

Special Report

## Ex-post review of EU legislation: a well-established system, but incomplete

(pursuant to Article 287(4), second subparagraph, TFEU)



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## **AUDIT TEAM**

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

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## **ABBREVIATIONS AND GLOSSARY**

**Application report:** A report that analyses the application of a piece of legislation. These reports include information on application measures implemented in the Member States. Some monitoring data is available. (*Source:* ECA.)

**Better regulation:** The design of policies and laws so that they achieve their objectives at minimum cost. Better regulation is not about regulating or deregulating. It is a way of working to ensure that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders. (*Source:* Better Regulation toolbox.)

**CWP:** Commission Work Programme

**Evaluate first principle:** The (non-binding) principle by which timely evaluation results are fed into the policy-making process; in practice it means that impact assessments carried out before legislative proposals should draw on the lessons learnt from evaluations, which should identify problems, deficiencies, challenges and successes. (*Source:* Better Regulation toolbox.)

**Evaluation:** An evidence-based judgement of the extent to which an intervention has been effective and efficient, been relevant given the needs and its objectives, been coherent both internally and with other EU policy interventions and achieved EU added-value. (*Source:* Better Regulation toolbox.)

**Ex-ante impact assessment:** A policy tool that aims at collecting evidence (including results from evaluations) in order to assess if future legislative or non-legislative EU action is justified and how such action can best be designed to achieve desired policy objectives. An impact assessment must identify and describe the problem to be tackled, establish objectives, formulate policy options and assess the impacts of these options. The Commission's impact assessment system follows an integrated approach that assesses the environmental, social and economic impacts of a range of policy options thereby mainstreaming sustainability into Union policy making. (*Source:* Better Regulation toolbox.)

**Ex-post review of legislation:** A policy tool resulting in a document or set of documents presenting a retrospective stock-taking of one or all aspects of an EU regulatory intervention (be it one or more legislative acts), with or without evaluative elements. Within the Commission, such documents can take the form of a Commission report or a Staff Working Document, and it can be supported by external studies. (*Source:* ECA.)

**Fitness check:** A comprehensive evaluation of a policy area that usually addresses how several related legislative acts have contributed (or otherwise) to the attainment of policy objectives. (*Source:* Better Regulation toolbox.)

**Implementation report:** A report which focuses on the transposition of a directive and the conformity of national provisions with the latter. These reports are sometimes referred to as transposition reports. (*Source:* ECA.)

**Inter-service Steering Group (ISG):** An inter-service steering group consists of people from a range of Directorates-General whose area of work is the same as or related to the subject of the evaluation, plus a representative from the evaluation department of the Directorate General conducting the evaluation. It should be involved in all key aspects of the evaluation, particularly from the set-up (roadmap) through to drafting the Staff Working Document and its launch into inter-service consultation. (*Source:* Better Regulation toolbox.)

**Monitoring clause:** A clause in a piece of EU legislation mandating the Commission and/or the Member States to monitor the implementation and/or application of the whole or part of the piece of legislation. (*Source:* ECA.)

**OECD:** Organisation for Economic Co-operation and Development

**REFIT:** The Commission's regulatory fitness and performance programme established in 2012 to ensure that EU law is 'fit for purpose'. It is a process under which existing legislation and measures are analysed to make sure that the benefits of EU law are reached at least cost for stakeholders, citizens and public administrations and that regulatory costs are reduced, whenever possible, without affecting the policy objectives pursued by the initiative in question. (*Source:* Better Regulation toolbox.)

**Regulatory Scrutiny Board (RSB):** An independent body of the Commission that offers advice to the College. It provides a central quality control and support function for Commission impact assessment and evaluation work. The Board examines and issues opinions and recommendations on all the Commission's draft impact assessments and major evaluations and fitness checks of existing legislation. (*Source:* Europa website.)

**Review clause:** A clause in a piece of EU legislation mandating the Commission and/or the Member States to carry out some form of ex-post review on the whole or part of the piece of legislation. (*Source:* ECA.)

**SWD:** Staff Working Document of the European Commission

## **EXECUTIVE SUMMARY**

### ***About ex-post review of legislation and better regulation***

I. The ex-post review of legislation is a key part of the Commission's Better Regulation policy. It is aimed at facilitating the achievement of public policy objectives at minimum cost and improving the added value of EU interventions. In 2015, the Commission strengthened its better regulation policy by launching the Better Regulation Agenda.

### ***How we conducted our audit***

II. In our audit, we assessed whether the EU system of ex-post review of legislation had been properly planned, implemented, managed and quality-controlled, thereby contributing effectively to the Better Regulation cycle.

III. The audit covered ex-post reviews of legislation carried out between 2013 and 2016 by four directorates-general of the Commission as well as all legislation and ex-ante impact assessments within the remit of those directorates-general adopted between 2014 and 2016.

### ***What we found***

IV. Overall, we concluded that the Commission's current ex-post review system compares well to the situation in the majority of Member States. Regarding more specifically the evaluations, the Commission has designed a system which is, as a whole, well-managed and quality-controlled, thereby contributing effectively to the Better Regulation cycle. However, when it comes to reviews other than evaluations, we identified weaknesses.

V. We found that review clauses and, to a lesser extent, monitoring clauses are widely used in EU legislation. However in the absence of common inter-institutional definitions and drafting guidelines, their content and therefore their expected outputs are not always clear.

VI. While evaluations are generally carried out in line with legal requirements and good practices, this is less the case for the other reviews, to which the Better Regulation guidelines did not apply until 2017. We also identified shortcomings in the presentation of the methodology used and in the recognition of data limitations when applicable.

VII. We also found that ex-post reviews are publicly available and accessible and that the vast majority of them provide a clear conclusion and indicate next steps to be taken. The Commission systematically forwarded its reports on the ex-post reviews to the co-legislators (European Parliament and Council); the latter, however, seldom react to the Commission directly. Also, the ex-post reviews are not always used by the Commission when preparing ex-ante impact assessments. The inter-institutional agreement between the European Parliament, the Council and the Commission on better law-making, which provides provision on the review of existing laws, is not binding.

