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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Strengthening the foundations of Smart Regulation – improving evaluation

1. INTRODUCTION

Responding to the need to continually improve and strengthen governance, the European Commission has developed a comprehensive Smart Regulation policy aimed at facilitating the achievement of public policy objectives at minimum cost and improving the added value of EU intervention¹. Evaluation is a key Smart Regulation tool, helping the Commission to assess whether EU actions are actually delivering the expected results and ultimately improving conditions for European citizens and businesses and contributing to the EU's global role.

In its 2012 EU Regulatory Fitness Communication², the Commission re-iterated its commitment to making "the identification of unnecessary costs and areas for performance improvement an integral and permanent part of its policy-making and programming across all EU legislation." Better evaluation practices will play a crucial role in delivering on this promise.

The reforms outlined in this Communication aim to bring the Commission's evaluation system up-to-date with developments in Smart Regulation policy and make it more transparent and comprehensive. EU policies need to be regularly and systematically evaluated, including critical consideration of whether they are fit for purpose, produce the expected changes and avoid unnecessary regulatory burden. Better evaluation should increase learning and accountability and improve stakeholders' participation.

A recent consultation³ showed that whilst stakeholders support the general concept of evaluation, they see scope for improvement. They call for a more transparent and accessible evaluation system, with clearer planning and consistent analysis. This would help them provide relevant information and feedback and make it easier to understand what may happen after an evaluation finishes.

Drawing on existing good evaluation practice within the Commission and organisations undertaking similar analysis, this communication identifies the main areas for improvement and the changes the Commission is considering to strengthen all aspects of evaluation performance. It concentrates on retrospective evaluations. Revised evaluation guidelines, based on the suggestions presented in this communication, will shortly be put out to public consultation.

¹ Throughout this text the words intervention and action are used as umbrella terms to describe the wide range of different EU actions including: expenditure and non-expenditure measures, legislation, trade agreements etc.

² COM(2012) 746 final

³ Summary of the Responses to the 2012 Stakeholder Consultation on Smart Regulation in the EU, available at: http://ec.europa.eu/governance/better_regulation/smart_regulation/docs/sr_consultation_outcome2012_en.pdf

2. EVALUATION IN THE COMMISSION: STATE OF PLAY

Evaluation does more than just assess what has happened - it also looks at what caused the change and how much might reasonably be credited to EU action. It seeks answers to questions like:

- Have the objectives been met? (Effectiveness)
- Were the costs involved justified, given the changes which have been achieved? (Efficiency)
- Does the action complement other actions or are there contradictions? (Coherence)
- Is the EU action still necessary? (Relevance)
- Can or could similar changes have been achieved without EU action, or did EU action make a difference? (EU added value).

By looking at if, how and why the initial situation has changed, evaluation provides evidence and informs the debate on current performance and possible changes. Evaluation plays an important part in organisational learning, identifying and sharing different practices. It provides an opportunity to receive stakeholder feedback and requests for change. Thorough evaluation also identifies unintended and unexpected consequences, which also need to be taken into account. By publishing evaluation findings, the Commission is publicly taking responsibility for its actions, acknowledging how an intervention is performing and inviting further feedback.

2.1. Progress

The Commission has a long history of evaluating its spending programmes and is committed to evaluating all its activities, including legislative and other non-financial interventions⁴. Whilst there is often a fairly consistent and standard model that applies to the planning and timing of spending programme evaluations, the practice for evaluating regulatory and other policy actions is more varied. The Commission will from now on fulfil its commitment to "evaluate first"⁵ and systematically ensure that all significant proposals for a revision are backed up by a robust evaluation of the performance of existing EU action.

Fitness Checks⁶ are comprehensive policy evaluations covering more than one piece of legislation. They assess whether the regulatory framework for a policy area is "fit for purpose" and if not, what should be changed. Pilot Fitness Checks have been conducted, testing the concept and providing valuable insights for future development. On this basis, new

⁴ See Commissions Internal Control Standard 14 available at:

http://ec.europa.eu/budget/library/biblio/documents/control/sec_2007_1341_annexes_en.pdf Commission's Financial Regulation and its implementing rules available at:

http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm

⁵ COM (2010) 543 final

⁶ Within this text, wherever an evaluation is mentioned, the concept of a Fitness Check could equally apply. The Fitness Check concept was introduced in COM (2010) 543 final.

fitness-checks have been designed and launched in various Commission services. The REFIT Communication⁷ indicates further Fitness Check planning.

