



Better regulation

*taking stock and sustaining
our commitment*

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Better regulation: taking stock and sustaining our commitment

15 April 2019

1 INTRODUCTION

The Juncker Commission aimed to do different things and to do them differently ⁽¹⁾. With a determined focus on ten political priorities, we have delivered concrete results on the issues that matter most to Europeans. One of those priorities was democratic change, and over the past mandate, we have put better regulation principles at the heart of our policymaking processes, because more open and participative evidence-based policy making has a key role to play in enhancing the legitimacy of EU action. We have transformed our internal working methods and planning processes to build better regulation into all stages of the planning and programming cycle and to deliver streamlined annual work programmes.

The introduction of better regulation principles had its origins in the desire for better European governance ⁽²⁾ and for anchoring sustainable development in the Union's policymaking ⁽³⁾ by looking at economic, social and environmental impacts together. Better regulation is about professionalising every aspect of our policy-making and keeping it fit for today's world. It is not an obscure bureaucratic procedure. Better regulation is about legislating when this is needed to deliver on shared objectives, which can only be effectively achieved through common action at European level. It is not a hidden deregulatory agenda. Better regulation is also about considering alternative ways to achieve results since legislation should never be an end in itself. Actions at the EU level should always add value compared with what can be done at national, regional or local level.

This Commission has thus been ambitious where we needed to be and modest wherever we could. We aimed to deliver better outcomes for our people and businesses. We looked to build trust in the Union's institutions. And we sought citizens' and stakeholders' active involvement in shaping what the Union does, should do, should do differently or should no longer do. By setting a framework for delivering transparency, accountability and evidence-based decision-making, the Commission's commitment to better regulation and the implementation of the key measures announced in May 2015 ⁽⁴⁾ has allowed us to make real progress towards these goals.

Box 1. Key measures under better regulation announced in May 2015

- Improved stakeholder participation through (i) feedback opportunities over the entire policy lifecycle, including on draft delegated and implementing acts; (ii) a commitment to consult for a period of 12 weeks on all new proposals and evaluations; and (iii) a new web-based common portal where all stakeholders can obtain information about new initiatives and express their views;
- Integrated guidelines and a comprehensive toolbox for Commission staff on how to apply better regulation across the policy cycle;
- A renewed commitment to evaluate existing legislation before proposing changes ('evaluate first');
- An independent Regulatory Scrutiny Board reviewing the quality of all impact assessments and major evaluations, comprising seven full-time members who are not involved in the policymaking process, including three appointed from outside of the EU's institutions;
- A new commitment ⁽⁵⁾ to systematically verify the opportunities for simplification and greater efficiency when revising existing legislation without undermining its purpose;
- A REFIT Platform to provide bottom-up support to the Commission in the above task; and
- A proposal on the basis of which a new Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission was agreed on 13 April 2016 ⁽⁶⁾.

⁽¹⁾ COM(2014) 910 final Commission Work Programme 2015 – A New Start.

⁽²⁾ COM(2001) 428 European Governance – A White Paper:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52001DC0428>.

⁽³⁾ COM(2002) 276 Communication on impact assessment:
<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0276:FIN>.

⁽⁴⁾ COM(2015) 215 final Better regulation for better results – An EU agenda:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0215:FIN>.

⁽⁵⁾ The commitment to do this whenever an existing piece of legislation is revised was taken in the 2017 Commission work programme following an initial consolidation of the existing REFIT programme in the May 2015 package.

⁽⁶⁾ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG

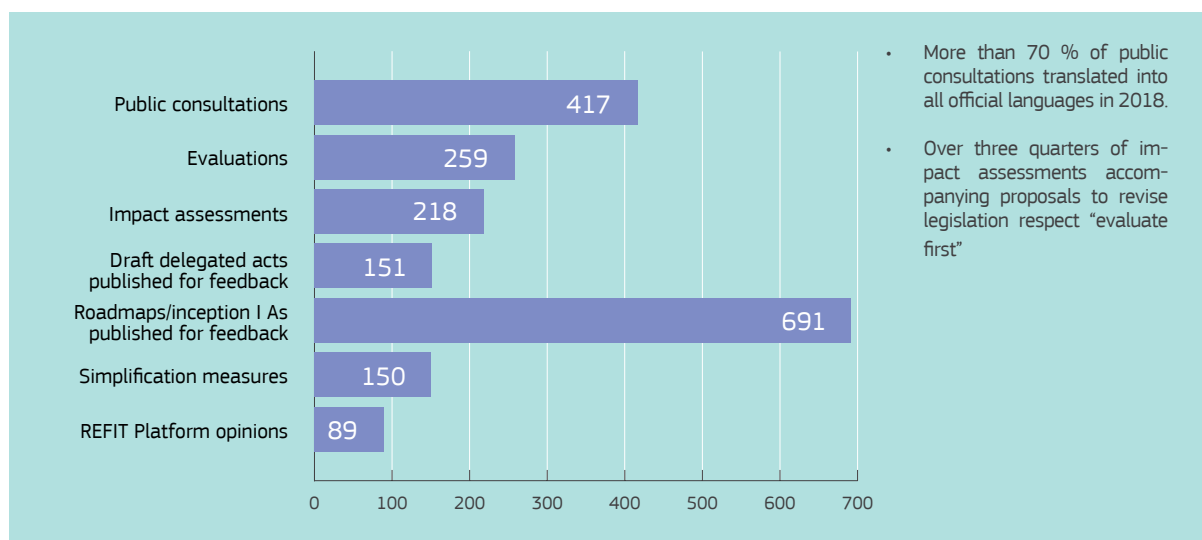
We have presented Communications setting out the results achieved in the last years ⁽⁷⁾ and yearly burden reduction reports since 2017 ⁽⁸⁾.

