ANNUAL REPORT 2019

REGULATORY SCRUTINY BOARD

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Foreword by the Chair

I am pleased to report on the Regulatory Scrutiny Board's fourth year of operation, and my first as Chair.

2019 was a year of transition for the Board. Several Board members' three-year mandates came to an end at around the same time. Managing the turnover proved challenging, and the Board lost its decision-making quorum for three months before the issues could be resolved.

Despite these staffing issues, the Board managed to fulfil its mandate to examine and issue opinions on draft impact assessments and evaluations. A silver lining was that, being a transition year, the Board's workload was lighter than in 2018, with but a single impact assessment to review for a legislative proposal. The Board instead focused its work on fitness checks and major evaluations likely to be needed in priority policy areas for the incoming Commission. Commission departments produced these reports under less time pressure than in 2018. This allowed for additional time and flexibility at the preparation, review and finalisation stages.

This report presents the Board's current thinking on evaluations, based mostly on what it has observed over the past year, but also drawing on experience from earlier years. The quality of initial draft evaluations remains patchy. Reports sometimes had design flaws severe enough to compromise the very purpose of the evaluation, which is to draw useful lessons for the future.

There will always be issues of how to apply Commission guidelines intelligently. But there is also a question of whether the incentives for the people who design and produce the evaluations are fully aligned with the aim of producing reports that are clear and transparent. This is a challenge that goes beyond the remit of regulatory scrutiny.

The Board's effectiveness depends not only on high quality scrutiny, but on effective communication of its work and its findings to all interested parties. In addition to fulfilling its core duties of scrutiny, the Board received a clear mandate in 2019 to reach out to external stakeholders and explain its activities. Board members engaged in 46 outreach events in 2019.

The von der Leyen Commission has confirmed the strong role of better regulation in general and regulatory scrutiny in particular. In 2020, the Board will as a priority play its role to ensure that the information basis for decision-making is clear and meets the Commission's better regulation guidance. It will contribute to the further development of the better regulation policy and guidelines to align them to the new Commission's priorities. The Board will also work to fill its outstanding vacancies.

I am grateful to the Board secretariat for its dedicated support over the past year.

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Veronica Gaffey

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CHAPTER 1

Activities of the Board in 2019

The Board has a central and precisely defined role.

The Board independently scrutinises the drafts of all impact assessments and fitness checks, and a selection of evaluations. It reports to the President of the Commission and to the First Vice-President for Interinstitutional Relations and Foresight.

Figure 1 shows how the Board acts at the early stages of preparing legislation, making sure Commission proposals are based on the best available evidence and in full knowledge of stakeholder views. It gives approval for work that is in good shape to progress quickly and it can halt the preparatory process and ask for better justification of what is proposed [1]. Any political decision to proceed with an initiative that the Board has found lacking in adequate evidence requires an explanation as to why it should go ahead.

Figure 1. RSB position and role in the EU law-making cycle
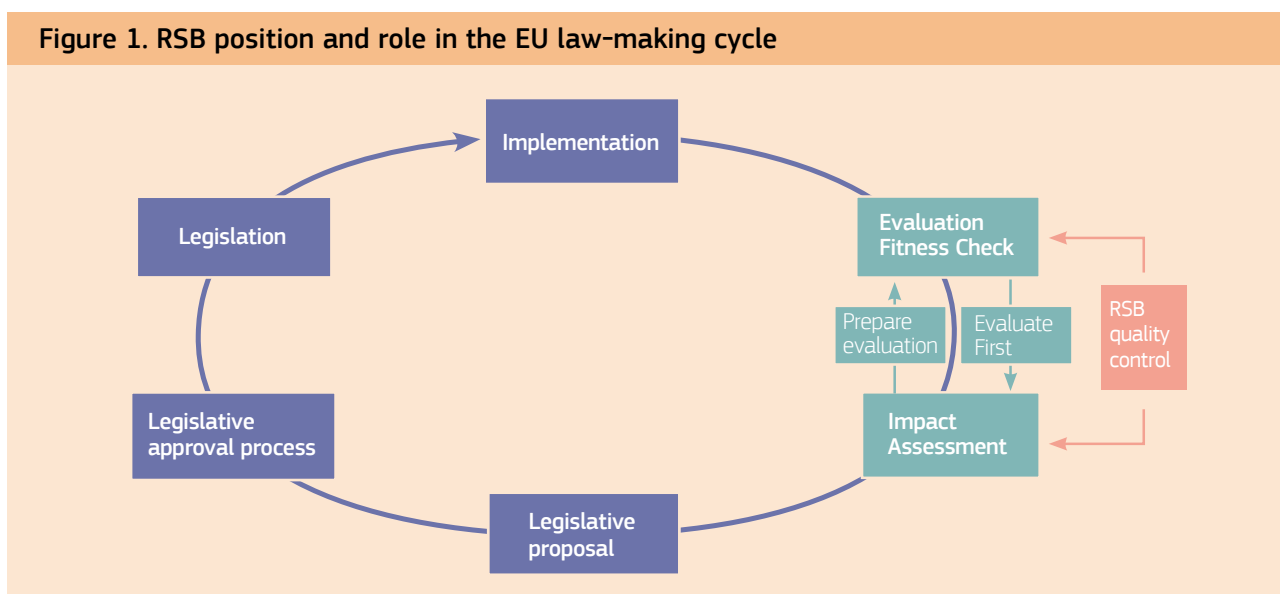
1.1. How the Board performed in 2019

Three key performance indicators (KPIs) serve as benchmarks to assess how the RSB makes effective use of its resources.

Three benchmarks for success.

KPI 1 The number of impact assessments and evaluations scrutinised.

KPI 2 On-time delivery of RSB opinions.

KPI 3 Qualitative improvements of reports, following contacts with the Board.

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[1] The full mandate of the Board can be found here: https://ec.europa.eu/info/sites/info/files/rsb_decision_23_01_2020_en.pdf.

In 2019 the Board mostly assessed evaluations...

Table 1 shows 2019 activity in comparison with earlier years (KPI 1). In 2019, the Board scrutinised one new impact assessment and 17 evaluations, four of them fitness checks covering multiple pieces of legislation in broad areas of policy ([2]).

...because there was only one impact assessment.

The relative absence of impact assessments reflects the EU's political cycle. With parliamentary elections in May and a new Commission taking office at the end of the year, the Commission focused on negotiating recent initiatives and on evaluating the performance of current legislation in preparation for future action. For the first time since the Board was established, the emphasis of its scrutiny was on evaluation.

Table 1. Overview of Board regulatory scrutiny work by year				
Year	Meetings	Cases	Negative opinions	Initial rejection rate
Impact assessments				
2016	22	60	25	42%
2017	23	53	23	43%
2018	27	76	21	28%
2019	9	1	1	100%
Evaluations				
2016		7	*	
2017		17	7	41%
2018		11	3	27%
2019		17	8	47%

*In 2016, evaluations received opinions with comments, without 'positive' or 'negative' mention.

The Board reviewed resubmissions of two impact assessments and five evaluations that it had rejected in its first round of scrutiny ([3]). It considered all the resubmissions it received in 2019 to be up to standard and gave each a positive assessment.

The Board delivered its opinions on time...

With regard to KPI 2, the Board issued all of its opinions on initial submissions within two working days of the Board meetings at which it assessed the files. For the two resubmitted files that arrived in August, the Board issued its opinions in November. This was due to the Board losing its required quorum for taking decisions. The Board would usually need to issue its opinion on resubmitted files within four weeks, so this delay was a technical breach of KPI 2. More on the quorum issue below.

...except when it lost its quorum.

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[2]   These include air and water quality legislation, as well as firms' financial reporting requirements to regulators and to the public.

