

# Stocktaking of the Commission's 'better regulation' approach

Fields marked with \* are mandatory.

## Introduction

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The European Commission is committed to being 'big on big things' and smaller on things where EU action does not add value. To help to deliver on this commitment, the Commission has put in place a 'better regulation' agenda based on three key pillars: stakeholder engagement throughout the policy cycle; evaluation to ensure that the current body of EU law remains fit for purpose; and impact assessment to ensure that new proposals reach their policy goals in the most efficient way without imposing unnecessary burdens.

Since 2015, the Commission has revamped the 'better regulation' framework to make it more effective. The results of this revision include:

- *further efforts to increase the transparency, legitimacy and accountability of our work, in particular as regards the consultation process throughout the policy cycle, including the possibility for the general public and interested parties to provide feedback on proposals, and increased availability of languages*
- *an independent Regulatory Scrutiny Board which checks the quality of the Commission's impact assessments and major evaluations*
- *a new online tool – 'Lighten the Load' – which enables those affected by EU legislation to put forward their views, plus any criticisms and ideas for improvement they may have, so as to simplify and improve existing EU laws*
- *a platform of experts including representatives of NGOs, interest groups and national governments – the 'REFIT platform' – to advise the Commission on how to make EU laws simpler and less costly without watering down the intended objectives*

**The Commission is aware that further improvements can be made. We would like to hear your views on those aspects of the better regulation framework that work well and those where you think it should be improved.**

The results of this public consultation will inform the Commission stocktaking of its better regulation framework which it will publish in Spring 2019.

The questionnaire is divided into 7 short sections. Most questions are optional. You can upload a position paper at the end should you so wish.

Relevant links:

- the Commission's 2017 communication on ['Completing the Better Regulation Agenda: Better solution for better results'](#)
- the Commission's [better regulation agenda](#)

- the Commission's [better regulation guidelines and toolbox](#)
- the Commission's [central consultation page](#) ('Have your say')
- [Regulatory Scrutiny Board](#)
- the Commission's [REFIT Programme](#)
- [REFIT platform](#)
- [Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'](#)

## About you

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\*1 You are replying

- as an individual in your personal capacity
- in your professional capacity or on behalf of an organisation

\*8 Respondent's first name

Stefano

\*9 Respondent's last name

Marmo

\*10 Respondent's professional email address

SMA@amchameu.eu

\*11 Name of the organisation

American Chamber of Commerce to the European Union (AmCham EU)

\*12 Postal address of the organisation

Avenue des Arts 53, 1000, Brussels, Belgium

\*13 Type of organisation

Please select the answer option that fits best.

- Private enterprise
- Professional consultancy, law firm, self-employed consultant
- Trade, business or professional association
- Non-governmental organisation, platform or network
- Research and academia
- Churches and religious communities

- Regional or local authority (public or mixed)
- International or national public authority
- Other

\* 16 Please specify the type of organisation.

- Chamber of commerce
- Business organisation
- Trade Union
- Representative of professions or crafts
- Other

\* 22 Is your organisation included in the Transparency Register?

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

- Yes
- No
- Not applicable

\* 23 If so, please indicate your Register ID number.

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\* 24 Country of organisation's headquarters

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal

- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

**\*26 Your contribution,**

Note that, whatever option chosen, your answers may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)

- can be published with your organisation's information** (I consent the publication of all information in my contribution in whole or in part including the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication)
- can be published provided that your organisation remains anonymous** (I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

## 1. The Commission and better regulation – general questions

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*This section focuses on the Commission's general approach to improving regulation (later sections will go into more detail).*

**\*27 Are you informed about the Commission's plans early enough to be able to take part in the policy-making process?**

- Yes, fully
- Yes, mostly
- Sometimes
- No, not usually
- No, not at all
- Don't know

**\*28 Are you satisfied with how the Commission involves members of the public, businesses, non-governmental organisations and other interest groups?**

- Yes, very satisfied
- Yes, satisfied
- Neither satisfied nor dissatisfied
- No, dissatisfied
- No, very dissatisfied
- Don't know