Now the time has come to take stock of how the various better regulation tools and processes are working. The aim has been to identify what is working well, what is problematic and which are the main lessons to be learned. Overall, the message is positive: better regulation has improved the way policy is made and should remain at the heart of our working methods for the future. But there is room for further improvement and we have identified areas which should be explored in a wider debate on future improvements. These will depend on a stronger shared effort by all those involved in designing and implementing policy solutions.

In the course of this stocktaking exercise, we have reviewed the literature, consulted publicly, and sought the views of the other institutions and bodies as well as those of the Commission departments who integrate better regulation in their daily work. Account has also been taken of the conclusions of the 'Task Force on subsidiarity, proportionality and doing less more efficiently' (hereinafter 'the Task Force') ⁽⁹⁾ and the commitments the Commission made as a response ⁽¹⁰⁾.

We would like to acknowledge stakeholders' contributions to the stocktaking exercise which provided rich feedback on how better regulation is currently working. The detailed results of the stocktaking are presented in the accompanying staff working document ⁽¹¹⁾. This Communication first highlights the general lessons that can be drawn and then considers some specific better regulation areas where further improvements can be made.

Figure 1. Overview of better regulation activities, 2015-2018



⁽⁷⁾ COM(2017) 651 final Completing the better regulation agenda – better solutions for better results; and COM(2016) 615 final Delivering better results for a stronger Union.

https://ec.europa.eu/info/sites/info/files/completing-the-better-regulation-agenda-better-solutions-for-better-results_en.pdf; <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-615-EN-F1-1.PDF>

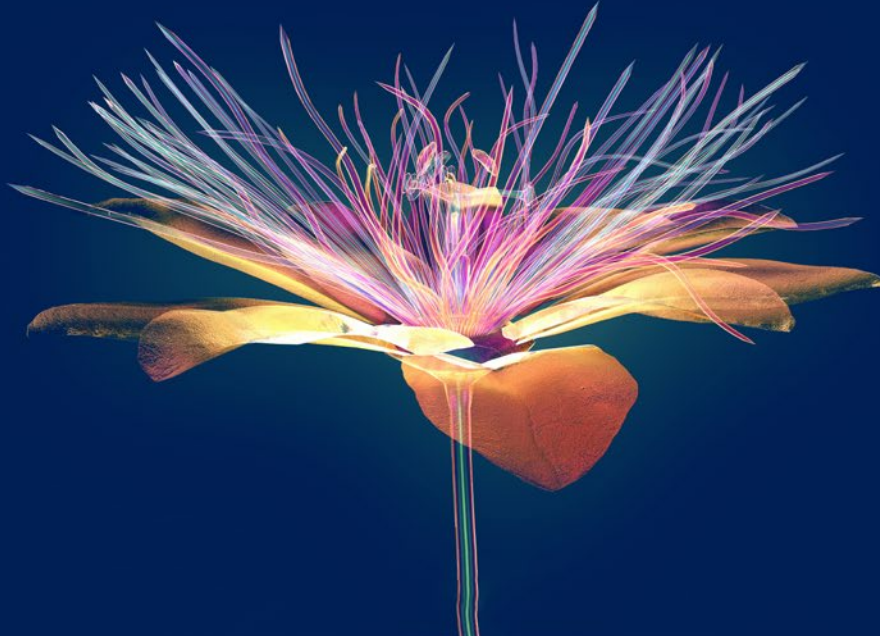
⁽⁸⁾ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en

⁽⁹⁾ https://ec.europa.eu/commission/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en

⁽¹⁰⁾ COM(2018) 703: The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking.

⁽¹¹⁾ SWD(2019) 156

2 GENERAL LESSONS LEARNED



There is a general recognition that progress has been achieved across several dimensions since 2015. There is an equally widespread demand for better regulation to continue as an integral part of the Commission's way of working, with a sustained commitment to achieving further improvements in the future.

Above and beyond specific individual concerns, this view is broadly shared across all stakeholders groups. This stands in contrast with the more polarised views of the past and reflects the comprehensive and balanced nature of the Commission's better regulation system. The Commission staff surveyed considered that the various better regulation tools and principles are the right ones, while offering many useful suggestions which will be factored into our thinking about how to improve better regulation tools and their use in the future. A literature review ⁽¹²⁾ has also shown that the expert community welcomes the Commission's stronger commitment to evidence-based policymaking, the guidance provided in its better regulation guidelines and toolbox, the value of the 'evaluate first' principle and the significantly increased

opportunities for participation in EU policymaking. Finally, a 2018 OECD comparative assessment of the better regulation systems in its member countries ⁽¹³⁾ also shows that the Commission's 2015 reforms have brought significant improvements. Overall, the Commission's regulatory policy now ranks amongst the very best in the OECD ⁽¹⁴⁾.