[3]   One of the resubmitted impact assessments and two of the evaluations received initial negative opinions in 2018.
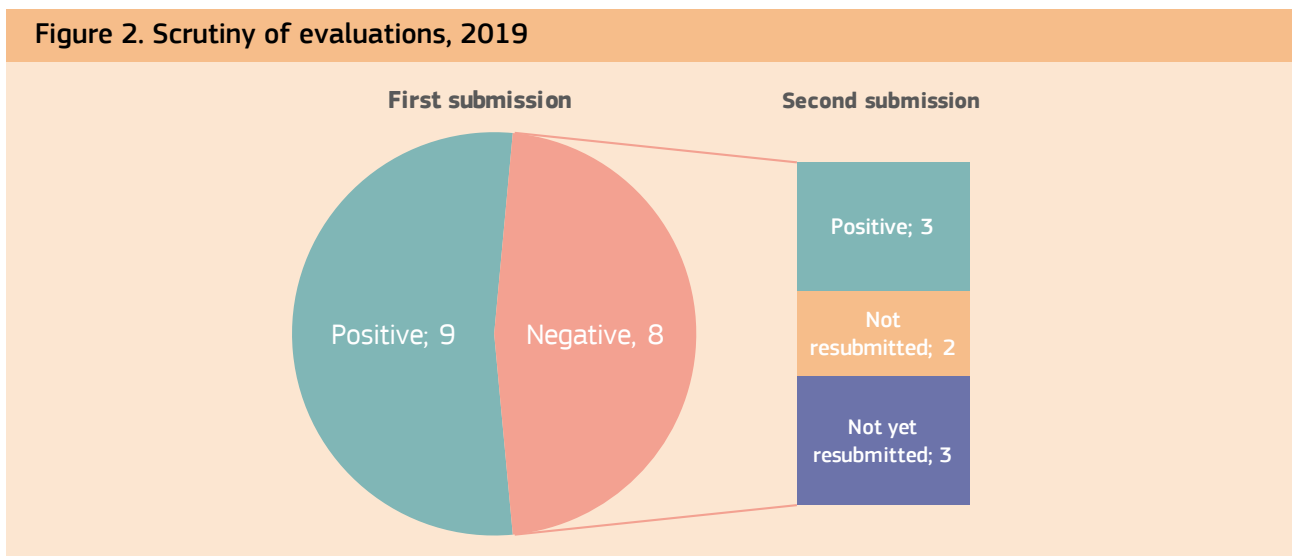
With regard to KPI 3, due to the lower number of cases, there is limited evidence on how the Board improved the quality of reports in 2019. The only new impact assessment that the Board reviewed in 2019 initially received a negative opinion ([4]). One case is not sufficient to discern an overall trend in the quality of impact assessments.

A crucial difference between the scrutiny of evaluations and impact assessments is that when the RSB gives an initial negative opinion on an evaluation, Commission departments are not obliged to resubmit. When departments chose not to resubmit the file, a commonly cited reason has been time pressure. If the Board flagged issues in the design of the evaluation, the department may also have considered that it could not fix these easily in a revised version.

Resubmitted reports improved. Only three of the eight evaluations that received a negative opinion in 2019 returned to the Board before the end of the year (**Figure 2**). In each case, the quality had improved sufficiently for the Board to issue a positive opinion. In one case, the lead department decided not to resubmit a revised evaluation report to the Board for a second opinion. This evaluation also improved, but not by as much. The Board collected statistics on the quality of the final version, and there is evidence that the Board's input led to improvements. Chapter 2 gives further detail and data relating to 2017-2019.

Departments normally finalise the evaluations that the Board reviews, regardless of whether the initial opinion was positive or negative. In one case, the department followed the Board's suggestion not to finalise the report as an evidence-based evaluation, due to the limitations of the underlying study. Some of the remaining three evaluations that have not been resubmitted are likely to return to the Board for review in 2020.

Figure 2. Scrutiny of evaluations, 2019

First submission

Positive; 9   Negative, 8

Second submission

Positive; 3

Not resubmitted; 2

Not yet resubmitted; 3

([4]) The subsequent resubmission received a positive opinion.

Evaluations are complex exercises. A good evaluation needs to get many aspects right and strike a suitable balance between these aspects and the specific circumstances. The Board's initial opinions from 2019 suggest a number of recurring issues:

1. In 12 cases, the evaluation drew conclusions that were not backed up by the underlying data.

2. In 10 cases, the evaluation did not satisfactorily describe the policy context.

3. In eight cases, the evaluation did not clearly describe the logic of how the measure should work to produce interim operational outcomes and contribute to the desired policy outcomes (intervention logic).

4. In eight cases, the evaluation lacked benchmarks for success.

5. In eight cases, the evaluation added up all consultation responses and reported them as if they were representative votes, instead of reporting on the substance of the views of each stakeholder group.

6. In five cases the Board wrote in its opinion that stakeholder remarks should be more thoroughly investigated, and that the report should be more reader-friendly.

7. In three cases the Board considered that the evaluations should do more to identify ways to simplify or reduce burdens, and draw more lessons for the future.

1.2. Special task this year: renewing the Board

Several Board members' terms ended in 2019...

The 2015 decision that established the Regulatory Scrutiny Board limited Board members' appointments to a single three-year term. The Chair and one Board member left their positions in 2018, and four of the remaining five Board members reached the three-year mark in 2019. Three Board members left during 2019. The Board needs four members to reach a decision-making quorum (**Figure 3**).

...which led to a temporary loss of quorum.

Although the current Chair took office in March and the Commission extended the term of some Board members, the length of the process to recruit two internal members meant the Board lost its quorum from 1 August to 31 October.

Figure 3. Number of Board members, 2016-2019
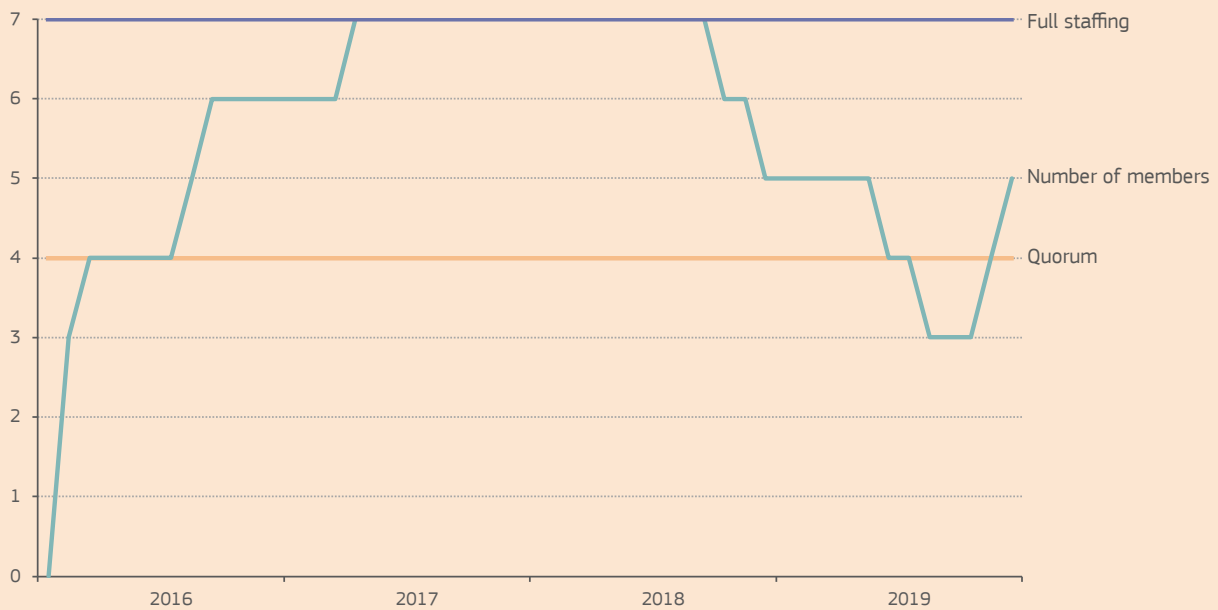
The Board finished the year as it began, with five members, two vacancies and two external members within months of contract expiry. The workload in 2019 was manageable because the Board's smaller team was experienced and had fewer files to review. For the future, staggered starting dates would help prevent another loss of quorum. A priority for 2020 will be to restore full staffing levels so that the Board is ready to scrutinise the impact assessments that support the new Commission's initiatives.

The Board took steps to minimise disruptions...

The Board could not issue opinions in the months that it lacked a quorum. To be constructive and minimise disruptions, Board members nevertheless continued to examine evaluations, both new and resubmitted. It cancelled one scheduled meeting with three evaluations, but Board members provided informal comments on two evaluations for review at that meeting and removed these from its work programme. The Board reviewed the third evaluation after it regained a quorum.

...and continued most of its functions.

The Board organised its annual conference and a networking event for scrutiny bodies in September. These were opportunities to interact with counterparts and reflect on progress made and areas for future development. More on events and outreach below.

1.3. Advisory role of the Board

The Board provided cross-cutting advice...

Based on its experience, the Board provides advice to the Commission's Secretariat-General on better regulation policy, related processes and guidelines. The purpose is to improve the quality of impact assessments and evaluations over time. The Board delivers most of its cross-cutting advice via in-house discussions and occasional written contributions. In April 2019, the Chair moderated a panel discussion on 'Quality and scrutiny' at the Secretariat-General's conference on 'Better regulation: taking stock and sustaining our commitment.' Throughout the year, the Board focused primarily on evaluations and their proper inclusion in the policy cycle.