VIII. Finally, we found that the rationale of the REFIT programme is unclear, as are the criteria by which individual initiatives have been labelled as REFIT. At the same time, the guidelines present REFIT as a specific programme. This raises questions as to its current nature and added value.

***What we recommend***

IX. On the basis of these observations, we make several recommendations to the Commission and one to the Regulatory Scrutiny Board.

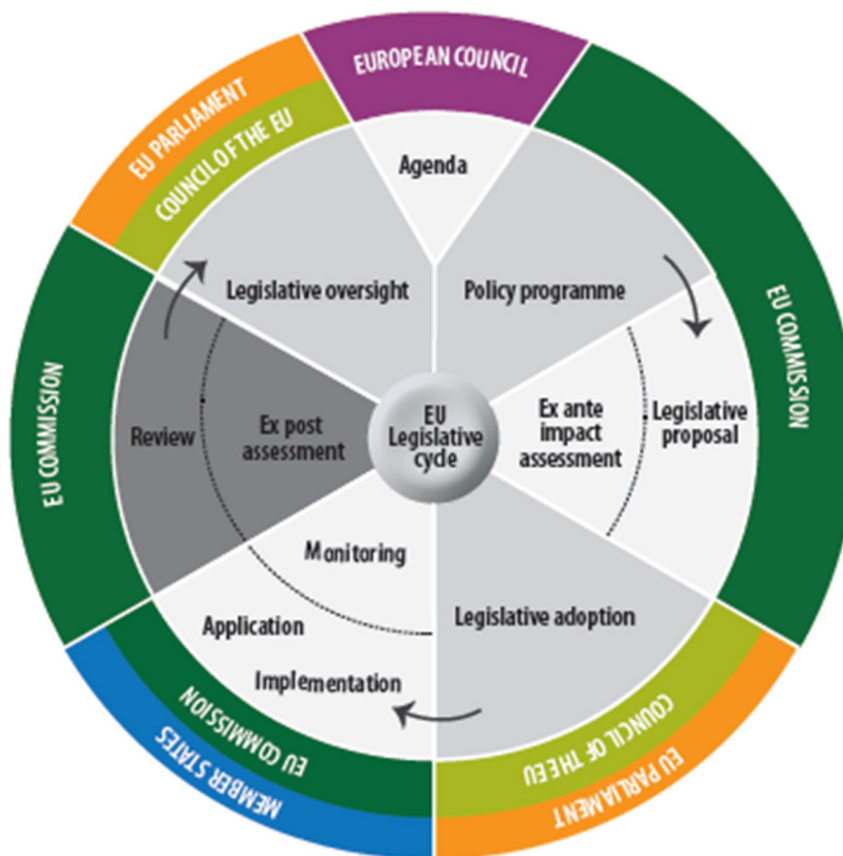


## INTRODUCTION

### *Ex-post reviews of legislation are an essential part of the legislative cycle*

1. The ex-post review of legislation is a key part of the Commission's Better Regulation policy aimed at facilitating the achievement of public policy choices and improving the added value of EU interventions. Ex-post review can be seen as the final stage of the legislative cycle, providing a retrospective stock-taking of one or all aspects of an EU regulatory intervention, be it one or more legislative acts. It can also be considered as the initial point to understand the impacts, shortcomings and advantages of a policy or regulation in place which provides feedback for the design of new regulations or changes to the existing ones. Ex-post reviews should be seen in the context of a virtuous cycle of improved processes and outcomes at every step of the legislative process, each reinforcing the quality of the other (see [Figure 1](#)).

**Figure 1 - Ex-post review: a key stage of the EU legislative cycle**



Source: European Court of Auditors.

### ***Growing relevance of ex-post reviews***

2. At the EU institutional level, the better regulation concept can be traced back to the 2001 Gothenburg and Laeken European Councils. The current EU Better Regulation agenda<sup>1</sup>, an initiative of the Juncker Commission, was published in 2015 along with several other initiatives. It was accompanied by guidelines, including a toolbox, which were reviewed in mid-2017<sup>2</sup>.

3. The European Commission has recognised the importance of properly conducted evaluations for the quality of legislation on a number of occasions over the past two decades<sup>3</sup>. By working on better regulation the Commission aimed at improving the added value of EU interventions according to the principles of subsidiarity and proportionality. A timeline of the main initiatives in this respect is provided in ***Figure 2***<sup>4</sup>.