The appreciation of better regulation and the demand for its continued application and further improvement are evident from the stocktaking. *The rationale for better regulation is in fact even stronger now than in the past.* In a 'post-fact' world, where disinformation, social media echo chambers and outright propaganda combine to undermine the fabric of democratic debate and scientific authority, evidence-based

⁽¹²⁾ Listorti G., Basyte Ferrari E., Acs S., Munda G., Rosenbaum E., Paruolo P., Smits P. (2019). *The debate on the EU Better Regulation Agenda: a literature review*, EUR 29691, Publications Office of the European Union, Luxembourg, 2019, ISBN 978-92-76-00840-8, doi:10.2760/46617, JRC116035.

⁽¹³⁾ <http://www.oecd.org/governance/oecd-regulatory-policy-outlook-2018-9789264303072-en.htm>

⁽¹⁴⁾ Relative to the previous (pre-May 2015 better regulation package) OECD assessment, the Commission is now ranked first in the OECD for stakeholder engagement, has been found to have further refined and improved its third-placed impact assessment policy and has improved its rankings on evaluation to fourth place. No country or associated country scores higher across these three dimensions.

policymaking is neither just a priority of the past nor normal professional practice of the day. It remains a key imperative for the future.

Better regulation tools are applied in an ever changing world where policy challenges and priorities constantly evolve. Meeting our climate targets and achieving the UN Sustainable Development Goals is ever more pressing. At the same time, the pace of technological transformations is accelerating. In this increasingly complex world, it is ever more important to understand cross-sectoral impacts and to identify the opportunities for synergies to develop and implement the appropriate policy answers across the full policy cycle, from evaluation to implementation. It is important, for instance, to have regulation that fosters and, at the same time, harnesses innovation to the benefit of the environment, the economy and EU citizens. Or to further the digital dimension of our legislation. These are some of the changes that will challenge how we make policy and support our proposals with evidence from evaluations and impact assessments.

Better regulation principles should be an integral part of the institutional culture of any public authority having the type of duties entrusted to the European Commission. The stocktaking findings, especially the staff interviews, clearly indicate that such *a cultural change has been taking hold within the Commission in recent years*. However, *this change is not irreversible yet*. To ensure this final step, the European Commission will need to continue emphasising internally and externally the importance of better regulation for some time still.

Better regulation tools and procedures are there to support political decision-making, not to substitute it. Their key task is to provide the best possible basis for timely and sound policy decisions. Achieving this in practice may at times be challenging, because of ever-emerging new and urgent policy needs and the long lead-times of better regulation processes. Some adaptations and exceptions to better regulation procedures have thus been necessary in practice, and realistically this will also be the case in the future. The Commission has strived to minimise exceptions to the general rules on the need for evaluation, public consultation and impact assessment, to justify exceptions in a clear and transparent

manner to the outside world, and to do the utmost to meet better regulation principles as much as possible under the specific circumstances. The stocktaking shows that this has generally been the case, but not always. To the extent possible, a greater effort in planning and better communicating on an initiative's better regulation aspects is warranted.

Better regulation practices are not cost-free. They imply investment in terms of monetary and human resources and they increase the time needed to prepare an initiative for adoption, given the formal requirements of the policy process. This investment is justified by the benefits, not least supporting faster and better-informed decisions by the co-legislators on the Commission's proposals. However, the costs must remain proportionate. The findings of the stocktaking suggest ways in which better regulation processes could become more efficient without undermining their purposes. We need to better acknowledge, share and exploit the experience and expertise of staff across the Commission as well as that of the Regulatory Scrutiny Board.

Finally, the stocktaking has once again confirmed that, to be successful, better regulation must be a shared effort. As the tools and processes deployed by the Commission improve, further advances increasingly rest upon improvements the Commission can facilitate but not ensure by itself. For instance, the stocktaking clearly showed that the quality of evaluation depends on a shared understanding with the co-legislators and Member States on when best to evaluate, which indicators and frameworks to use for measuring performance, and how to efficiently collect the necessary monitoring information. The usefulness and relevance of impact assessments also depend on whether the impact of substantial amendments to the Commission proposals are also assessed, as the co-legislators have committed to do wherever appropriate and necessary ⁽¹⁵⁾. The delivery of the benefits of simplification efforts in Commission proposals depends on the respective provisions being maintained by the co-legislators and on Member States' implementing choices. The reach of public consultations depends on the proactive involvement of other institutions and national, regional and local levels of government. Further collaborative efforts in all of these fields are warranted.

⁽¹⁵⁾ See paragraph 15 of the Interinstitutional Agreement on Better Law-Making.

3 SPECIFIC ISSUES AND CONSIDERATIONS FOR THE FUTURE



3.1 OPENING UP POLICYMAKING

A key aim of this Commission has been to promote the participation of Europeans and civil society in our policymaking activities. We have invested extensively to provide the tools for this, creating opportunities for stakeholders to contribute throughout the policy cycle. We introduced a requirement for public consultations for all impact assessments and evaluations, and significantly increased the number of public consultations translated into all EU languages. The new *'Have Your Say'* ⁽¹⁶⁾ portal now provides a single web-based point of entry for interested parties to learn about the Commission's policymaking activities and to leave their comments, views and other information.