...as well as advice on specific cases.

The Board also gives advice to Commission departments on specific cases. In 2019, it organised 21 'upstream meetings' covering 34 initiatives. These meetings involved informal discussions with departments about files in relatively early stages of preparation. Board members, accompanied by colleagues from the Secretariat-General and the Joint Research Centre (JRC), learn about the file and the lead departments receive an early reaction from Board members. In 2019, the Board followed up every such meeting with informal minutes to capture the key points made. In 2019, it brought in a structured template for these minutes. Chapter 3 gives more details on how upstream meetings have evolved in recent years.

1.4. Communication and outreach

Clear communication is a priority for the Board...

The Board took additional steps in 2019 to ensure that the recommendations for improvement that it provides during the formal scrutiny of cases are clear and helpful. It simplified and clarified its templates for quality checklists and opinions. It also made a particular effort to ensure that its recommendations are unambiguous and that its language is as clear and plain as the subject matter will permit. Chapter 3 contains further details on the readability issues found in Commission reports.

...and deserves more emphasis in reports.

The Board is not well known.

It is working to remedy this.

One of the Board's challenges is to make its work better known. The Board and the policies on better regulation are core aspects of the Commission's strategy to promote transparent and evidence-based policy making. In July 2019, the Commission explicitly added external outreach to the Board's tasks. The Board's outreach activities include making presentations on how the Board works and holding exchanges of views on issues relating to better regulation. There are many types of audiences, both internal and external, that take an interest in regulatory scrutiny. **Table 2** illustrates the range of bodies involved. Chapter 3 gives further details of the Board's outreach strategy.

| Table 2. Outreach activities in 2019		
Type of outreach	Examples	Number of meetings/events
Internal	Commission networks and departments	11
Interinstitutional	European Parliamentary Research Service, Committee of the Regions	6
Member state institutions and national counterparts	Better Regulation Network, RegWatch Europe	11
Stakeholders, interest groups and general public	College of Europe, United Nations Economic Commission for Europe (UNECE)	18
Total		46

CHAPTER 2

Investing in better evaluation

2.1. Evaluate first

Evaluation has been timely... The 2015 better regulation package reaffirmed the Commission's commitment to evaluate how existing legislation is working before proposing to change it. The share of Commission impact assessments that have observed this 'evaluate-first' principle has increased from 50% in 2016 to 79% in 2018-2019 (see **Figure 4**). This does not include cases where an evaluation is not deemed necessary, typically because there is no existing EU legislation in force to evaluate. The only impact assessment that the Board reviewed in 2019 drew on evidence from a recent evaluation. Many evaluations that the Board scrutinised in 2019 explicitly stated that they would feed into future impact assessments.

Figure 4. The evaluate-first principle
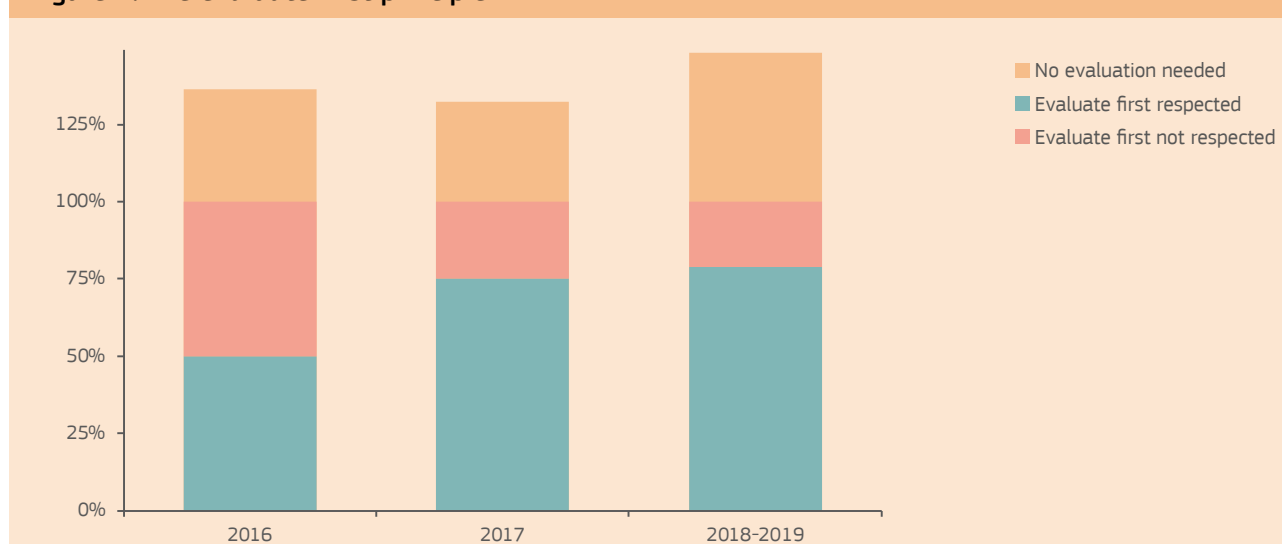
...but evaluation quality has often fallen short. The view of the Board is that the Commission is indeed taking the 'evaluate-first' principle seriously. However, the Board also found that as many as one third of the available evaluations carried out over the period 2017-2019 were not of sufficient quality to form a useful basis to underpin the associated impact assessments.

2.2. Evaluate properly

Evaluating is not a simple exercise.

Constructing a sound evaluation involves reflecting on the objectives of the initiative and investigative work to bring together data from different sources to form an accurate and useful picture of how the initiative is operating.

Several components need to work well together.

When scrutinising the quality of evaluations, the Board often raised concerns about basic elements. In over 80% of the cases that the Board reviewed between 2017 and 2019, the first opinions criticised issues of design and methodology. **Figure 5** shows that when the Board gave a negative opinion, poor quality of evaluation design and methodology was one of the most serious shortcomings. The two other main shortcomings were the analysis of effectiveness and efficiency and the validity of the conclusions. To some extent, the latter two were likely to flow from the first issue of design quality. Problems in the design of the evaluation make it harder to draw valid conclusions on effectiveness and efficiency. The Board remarked less often on shortcomings in the presentation and in the analyses of relevance, of EU value added and of coherence (^{5}). On these aspects, the quality was markedly lower in evaluations that had received an initial negative opinion.

Figure 5. Average score of evaluations — first submissions, 2017-2019
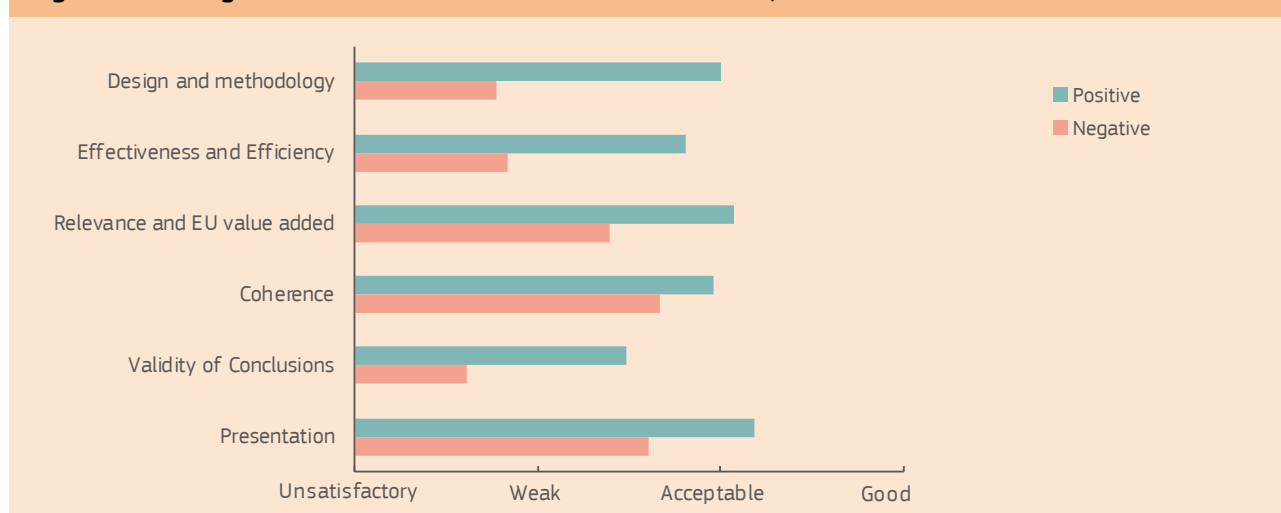
(^{5}) The categories on which the Board collects and reports statistics sometimes seemed to be unhelpfully broad. In 2019, the Board reviewed its system for collecting statistics, with a view to collecting more detailed information in some areas and dropping statistics that had not proved useful as formulated. These changes will take effect in 2020.