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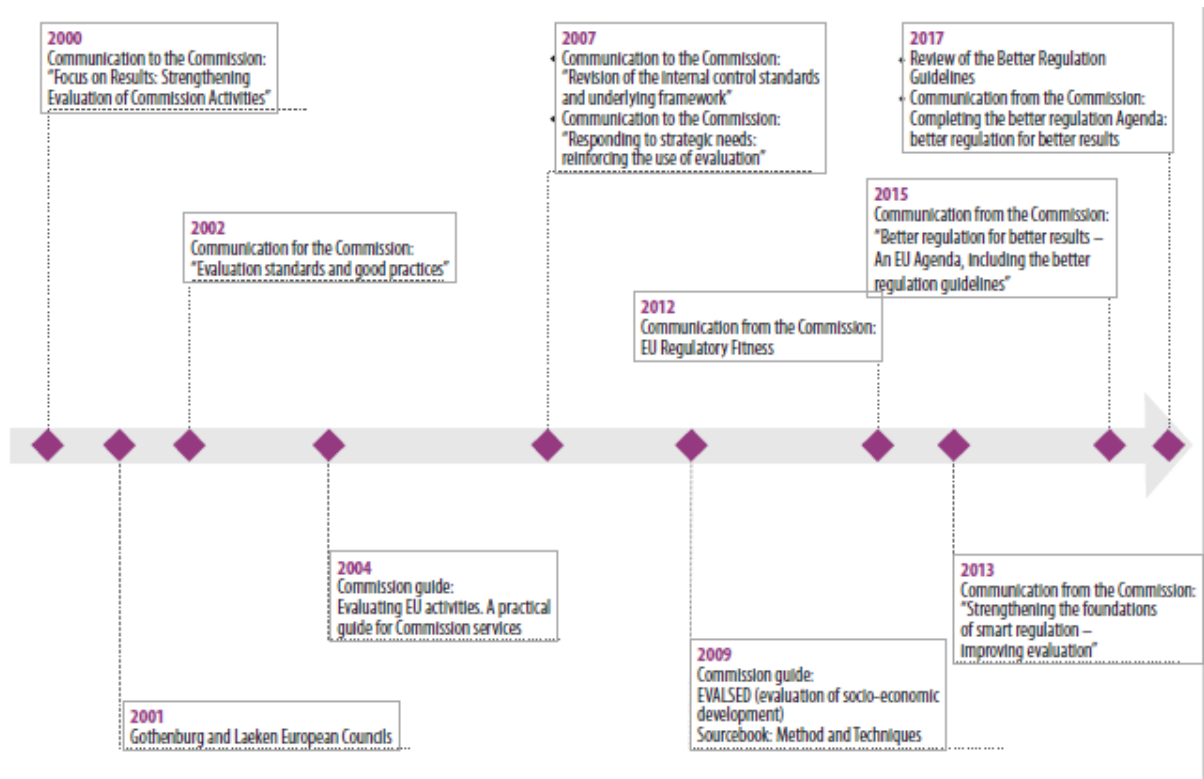
<sup>1</sup> COM(2015) 215 final “Better Regulation for Better results – An EU agenda”.

<sup>2</sup> SWD(2017) 350 final “Better Regulation Guidelines”. The toolbox accompanies and complements the guidelines, providing more detailed information on their application.

<sup>3</sup> Since 1996, the Commission requires its services to carry out ex-post evaluations of all spending programmes.

<sup>4</sup> SEC(2000) 1051 “Focus on Results: Strengthening Evaluation of Commission Activities”; C(2002) 5267/1 “Evaluation standards and good practices”; Commission guide: “Evaluating EU activities. A practical guide for Commission services” (DG Budget, 2004); SEC(2007) 1341 “Revision of the Internal Control Standards and Underlying Framework”; SEC(2007) 213 final “Responding to strategic needs: reinforcing the use of evaluation”; Commission guide: “EVALSED (evaluation of socio-economic development) Sourcebook: Method and Techniques” (DG REGIO, 2009); COM(2012) 746 final “EU Regulatory Fitness”; COM(2013) 686 final “Strengthening the foundations of smart regulation – improving evaluation”; COM(2015) 215 final; COM(2017) 651 final “Completing the Better Regulation Agenda: Better solutions for better results”.

**Figure 2 - Main European Commission initiatives regarding evaluation since 2000**



Source: European Court of Auditors.

4. Recent years have seen major developments. Since 2013, the Commission committed itself to operate on the “evaluate first” principle, meaning that existing legislation should be evaluated before the impact assessments related to new legislative proposals are drawn up. In the same year, it recognised that major efforts were still needed to ensure that the Commission’s ex-post review activities could provide timely and relevant input to the decision-making process<sup>5</sup>. The 2016 inter-institutional agreement<sup>6</sup> emphasised the importance of evaluation, committing its parties to establishing monitoring and reporting and evaluation requirements in legislation where appropriate and to systematically considering including review clauses in legislation.

<sup>5</sup> COM(2013) 686 final.

<sup>6</sup> Inter-institutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making, 13 April 2016.

### ***Ex-post reviews of legislation – a plethora of definitions***

5. The Commission uses many different terms to denote an ex-post review of legislation. In the context of this audit, an ex-post review of legislation (hereafter referred to as ex-post review) is defined as a policy tool resulting in a document or set of documents presenting retrospective stock-taking of one or all aspects of an EU regulatory intervention (be it one or more legislative acts), with or without evaluative elements. The term “ex-post review” is used to encapsulate ex-post documents produced by the Commission under the title: evaluation, review, fitness check and report of all kinds (transposition report, implementation report, application report, etc.)<sup>7</sup>.

6. Of the above terms, the Commission has defined what constitutes an evaluation: “an evidence-based judgement of the extent to which an intervention has been effective and efficient, been relevant given the needs and its objectives, been coherent both internally and with other EU policy interventions and achieved EU added-value<sup>8</sup>” and a fitness check: “a comprehensive evaluation of a policy area that usually addresses how several related legislative acts have contributed (or otherwise) to the attainment of policy objectives”<sup>9</sup>.

### ***The REFIT programme***

7. The significance of the Commission’s intent and efforts in the field of ex-post reviews in the past few years should also be considered within the broader scope of its efforts to improve the management of the existing stock of EU legislation. This focus has raised the

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<sup>7</sup> In its consideration of the different reviews, we also analysed the externally conducted studies commissioned by the Commission in support of some of its reviews (known as “supporting studies”). In a few cases, where a Commission report was not available, the external study was considered to be the review document.

<sup>8</sup> European added value is understood as “the value resulting from an EU intervention which is additional to the value that would have been otherwise created by Member State action alone”, SEC(2011) 867 final “The added value of the EU budget”. The toolbox from 2017 states that European added value “looks for changes which it can reasonably be argued are due to the EU intervention, over and above what could reasonably have been expected from national actions by the Member States”.

<sup>9</sup> SWD(2015) 111 final.

importance of ensuring consistently high output quality across all different forms of ex-post review activities.