These measures appear to have increased stakeholder engagement. The number of visits to the portal is now more than 800,000 each year. The average number of responses to public consultations and feedback vary widely, but the overall trend is increasing. Some consultations in the period since 1 January 2015 have generated very high levels of public interest ⁽¹⁷⁾.

Box 2. Feedback mechanism on draft delegated acts: an example

The Renewable Energy Directive (EU) 2018/2001 reinforces the sustainability criteria of bioenergy through different provisions, including the impact that the production of biofuels may have due to indirect land use change (ILUC). The Commission was empowered to adopt a delegated act setting out specific criteria to identify biofuels with high and low risk of causing ILUC. After a number of meetings with stakeholders, experts and third countries, a draft delegated act was finalised and published for a four week feedback period. Following this robust consultation process and the large feedback received, the Commission decided to change a number of significant parameters in the delegated act ⁽¹⁸⁾. This concerned mainly the criteria for certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels, in order to eliminate potential loopholes and prevent abuse of those provisions.

⁽¹⁶⁾ https://ec.europa.eu/info/law/better-regulation/have-your-say_en

⁽¹⁷⁾ For example, the 2018 consultation on [summertime arrangements](#) in the EU attracted 4.6 million responses; the 2016 consultation on [nature legislation](#) attracted 550,000 responses and that of the [common agricultural policy](#) in 2017 attracted over 300,000 responses.

⁽¹⁸⁾ C(2019) 2055 final, Commission delegated regulation of 13/03/2019 supplementing Directive (EU) 2018/2001 as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels.

The OECD's comparative assessment ranked the Commission's stakeholder engagement system first in 2018 ⁽¹⁹⁾. The replies to the Commission's own public consultation identified consultations and transparency as the two areas where most progress has been achieved since 2015. At the same time, transparency and consultation were also the two areas flagged as most in need of improvements in the future. There is a widespread recognition that the system is advanced, but not delivering to its potential.

The public consultation showed that there is still a relatively low level of knowledge about the opportunities to participate in the Commission's policymaking. There is also a call for more transparency with the way the Commission reports on the results of its public consultations and feedback requests and the use made of them, a call also supported by the literature review. The Task Force also highlighted the challenge of obtaining the views of local and regional authorities across the Union. Since then, the Committee of Regions has set up a pilot Network of Regional Hubs for EU Policy Implementation Review (RegHub) to assess the implementation of EU legislation in practice ⁽²⁰⁾.

The Commission will step up its collaboration with the Committee of the Regions, the European Economic and Social Committee, the Commission's representations in Member States, national authorities and other representative asso-

ciations to raise general awareness about the opportunities to contribute to the Commission's policymaking. In particular, we will look at ways to encourage more people to sign up to the email notifications of the Commission's *'Have Your Say'* web portal so that they are informed about launching of relevant initiatives and consultations.

We also recognise that consultations are a resource-intensive activity for stakeholders. The higher the quality of consultation questionnaires, and the more clearly we explain how results are taken into account, the more stakeholders will see the value of their contribution and want to participate again. This will make the responses richer, thus further justifying the Commission's investment in high-quality consultation activities.

More carefully prepared consultation strategies ⁽²¹⁾ using a wide range of consultation tools and broader stakeholder awareness of opportunities to become involved, coupled with better consultation documents and more satisfactory responses to stakeholder contributions, are key avenues to further improve the Commission's public consultation mechanisms. We should reflect on how to enhance and monitor the quality of public consultations and reporting. To make sure consultation requirements remain proportionate to their objectives, there may be a need to reconsider the added value of some of the current requirements.

3.2 BETTER TOOLS FOR BETTER POLICIES

Impact assessments, evaluations, supporting instruments (including the better regulation guidelines and toolbox) and the independent quality control provided by the Regulatory Scrutiny Board are key tools used to translate evidence and stakeholder input into objective analysis supporting political decision-making.

The public consultation and the feedback from the Commission's own staff overwhelmingly supported such evidence-based policymaking and provided generally positive views on the progress the Commission has made to improve its tools. The Regulatory Scrutiny Board's annual reports document such progress. The co-legislators, the European Court of Auditors and other EU institutions, as well as the OECD, also hold broadly positive views, as do many independent studies ⁽²²⁾.

Most of these opinions, however, also flag shortcomings and areas for improvements.

Impact assessments

Impact assessments primarily serve to inform the Commission's political decision-making. They justify the necessity and value of Union action and present information on who will be affected and how, ensuring economic, social and environmental impacts are considered together. They are now systematically discussed in the deliberations of the European Parliament and the Council on Commission proposals. A better understanding of the evidence and impacts underpinning policy choices facilitates the legislative procedure. Impact assessments are also an important communication tool for the legitimacy of EU action since they explain the content of

⁽¹⁹⁾ OECD (2018), OECD Regulatory Policy Outlook 2018, OECD Publishing, Paris, <https://doi.org/10.1787/9789264303072-en>.