The Secretariat-General of the Commission has produced extensive evaluation guidance. It provides this guidance via the better regulation guidelines and an accompanying toolbox created in 2015 and revised in 2017, with another revision planned for 2020. The guidance stipulates that all evaluations should examine the extent to which an intervention is effective, efficient, relevant, coherent and delivers EU added value. Departments are to apply these evaluation criteria with good judgement, taking into consideration the specific nature of each case. This has proved difficult for some teams to interpret. The Board has observed a tendency to apply the guidance too mechanically, without sufficient reflection on how to adapt the evaluation criteria to the specific context and how the criteria fit together.

Box 1. Example of a successful evaluation: fitness check on EU supervisory reporting requirements.

In the wake of the global financial crisis, EU policymakers adopted over 40 pieces of legislation that expanded and reorganised financial sector supervision. Market participants now report more data on their financial situation and activities. While most agree on the need for reporting, many also argue that regulators could achieve the same objectives in less burdensome ways.

The Board reviewed a fitness check on EU supervisory reporting requirements that investigated stakeholders' concerns about the evolving system of financial sector supervision. A fitness check is an evaluation that reviews several pieces of legislation that apply to the same broad policy area. Fitness checks are a useful way to check for gaps and duplications, and to look for ways to simplify rules and reduce the overall burden. The Board scrutinises all fitness checks.

This fitness check did a good job both in gathering and presenting stakeholder views, and in assessing how well the overall EU legal framework for supervisory reporting meets its objectives. This was an unusually large and difficult undertaking, and it took nearly two years to complete. The Board found the resulting report to be reader-friendly and informative. It was longer than usual, but justifiably so. A 70-page annex describes in a structured way the reporting requirements for each reporting framework, forming a valuable reference document in its own right.

The Board gave this fitness check top marks for design, methodology and presentation. It found the report to be strong in assessing effectiveness and efficiency, relevance and EU value added. The report gave a clear description of how different reporting frameworks interact and the conclusions appeared to be valid and relevant for future action.

Even the strongest reports have scope for further improvement. In this case, the Board suggested more clearly assessing the reporting burden on smaller entities. The report could also better explain supervisors' roles and information needs on broad objectives such as market integrity. But all in all, several Board members considered this the best evaluation report they had seen to date.

Design problems can relate to data,

The Board found several issues relating to evaluation design. One was poor generation or use of data. It may be that the data needed to evaluate the achievement of objectives is not collected, sometimes because the means to do so were not part of the initiative. A related problem has been that the evaluation's ambitions do not match the timeframe. Several reports prematurely designed evaluations as ex post exercises, only to conclude with the obvious observation that data on outcomes were not yet available. In these cases, it would have been more useful to document implementation to date, describe pathways to success and any surprises or obstacles encountered. The evaluations should still examine whether policy initiatives are on track to deliver.

timing,

intervention logic,

A second aspect of evaluation design that weakened scores was a lack of clarity on how measures link to immediate and longer-term outcomes. For these cases, the evaluation did not sufficiently express the underlying rationale for the initiative and describe how the action proposed would help produce the desired outcomes. This description should include hypotheses that evaluations can test by collecting and analysing available evidence. In the absence of an appropriate 'intervention logic' that describes how the programme or policy is expected to work, the evaluation may not ask the right questions to test the logic against the evidence. A precondition to a hypothesis being testable is that there are benchmarks for success against which to compare intermediate and final outcomes. Without a clear description of success, it is hard to assess whether it has been achieved or is on track.

success benchmarks,

models,

A third problematic aspect with evaluation design concerned the methods used to support the studies and evaluation reports. Some evaluations compared the status quo against a counterfactual ([6]) or a theoretical basis that was inappropriate or not fully fleshed out. Others chose analytical tools or models without properly explaining these choices. The Board expects departments to be open and frank about the strengths and limitations of data and methods used.

or other factors.

Impact assessments should indicate how a subsequent evaluation would measure success, and which benchmarks to use to assess performance. Reality often unfolds differently to that expected when the impact assessment is written. Therefore, evaluations should explore how external factors and unforeseen events could have an impact on the expected outcome. This could be helpful in the event that there are significant differences between the initiative as adopted and the analysis carried out in the impact assessment.

Full quantification is not necessary to assess whether benefits justify costs.

The efficiency analysis looks at whether the EU can achieve the same benefits of an initiative at a lower cost. It should also feed into the conclusions on whether the benefits justify the costs. Even if it is not possible to quantify all the benefits and costs, clearly juxtaposing the

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([6]) A counterfactual is a hypothetical state of the world. It describes what the world would have looked like in an alternative scenario, e.g. if the EU had decided to act differently or not to take action.

benefits and the costs is helpful when assessing whether the initiative has been worthwhile, and where there may be scope to simplify or reduce the administrative burden.

Scope for simplification deserves more attention.

The Board regularly highlighted the need to put more emphasis on assessing the scope for simplification and burden reduction. The Commission's REFIT programme requires evaluations to assess the scope to reduce the costs of an initiative without jeopardising its benefits.

Conclusions were sometimes biased.

In some cases, the Board found that important or critical findings of an underlying study had been left out of the evaluation, without explanation. The Board has regularly expressed concerns that the conclusions of the evaluation were selective readings of the evidence, or not clear enough on the weaknesses of the evidence collected. Evaluations are also learning exercises to identify areas for improvement, so an objective reading of the data is essential.

Teams may not have the capacity to evaluate properly...

Two structural weaknesses may be at the root of many of shortcomings found on the quality of the evaluation. Firstly, there is an evaluation capacity problem. Although the Commission has a lot of experience with evaluation, the evaluation capacity is not always available where it is needed. The responsibility for planning and conducting evaluations lies fully with the operational departments. Often the teams responsible for the initiative are the same teams that design and manage the evaluation. These teams do not always have evaluation expertise. Local and central support teams can provide evaluation know-how, but they often lack the capacity or authority needed to ensure evaluation quality. This can lead to an overly mechanical application of the guidance. In other cases, evaluations are led by the local evaluation team, which is more likely to have the necessary expertise.

...and they may face conflicting incentives.

The second fundamental weakness concerns the incentives to ask the right questions and draw accurate and relevant conclusions from the evidence. Operational departments may have an interest in the evaluated initiative, and this can impede a frank assessment of its potential flaws.

There is a balance to strike between the independence of the evaluation and the need to ensure ownership of its results. When operational teams have sufficient buy-in to the evaluation, it is more likely that they follow up when shortcomings are found.

2.3. How scrutiny has affected evaluation quality

Scrutiny of evaluations has led to improvements.

Since its creation in 2015, the Board has examined 52 evaluations. There is evidence that Board scrutiny has led to improvements. **Figure 6** shows that, on average, departments tended to improve the quality of their evaluations after the Board's initial opinion. The greatest improvement was seen for evaluations that initially scored lowest on quality and received a negative opinion ([7]).