The 2012 report of the Impact Assessment Board (IAB)⁸ noted that "a significant number of impact assessments did not include the results from ex post evaluations". The Commission intends to make full use in prospective evaluations (impact assessments) of available retrospective evaluation results. The IAB committed itself to verify that such evaluation has been conducted and that its conclusions have been used in any related impact assessment. It also encouraged further strengthening of the identification within impact assessments of future evaluation and monitoring requirements. The Commission will follow-up on impact assessments in its subsequent evaluation of the performance of the actions adopted, thereby completing the evaluation and assessment cycle.

2.2. The current organisation

Across the Commission the structures are in place to deliver evaluation. The Commission's organisational framework for evaluation is decentralised. Individual Directorates General are responsible for the evaluation of their activities and can structure their evaluation functions to reflect the Directorate General's needs and requirements. Evaluation functions co-ordinate and support a Directorate General's evaluation activities and promote the well-founded and objective character of evaluation. The Secretariat-General is responsible for supporting measures, including the provision of guidelines⁹, and for ensuring that the evaluation standards¹⁰ are respected.

The vast majority of evaluations are out-sourced i.e. the Commission hires consultants to collect and analyse the relevant data and answer a set of "evaluation questions". Individual evaluations are followed by steering groups, which provide guidance and support to the evaluations and take part in ensuring their quality.

The Commission's evaluation standards are comprehensive and are similar to those applied by other comparable international organisations. They cover the full evaluation process: from resourcing, organisation and planning of evaluation activities to design, conduct and ultimately the dissemination and use of evaluations. They commit the Commission to conducting high quality evaluations, contributing both to better regulation and better integration of evaluation findings in the Commission's Strategic Planning and Programming Cycle.

⁷ Available at: http://ec.europa.eu/smart-regulation/better_regulation/key_docs_en.htm

⁸ Available at http://ec.europa.eu/governance/impact/key_docs/docs/iab_report_2012_en_final.pdf

⁹ Evaluating EU Activities: A practical guide for the Commission Services (2004)

¹⁰ Originally published in Annex A of the 2004 guidelines and updated in the Commission Communication "Responding to Strategic Needs: Reinforcing the use of evaluation" – SEC(2007)213

3. THE DRIVERS FOR CHANGE

Current evaluation practice should be improved for the following reasons:

3.1. Embedding an "evaluate first" culture and improving quality

There can be a tendency to look forward and focus on new initiatives. But changes are costly and take time to implement – so they need to be justified and greater attention needs to be paid to looking back before moving forward. There is a need to confirm the place of evaluation in the framework for EU action, to commit the appropriate resources and make sure that evaluations are conducted before proposing further action or change.

The link between evaluation and impact assessment needs strengthening. This should be a continuous loop: a good evaluation should be influenced by the quality of the preparation which went into an intervention (i.e. the impact assessment); good impact assessments should draw on the lessons learnt from evaluations, which should identify problems, deficiencies, challenges and successes.

Although evaluations often present the state of play, they do not always include sufficient analysis of why something has happened, whether some of the change can be attributed to EU action and the extent to which the change fulfilled all initial expectations. Despite the commitment to evidence-based policy making, evaluations are not always supported by sufficient data and stakeholder opinion. The Commission often depends on data to be provided by Member States. Greater attention also needs to be paid to the limits of the evaluation process itself and how that affects the ability to draw sound conclusions. More consideration could also be given to the risks faced and their possible impact on the overall success of the EU action.

Evaluation often starts with a presumption that EU action will continue and that changes will be made. Some evaluations don't focus enough on the problems and difficulties encountered – which, in a way, are more important than promoting what is working. The main focus of an evaluation should be a critical drive to improve performance, which means looking both for the bad practices and the good, providing robust and objective evidence to feed decisions as to whether EU action should continue as-is, be changed or even stop. The REFIT screening exercise¹¹ showed that progress is being made, but there is room for improvement. More can be done to challenge the status quo and improve the management of the EU acquis.