**\*29 Does the Commission provide enough evidence (e.g. evaluations, impact assessments) to back up its proposals?**

- Yes, always
- Yes, mostly

- Partially
- No, not usually
- No, not at all
- Don't know

\* 30

**Does the Commission take environmental and social impacts sufficiently into account when putting forward policy proposals (in addition to economic impacts)?**

- Yes, always
- Yes, mostly
- Partially
- No, not usually
- No, not at all
- Don't know

\* 31 **Does the Commission take [subsidiarity](#) and the role of national, regional, and local authorities sufficiently into account when putting forward policy proposals?**

- Yes, always
- Yes, mostly
- Partially
- No, not usually
- No, not at all
- Don't know

\* 32 **Are you satisfied with the Commission's efforts to simplify existing EU laws and to reduce costs where possible (REFIT)?**

- Yes, very satisfied
- Yes, satisfied
- Neither satisfied nor dissatisfied
- No, dissatisfied
- No, very dissatisfied
- Don't know

**33 Please feel free to explain your answers. We would like to know what works well (and should be kept) and what doesn't (and needs review).**

*3000 character(s) maximum*

In the area of food law there are two recent examples that we would like to make reference to: the REFIT of the General Food Law (GFL) and the REFIT of the Nutrition and Health Claims Regulation (NHCR). In the consumer policy space we would like to highlight the example of the New Deal for Consumers.

- General Food Law (GFL)

The conclusions of the actual REFIT assessment were first delayed for two years and when they were finally published most of the aspects were not considered for the revision. The Commission pushed forward with a different proposal from what was originally envisaged with a 'new' proposal on transparency, without any impact assessment of the proposal itself and at the end of this term of office, giving little time for the institutions to assess the consequences and improve the proposal. The lack of impact assessment, and the speed at which the Commission is trying to have such a file agreed, did not allow for a valuable fitness check to be implemented.

- Nutrition and Health Claims Regulation (NHCR)

The REFIT process of the NHCR appears to have completely stagnated. This REFIT did not address the aspects of the law, which the Commission actually had to assess under article 27 of that law and which is long overdue. It did address two aspects that have not been implemented, making it questionable if the effectiveness, efficiency, relevance, coherence and EU-added value of such measures can be meaningfully addressed. The outcome of this REFIT remains unknown.

- New Deal for Consumers

The recent New Deal for Consumers package offers a further example where the Commission failed to take into account available evidence, including its previous work. In the proposal on representative actions, the Commission contradicted its own 2013 recommendation to Member States to implement a suite of essential safeguards for the protection of consumers. The few safeguards included in the proposal were weakly implemented, leading to a proposal which risks creating a US-style class action system – a result the Commission specifically aimed to avoid. Furthermore, the proposal fails to take into account the Commission's own report on its recommendation, which found Member States had already begun to diverge; as such, the minimum level of harmonisation proposed risks further unintended consequences, including forum-shopping and legal confusion.

## 2. Consulting the public and interested parties

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When preparing new or revising existing laws and regulations, the Commission asks interested parties for their ideas and views as well as for factual information. The idea is to give those likely to be affected by EU policies an opportunity to be heard.

Members of the public and representatives of interest groups can provide input throughout the policymaking process in a number of ways (all of which you can find on the Commission's central consultation page, Have Your Say). They can:

- comment on roadmaps and inception impact assessments (these documents present the Commission's initial ideas, announce the launch of an impact assessment process or explain its absence and also provide an overview of the planned public and targeted consultations)

- participate in public consultations
- comment on legislative proposals
- comment on draft delegated or implementing acts (these acts complement existing laws to update them or to help implement them)
- suggest ways to improve existing laws, via the 'Lighten the Load' tool

Individual Commission departments also regularly hold targeted consultations of stakeholders through events, working groups, or questionnaires published on the respective department's web page or sent to experts.

The aim of this section is to identify what parts of the stakeholder consultation processes are working well and find out how the Commission can improve them further.