Figure 6. Quality of evaluations improves after Board scrutiny, 2017-2019
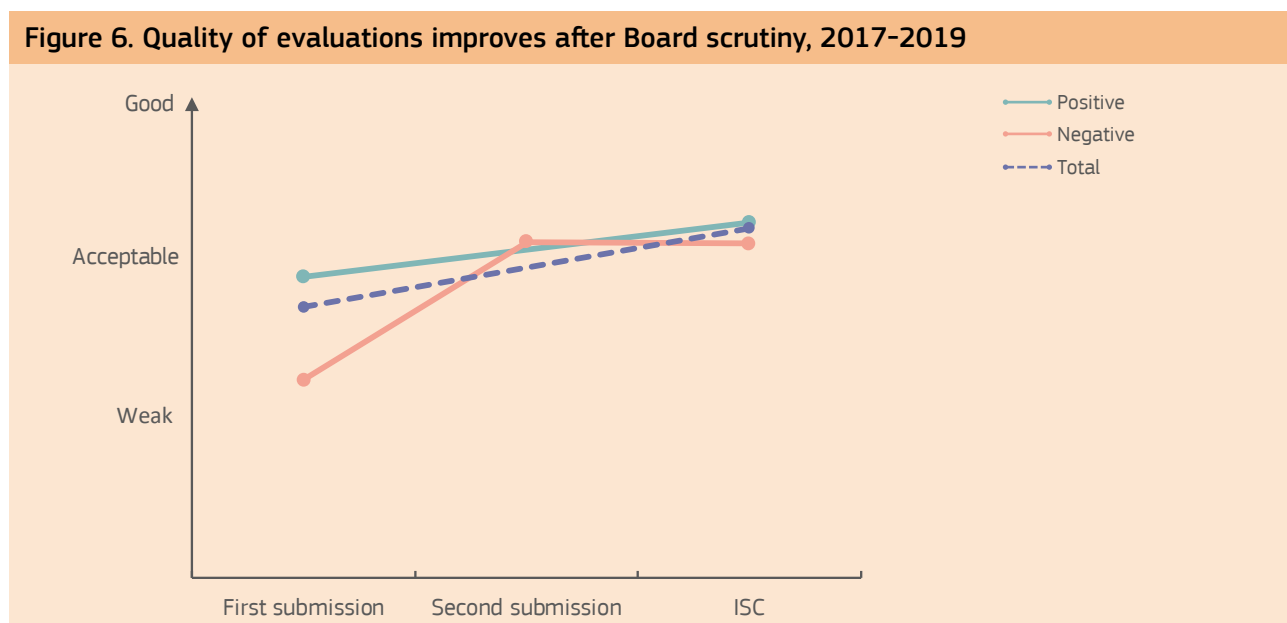
These general trends mask differences between specific cases. At first submission, 22% of evaluations had an overall quality rating of acceptable or higher (one was rated good). Almost 70% were weak, and 9% were below the level for weak (**Figure 7**). By the time departments had submitted their evaluations to interservice consultation (ISC), the spread was narrower, with as many as 78% rated as acceptable or higher. The remaining cases still had much room for improvement.

([7])   Data in Figures 6, 7 and 8 include all scrutinised evaluations that passed the interservice consultation (ISC) phase. There were fewer observations for the second opinion, as not all evaluations that received an initial negative opinion were resubmitted. In Figure 6, the small decrease in the quality score at the ISC stage for evaluations with an initial negative opinion is the result of the relatively smaller improvement in the quality of evaluations that were not resubmitted.

Figure 7. Spread of evaluation quality before and after Board scrutiny, 2017-2019
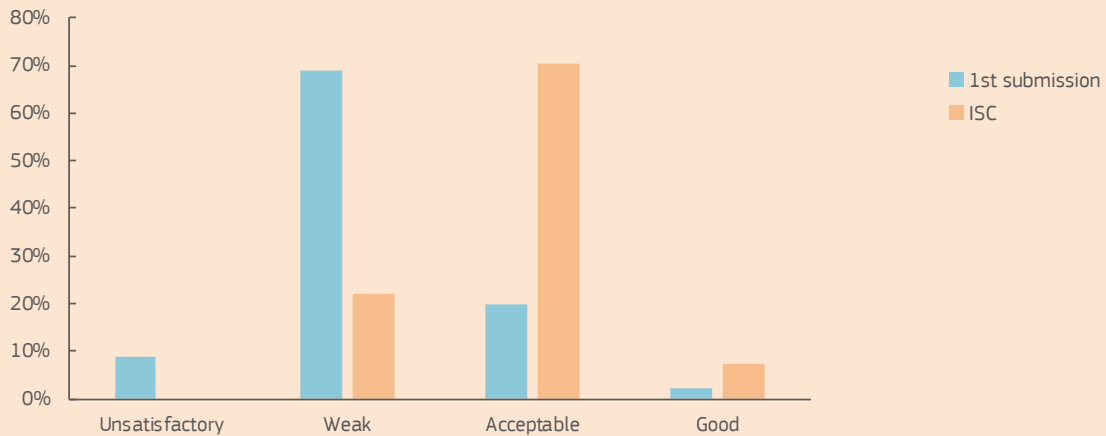

The validity of conclusions can usually be improved...

...but design flaws often cannot.

The impact of the Board's scrutiny varies across the different quality aspects of evaluations. **Figure 8** shows that when the Board questioned the validity of the conclusions, departments almost always improved them. Likewise, departments almost always took steps to address issues of presentation. By contrast, Board concerns on the design and methodology of the evaluation did not lead to as many improvements. By the time the Board reviews a draft of the evaluation, it is often too late to correct issues that stem from poor design. The analysis of the five evaluation criteria (effectiveness, efficiency, relevance, EU value added, coherence) is often based on outsourced studies. These may have completed data collection and analysis agreed many months earlier. In such cases, departments were usually no longer able to do much to improve quality.

Figure 8. Areas where scrutiny of evaluations had a positive impact, 2017-2019 (⁸)
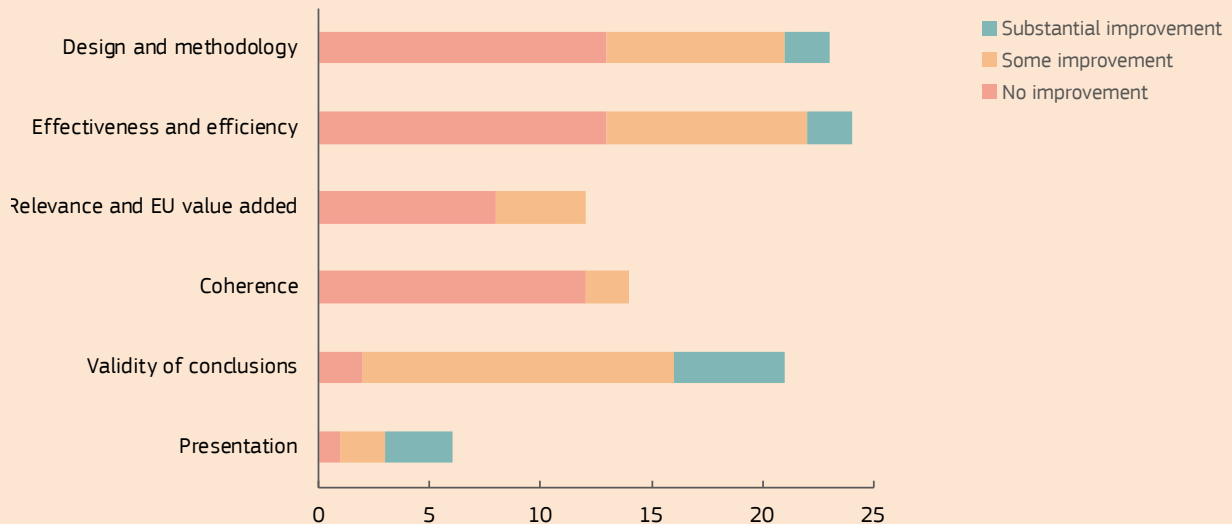
(⁸) **Figure 8** shows to what extent individual aspects of the quality of evaluations improved after the Board had issued remarks in its opinion. The length of the bars indicates the number of times the Board made a remark.

The Board reviews only some evaluations.

Of course, scrutiny by the Board only had a direct positive effect on quality in the cases that it reviewed, and the Board scrutinised only a fraction of the Commission's evaluations ([9]). The Board tries to select the most important evaluations for scrutiny, but there may be scope to learn from experience with this over time. Departments may start to take into account the Board's feedback also in other future evaluations, including those that the Board will not review. This is more likely to take place when the central and local evaluation guidance functions are strong and have support from senior management.

Senior management should pay close attention to evaluations.

In this regard, the Board insists that the departments are represented at upstream and at Board meetings at senior management level. This is, arguably, particularly important for evaluations. Senior management in the Commission usually pays careful attention to impact assessments, as they will feed into a political decision by the College of Commissioners. Evaluations tend to attract less interest, perhaps being perceived more as technical work.

This can result in unhelpfully narrow evaluations. Especially when evaluations are carried out back-to-back with impact assessments, they may effectively start with the question 'what legislative fixes might be desirable?' It is usually more helpful for evaluations to ask the broader question of 'how can we do what we do in a better way?' Approaching an evaluation this way can also help identify managerial problems that do not require legislative changes, and thus do not require an impact assessment to put in place remedies. They do, however, require the attention of senior management.

Evaluations should be transparent about their limitations.

When scrutinising evaluations, the Board will continue to take into account proportionality and limits on available time and resources to conduct evaluations. It nevertheless expects reports to be transparent about those limitations. The Board also expects the evaluation design to reflect resource constraints, i.e. to pose relevant evaluation questions that are possible to answer meaningfully with the available time and resources, and to focus on drawing meaningful lessons from experience.