3.2. Need to update and improve the consistency of approach

The current evaluation guidelines need to be updated to reflect the latest developments in Smart Regulation policy and standardise minimum practices across the Commission.

Over time, there have been both consistent and diverging trends in Directorates General evaluation practices as they have evolved to accommodate new demands and developments, as well as the nature of different policy areas. This has led to differences in the planning, scope, method, content and final quality of evaluations. Not all EU legislation contains a clear commitment to conduct future retrospective evaluation, realistically scheduled so that the necessary data and information should be available.

¹¹ Initial results are presented in SWD (2013) 401 final.

There is significant room for improved longer-term planning, more transparency and greater advance warning and predictability in the nature and timing of evaluation work. Planning is a first and critical step in any evaluation process - poor planning can lead to evaluation results not being available in a timely manner, reducing the information and evidence available to policy making. Better advance planning is particularly necessary if evaluation is to fulfil its' role in the Smart Regulation cycle and provide a robust and timely starting point for consideration of whether further action is needed. Currently, the scope and range of such planning varies between Commission Services and it is not always clear how priorities are identified. The link between the performance of existing actions and proposed options for change is not always clear. Stakeholders and external parties find it difficult to provide timely inputs.

It can be difficult to decide when to conduct an evaluation. Often trade-offs need to be made between when the evaluation results are available (so that they can feed into the decision making process) and the amount of data on hand (needed to provide a robust evidence base and conduct analysis). Different policies take different lengths of time to deliver the desired changes, causing problems with data availability and making it difficult to standardise when to evaluate. Such limitations need to be taken into account when evaluation or review clauses are drafted and evaluations are first planned.

Apart from any available statistical evidence, much of the important information needed to perform a good evaluation comes from stakeholders and actors who are (directly and indirectly) affected – whose daily lives may be altered as a result of EU policies and subsequent Member State actions. These stakeholders have valuable insights into what is actually happening on the ground – yet often lack of advance notice makes it difficult for them to provide input in a timely and well-organised manner.

3.3. Quality assurance and quality assessment

A clear and common scrutiny process is needed to ensure that the evaluations carried out by the Commission are conducted to a suitably high standard, adopt a sufficiently critical approach and are free from bias (independent).

At present, quality assurance is undertaken by the Directorate General's evaluation function and/or the steering group. Sometimes Directorates General draw on a wider group of resources, for example, by involving external stakeholders in steering groups or by involving academics in the quality assurance of a given evaluation.

According to the evaluation standards, the steering group jointly produces (together with the officials managing the evaluation) a quality assessment of the final evaluation report. This quality assessment should critically assess the evaluation process undertaken, the information sources used, the analysis produced and the conclusions drawn. The quality assessment is not always published, in contrast to the IAB opinions, which are systematically made available alongside the final impact assessment and any associated Commission proposal.

4. BLUEPRINT FOR THE NEW APPROACH

The improvements outlined below build on the existing foundations and good practices, aiming to strengthen evaluation at the Commission.

4.1. Improving consistency and clarity: providing a common definition and process

The new guidelines will outline and define what constitutes a robust evaluation as well as provide pointers to what a good evaluation report might contain. The appropriate level of (proportionate) analysis is defined based on the policy importance, the complexity of the EU action and its stage in the policy cycle. A major effort will be needed to strategically manage the studies, reviews and assessments to optimise resource use and ensure that they feed into an evaluation framework that provides a timely and relevant input to the decision making process. Within the Commission, the new definition of evaluation could be: a critical, evidence-based judgement of whether EU action(s) has met the needs it aimed to satisfy and actually achieved its expected effects. It will go beyond an assessment of whether something happened or not, and look at causality – whether the action taken by a given party altered behaviours and led to the expected changes and/or any other unintended changes.

All evaluations should look at the effectiveness, efficiency, relevance, coherence and EU added value of EU action or justify why this is not the case.

Although each evaluation needs to be tailored to meet the needs of a given set of circumstances, elements of a common process can still be applied across the wide range of EU actions (for example, by using standard templates for the key stages of evaluation¹²).