⁽²⁰⁾ <https://cor.europa.eu/en/engage/Pages/network-regional-hubs-implementation-assessment.aspx>

⁽²¹⁾ Departments use a broad range of consultation tools, including public and targeted consultations. The purpose of the consultation strategy is to design an effective and efficient consultation approach by identifying the consultation scope and objectives, relevant stakeholders, the envisaged consultation activities, their timing and language regime.

⁽²²⁾ See SWD(2019) 156, in particular section 4.

the Commission proposals and how we have weighed the evidence underpinning the choices made.

Not every initiative, however, needs to be accompanied by an impact assessment. Sometimes this would not be relevant ⁽²³⁾, and in some cases, it is simply not possible. Between 2015 and 2018, 8.5 % of the Commission proposals announced in the Commission work programmes ⁽²⁴⁾ were not supported by an impact assessment where one might have been expected ⁽²⁵⁾. This proportion is higher than we would have desired, but it should be seen in the prevailing political context and the pressing need to respond quickly to developments such as those in the migration and security fields. There will always be situations, which justify exceptions but we recognise the need to communicate this and explain the reasons as early as possible ⁽²⁶⁾. In such cases, we will ensure that staff working documents accompanying the Commission's proposals or appropriately reinforced explanatory memoranda systematically provide the available information and as much analysis of the alternative options as possible. In cases where there is no intention to carry out an impact assessment, the public is informed through roadmaps. It is therefore important to increase the awareness of roadmaps and ensure their prompt publication.

A second key issue is the depth of impact assessment analysis and the readability of the reports. Stakeholders want impact assessments to be more user-friendly, but at the same time present a deeper analysis of a varying set of impacts. These two divergent imperatives need to be carefully balanced. However, two general lessons emerge.

First, the assessments of subsidiarity presented in impact assessments are frequently rather general, overly legalistic and formalistic. They are also separate from the assessment of the proportionality of the various policy options. We have already responded positively to the recommendations of the Task Force to tackle this issue ⁽²⁷⁾ and have notably committed to incorporate the common 'grid' the Task Force proposed for assessing subsidiarity and proportionality in our impact assessments, explanatory memoranda, and in the better regulation guidance.

Secondly, when considering the appropriate level of analysis, there is a need to consider the magnitude of the expected impact and the limit to the depth of analysis imposed by constraints in the availability of data, timing and resources, while taking into account the importance of preserving the balance

and comprehensiveness of the impact assessment process.

Evaluations

Evaluation is one of the key pillars of better regulation. It allows us to check whether European legislation and funding programmes deliver as intended and remain relevant and fit for purpose. It identifies problems and their causes that then feed into impact assessments and eventually proposals that can deliver better results. It also provides the evidence we need to simplify and tackle unnecessary costs without undermining policy objectives. In 2015 we introduced a common approach for all evaluations and committed to systematically evaluate legislation first before proposing a revision. By the end of 2018, the Commission had produced 259 evaluations. About three quarters of impact assessments supporting legislative revisions are now accompanied by an evaluation.

The 'evaluate first' principle is therefore working. But it is also clear from the stocktaking that there is a need to improve the quality of evaluations (in particular as concerns design and objectivity), that their timing is not always appropriate, and that they could be made more efficient in practice. There remain, however, important practical and political barriers to overcome to achieve this.

First, the European Parliament, the Council and the Commission do not yet have a consistent approach for evaluating legislation, despite the commitments made in the Interinstitutional Agreement on Better Law-Making ⁽²⁸⁾. In many cases, the Commission does not have adequate information about how Union legislation works in the Member States because the legislation as adopted by the co-legislators does not maintain the measures proposed to allow the collection of the data necessary to permit a good evaluation. Obtaining data on the performance and impact of EU law in practice across all Member States remains a challenge. In other cases, the co-legislators add requirements for a range of different reviews or impose deadlines for evaluating legislation, which fall before there has been enough practical experience of applying the rules. The European Court of Auditors has recently recognised these failings. The solution requires a degree of cooperation between the European Parliament, the Council and the Commission ⁽²⁹⁾, which goes further than what is offered in the Council's recent conclusions ⁽³⁰⁾. In order to improve the quality of evaluations, the Commission will pay special attention to the inclusion of monitoring and reporting provisions in its future proposals, and will in particular press firmly for the maintenance of such pro-

⁽²³⁾ The Commission has developed precise guidance on when an impact assessment is necessary or not in its Better regulation Toolbox, Tool #9: https://ec.europa.eu/info/files/better-regulation-toolbox-9_en.

⁽²⁴⁾ Annex 1 and Annex 2 proposals of the Commission work programmes.

⁽²⁵⁾ For a further 19.5 %, an impact assessment was not considered necessary. For further details see SWD(2019) 156, section 4.

⁽²⁶⁾ SWD(2017) 350: Better Regulation Guidelines, Box 1; <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>

⁽²⁷⁾ COM(2018) 703: The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking.

⁽²⁸⁾ See paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making.