8. In this context, the Commission launched in 2012 the Regulatory Fitness and Performance (REFIT) programme with the aim of ensuring that EU law is “fit for purpose”. According to the Commission Communication establishing the programme<sup>10</sup>, its aim is “to make sure that the benefits of EU law are reached at least cost for stakeholders, citizens and public administrations and that regulatory costs are reduced, whenever possible, without affecting the policy objectives pursued by the initiative in question”.

### ***International ranking and Court’s previous assessment***

9. The EU has a system of ex-post review of legislation. It is therefore more advanced in this field than the majority of Member States.

10. In 2015 the OECD ranked the EU system of ex-post review in fifth place<sup>11</sup> among OECD members on the basis of a composite index consisting of methodology, transparency, quality control and systematic use of ex-post reviews<sup>12</sup>.

11. Furthermore, the quality of the system when placed in an international context was also borne out by the background research we commissioned on 32 countries’ ex-post review systems (28 Member States and four other countries considered by the OECD to be among the best in class). The results of the research concluded that, of the 32 countries, only 14 have a system for ex-post review of legislation in the form of clear institutional responsibilities and guidelines. Of those 14 countries, 11 are EU Member States.

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<sup>10</sup> Toolbox accompanying the Better Regulation guidelines.

<sup>11</sup> The top four countries are Australia, the United Kingdom, Mexico and Germany.

<sup>12</sup> OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, 2015 (<http://www.oecd.org/publications/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm>).

12. In a special report on impact assessment in the EU institutions published in 2010<sup>13</sup>, we concluded that the use of ex-post evaluations remained a weakness as “[they were] not carried out systematically across all legislative areas”. With this audit we aim to provide relevant and impartial information on the current EU system of ex-post review of legislation.

### **AUDIT SCOPE AND OBJECTIVES**

13. Through this audit we assessed **whether the system of ex-post review of EU legislation had been properly planned, implemented and quality controlled, thereby contributing effectively to the Better Regulation cycle**. In particular, we examined:

- (a) to what extent the Commission and the co-legislators (European Parliament and Council) had given proper consideration to review and monitoring clauses when preparing new legislation or amending existing legislation;
- (b) whether the Commission ensures the timely execution of all its ex-post review obligations, within the framework of a comprehensive and coherent set of guidelines and standards, including the quality control mechanisms;
- (c) whether the Commission and co-legislators ensure that ex-post reviews of legislation are made publicly available, provide a clear outcome and are properly followed-up and integrated into the legislative cycle;
- (d) whether the rationale of the REFIT programme is clear.

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<sup>13</sup> Special Report No 3/2010 “Impact assessments in the EU institutions: do they support decision making?”.

14. The audit scope covered all legally and non-legally mandated ex-post reviews<sup>14</sup> carried out between 2013 and 2016<sup>15</sup>. Due to the vast numbers of ex-post reviews carried out, we sampled four DGs from different policy fields and levels of experience in carrying out ex-post reviews. The sampled ex-post reviews amount to 133, carried out by four DGs: DG ENV, DG GROW, DG HOME and DG SANTE (see *Annex I*)<sup>16</sup>. Of these, 49 were evaluations (40) and fitness checks (9), the remaining 84 being ex-post reviews other than evaluations or fitness checks. These DGs were chosen based on the volume of ex-post reviews they are responsible for and because they represent a cross-section of experience in the practical application of the Commission's review methods. We also examined the 105 pieces of legislation that were subject to the abovementioned 133 ex-post reviews.

15. In order to assess the presence and content of monitoring and review clauses in recent legislation, we also examined all 34 pieces of legislation adopted between July 2014 and the end of 2016 initiated by the selected DGs (see *Annex II*).

16. We also checked compliance with the "evaluate first" principle for the 29 impact assessments<sup>17</sup> produced by the four selected DGs between 2014 and 2016 as well as for the legislative proposals in the 2017 Commission Work Programme<sup>18</sup>.

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<sup>14</sup> The audit covers all secondary legislation (directives and regulations) within the remit of the four DGs which have been adopted or considered by both co-legislators. Implementing measures and other secondary legislation as well as the review of spending programmes, action plans, communications, reviews carried out by agencies, Council recommendations and Decisions are excluded. The reviews of entire Agencies are also excluded with the exception of specific activities of an agency mandated within the context of a directive or regulation (i.e. that is linked to the performance of a policy area rather than the operation of the agency).

<sup>15</sup> This includes reviews either completed or still ongoing as of 31.12.2016.

<sup>16</sup> As DG GROW was established in 2015 as a result of a merger of parts of DG ENTR and DG MARKT, the reviews and impact assessments of those preceding DGs have been included in the sample.

<sup>17</sup> In this report and when not otherwise indicated 'Impact assessment' refers to 'ex-ante impact assessment'.

<sup>18</sup> Annex I of the Commission Work Programme.

17. In addition, the audit examined the framework in place in each of the four DGs, as well as the Secretariat-General (SG) designed procedures applicable to the whole Commission. Quality control procedures in general, and the Regulatory Scrutiny Board's (RSB) work in particular, were also part of the audit.

18. Finally, we examined the ex-post work done by the two co-legislators regarding: (a) the changes made to the monitoring and review clauses in Commission legislative proposals; (b) the reaction of the co-legislators to the Commission ex-post reviews; and (c) the ex-post reviews carried out by the co-legislators themselves.

19. Our audit criteria draw on Commission's own guidelines, mainly the Better Regulation guidelines from 2015<sup>19</sup>, applicable to recent ex-post reviews, and the previous Commission guidelines and standards on evaluation<sup>20</sup>, for those ex-post reviews predating 2015. We also visited the OECD to obtain information on measuring the quality of ex-post review work.

20. The audit also drew on background research (commissioned by the ECA) on the systems of ex-post review of legislation in each of the EU Member States and four non-EU countries considered to be among the "best-in-class". The objective of this work was to have a better appreciation of the state of advancement of the Commission's system within an international context.