4.2. Embedding Fitness Checks¹³

Fitness Checks are subject to the applicable evaluation standards and guidance. Their aim is to identify excessive administrative/regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time for, launching a discussion of the effectiveness, efficiency, relevance, coherence and EU added value of the actions being considered.

In comparison to the evaluation of an individual action, Fitness Checks should cover groups of actions that serve similar or overlapping objectives rather than independent and discrete aspects which have no inter-action or relationship between them. They should not be used just to fill gaps in evaluations undertaken before of an individual action and should thus provide a more comprehensive picture than could be obtained by combining several separate evaluations of individual actions.

The pilot exercises have shown that such an investment can be a cost-effective way of collecting evidence for better policy making. Further use of Fitness Checks can help to identify the cumulative impacts of EU actions and the scope for simplification and burden reduction.

¹² These could include the evaluation mandate, evaluation final report, and the quality assessment of the evaluation final report.

¹³ To date, 3 pilot Fitness Checks have been completed by the Commission and a further 2 are on-going. The REFIT Communication envisages more being created as this tool becomes an established part of Commission evaluation policy.

4.3. Promoting an evaluation culture

A further culture shift is required to complete the Smart Regulation cycle in practice and ensure that timely evaluation results are fed into the policy making process. Good policy must be based on robust evidence and evaluation can make a major contribution in this respect. The 'evaluate first' principle should be further promoted.

The necessary resources need to be dedicated to the organisation of evaluation and to ensure involvement of all levels of management and greater ownership within a Directorate General of the final evaluation results. Evaluation needs to become a fully integrated part of the policy making cycle, with clear recognition being given to the important and necessary role its findings and conclusions must play when considering the need for any possible future action.

Irrespective of whether an evaluation has been conducted by the Commission Services or by an external contractor, to improve accountability, the Commission Services responsible for the evaluation should publish their analysis and planned follow-up.

4.4. Planning

Building on the REFIT mapping, the planning process should be streamlined and all Directorates General should produce indicative rolling evaluation plans covering a five year period that should be updated annually. The planning should clearly link up the various commitments already made to evaluate and identify the degree of evaluation expected within each item on the plan¹⁴.

Evaluation planning and design needs to be carefully considered and developed at the start of an action or following major change¹⁵. Since each action has a different life cycle, better consideration should be given to the implementation stage and likely data availability at a given point of time, to ensure that evaluations provide a more timely input to decision making¹⁶.

A framework of data monitoring and collection needs to be established from the start of the action¹⁷, so that when the time comes to evaluate, the most useful information is readily accessible. This framework should also indicate where Member State authorities are expected to assist with data collection, monitoring and evaluation. Consideration also needs to be given to an initial check of the performance of a measure, with a view to prioritising and scheduling proportionate evaluation dependent on the initial identification of performance and associated levels of risk.

In principle, all policy and programme Directorates General should be conducting at least one evaluation or one Fitness Check each year.

¹⁴ The Commission plans to provide an outlook on the context, timing and organisation of the reporting and evaluation work to be carried out from next year on the spending programmes in this year's report under Article 318 of the Treaty on the Functioning of the EU.

¹⁵ The final chapter of an impact assessment sets out the proposed future evaluation and monitoring arrangements.

¹⁶ A point also made in the 2011 IAB report.

¹⁷ Normally, such arrangements should be identified during the impact assessment process.

To improve transparency evaluation planning should be publicly available on a central website and annexed to the management plan of the Directorate General.

4.5. Getting the design right: delivering more relevant, robust and rigorous evaluations

Evaluation design should be sound and realistic about what can be evaluated at a given point in time and an approach selected which maximises the use of readily available evidence. The scope and purpose of the evaluation should be clearly defined at the beginning of the process, setting the objectives of the evaluation and confirming that the five key evaluation criteria (effectiveness, efficiency, relevance, coherence, EU added value) will be analysed or, exceptionally, explaining why this is not the case. Consideration should also be given as to how best to analyse other key elements relevant to the given policy area or activity, such as competitiveness (including international competitiveness) and implementation costs, bearing in mind possible methodological and data constraints.