**\* 34 Are roadmaps and inception impact assessments useful to help you prepare your participation in the policy-making process?**

- Yes, fully
- Yes, mostly
- Partially
- No, mostly not
- No, not at all
- Don't know

**35 Please feel free to explain your answer.**

*2000 character(s) maximum*

In general, roadmaps normally lay out the policy options quite well and are easy to follow and understand, although it depends on the area as to whether they are easy to locate online or otherwise. Consultation on Roadmaps are useful as the format is open, which allows for more thorough and creative input from stakeholders. However, even at the roadmap stage, policy options are on occasion predetermined in the inception impact assessment by selecting the preferred option. This negates the objective of the roadmap, which is to prepare the evidence gathering from the start of the process, pending full investigation and impact assessment leading to policy decisions and a legislative proposal. A specific example where this predetermination took place was in the inception impact assessments on Ecodesign published in January 2018. For each product group, a preferred option was selected from the four on offer, pre-empting the rest of the legislative process.

36 Are you satisfied with the following opportunities to contribute to the policy-making process?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know	I am not aware of this tool / opportunity
* Opportunity to <b>comment on roadmaps and inception impact assessments</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* <b>Public consultations</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to <b>comment on draft delegated and implementing acts</b>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to <b>comment on Commission legislative proposals</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to <b>suggest ways to improve existing laws (Lighten the Load)</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



### 37 Please feel free to explain your answer.

*2000 character(s) maximum*

- Public consultations: they are often too long and ill thought out with leading questions, sometimes leaving little opportunity to respondent to effectively and properly answer the questions, or provide the correct data or information. In general, a one size fits all approach does not fit here and it is better to take a targeted approach.
- Opportunity to comment on draft delegated and implementing acts: this in itself is not a problem, although how much influence it has on the process is hard to tell as it is rare that such legislation changes dramatically between expert group and standing committee, on the basis of stakeholder feedback. In addition, such a facility should be extended to regulatory procedure with scrutiny, as long as it continues to exist, as they are all comitology acts after all.
- Opportunity to comment on Commission legislative proposals: the formal opportunity to comment at this stage in the process is useful, but it is unlikely to bring any tangible advantages for policy making. Once a proposal is adopted, decision making powers passes to the Parliament and Council. Any feedback to the Commission can therefore only have an indirect influence on the ongoing legislative process. Much more valuable would be the opportunity to comment on draft impact assessments before they are submitted to the RSB for scrutiny. This is the point where evidence, including that gathered from consultations and direct from stakeholders, has been processed into policy provisions and therefore where expert feedback (from across the stakeholder spectrum) would be most valuable to review the draft results of that processing.

38 Are you satisfied with the following aspects of the Commission's *public* consultations?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know
* Clarity of questionnaires	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Length of questionnaires	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Neutrality of questionnaires	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Opportunity to make relevant comments or provide supporting material	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Availability of different language versions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Length of consultation period (12 weeks)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**39 Please feel free to explain your answer.**

*2000 character(s) maximum*

Clarity of questionnaires – no, as mentioned above they are sometimes inappropriately worded and structures, whilst on occasion the questions simply do not make sense nor allow for proper or answers. An example of this are consultation questions which are simultaneously drafted for industry stakeholders and citizens (there have been many of these in the environment and climate field lately.) This leads to obtuse questions which are hard, if not impossible, to answer as a private company or as a trade association.

Neutrality of questionnaires – they are rarely written in a neutral manner and as mentioned previously can often contain leading questions which therefore distort the whole function of the questionnaires.

**\*40 Are you satisfied with how the Commission reports on the results of its public consultations and the other opportunities to comment?**

- Yes, very satisfied
- Yes, satisfied
- Neither satisfied nor dissatisfied
- No, dissatisfied
- No, very dissatisfied
- Don't know

**41 Please feel free to explain your answer.**

*2000 character(s) maximum*

Reports on the results of consultations often take too long to be published, in many cases not until the impact assessment and legislative proposal are adopted. Earlier publication of the results would be useful in order to give stakeholders the opportunity to provide additional perspective, in particular where the format of the consultation has enabled inconsistent or misleading conclusions to be drawn. This is necessary well before the conclusion of the legislative drafting.

