

Three years of the Regulatory Scrutiny Board:

Taking Stock and looking forward

Veronica Gaffey, Chair

Good morning ladies and gentlemen....

I am delighted to be here at the third annual conference of the Regulatory Scrutiny Board. It is my first as its chair. I am delighted that so many of you have expressed an interest in our work. This is clear from your presence here today. I hope you find the day interesting. I encourage you to participate actively in the different sessions.

Today, I would like to introduce myself and give a brief outline of the conference. I will share with you our experiences in reviewing Impact Assessments and Evaluations. What are the improvements we have observed? What still need to improve? What might be the challenges for scrutiny in the new Commission? Today we have an opportunity to share our views on these issues at this important time of transition.

My Background

I see many familiar faces here, but for those who do not know me, a few brief words about me. I started to work on evaluation in the Irish administration in the early 1990s. The Ministry for Labour established an independent evaluation unit in 1992 to evaluate European Social Fund supported programmes. It reported jointly to the Ministry and the European Commission. I am familiar, therefore, with issues of independence and perceptions of independence, which feature in debates on the Regulatory Scrutiny Board.

In 2000, I joined the European Commission in the evaluation unit of the Directorate General for Regional and Urban policy where I worked until 2015. I have spent 23 years of my career working on evaluation. My evaluation experience before joining the Board has been mostly of expenditure programmes. In the last six months, it has been fascinating to review evaluations of policy and regulation and to see the same, familiar issues.

A Time of Transition

We are at an interesting time of transition – at the Board as well as on a larger scale with the new Commission coming into office in November. Last week the President-elect of the Commission announced her proposals for the future Commission. We take note that she has told each Commissioner-designate in their mission letters:

“Proposals must be evidence based, widely consulted upon, subject to an impact assessment and reviewed by the independent Regulatory Scrutiny Board.”

We also note the commitment that regulation is “targeted, easy to comply with and does not add unnecessary regulatory burdens” and the commitment to develop a new instrument to deliver on a “one in one out principle”. We look forward to the Commission’s operational definitions of these concepts, so that we can include them in our scrutiny.

Board members serve for a period of three years and the Board is now in a process of recruitment and renewal for internal members. We continue during this phase to play our role as constructively and rigorously as we can. Shortly, we will advertise for new external members of the Board.

Outline of the Day

We will explore what the Board has achieved in each of our sessions today. In the first session, which Nils Björkstén will lead, we will discuss how scrutiny has performed over the last three years and what could be further improved. From 2016 to 2018, the Board has held nearly 80 meetings and has issued 239 opinions, 86 (36%) initially negative. What difference did they make? What could improve both upstream and downstream from the Board’s scrutiny?

Andreas Kopp will chair the second session, exploring the role of quantification in assessing impacts. We will review what is proportionate in different contexts. This discussion is relevant in the context of the proposal of the new Commission to alleviate the regulatory burden for people and businesses.

In the third session, Bernard Naudts will lead an exploration of the topic of stakeholder consultation and how best to use it in Impact Assessment and Evaluation. Pascal Leardini, Deputy Secretary General will join us at our closing session.

Role of the Board

Let us recall the very specific **role of the Board** as one part of the Better Regulation Agenda:

- The European Commission sets priorities.
- Services evaluate existing legislation, consult and draft impact assessment.

- RSB scrutinises all impact assessments and major evaluations. For impact assessments, the Board must give a positive opinion to proceed; if the Board issues a negative opinion, the services can do more work and can resubmit; in the case of a second negative opinion, the Commission can decide to proceed but must explain publicly why. Board opinions are published.
- The co-legislators – Council and Parliament – play their roles in further stages before proposals become legislation, followed by implementation by the Member States.

It is important to understand that the Board does not decide on initiatives or on policy objectives. That is the role of the European Commission. The Board sees its role as to contribute to improve the evidence base and quality of the Commission’s impact assessments and evaluations. It does this in its opinions, which explain the reasons for the opinion and give advice on possible improvements.

Independence

The decision of the Commission President establishing the Board underlines its independence: “The Board and its support staff shall act independently and shall not seek or take instructions”. Board members have taken this literally and focus on the evidence base presented supporting the proposals made, nothing else. Directors General and Commissioners have not sought to influence the opinions of the Board.

I would like to turn now to the current state of play on Impact Assessment and Evaluation. I look forward to hearing your views in the different sessions today and let us see if we have a shared understanding on these issues at the end of the day.

Impact Assessments

The Board has observed a gradual improvement in the quality of Impact Assessments over the years. Directorates General have gained experience in carrying out Impact Assessments. If services have prepared them before, they know what the Board looks out for: the clarity of the logic of intervention, data issues, how to use the results of consultations, etc. Over the years, the Board has held upstream meetings with DGs if they wish to discuss such issues before they draft the Impact Assessment.

One point of concern noted in the 2018 Annual Report is that positive opinions with reservations have not always led to the improvements recommended. This may mean that the Board will need to review this practice when DGs submit the next Impact Assessments, or explore the possibilities to ensure that DGs follow up such recommendations.