⁽²⁹⁾ Special report 16/2018 of the European Court of Auditors: Ex-post review of EU legislation: a well-established system, but incomplete. See paragraphs 52 to 56; 85 to 87 and Recommendation No.1:

https://www.eca.europa.eu/Lists/ECADocuments/SR18_16/SR_BETTER_REGULATION_EN.pdf

⁽³⁰⁾ Council Conclusions of 29/30 November 2018 st14137/18 approved by COREPER on 14 November 2018: <http://data.consilium.europa.eu/doc/document/ST-14137-2018-INIT/en/pdf>.

visions in the legislation on the future Multiannual Financial Framework.

Secondly, while the ‘evaluate first’ principle is being applied, evaluations are not always put to best use. Commission impact assessments could make better use of evaluations as a basis for problem definition, and the European Parliament and the Council do not generally consider evaluations in their work ⁽³¹⁾. Evaluations and impact assessments should be linked better so that findings from one are used more effectively by the other. Then the reliance on evaluations by policymakers will increase, improving incentives for high-quality and useful evaluations. The quality of evaluations depends heavily on their initial design, on whether good-quality information is available about how the legislation works, on the relevance of the questions asked for actual policymaking and on the scope of the analysis. If this is too narrow, important factors may be missed. Evaluations should always look at all relevant legislation, including delegated and implementing acts, as well as the national implementation of Union law since that too can be the source of the problems. In line with the recommendations of the Task Force ⁽³²⁾, consideration should be given to how to better engage with those directly involved in applying Union legislation at local and regional levels to capture their first-hand expertise.

Regulatory Scrutiny Board

We set up the Regulatory Scrutiny Board in 2015 ⁽³³⁾ to replace the former Impact Assessment Board. Compared to its predecessor, the new Board has substantially greater independence and more capacity as a result of being composed of seven full-time members who are separated from any policymaking responsibility, three of whom are recruited from outside

the Commission. The key tasks of the Board were extended to scrutinise the quality of major evaluations, and not just impact assessments as had been the case in the past. Through its critical and rigorous oversight of the quality of impact assessments and by fostering the necessary improvements, the Board plays a key role in assuring the objectivity and credibility of the evidence base underpinning the Commission’s political decisions. In the very limited number of cases where the Commission took the political decision to go forward with an initiative despite the absence of a positive Board opinion vouching for the adequateness of the underlying impact assessment, we have publicly explained the reasons for our choice. We have also often adapted our proposals to reflect a less solid evidence base, for instance proposing less intrusive measures in view of the Board’s concerns on the proportionality of the preferred option in some impact assessments ⁽³⁴⁾.

The Board’s own reports have shown that its scrutiny has a positive influence on the quality of the impact assessments and evaluations ⁽³⁵⁾. The responses to the public consultation also confirmed the benefit that the Board brings. Commission staff have indicated that having had to reply to the questions of the Board is a good preparation for later explaining the Commission’s policy choices in the subsequent legislative negotiations. The positive contribution of the Regulatory Scrutiny Board to increase the quality of legislative proposals is fully recognised, although some stakeholders would prefer the Board to have a different setup. The stocktaking has highlighted at the same time the need to increase public awareness of the Board and to better mobilise its expertise and experience within the Commission to better support the general improvement of impact assessments and evaluations.

3.3 KEEPING THE EXISTING STOCK OF LEGISLATION FIT FOR PURPOSE

Legislation should remain fit for purpose and deliver the results that EU lawmakers intended and the public expected. This Commission has focused on tackling unnecessary costs without ever compromising our ambitious policy objectives. We have paid particular attention to progressively ensuring legislation is fit for the digital era. Making legislation simpler and less burdensome also improves implementation and enforcement, and ultimately delivers better results. This is especially the case for small and medium-sized enterprises.

To this end, we have progressively mainstreamed the REFIT programme, supported it by setting up a group of high level experts, the REFIT Platform, whose role it is to suggest measures to reduce existing burdens without affecting policy objectives, and we have communicated more extensively on the results achieved.

The Commission presented 150 measures to simplify Union legislation between 2015 and 2018. The REFIT Platform

⁽³¹⁾ Paragraphs 63 and 69 to 70 of the European Court of Auditor’s Special report 16/2018: *Ex-post review of EU legislation: a well-established system, but incomplete*.

⁽³²⁾ COM(2018) 703: The principles of subsidiarity and proportionality: Strengthening their role in the EU’s policymaking: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A52018DC0703>.

⁽³³⁾ https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en.

⁽³⁴⁾ For further examples see section 4.3 of the SWD(2019) 156.

⁽³⁵⁾ https://ec.europa.eu/info/sites/info/files/rsb-report-2017_en.pdf

Box 3. Examples of regulatory simplification that entered into force in 2018

Value added tax (VAT) for cross-border business to consumer e-commerce ⁽³⁹⁾. Originally proposed in 2016, this legislation sets up a one-stop shop by which traders that sell goods online to their customers can deal with their VAT obligations through one easy-to-use online portal. The online traders will no longer have to register for VAT in each of the Member States in which they sell goods. At the time of our proposal, the Commission estimated that the one-stop shop will generate an overall saving of €2.3 billion for businesses and €7 billion increase in VAT revenues for Member States.