21. During the audit, we were assisted by a panel of five external experts on regulatory policy and evaluation, drawn mainly from academia and think tanks. It provided input to our audit approach and ensured that the most relevant aspects of ex-post review had been taken into account.

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<sup>19</sup> COM(2015) 215 final.

<sup>20</sup> Communication to the Commission from Ms Grybauskaite in agreement with the President: "Responding to Strategic Needs: Reinforcing the use of evaluation", SEC(2007) 213; and C(2002)5267: Communication for the Commission "Evaluation Standards and Good Practices" of 23.12.2002.



## **OBSERVATIONS**

### ***Widespread use of both review and monitoring clauses but a lack of common guidelines***

22. Review clauses contribute to ensuring that ex-post reviews are carried out the legislation in which they are included. Their presence is important, but not sufficient. Their wording and the terminology used should be clear and the stipulated timing in line with the type of ex-post review requested. If co-legislators have made changes to the Commission's proposal, these should not be to the detriment of the clarity of the clause. There should be an indication of a common understanding of the different terminology and the implications this would have on the timing of the different types of reviews. In addition, monitoring clauses addressing the Member States should generally be included in legislation whenever a review clause is present, in order to enable data gathering at Member State level for the upcoming ex-post review.

23. For this purpose, the audit examined:

- (a) Whether there are guidelines on the drafting of monitoring and review clauses.
- (b) The presence of review clauses in pieces of legislation, and what the wording and timing used for these clauses was, including whether the proposed review clause underwent changes through co-legislators' amendments.
- (c) The presence of monitoring clauses and the possible link between the absence of monitoring clauses in legislation and observations made in ex-post reviews regarding the availability or quality of monitoring data.

### **Lack of inter-institutional guidelines on drafting monitoring and review clauses**

24. Until 2017, there were no Commission guidelines on drafting monitoring and review clauses. It was in the context of the revision of the Better Regulation guidelines and its toolbox that the Commission introduced a tool regarding "legal provisions on monitoring

and evaluation”<sup>21</sup>. This tool provides practical guidance on what to include in both monitoring and review clauses in draft legislation, notably timing, responsibilities and methodologies for data collection. It specifies that an evaluation should normally only be conducted when at least three full years of data on the EU intervention are available. The other/intermediate ex-post reviews listed in this tool are transposition reports, implementation reports and monitoring reports. The tool provides examples of clauses to be inserted into legislation for each of these review types.

25. Neither the European Parliament nor the Council have guidelines of their own on drafting monitoring and review clauses. The Commission guidelines do not concern the co-legislators and the “Joint Practical Guide”<sup>22</sup> on drafting EU legislation does not make any specific reference to the drafting of monitoring or review clauses. In April 2016, the three institutions adopted an inter-institutional agreement on better law-making, which underlines the relevance of systematically considering including review clauses in legislation<sup>23</sup>. However, this agreement is not legally binding<sup>24</sup> and can be considered as a “soft law” instrument. No further detailed guidelines on this topic have been issued by the institutions.

26. In the study “Rolling Checklist on Review Clauses” compiled by the European Parliamentary Research Service (EPRS) in 2017, review clauses are categorised into heavy (or core) and light review obligations. ‘Heavy’ obligations trigger a full evaluation of legislation, while ‘lighter’ obligations refer mostly to implementation reports. This may not necessarily

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<sup>21</sup> European Commission Better Regulation “Toolbox”, tool #42.

<sup>22</sup> Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation, European Union, 2015.

<sup>23</sup> Article 23 stipulates that “The three Institutions agree to systematically consider the use of review clauses in legislation and to take account of the time needed for implementation and for gathering evidence on results and impacts.”, inter-institutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making, 13 April 2016.

<sup>24</sup> Case C-343/09, *Afton Chemical*, 8 July 2010, para 30-40; Case C-477/14, *Pillbox 38 (UK) Ltd*, 4 May 2016, para 64-66.

reflect a common inter-institutional understanding of the review terms used in the review clauses since, as acknowledged in this study, “there is no agreed definition of a review clause” among the three institutions.

27. When it comes to timing, the European Parliament has a similar approach to the Commission, stating that “there is broad consensus that implementation assessments<sup>25</sup> should not be made too early: at least 3 years after the policy intervention is recommended”<sup>26</sup>.

28. The Council has not taken any position on the presence or the content of review clauses in EU legislation. There is no indication that this issue has been the subject of internal cross-sectoral analysis within the institution.

### **Review clauses are widely used but frequently unclear**

29. Of the 34 pieces of legislation within the remit of the sampled DGs adopted between 2014 and 2016, almost all (32) had a review clause. This observation is corroborated by the 2017 European Parliament Rolling Checklist on review clauses which indicated that 80 % of all Directives and 58 % of all Regulations under scrutiny contain a review clause.

30. However, only two-thirds of the legislative proposals in our sample<sup>27</sup> already included a review clause. The Commission may not have proposed review clauses when simply amending an existing piece of legislation because it already contained a review clause. Nevertheless, in certain of these cases the co-legislators found it necessary to replace or amend the existing review clauses.

31. Most of the ex-post reviews mandated in the 34 pieces of legislation can be roughly categorised either as evaluations or as implementation, application or subject-specific

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<sup>25</sup> Implementation assessment is the term used by the European Parliamentary Research Service to refer to its ex-post evaluation background documents for parliamentary committees’ implementation reports.

<sup>26</sup> European Parliament, EVAL unit working document “Method and Process”.

<sup>27</sup> Sample of recently-adopted legislation (2014-2016).

reports. However, this does not clearly express the nuances between the different possible types of report, which in turn makes it difficult to understand what the Commission is required to look into and what kind of product it will produce (see **Box 1**).

**Box 1 - The uncertainty introduced by the lack of common definitions**

The lack of common definitions of the different types of review possible leads to a myriad of terms or combinations thereof, notably regarding the ex-post reviews referred to as “reviews” (e.g. “review”, “review of the functioning and effectiveness” or “review of all elements”). Other terms used are “report on the results of the application”, “evaluation of the implementation” and “report on the implementation and impact”.