The most critical issue with consultations is how the results are presented and used in the legislation and their impact assessments. In many cases, multiple choice answers are analysed statistically and then the raw numbers used to indicate the level of support for a particular policy option, for example “the majority of respondents supported....” or similar, with in some cases the precise percentage being quoted. This method is fundamentally flawed, since the consultation results are only a snapshot of opinions of those organisations and individuals responding to the questionnaire. This is neither comprehensive nor are the relative weights of the different respondents taken into account (e.g. an association vs an individual or a large economic sector vs a small one). When such statistics are used to substantiate a policy option, they cannot be considered as legitimate evidence. Further, opinions should be taken as an indicator, not as evidence.

**42 Do you have any other ideas for improving the Commission’s stakeholder consultation practices? We would like to hear examples of good practice from both EU and non-EU countries.**

*3000 character(s) maximum*



### 3. Evaluating existing EU laws

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The Commission regularly assesses how well existing EU measures - laws, policies, and financial programmes, for instance – are working.

An assessment of existing EU measures is called an '**evaluation**' (and, where several EU measures are examined collectively, a 'fitness check'). Assessments enable the Commission to decide whether particular EU measures are still justified, or whether they need to be simplified or improved (e.g. to cut out unnecessary regulatory costs or inconsistencies, adapt measures to take account of new developments, make them work better, or even repeal them).

The REFIT programme and the REFIT platform help the Commission identify the areas where it needs to focus its efforts, to simplify legislation and reduce any burdens caused by EU action. The state of play of such initiatives are tracked by the REFIT Scoreboard.

43 Are you satisfied with the following aspects of the Commission's evaluations?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know
* Transparent assessment of what works and what doesn't	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Usefulness of evaluations for policy-making	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Transparent information about all relevant impacts (benefits and costs) of existing legislation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Focus on simplification and cutting unnecessary costs ('REFIT programme')	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**44 Please feel free to explain your answer.**

*2000 character(s) maximum*

Often the REFIT reports take some time to publish, are quite lengthy and it is hard to understand what they are based on and where the information came from, giving the impression of a lack of transparency.

In certain cases, controversial REFIT reports are delayed for months, and once they are released, conclude that the evidence is inconclusive. The DG ENV REFIT report on Ecolabel and EMAS was an example of this. Although few Ecolabel or EMAS licenses have been applied for in Member States, this quantitative data was disregarded, then it was concluded that qualitative trends make up for the poor numbers. This was used as justification that the law should be considered as successful.

**\*45 Is the REFIT platform effective in identifying areas where legislation can be simplified and unnecessary costs cut while preserving policy objectives?**

- Yes, fully
- Yes, mostly
- Partially
- No, not usually
- No, not at all
- Don't know

**46 Please feel free to explain your answer.**

*2000 character(s) maximum*

The platform needs to work more with industry and NGOs to identify areas for review, as well as looking at its own work programme. Just because legislation is old does not mean it needs a REFIT and conversely just because something is relatively new, does not mean it works well.

**47 Do you have any further ideas about how to improve the Commission's evaluations? Please feel free to share examples of good practice from both EU and non-EU countries.**

*3000 character(s) maximum*

Identify problems of overlap between different pieces of EU legislation and clarify which law takes precedence in what circumstance. At the moment, refit reports acknowledge the overlap, but shy away from making recommendations to improve the situation.

## **4. Assessing new Commission proposals**

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Impact assessments support the Commission's policy proposals. They assess:

- the pros and cons of a range of policy options designed to address one or more problems, using evidence from previous evaluations and consultations
- conformity with the principles of [subsidiarity](#) and [proportionality](#)

- potential for simplifying existing legislation and cutting any unnecessary regulatory costs, in line with the Commission's REFIT programme.