A single digital gateway to provide information, procedures, assistance and problem-solving services ⁽⁴⁰⁾. Originally proposed in 2017, this legislation introduced a single digital gateway to ensure centralised access to EU citizens and businesses to information they need to exercise their EU rights. The gateway integrates several networks and services from national and EU level. It provides a user-friendly interface in all official EU languages. At the time of our proposal, the Commission estimated that the single digital gateway could reduce by 60 % the 1.5 million hours that people currently spend researching online before going abroad and businesses could save between €11 and €55 billion annually.

Consumer protection cooperation ⁽⁴¹⁾: Originally proposed in 2016, the legislation modernises cooperation mechanisms to reduce the harm caused to consumers by cross-border infringements. The regulation ensures a swifter protection of consumers, saving time and resources for Member States and businesses. Thanks to additional cooperation powers, the authorities can act faster and save costs to jointly stop widespread online infringements. Businesses operating in all or a large majority of Member States will have the possibility to negotiate commitments at EU-level, which will make it simpler, faster and cheaper to resolve consumer issues.

European Structural and Investment Funds ⁽⁴²⁾. Originally proposed in 2016, the Regulation brings forward concrete simplification provisions to make the use of the Funds simpler for beneficiaries and authorities and financial rules more flexible. At the time of the proposal, the Commission estimated that these simplifications would reduce the implementation costs of EU rules as well the number of errors contributing to optimise the impact of the Multi-annual Financial Framework 2014-2020.

supported these efforts. It processed 684 submissions from stakeholders and adopted 89 opinions ⁽³⁶⁾ to which the Commission replied including in the context of its annual work programmes. The Commission reports transparently the results of these efforts annually ⁽³⁷⁾ and in a scoreboard ⁽³⁸⁾ that is now available online and is more user friendly. Box 3 presents a few illustrative examples.

The stocktaking shows that the Commission's efforts to simplify and reduce unnecessary burdens are appreciated and have delivered results. These, however, have neither been well communicated nor are they generally regarded as sufficient.

There is therefore a need to consider why simplification is often complicated and burden reduction burdensome. It is important to avoid pushing the efforts to quantify costs and benefits beyond a reasonable limit. Simplification is the objective, not quantification per se. While useful, quantification is often constrained by the qualitative nature of certain impacts or the availability and robustness of data. This is particularly difficult when trying to quantify benefits, where qualitative methods are often more appropriate.

We remain unconvinced that the types of target-based approaches to burden reduction that the Council and some Member States in particular have asked us to introduce would be particularly helpful. We set out the reasons for our position in detail in 2017 and none of these has changed ⁽⁴³⁾. Target-based approaches tend to overlook the fact that it is legitimate and necessary to impose some costs in pursuit of important societal objectives. The Commission prefers to focus on the costs that are unnecessary to reach the objectives of legislation, on the basis of evidence and by involving stakeholders. This is more transparent, less arbitrary and unlikely to lead to deregulatory effects undermining the delivery of the desired policy objectives.

The Commission will continue to reflect on how best to identify simplification potential and translate it into REFIT objectives or how to make the adoption of simplification measures easier and more visible. Improvements in identifying excessive costs in evaluations would also be beneficial. The Task Force report pointed to the combined effects of legislation (including delegated acts and implementing acts) whose impact may not be assessed or evaluated well enough. The REFIT programme could probably play a greater role in identifying and tackling legislative density ⁽⁴⁴⁾ with the help of the REFIT Platform.

⁽³⁶⁾ These covered 129 submissions as several submissions from stakeholders simply included requests for information or addressed subjects beyond the mandate of the REFIT Platform.

⁽³⁷⁾ See for example, the 2018 Annual Burden Survey: https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/2018-annual-burden-survey_en

⁽³⁸⁾ <http://publications.europa.eu/webpub/com/refit-scoreboard/en/index.html>

⁽³⁹⁾ COM(2016) 757

⁽⁴⁰⁾ COM(2016) 256

⁽⁴¹⁾ COM(2016) 283

⁽⁴²⁾ COM (2016) 605; The work of the High Level Group of Independent Experts on Monitoring Simplification for Beneficiaries of the European Structural and Investment Funds, set up by the Commission in July 2015, identified opportunities to strip cohesion policy rules of unnecessary complexity.

⁽⁴³⁾ For more details, see COM(2017) 651: Completing the Better Regulation Agenda: Better solutions for better results; https://ec.europa.eu/info/sites/info/files/completing-the-better-regulation-agenda-better-solutions-for-better-results_en.pdf

⁽⁴⁴⁾ Legislative density is defined as the number of pieces of legislation in a given policy area.

The findings of the stocktaking show support for the REFIT Platform. The Platform itself is satisfied with its contribution to the REFIT effort and considers it should continue in its current form ⁽⁴⁵⁾. Most stakeholders want the Platform to be more productive, to gather more ideas for simplification and for concrete changes to flow more quickly from those ideas. The Commission agrees with these objectives.

The Platform has the capacity to mobilise and channel knowledge of the practical implementation and the impact of EU legislation. But a greater effort is needed to fully exploit this potential in a way that is more effective and efficient. The Platform requires considerable investment by its members and by the Commission. Any successor should thus streamline its working methods, be better known to the general public and

provide timely feedback. It should place greater focus on issues such as subsidiarity, proportionality, legislative density in addition to the existing focus on simplification ⁽⁴⁶⁾. To this end, ways to increase the breadth of its expertise and the involvement of local and regional authorities who are responsible for implementing much Union legislation could be explored.