The Board has seen a few cases with seemingly unfixable flaws in initial design and in the supporting study. If the problems cannot be fixed, there is little point in resubmitting a revised version. One option for the future would be for the Board to ask Commission departments to resubmit evaluations on which it has issued a negative opinion only when it believes that the department can realistically rectify the flaws.

([9])   On average, the Board scrutinised 15 evaluations a year out of about 70 carried out across the Commission (annual number of evaluations estimated in Commission Staff Working Document "Taking Stock of the commission's Better Regulation Agenda", p. 46).

CHAPTER 3

Communication and outreach challenges

This chapter explains how the Board has worked with Commission departments to address communication and outreach challenges. It also reports on challenges that the Board faces in making its role better known outside the Commission, and recent action the Board has taken in this regard. The Board intends to step up work on all these aspects.

3.1. Upstream advice to Commission departments

Upstream meetings help to focus reports on the key issues...

Commission impact assessments and evaluations are important exercises into which the Commission invests a lot of time and resources. Early contacts between departments and the Board help make the report-writing process more efficient and focus the report on the key issues in the initiative. On any given file, an upstream meeting provides the first opportunity for teams responsible for the file to interact with Board members. These meetings are voluntary but **Figure 9** shows that they have become the rule rather than the exception for impact assessments, and are increasingly common for evaluations too.

Figure 9. Percentage of impact assessments and evaluations reviewed that had upstream meetings

% Evaluations with upstream

% Impact assessments with upstream
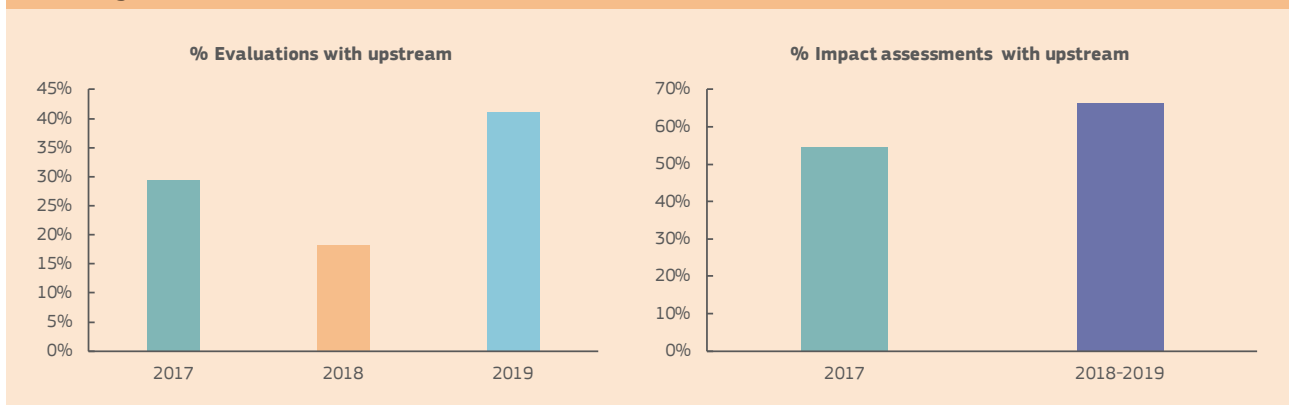
...and help to develop a shared understanding of...

... what is proportionate,...

At these meetings, Board members express their initial reactions to the file at an early stage, in their personal capacity. The views expressed are not necessarily shared by all Board members, and do not commit the Board when it comes to issue its formal opinion at a later stage on a complete draft impact assessment or evaluation. Nevertheless, the discussions help all parties develop a joint understanding

of what a proportionate analysis would look like in this case, i.e. it does not go beyond what is necessary for its specific purpose and audience. Aware that the Commission's procedure involves independent scrutiny by the Board, departments may be tempted to overdo analysis in data-rich areas to compensate for thinner analyses elsewhere.

...an appropriate range of options,...

...potential for simplification...

...and the logic of intervention.

In these meetings, Board members have often suggested that the teams leading on the file expand the range of options to examine, including repealing legislation. Board members often mentioned the need to examine ways to simplify processes and reduce burden. Another issue has been the need to explain how policy action is supposed to work in practice (the intervention logic). In addition to clarifying the system in place, having a clear logic is useful to identify relevant questions and to collect only the most relevant data, including stakeholder data. In this context, it is also important to reflect on the role of related legislation. Many of these issues can be as challenging to tackle as they are important. In some cases, issues discussed at an upstream meeting resurfaced months later when the Board issued its opinion.

Timing is important.

How useful the upstream meetings are depends in part on their timing. A well-timed meeting is held late enough for the lead department to present a clear structure and idea, and early enough to have time to make substantial changes. It is up to the lead department to determine the most useful timing. Departments face different pressures and need to weigh up different factors than the Board on the best time to schedule an upstream meeting. What the Board might consider too late could be exactly the stage when the department finds it most useful to discuss the file.

Commission staff find the meetings helpful.

Upstream meetings may help departments avoid major mistakes, they save time and they alert senior management to potential pitfalls or weak points with an evaluation or impact assessment. They do not provide a safe harbour. Statistics to date do not show that an upstream meeting significantly improves the chances that a case receives a positive opinion. But upstream meetings are likely to promote more efficient use of scarce time and resources. A survey run by the Board in 2018 of Commission staff members who had interacted with the Board found that 85% of respondents agreed or strongly agreed that the meetings were helpful to improve the quality of reports [10]. The survey also provided several helpful ideas that guided the Board in further improving upstream meetings.

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[10]   Out of 181 replies, 40% strongly agreed, 45% tended to agree, 12% tended to disagree, and 3% strongly disagreed (excluding the 56 replies stating no opinion or no answer. Many of the latter may be from persons who had not participated in any upstream meetings).

3.2. Stakeholder consultations: Board findings in 2019 and challenges ahead

The EU stakeholder consultation system has received praise...

The stakeholder consultation system allows interested parties to feed in their views, feedback and evidence into the policy-making process. It helps boost transparency and communication on how the Commission's prepares and reviews its policies.

According to the OECD, the Commission's consultation system has improved considerably in recent years, and the OECD now ranks it the best amongst OECD members [11]. The European Court of Auditors [12], the European Economic and Social Committee [13] and the REFIT Platform [14] have also recognised the high quality of the system, though they see room for improvement in implementation.

Public and targeted consultations featured in almost all impact assessments and evaluations that the Board scrutinised (see **Table 3**).

...but there is scope for further improvement.

More remains to be done, however. In its scrutiny, the Board regularly noted shortcomings in the quality and use of consultations. So has the European Parliamentary Research Service [15]. In its Stocktaking report on the Better Regulation agenda, the Commission reported *'a widespread view that the system is not delivering up to its potential in terms of participation and evidence collection'* [16].

Table 3. Almost all evaluations and impact assessments include a consultation stage

2017-2019	Evaluation	Impact assessment
Public consultation	93%	95%
Targeted consultation	91%	92%

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[11] OECD Regulatory Policy Outlook 2018.

[12] European Court of Auditors, Special Report 2019/14.

[13] EESC opinion 2015-02021, updated in opinion 2017-06085.

[14] REFIT Platform opinion on submissions XXII.4.a and XXII.4.b, adopted 7 June 2017.

[15] See page 19 of the EPRS study 'Appraising the quality of the European Commission's impact assessments', December 2019. Available at http://www.europarl.europa.eu/RegData/etudes/STUD/2019/642807/EPRS_STU(2019)642807_EN.pdf.

[16] COM(2019) 178.

Efforts to collect data via consultation have not always been successful, particularly via public consultations. In some cases, participation in the public consultation is low. This can be for any of several reasons. There may be issues with the consultation questionnaire. Some questions may be too specialised to attract many responses from the wider public. Consultation fatigue can also be a factor. In any case, public consultation has often played only a supplementary role in evaluations, which rely more on targeted consultations. When responding to either type of consultations, companies may be reluctant to share proprietary data that they consider important to their business success.

...for many reasons...

The Commission's stocktaking report found that in a number of cases, survey questionnaires lacked clarity or neutrality. The Board cannot directly verify this, as draft evaluations and impact assessments do not usually show the questionnaires. Nonetheless, the Board has observed that stakeholders are sometimes not asked about important aspects, including problems, options and impacts.