This lack of common definitions of the different types of ex-post review creates uncertainty as to what the Commission is required to look into and what kind of product it will produce.

32. It is not possible to draw a clear and consistent causal link between the type of ex-post review mandated and its timing. For example, in one case an evaluation is mandated three years after application while in another case an implementation report is due only ten years after application. There is also a fairly substantial body of application reports, implementation reports and evaluations within the sample, which have all been mandated four to five years after application, while these three types of reports cover different periods of the legislative cycle.

33. While we recognise the advantage of allowing the Commission and the co-legislators to tailor review clauses to the specific needs of each piece of legislation, we also found that the expected deliverables from the review clause were not always clear. Moreover, there is also a risk that the timing of the ex-post review is not commensurate with its expected deliverables.

34. These issues of inconsistent wording and timing were also found for the other main sample used for this audit, consisting of 133 ex-post reviews due to be delivered between 2013 and 2016, and therefore linked to older pieces of legislation. This points to a long-standing issue in the drafting of review clauses in EU legislation.

### **Monitoring clauses used in two thirds of cases**

35. It is essential to monitor the implementation and application of legislation in order to ensure that sufficient reliable and comparable data is available in order to carry out an evidence-based ex-post review of legislation. The inclusion of monitoring clauses in legislation, where appropriate, is therefore important to set the framework under which information should be made available to the Commission, in particular from Member States.

36. Over two thirds (73 out of 102<sup>28</sup>) of the pieces of legislation examined included a monitoring clause concerning Member States. This was much more common in some DGs than others. While DG ENV (24 of 27) and DG SANTE (21 of 24) had monitoring clauses for almost all of the pieces of legislation within their remit, this was the case for less than half of the legislation sampled in DG GROW (11 of 26), which in part may reflect the less technical nature of legislation of the sample.

37. Moreover, many ex-post reviews pointed to the need to improve data collection by introducing or improving monitoring arrangements.

38. The remaining 29 pieces of legislation had no monitoring clauses addressing Member States. In four of the ex-post reviews carried out for those legislative acts, the lack of a monitoring clause was mentioned and the need to set up monitoring arrangements underlined.

39. When assessing legislation adopted in the 2014-2016 period, the situation is similar: nine out of 34 did not have a monitoring clause. There is no significant improvement in the systematic inclusion of monitoring clauses in legislation.

40. A dedicated working group on monitoring and quantification was set up by the Secretariat-General of the Commission in June 2016. Its key objectives are to support the Commission work on improving monitoring and quantification of the impacts of EU actions, through increasing knowledge and sharing of experience, in order to respond to the strong need for practical advice and steer on how to quantify the impacts of EU actions, particularly

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<sup>28</sup> Three of the 105 pieces examined were left out of the sample for want of relevance.

for regulatory intervention where experience is limited. The mandate of the working group includes issuing guidance or best practice documents but this has not yet been produced.

### ***Uneven execution and quality control of ex-post reviews***

41. The quality of the framework for ex-post reviews (guidelines, including the toolbox) is critical, as is the actual practical execution. We therefore examined:

- the different institutions' framework for the execution of ex-post reviews;
- the timeliness of the execution of ex-post reviews;
- the methodologies used and the extent to which these are explained;
- data limitations and the extent to which they are recognised;
- the internal quality control mechanisms;
- the role of the Regulatory Scrutiny Board.

### **Improved but incomplete framework for ex-post reviews**

42. The Commission Secretariat-General plays a central role in the creation, development and oversight of guidelines and best practices in the field of regulatory policy. This includes drafting guidelines, ensuring their coherent application by the different DGs, running various inter-service networks on/related to ex-post reviews (e.g. technical Working Group on monitoring and evaluation) and interacting with third party stakeholders active in this area (Member States, academics, international organisations such as the OECD, etc.).

43. In particular, the Secretariat-General has taken a leading role in the preparation of the 2015 Better Regulation guidelines and toolbox and their 2017 revision. Those guidelines provide a comprehensive framework under which the Commission services can undertake

evaluation work. The toolbox has a chapter dedicated to evaluations and fitness checks<sup>29</sup>, while a number of other tools can also be applicable to certain aspects of ex-post reviews.

44. However, ex-post reviews other than evaluations are not covered by the guidelines until 2017. They are not bound by strict quality control standards such as those required of evaluations and fitness checks, despite the fact that the underlying work can be of a similar nature, duration and cost. As a result, ex-post reviews other than evaluations allow for many different execution practices potentially resulting in different levels of quality. In 2017, the reviews were included in a limited way.

45. The co-legislators can also carry out their own ex-post reviews and issue their own guidelines. Whereas the Council does not have its own guidelines and has not carried out any ex-post reviews of its own during the period 2013-2016, the Parliament has set up the European Parliamentary Research Service (EPRS) which, since 2013, has also had an Ex-Post Evaluation (EVAL) unit. This unit carries out ex-post reviews, which it calls “European implementation assessments” (EIA), functioning as background documents for parliamentary committees’ implementation reports<sup>30</sup>. It has internal guidelines on how to conduct EIAs; these guidelines closely follow those of the Commission regarding methodology.

### **The Commission rarely explained to the co-legislators why ex-post reviews were delayed**

46. The timely execution of European Commission ex-post reviews is both a legitimate expectation of co-legislators and stakeholders and a legal requirement when an ex-post review is mandated in legislation.

47. On the whole, European Commission ex-post reviews are not conducted on time (69 out of 85) and delays are rarely explained. The average delay across the whole sample is just

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<sup>29</sup> European Commission Better Regulation “Toolbox”, Chapter 6, p. 314.