All impact assessments are published on a [central web page](#). Members of the public and people with a special interest in the issue at hand can comment on impact assessments accompanying legislative proposals.

48 Are you satisfied with the following aspects of the Commission's impact assessments?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know
* Transparent information about all the relevant impacts (benefits and costs) of different policy alternatives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Assessment of the potential for simplifying existing legislation and cutting unnecessary costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Usefulness to inform the Commission's decision-making	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Usefulness to inform the European Parliament's and the Council's decision-making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>



**49 Please feel free to explain your answer.**

*2000 character(s) maximum*

Transparent information: in many cases this is indeed given, but in very important files the necessary transparency is not provided. This is especially important in energy and climate modelling, where many models are proprietary and therefore not accessible to stakeholders. It is also relevant in many other technical areas, where calculations and modelling are performed with greater or lesser degrees of transparency. For important evidence for public policy, all modelling and calculations should be fully available for stakeholders to scrutinise in detail, to recreate and to perform their own sensitivity analysis. This is essential to provide confidence to stakeholders in the policy making process and to enable properly informed expert input. Otherwise the evidence and therefore the legislation lack legitimacy.

**50 Do the Commission's impact assessments analyse the most relevant and important issues? (e.g. impacts on SMEs via the SME test, etc.)**

*2000 character(s) maximum*

Not always – depending on the contractor and the area/sector sometimes the cost-benefit analysis is completely outweighed by for example economic impact, or the impact assessment ignores the fact that banning a product/substance/material may incur other costs down the line by the depriving the consumer or user of a viable or affordable solution. This can mean that the knock on effect of certain policy decisions is not taken into account e.g. removal of one pesticide can mean the overuse of another pesticide, which is older and less environmentally friendly.

**51 What more can the Commission do to justify its proposals with regard to [subsidiarity](#) and [proportionality](#)?**

*2000 character(s) maximum*

This question has a fundamental flaw in its formulation. The commission should not set out with the intention to justify its proposals through subsidiarity, proportionality or any element of the analysis. It should assess all these elements in an objective fashion and publish the conclusions faithfully. If the conclusions do not support a particular proposal, this is a legitimate result and in that case the commission would therefore need to make a political decision on how to proceed.

Specifically, subsidiarity and proportionality need to be assessed thoroughly with reference to relevant evidence. They should not simply be stated as a given. This has improved in recent years but still requires vigilance.

**52 Do you have any further ideas about how to improve the Commission's impact assessments? Please feel free to share examples of good practice from both EU and non-EU countries.**

*3000 character(s) maximum*

It is often the case that impact assessments distinctly favour one scenario over the others even before the evidence has been processed or referred to. This is often evident in the language used in presenting the scenarios in the first place, which already signals a clear preference.

Ideally the drafting of impact assessments should be performed independently from the policy unit writing the associated legislation. This is the only way to ensure that impact assessments are used to gather, process and present evidence faithfully rather than employed as devices to justify legislative proposals.

## 5. Scrutinising the quality of impact assessments and evaluations

The Regulatory Scrutiny Board (RSB) became operational in 2016. It is appointed by the President of the Commission. It has 7 full-time members, of which 3 are externally recruited. The Board quality controls impact assessments and major evaluations. It ensures that facts and stakeholder views are fairly presented to decision-makers. Its opinions are published.

53 Please indicate the level of your agreement with each of the following statements:

	I strongly agree	I tend to agree	I tend to disagree	I strongly disagree	Don't know
I am familiar with the Regulatory Scrutiny Board.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is sufficient regulatory scrutiny of EU impact assessments and evaluations.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory scrutiny adds value to the overall regulatory process.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board is impartial.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board opinions are informative.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board opinions promote evidence-based policies.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board increases the quality of Commission proposals.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board increases transparency of Commission policy-making.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board increases accountability of Commission policy-making.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

54 Do you have any comments on the Regulatory Scrutiny Board?

*3000 character(s) maximum*

Within the framework of its mission and structure, the RSB performs an important scrutiny function and by evidence of the frequent negative opinions and opinions with reservation, applies that scrutiny robustly.