In the review of the Better Regulation Agenda, we have heard some stakeholders express a concern that the Commission perceives some initiatives as too urgent or too important to require an impact assessment and the associated scrutiny of the Board. I quoted from the President-elect's mission letters to the commissioners-designate earlier. For its part, the Board welcomes the strong continuing commitment to the better regulation processes. The Board will be flexible in its approach for the initiatives, which the new Commission aims to adopt in its first 100 days. The Board will seek to ensure that impact assessments are – indeed – evidence based and consulted upon, and that they present evidence and views objectively.

Evaluations

The Board is now scrutinising evaluations and fitness checks. This is an important phase. Commission services are reviewing their policies and generating an evidence base for future proposals. The quality of these evaluations is therefore self-evidently important.

When I reflect on the first European evaluations of spending programmes I read in the 1990s, we have certainly come a long way in improving quality. Those early evaluations tended to focus only on funding allocations and expenditure with some supposedly illustrative project examples.

Now we have an agreed approach Commission wide on evaluation criteria: effectiveness, efficiency, relevance, coherence, EU added value. The inter-institutional agreement on better law making between the European Parliament, the Council of the European Union and the European Commission also follows this approach.

In the Commission's approach to evaluation, a new element introduced in 2015 was the requirement for the Commission services to draft a Staff Working Document, which would pull together the Commission's analysis, based on supporting studies and public consultation. The objective was to ensure that the Commission services took ownership of evaluation findings. What is clear is that Commission services must retain the expertise to design, manage and respond to external studies. This is a necessary condition for a good quality evaluation.

The Regulatory Scrutiny Board examines “major evaluations”. The evaluations that the Board is interested in always have a learning objective and contribute to the policy making cycle. Some argue that some evaluations have only accountability and transparency objectives. Accountability and transparency are important. However, evaluations limited to these objectives are of less interest to the Board.

A related debate is on the timing of evaluation. Some argue that evaluation comes either too early or too late to be of use. Depending on the point in the policy cycle, the questions the evaluation asks will be different. Nevertheless, it will always be possible to learn.

If one is going to invest time and resources (human and financial) in evaluation, it represents an opportunity. It is a point in time when policy makers can reflect on how well policies are

working and if there are possible improvements or changes. *Ex post* evaluations create the evidence base for impact assessments. Future evaluations can assess if policy choices were correct, if the policy was effective and efficient, if it is still relevant and coherent and still has value added at the EU level.

The principle of “evaluate first” is more and more respected across policy making in the Commission. I would add to this an exhortation to “evaluate properly”. What do I mean by this? Evaluations should answer the following questions:

- What is the need and what was the logic for intervention? This is the starting point for all evaluations. It is surprising how often these concepts are not clear, and different stakeholders can have quite different views.
- What does success look like? How can you measure it? Does the data available measure this success? Are there other contributing factors?
- What was the baseline situation or is there another appropriate point of comparison?
- The evaluation criteria are important; not only effectiveness and efficiency but also (particularly for policy evaluations) relevance, coherence and EU added value.
- What are the views of stakeholders and how do they differ across different stakeholder groups?
- Do the conclusions objectively derive from the evidence gathered and presented?

The Iterative Life Cycle

More and more we see evaluation and impact assessment as part of an iterative and cumulative life cycle, each playing a role to support evidence based policymaking. It is crucial that impact assessments set out future monitoring and evaluation arrangements clearly, including the data to be gathered, timing for data collection and reporting responsibilities.

In the Commission, evaluation is usually considered as an *ex post* exercise. However, we sometimes also have evaluation or implementation reports relatively early in the life cycle of a policy. These can be the result of a requirement by Parliament or Council inserted relatively late in the legislative cycle. Commission services sometimes struggle with this type of evaluation. They could be useful, however, to document implementation to date and – the evaluation part – to describe pathways to deliver success. They can assess if policy initiatives are on course to deliver as intended.

When the more traditional *ex post* evaluations find data are not available, they should make clear recommendations on how to improve the situation for future evaluations.

The important point is that whenever Commission services design or implement an evaluation or an impact assessment, at whatever point in the policy life cycle, it is an opportunity to generate evidence and to learn how to make things better for European citizens.

Looking Forward

As the Regulatory Scrutiny Board transits into its second iteration, I would like to pay tribute to my predecessors in the RSB and in the previous Impact Assessment Board and the secretariat provided by the Secretariat General. It is clear that, collectively, the Commission has embedded the better regulation processes more and more into its structures and ways of working. Since my appointment, a number of senior managers across the Commission services have told me of their support for these processes, painful as they may be in the case of negative opinions. As the new Commission takes office, I can promise that the Board will continue to scrutinise proposals and will continue to criticise them constructively. I believe we all share the objective to enhance the evidence for and logic of interventions and to contribute to their likely success.

During the day today, I would like to hear your views on all these points and on those, which my colleagues will introduce in each session.

Thank you very much.