<sup>30</sup> “An EIA is a core background document for parliamentary committees when they prepare an “Implementation report” on the national transposition of an EU policy or law and its implementation into national law”, European Parliament, EVAL unit working document “Method and Process”.

over a year<sup>31</sup> in relation to the legal obligation the ex-post reviews are designed to meet, notwithstanding the fact that such ex-post reviews may well be broader and deeper in scope than those originally foreseen in legislation<sup>32</sup>. This delay includes a very broad range of ex-post reviews and, given the Commission's emphasis on evaluations, it is worth noting that the average delay for evaluations and fitness checks is just over 16 months. This can be explained by delays in the transposition by Member States (which delay compliance assessment for example), the late implementation and/or reporting from Member States.

48. The quite significant average delay in delivering ex-post reviews should be seen within the context both of the lack of consideration given to the most appropriate timing for different types of ex-post review in the design of review clauses (see ***paragraphs 32 to 34***) and to the need for a completed ex-post review within the context of the Commission's "evaluate first" commitment. The need for the Commission to achieve a balance between appropriate timing, respect for the 'evaluate first' principle and output quality can no doubt explain much of the timing in delivering ex-post reviews. There is little evidence, however, of the Commission explaining this to the co-legislators when an ex-post review is delayed.

#### **No homogenous treatment of methodology**

49. The toolbox on Better Regulation stresses the importance of recognising the methodological and data collection challenges encountered during an evaluation<sup>33</sup>. In the context of the Commission's emphasis on evidence-based policy making, a proper outline of methodology covering both data collection and analysis tools in all ex-post reviews with an evaluative content (not only evaluations), as well as an explanation of the choice of methodology, would strengthen the legitimacy of its conclusions. This would also facilitate a

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<sup>31</sup> These delays are calculated only in relation to legally-mandated deadlines for reviews.

<sup>32</sup> The length of the delays for ongoing reviews (not published by 31.12.2016) is the difference between the prescribed deadline and 31.12.2016.

<sup>33</sup> European Commission Better Regulation "Toolbox", tool #41 on monitoring arrangements and indicators, p. 270.



better understanding, and if necessary allow for the work underpinning the conclusions to be repeated.

50. There is an inconsistent approach to methodology across our sample of completed ex-post reviews<sup>34</sup>. While the chosen methodology is most often outlined, this outline was comprehensive (i.e. it covered both data collection and data analysis tools) in only a little more than half of ex-post reviews. The reason for a particular methodology having been chosen is only provided in a little more than a third of ex-post reviews. We also noted wide variations in the quality and comprehensiveness of the information provided on methodology. Within the sampled ex-post reviews, there were 14 evaluations published in 2016, once the Better Regulations guidelines became applicable. While these evaluations always respect the five criteria<sup>35</sup> mandated in the Better Regulation guidelines, they sometimes fall short in explaining their methodology.

#### **Data limitations recognised and corrective actions taken but results yet to be yielded**

51. Ex-post reviews should provide enough information to readers on the data underpinning the Commission's conclusions.

52. Some level of data limitations can be seen as inherent to most ex-post reviews covering the entire EU because of the challenges that collecting and collating data on complex issues across multiple jurisdictions presents. Most completed ex-post reviews should therefore recognise any limitations to the data which has been used in order for the co-legislators and stakeholders to understand which conclusions the data does or does not support.

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<sup>34</sup> When examining the issue of methodology, we only studied reviews with an evaluative element to them (evaluations and others).

<sup>35</sup> The Better Regulation guidelines request that evaluations and fitness checks address five criteria: relevance, effectiveness, efficiency, coherence and European added value. European added value includes the principles of subsidiarity and proportionality.

53. Two thirds of the 80 completed ex-post reviews examined recognise limitations in the data which underpins the ex-post review work<sup>36</sup>. The main issues identified are incompleteness or lack of data, data quality and issues with stakeholder consultations (low response rate, representativeness of responses, etc.).

54. Sometimes data limitations are due to a lack of monitoring (see also [paragraphs 38 and 39](#)) and sometimes this is linked to ex-post reviews being carried out at an inappropriate time (see [paragraphs 32 to 34](#)). However, some ex-post reviews include an explanation on how those limitations were addressed (see [Box 2](#)).

**Box 2 - A good practice in mitigation of data limitations**

The methodology section of the evaluation of the Noise Directive<sup>37</sup> (END) includes a useful table on key methodological limitations, including data limitations, and how they were addressed, e.g.:

- As no impact assessment was performed, data on the noise exposure of EU citizens collected in the first round of noise mapping under the Directive was used as the baseline.
- As the implementation of the Directive was delayed by Member States, data was limited. Therefore the criteria for the selection of case studies were amended to include data availability considerations.
- It was difficult to determine the extent to which the costs and benefits incurred could be attributed specifically to the END. For that reason, attribution issues were factored into the quantitative case study and cost-benefit analysis work and a sensitivity analysis was undertaken to assess how costs-benefit ratios would change under different modelling scenarios of attribution effects.

55. Data limitations are likely to remain one of the biggest ongoing challenges for the Commission in its efforts to ensure consistently high-quality work for ex-post reviews. None of the DGs in our sample can be considered to have a DG-wide systemic approach to data

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<sup>36</sup> A certain number of completed reviews have been excluded because they do not have any evaluative content.

<sup>37</sup> Refit evaluation of Directive 2002/49/EC relating to the assessment and management of environmental noise (SWD(2016) 454), published in December 2016.

availability and quality issues. However many of them are taking different steps to improve their ability to collect and manage data (see **Box 3**).

**Box 3 - Different DGs' approaches to improving data collection and management**

- DG ENV has conducted a Fitness Check on EU environmental monitoring and reporting which led to the identification of ten actions for improvement<sup>38</sup>.
- DG GROW is leading a new regulatory initiative enabling the Commission to gather data directly from private undertakings<sup>39</sup>.
- DG HOME has stepped up its collaboration with the Joint Research Centre (JRC) on data collection and treatment methods and set up one of its units as a dedicated data hub.