The RSB is a Commission internal body and has only a partially independent element, a more independent body would provide yet more effective scrutiny.

The RSB's focuses only on impact assessments and does not look more broadly at how the results are processed in the legislation itself. The RSB has a short period of time for scrutiny and is tasked with reviewing all impact assessments. This means that its scrutiny may not be at sufficient depth, especially in

those cases where extensive background studies, mathematical or econometric modelling and detailed technical analysis are performed.

It would be valuable for stakeholders to be provided more clarity on how the RSB works in practice and how its decisions are reached.

## 6. Final questions

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**55 Please select up to three areas where the Commission has made (relatively more) progress since 2014, if any.**

*at most 3 choice(s)*

- Transparency of the policy-making process
- Consultation
- Evaluation
- Impact assessment
- Scrutiny of regulatory proposals
- How the different 'better regulation' tools work together
- Other

**57 Please select up to three areas where the Commission should make improvements in the future.**

*at most 3 choice(s)*

- Transparency of the policy-making process
- Consultation
- Evaluation
- Impact assessment
- Scrutiny of regulatory proposals
- How the different 'better regulation' tools work together
- Other

**59 How could the Commission simplify its better regulation approach to ensure the timely development of proposals while ensuring that these continue to be based on evidence?**

*3000 character(s) maximum*

Simplification for its own sake is not an effective approach. Any simplifications should go hand-in hand with measures to improve the robustness of evidence and of related policy making.

Improvements to the public consultations would generate simplifications for industry and other stakeholders, by removing the systematic inconsistencies identified in the questionnaires and by providing confidence that the input is used in a coherent manner when processed into policy provisions.

One measure would be to reduce the length of the Better Regulation Toolbox, which, at 500 pages, is likely to be too long for Commission officials to process efficiently. Details rules can be replaced by a more simple framework governed by a set of principles that support good evidence.

## 7. Document upload and final comments

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**60 Please feel free to upload a concise document, such as a position paper. The maximum file size is 1MB.**

*Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this public consultation. The document is optional and serves as additional background reading to better understand your position.*

**61 If you wish to add any further information relevant to this questionnaire, please feel free to do so here.**

*3000 character(s) maximum*

As indicated in previous answers, the commission should adjust its approach to evidence making to one that assesses impacts fully objectively, not one that may be used to justify proposals. Ideally this would have a structural solution to make impact assessment more independent of the policy process. At the very least, principles of objective evidence should be adopted and held up as a primary goal in policy making. This is necessary both to improve the evidence and therefore policy, as well as to provide stakeholders, including citizens, industry and civil society, with greater confidence in the process. This would be enhanced by the above proposal to allow consultation on the content of draft impact assessments.

Although the Commission is working to be more transparent in terms of ordinary legislative procedure proposals, it still fails to do so on the side of comitology, where there remains little if any transparency in terms of draft proposals themselves, expert and working group proposals or even standing committee discussions. This needs to be drastically improved considering the volume of high impact secondary legislation. In fact this entire process could do with a REFIT of its own, especially considering the efforts to improve the transparency around implementing acts has stalled and is receiving little to no support from Member States.

Many last minute changes to legislation lead to regulation which has not been impact assessed. The most glaring example of this was the recast of the RoHS and WEEE Directives in 2011. The Commission's legislative proposal made a reasonable amendment to both Directives' scope, but the legislators reversed the law's philosophy from a closed and defined scope of products, to an open scope where all products fell under the Directive scope unless explicitly excluded.

The legislators agreed to an ex post impact assessment to address the situation, but the assessment concluded that only another co-decision procedure (in 2017) could amend the errors caused by the legislators. Such examples demonstrate the limits of better regulation thinking, as the legislators are not concerned by the standards set by the Commission, and the Commission has no tools for redress.

## Contact

SG-BR-STOCK-TAKING@ec.europa.eu