From the start of the process it should be clear how the evaluation will be conducted and put to use. Such planning should be publicly summarised in an evaluation mandate making the intended scope, purpose and timetable of an evaluation more transparent and accessible to all interested parties at all steps of the process. Where external contractors are involved, the Terms of Reference for their work should be published centrally on the same website as the evaluation mandate. This should make the evaluation process more transparent and accessible, facilitating timely contributions from stakeholders.

Evaluation results and preliminary assessment need to be communicated to all stakeholders and actively discussed and debated. The Commission Services in charge of the evaluation should identify their follow-up actions within six months of the completion of the final evaluation report. As useful, regular progress updates of the follow up should be provided to senior management.

Within an evaluation, consultation should comply with the Commission's minimum standards for consultation. Respecting these standards, the actual timing and method of consultation should be defined on a case by case basis, reflecting the need for proportionality.

Greater focus needs to be placed on preparations for the implementation in Member States of actions adopted at the EU level. Just as the Commission publishes implementation plans to assist and support Member States in their legal transposition process, so too should more attention be given to the early preparation of monitoring and evaluation frameworks based on the adopted legislation or action. This should be facilitated by the work already done at the impact assessment stage. In the future, each Commission proposal for any significant change should be accompanied, in the implementation plan, by an evaluation framework containing the objectives and indicators for the action and proposed programming for the monitoring and evaluation of the performance of the action.

4.6. Building in quality and developing a range of scrutiny mechanisms

The role of the steering group should further improve the process and content of evaluations. By overseeing a minimum set of mandatory tasks, the steering group should make a strong contribution to the quality of an evaluation. It should also play a strong role in ensuring robust evaluation – bringing together technical and operational experts and other parties from related

policy, representing a wide range of opinions and influences. It should contribute to the quality assessment.

As a minimum the final report should be published and information on completed evaluations made accessible through the EU Bookshop, alongside the evaluation mandate and quality assessment. This wider dissemination should make it easier for all interested parties to scrutinise the full process, from start to finish.

Other initiatives which might contribute to improving the quality of evaluation results could be undertaken on an ad hoc basis. Suggestions include: the use of academic panels; an annual review of a (random) selection of completed evaluations to identify good practices and general improvements; presentation of evaluations in Council working groups and Parliamentary committees etc.

The Commission will continue to look for further ways to collaborate with stakeholders and national/regional governments, seeking ways to share experiences and learn from different evaluation systems. In particular, the High Level Group on Better Regulation is assisting the Commission by looking for pilot opportunities to develop and test approaches to "joint evaluations" with Member States and better ways to share available data and good practice.

5. A JOINT RESPONSIBILITY

Evaluation is not just a Commission responsibility. Member States require evidence based policy making and as such, must also commit to playing their part, particularly in providing the necessary data. They should also do more to evaluate and share their experiences of implementing EU legislation, or contributing to EU actions. In this context, the Commission will strive to ensure that its proposed monitoring requirements are as efficient and streamlined as possible, minimising any administrative burden.

Better Regulation is anchored in the inter-institutional agreements between the European Commission, the European Parliament and the Council. The 2003 Inter-institutional Agreement on Better Law-Making¹⁸ establishes a global strategy for better law making throughout the entire EU legislative process. By further improving the co-operation between the three institutions and working closely together to ensure that the evaluation and monitoring requirements adopted are clear, robust and efficient, fully corresponding to the objectives of the final proposal, the three institutions could significantly improve the evidence base available to decision makers. The Commission encourages the other institutions to actively discuss evaluation results in Council working groups and Parliamentary committees and promote an inter-institutional evaluation culture throughout the complete cycle.

6. THE FUTURE OF EVALUATION AT THE COMMISSION

The European Commission is committed to providing a proportionate and reliable evaluation system as part of its Smart Regulation cycle. Robust and useful analysis, critically judging the

¹⁸ OJ C 321, 31.12.2003, p. 1.

outcomes of EU intervention is essential. Learning from past experience, recognising the most efficient and effective ways of operating and developing a flexible and proportionate approach to analysing such actions will improve accountability and make EU intervention stronger, matching actions to priority needs and delivering the necessary high quality results.