In some cases, the Board has noted incomplete coverage of stakeholder groups in targeted consultations. While it is too much to expect a balanced representation of stakeholder groups in public consultations, departments should make every effort to understand the views and concerns of each stakeholder group.

...and the results are sometimes not well presented.

Evaluations and impact assessments also need to present available stakeholder feedback transparently, and make effective and unbiased use of it. The Board regularly found shortcomings in this regard. A frequent problem involved responses reported as if the consultation were a representative survey. Public consultations generally do not yield representative results, and they are not supposed to. Their aim is to identify different stakeholders' perceptions and priorities and thus flag issues for closer examination. Presenting average responses to broad questions masks potentially important differences in perspectives across groups of respondents, hides minority views and can easily mislead.

3.3. Reader-friendliness of Commission analysis

Reports are not reader-friendly enough.

Evaluations and impact assessments need to engage policymakers and be accessible to the public. Valuable insights are easily lost if the reports are difficult to read and absorb.

The Board has regularly commented on clarity of presentation ([17]). Many policy areas have technical terms or jargon that is useful as a shorthand when experts discuss issues amongst each other. But impact assessments and evaluations should aim to reach non-expert audiences too. They inform policymakers and help them to explain their decisions clearly to their constituents. Therefore these documents should be accessible to lay readers. Often this has not been the case.

Figure 10. Readability of executive summaries 2017-2019 (impact assessments and evaluations) ([18])
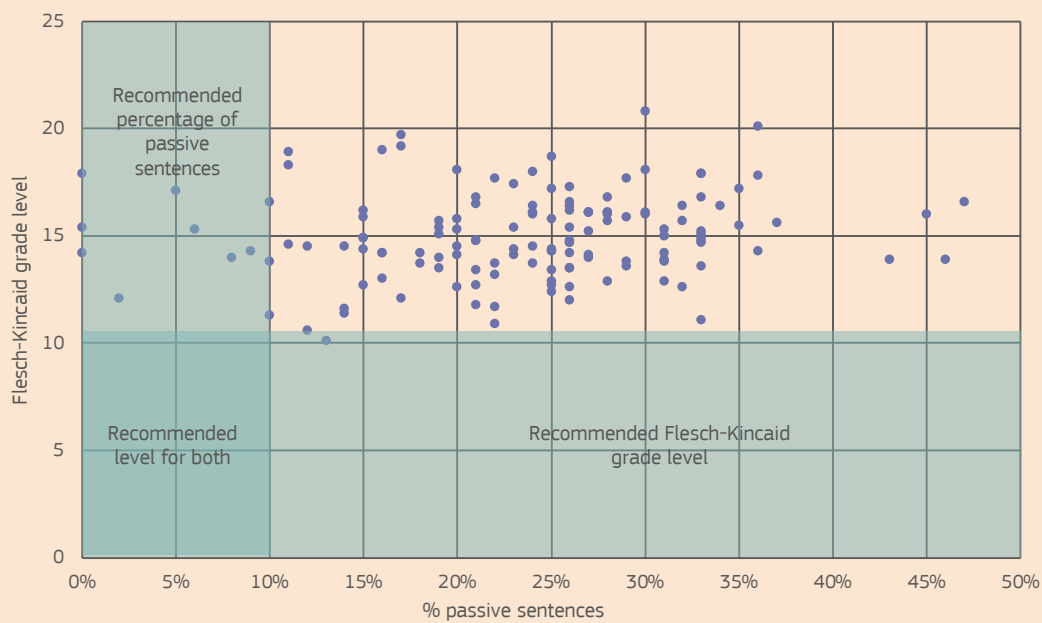
([17]) The Board mostly does this in the quality checklists that it sends to departments before Board meetings. Only when issues are particularly severe does the Board mention presentation issues in its opinion.

([18]) This figure includes 142 cases covered between 2017 and 2019. 33 cases are not included due to incomplete data on readability scores.

An example of a way to assess the readability of a text, among others, is the Flesch-Kincaid algorithm that rates text by school-grade level. **Figure 10** shows how the executive summaries of Commission evaluations and impact assessments score. The vertical axis tracks how difficult texts are, estimated by the length and number of words in sentences. The level (based on the U.S. education system) is equivalent to the number of years of formal education a person has had. For example, a score of 8.0 means that a typical 15 year old can understand the text. A score of 12 is understandable for a 19 year old who has completed high school. Press articles in leading newspapers tend to score around this level. The average Flesch-Kincaid level of Board-reviewed Commission reports' executive summaries is well above that.

The horizontal axis illustrates the proportion of sentences that contain passive verbs. Sentences that use active verb forms are usually clearer and less wordy. There is thus a slight positive correlation between use of passive and higher grade level scores.

What is a good score? In its own written communication, including its opinions, the Board strives for a Flesch-Kincaid grade level of 12 with no more than 10% of passive sentences. This corresponds to the bottom left corner in **Figure 10.** Most draft executive summaries have a grade level substantially above 12, meaning that many EU citizens would find the text hard to understand. Most summaries also contained more than 10% passive sentences.

Impact assessments and evaluations cover many complex and technical topics, and the reports themselves are written in complex language. It is a challenge for Commission departments to summarise the complex work carried out and the main findings in plain language. Executive summaries that are hard to read are a missed opportunity to deliver clear and balanced messages on Commission initiatives to other institutions and to the wider public.

3.4. RSB communications with parties outside the Commission

Transparent and well-understood scrutiny can boost confidence in quality...

...and ultimately in the EU's law-making process.

A sound and correct understanding of the Board's independent scrutiny boosts the credibility of the European Commission's analytical work and the quality of its proposals. Ultimately, this boosts confidence in the EU's law-making process. The Board has a mandate to conduct outreach for the purpose of raising awareness and understanding of the Commission's work on better regulation.

In past years, the Board carried out most outreach work in response to external parties expressing an interest in the Board. The Board intends to adopt a more strategic and proactive approach to outreach in 2020, in line with its formalised role to conduct outreach work.

The Board reaches out to stakeholders.

Frequent exchanges with a range of bodies give Board members an extensive and up-to-date understanding of current perspectives on substantive issues and on better regulation. Regular exchanges with stakeholders are part of the process of mutual learning.

This includes other EU institutions,...

The Board is already actively reaching out to other EU institutions. Opinions on evaluations and impact assessments are more likely to be picked up and understood when the audience is familiar with the role of the Board and how it works. Engaging with other EU institutions also provides an opportunity to discuss the strengths and weaknesses of the scrutiny process. One counterpart is the European Parliamentary Research Service (EPRS), which gives Board members a valuable perspective on the usefulness of impact assessments and evaluations for the European Parliament. Other examples are discussions with the Council of the European Union Working Group on Better Regulation and talks on the subsidiarity principle and territorial impact with the Committee of the Regions.

...organisations, interest groups and academics.

The Board works on a wide range of topics and therefore has a wide range of stakeholders. There are many think tanks, international organisations, interest groups and other associations with an interest in regulatory policy. It is important that stakeholders understand how the Board works and can bring in their own experiences with better regulation. Examples of active Board outreach in 2019 include an OECD conference organised by the Norwegian Better Regulation Council and presentations of the Board's work at the European Risk Forum and the Centre for European Policy Studies. Ultimately, the Board's largest potential stakeholder group is the general public. Part of the Board's regulatory scrutiny work is to ensure that evaluations and impact assessments consider the public interest. Several of the outreach events at which the Board participates are open to the public. For example, the Board has presented its purpose and function at the College of Europe, at the European Week of Regions and Cities and at the 8th Evaluation Conference on EU Cohesion Policy.

The Board also has national counterparts. For instance, it actively participates in events organised by RegWatchEurope, a cooperation between scrutiny bodies in seven European countries. It has also had contacts with a number of scrutiny bodies in other Member States. The Board has deepened and broadened contacts with the community of Member States bodies that scrutinise regulation at national level. These bodies differ in their mandates and organisation at national and sub-national levels. They also differ in their structure (in terms of independence, closeness to government, full or part-time scrutiny officers), in their roles (advisory or with the authority to block initiatives) and scope (to reduce the burden for business or a broader remit). Strengthening ties between these scrutiny bodies promotes mutual learning.

...and organises events with a focus on ways to scrutinise.

To this end, the Board organised an event for regulatory scrutiny bodies in conjunction with its annual conference in 2019. Thirty participants from 14 countries discussed the pros and cons of the different national regulatory cycles, and how the timing of scrutiny defines its role. They reflected on the consequences of different options to integrate the role of scrutiny in the organisation and to ensure that scrutiny is independent. Several participants advocated a holistic view of scrutiny and the value of having diverse approaches in preparing policy decisions. Participants also shared views on the challenges of putting procedures in place for better regulation and regulatory scrutiny.