The activities of the Committee of the Regions and the European Economic and Social Committee could stimulate the Platform's work. Platform members themselves could initiate work linked to the planned evaluations of legislation, leveraging their contacts with existing networks in the Member States. The submissions made to the Task Force could provide a good starting point ⁽⁴⁷⁾.

3.4 BETTER REGULATION AS A SHARED EFFORT

The 2016 Interinstitutional Agreement on Better Law-Making ⁽⁴⁸⁾ embodies the joint responsibility of the European Parliament, Council and the European Commission to deliver high-quality Union legislation founded on the principles of better regulation, transparency and cooperation throughout the legislative cycle. The Agreement is still quite new, but has delivered some notable successes. The annual Joint Declaration signed by the Presidents of the European Parliament, Council and Commission lists the proposals which should receive priority treatment in the legislative process. In the area of delegated acts and implementing acts, progress has been made to replace old procedures with those envisaged in the Lisbon Treaty ⁽⁴⁹⁾, to agree criteria for when delegated acts or implementing acts are used ⁽⁵⁰⁾ and to open up the process of making delegated acts ⁽⁵¹⁾. The Commission now presents an annual burden survey linked to the simplification of Union legislation.

In other areas of the Agreement, progress is mixed. For example, the European Parliamentary Research Service regularly provides initial appraisals of the quality of the European Commission's impact assessments and conducted 40 impact assessments on substantial amendments proposed by the Euro-

pean Parliament. The Council has established its own capacity to assess its substantial amendments but has not yet used it.

As mentioned above, more cooperation is needed to set the basis and provide the data for better evaluation of Union laws. Furthermore, Member States are not yet reporting transparently when they go beyond the requirements of Union law in their national transposing measures ('gold-plating') ⁽⁵²⁾. The Commission has invested in an IT platform to facilitate greater transparency here but only two Member States have notified such provisions over the past three years ⁽⁵³⁾. It is important that Member States' transposition and implementation choices do not add unwarranted layers of complexity.

There is scope to improve the way better regulation procedures at the EU and national level can positively interact. As the OECD recently remarked, several Member States could better inform their stakeholders of the opportunities offered by the Commission's consultations and feedback mechanisms, or provide better evidence and information during regulatory design to complement the existing practices of the European Commission ⁽⁵⁴⁾.

⁽⁴⁵⁾ REFIT Platform opinion XXII.10.a "REFIT Platform Survey – Future prospects", adopted on 14 March 2019:

https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii10a-refit-platform-survey-future-prospects_en.

⁽⁴⁶⁾ Section 4.5 of COM(2018) 703; *The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking*.

⁽⁴⁷⁾ Annex VI of the Report of the Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently" https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en.pdf

⁽⁴⁸⁾ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making; OJ L 123, 12.5.2016; https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJL_2016_123_01_0001_01_ENG.

⁽⁴⁹⁾ The European Parliament and the Council (as co-legislators) can empower the Commission to adopt secondary acts of Union law. These empowerments follow Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU). However, many empowerments still exist in Union law that follow the older regulatory procedure with scrutiny and these must be brought up to date. The Commission made the necessary proposal to align a total of 168 acts (COM(2016)799) and agreement on aligning 64 of these acts was reached by the co-legislators and is currently being finalised.

⁽⁵⁰⁾ The discussions of the European Parliament and the Council on the choice between delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU) are often difficult. The criteria are intended to make these choices less contentious.

⁽⁵¹⁾ A new Joint Register for delegated acts was launched in December 2017 with public access. This register now allows the public to access the various steps in the preparation, adoption, scrutiny and publication of delegated acts: <https://webgate.ec.europa.eu/regdel/#/home>.

⁽⁵²⁾ REFIT Platform opinion XXII.9.a "Transparent transposition (Implementation)", adopted on 14 March 2019:

https://ec.europa.eu/info/files/refit-platform-recommendations-horizontal-issues-xxii9a-transparent-transposition_en.

⁽⁵³⁾ See paragraph 43 of the Interinstitutional Agreement on Better Law-Making.

⁽⁵⁴⁾ OECD (2019), *Better Regulation Practices across the European Union*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264311732-en>.

4 CONCLUSIONS

This Commission put better regulation at the heart of its policymaking. This has helped to deliver better results focussed on the ten political priorities set out at the beginning of our mandate.

Looking forward, the need for evidence-based policymaking supporting EU political priorities is only growing stronger. Better regulation is increasingly an integral part of the institutional culture of the Commission and is widely supported by stakeholders who want to be involved even more in our policymaking and in a more meaningful way. However, there is

scope for further improvements in how better regulation processes are organised. Stronger shared efforts, starting from the implementation of the Interinstitutional Agreement on Better Law-Making, would also help further improve the quality of Union legislation.

This Communication has thus identified some cross-cutting principles to be taken into account and has mapped out possible avenues to sustain our commitment to better regulation in the years to come.