The half-day event was well received. Participants voiced interest in maintaining contact and in discussing several issues further.

The Board will invite all interested scrutiny bodies to a full-day networking event in 2020. They will have an opportunity to share information about their roles and powers, and give their views on effectiveness. A further point of interest is how the models of scrutiny have evolved over time. Some members of the scrutiny network voiced interest in practical methods to quantify costs and benefits. The Board's intention is to encourage a process of mutual learning and to explore the role of regulatory scrutiny in the context of EU priorities.

CONCLUSIONS

RSB TEAM

Conclusions

Independent scrutiny is more important than ever.

Scrutiny adds value by contributing to higher quality information, both for the purpose of feeding into the decision-making process and of informing and involving the public. In 2019, the Regulatory Scrutiny Board focused on evaluations. Chapter two of this report summarises the Board's reflections on the quality of the evaluations scrutinised. It was a year of transition. The Board continued its transition from its first to its second round of membership, a process that it should complete in 2020.

The new Commission took office on 1 December 2019, announcing a continued strong role for regulatory scrutiny in the European Commission's policy-making process. Work is underway across Commission departments to put together the evaluations and impact assessments that will support the upcoming decisions to be made by the new College of Commissioners. The Board expects a big increase in the number of impact assessments to be submitted for scrutiny in 2020. The Commission has announced new priorities for its proposals: simplification and reduction of unnecessary burden for citizens and for business via the introduction of a new one-in-one-out approach; an ambitious Green Deal, which will require more attention to the 'green impacts' of policy action, and an increased focus on foresight and future-proofing in impact assessments.

To reflect these new commitments, the Secretariat-General of the Commission will update the better regulation guidelines and toolbox in 2020. The Regulatory Scrutiny Board will feed its advice and observations into this process. Once agreed, it will align its scrutiny work with the revised guidelines.

In collaboration with the Secretariat-General, the Board intends to visit the departments that are preparing impact assessments to underpin legislative proposals. It will engage with senior managers to advise them on the strengths and weaknesses of their previous assessments, encourage them to take an early interest in the upcoming files and inform them about the impact of the new better regulation commitments on the Board's scrutiny.

Regulatory scrutiny also adds value by strengthening the credibility of the Commission's impact assessments and evaluations, ultimately resulting in greater confidence that the EU law-making process will produce sound solutions. In 2020, the Board will continue to intensify its outreach work, in line with the explicit role the Commission President has assigned to it. This will enhance the understanding of the value of and the European Commission's commitment to transparent and evidence-based policy-making. Outreach work will include engaging with Commission departments, with Member States' scrutiny bodies, and with international organisations and academics interested in better regulation. The focus will be to highlight the role of the Regulatory Scrutiny Board and to engage more with external bodies with the aim of improving EU impact analysis and evaluation work.

RSB team

Seated, from left: Antonina Cipollone, Board Secretary; Claudia Di Dio, Assistant; Bernard Naudts, Member of the Board; Corinne Tailly, Assistant; Veronica Gaffey, Chair.
Standing, from left: Mona Björklund, Member of the Board; Andreas Kopp, Member of the Board; Nils Björksten, Member of the Board.

The Board expresses its great appreciation and deep gratitude to its former members and assistants who left in 2019.

Didier HERBERT
Member of the Board
Acting Chair

Mariyana IVANOVA POPOVA
Assistant

Isabelle SCHÖMANN
Member of the Board

ANNEX

Annex: Impact assessments and evaluations

Impact assessments and evaluations reviewed in 2019	First opinion	Second opinion	'Evaluate first' principle ([19])
REFIT Evaluation of the EU legislation on plant protection products and pesticide residues	Ongoing		
Evaluation of the 7th Environment Action Programme	🟢		
Impact Assessment on a Proposal for a Decision of the European Parliament and of the Council on the Strategic Innovation Agenda 2021-2027 of the European Institute of Innovation and Technology (EIT)	🔴	🟢	✓
Evaluation of Regulation (EU) No 305/2011 laying down harmonised conditions for the marketing of construction products	🟢		
Evaluation of major projects in transport financed by the ERDF and the Cohesion Fund (2000-2013)	🔴	⚪	
Fitness check on the EU framework for public reporting by companies	Ongoing		
Evaluation of Energy Taxation Directive	🔴	🟢	
Evaluation of Ozone Regulation	🟢		
Evaluation of Administrative cooperation in the field of direct taxation	🟢		
Synthesis of the rural development ex post evaluations 2007-2013	Ongoing		
Fitness check of EU supervisory reporting requirements	🟢		
Fitness check of the Water Framework Directive and the Floods Directive	🔴	🟢	
Evaluation of the External Lending Mandate of the European Investment Bank	🟢		
Fitness Check of the EU Ambient Air Quality Directives	🔴	🟢	
Evaluation of the Urban Waste Water Treatment Directive	🟢		
Evaluation of the Toy Safety Directive	Ongoing		
Thematic evaluation of EU support for rule of law (2010-2017)	🔴	⚪	
Evaluation of the implementation and functioning of Regulation (EC) No 273/2004 and Regulation (EC) No 111/2005 on drug precursors	Ongoing		

Positive opinion 🟢
Negative opinion 🔴
Not resubmitted (for details see page 10) ⚪

([19])   The 'evaluate-first' principle applies to impact assessments, not evaluations. Only one impact assessment was scrutinised in 2019.

GLOSSARY

Glossary

BETTER REGULATION

'Better Regulation' means designing EU policies and laws so that they achieve their objectives at minimum cost. It is a way of working to ensure that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders. Better Regulation covers the whole policy cycle — policy design and preparation, adoption; implementation (transposition, complementary non-regulatory actions), application (including enforcement), evaluation and revision [20].

CONSULTATION

Consultation describes a process of gathering feedback, comments, evidence or other input on a specific area of EU action from outside the Commission. There are various forms of consultation, including internet-based public consultation open to a broad audience and targeted consultation open to the most closely affected stakeholders.

EVALUATION

An evaluation is an evidence-based judgement of the extent to which an existing policy, programme or legislation is effective, efficient, relevant given the current needs, coherent internally and with other EU action and has achieved EU added value. In the Commission, the evaluation report takes the form of a staff working document prepared by Commission departments. These reports are often based on underlying studies carried out by external consultants. The Regulatory Scrutiny Board examines major evaluations.

FITNESS CHECK/FITNESS CHECK REPORT

A fitness check is an evaluation of the effectiveness, efficiency, coherence, relevance and EU added value of a number of related EU measures in a policy area or business sector. It identifies excessive burdens, inconsistencies and obsolete or ineffective measures and helps to identify the cumulative impact of legislation.

A fitness check report is prepared by the lead service, which presents the findings of the fitness check. The Regulatory Scrutiny Board checks the quality of all fitness check reports against the requirements of the applicable guidelines before publication or transmission to the legislator as part of the formal report from the Commission.

IMPACT ASSESSMENT

Impact assessment is an aid to policy-making. It collects evidence to assess whether future legislative or non-legislative EU action is justified and how action can be best designed to achieve the desired policy objectives. In the Commission, the lead department prepares impact assessment reports, which need to be submitted to the Regulatory Scrutiny Board for a quality check. A positive opinion from the Board is in principle required in order for the related initiative to proceed to adoption by the Commission.

INITIATIVE

An initiative is a policy instrument prepared at EU level to address a specific problem or societal need. An impact assessment will assess options to inform the policy content of the initiative.

INTERSERVICE CONSULTATION

Before the Commission takes its decisions, all relevant Commission departments are consulted on the draft legislative or non-legislative documents via the 'interservice consultation' process.

INTERVENTION LOGIC

The intervention logic is the logical link between the problem that needs to be tackled (or the objective to pursue), the underlying causes of the problem, and the available policy options (or the EU action taken) to address the problem or achieve the objective. This intervention logic is used both for forward-looking impact assessments and backward-looking evaluations.

REFIT

REFIT is the European Commission's Regulatory Fitness and Performance programme launched in December 2012. Under REFIT, the Commission takes action to make EU law simpler, lighter, more efficient and less costly, contributing to a clear, stable, lighter and more predictable regulatory framework to boost growth and jobs.

STAKEHOLDER

A stakeholder is any individual or entity impacted, addressed or otherwise affected by an area of EU action.

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[20] For more on 'better regulation', see: http://ec.europa.eu/info/strategy/better-regulation-why-and-how_en