56. Since its update in 2017 the toolbox contains a recommendation to include an explicit assessment of the limits encountered in data collection and modelling and a corresponding assessment of the “strength of evidence” supporting an evaluation’s conclusions. In addition to this, the Secretariat General is also chairing a dedicated working group on monitoring and quantification to support the Commission work on improving monitoring and quantification of the impacts of EU actions, through increasing knowledge and sharing of experience (see **paragraph 40**).

**Evaluations and fitness checks are subject to systematic quality control, but other ex-post reviews are not**

57. The quality of ex-post reviews is crucial to ensure the quality of any subsequent actions within the legislative cycle. The Commission has stressed in the toolbox that the quality of evaluation work should be constantly checked, notably through the use of an Inter-Service Steering Group (ISG) to bring added expertise and ensure different perspectives are taken into account and analysed to improve overall quality. The principle of quality control can be extended to all ex-post review work with an evaluative content. Furthermore, the quality

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<sup>38</sup> COM(2017) 312 final.

<sup>39</sup> COM(2017) 257 final.

control process for external studies supporting an ex-post review, as well as for internally-conducted ex-post reviews, should always be documented.

58. The use of ISGs is well established for evaluations and fitness checks. All of them within the sample had an ISG, which also covered supporting studies. However, this was rarely the case for other types of ex-post review even though a significant number of them (40) included evaluative elements. These ex-post reviews, like evaluations and fitness checks, can be and often are subject to inter-service consultation. However, such consultations happen very late in the ex-post review process, concern only the Commission report, exclude supporting studies and are focused on producing alignment of Commission DGs.

59. External studies supporting ex-post reviews other than evaluations are not systematically subject to a formal quality assessment. The requirement to use a quality assessment form for those studies only applies when they are carried out in support of evaluations. Internally-conducted ex-post reviews do go through a quality control process within each DG, but this is rarely documented and we could not find evidence of clear criteria or guidance on quality control applicable to such ex-post reviews.

### **The Regulatory Scrutiny Board's increasing impact on quality control**

60. In order to ensure the quality and transparency of ex-ante impact assessments and ex-post reviews, the existence of an oversight body is critical. This was emphasised by the OECD in its 2012 recommendation on regulatory policy and governance.

61. In the EU context, the RSB has fulfilled this role since 2015. It supersedes the EC's Impact Assessment Board (IAB). The RSB has seven full-time members (four seconded from the European Commission and three recruited externally). Compared to the IAB, its mandate has been extended to cover evaluations and fitness checks. This is a positive development which puts the Commission's regulatory quality oversight body ahead of many of its peers in the EU and beyond (see also **Box 4**). However, ex-post reviews other than evaluations are not within the scope of competence of the RSB.

**Box 4 - An example of RSB added value regarding quality control: the Nature fitness check**

The RSB was provided with an early draft of the Nature fitness check<sup>40</sup>. In its opinion, issued in April 2016, the RSB considered that the fitness check needed to be significantly improved. It proposed several recommendations such as explaining why the two directives are fit for purpose and identifying areas for improvement (effectiveness criteria), better demonstrating the cost and benefit estimates of implementation (efficiency criteria), further elaborating on coherence and relevance criteria, and better presenting the view of the Commission's services on the findings of the external study (overall presentation). Annex I of the final version of the evaluation details how the Commission addressed these comments.

62. The number of negative opinions on impact assessments and evaluations issued by the RSB points to its *de facto* independence. However, the lack of an RSB dedicated secretariat hierarchically separate from the Secretariat-General of the Commission poses a risk to its independence. Moreover, the involvement of the Chair of the RSB also as a Chair in a Commission-run stakeholder platform (the REFIT Platform) could jeopardise the perception of its independence.

***Ex-post reviews generally publicly available; outcomes clear but not always used in ex-ante impact assessments***

63. The publication and communication of the ex-post review findings and conclusions helps to promote active use of the ex-post review and its findings to the widest possible audience. For this purpose, the audit examined whether:

- ex-post reviews were publicly available and their content clear;
- co-legislators reacted directly to the ex-post reviews;
- impact assessments drawn up for new legislative initiatives took account of existing ex-post reviews.

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<sup>40</sup> Fitness Check of the Birds and Habitats Directives (SWD(2016) 472), published on 16.12.2016.

**Overall, ex-post reviews are publicly available and their outcomes clear but follow-up monitoring needs to be strengthened**

64. For the sake of transparency, completed ex-post reviews should be publicly available. These ex-post reviews should indicate a clear outcome, i.e. next steps should be identified in the Commission report. The use of a follow-up action plan is considered good practice for post-2015 evaluations in the toolbox as it can help DGs to track the implementation of the actions to be carried out.

65. The sampled ex-post reviews were publicly available in almost all cases. The Commission reports and the related staff working documents (SWD) were always available. Unless bound by confidentiality clauses, supporting studies of the sampled completed ex-post reviews were also available online, with the exception of two. These studies were often on the thematic website of the DG.

66. Despite the public availability of most ex-post reviews, in a few cases the Commission document (report or SWD) did not provide a hyperlink or a clear reference to the supporting study, and in other cases the supporting study was not made public at the same time as the Commission report.

67. Of 88 completed ex-post reviews assessed, the vast majority (79) provided a clear indication of outcomes and/or next steps, indicating what actions (whether legislative or not) the Commission intended to take. This was normally in the concluding section of the official Commission document constituting the ex-post review. A tendency towards a more consistent presentation of conclusions and next steps was found in more recent Commission reports, but this is not yet standard practice.

68. Despite the clear indication of next steps in most Commission reports, follow-up reporting is not yet a standard practice in any of the sample DGs. Nevertheless, there are some interesting practices in use or available to the evaluation officers in several DGs to improve follow-up of the actionable conclusions of ex-post reviews. For example, DG HOME had developed a “follow up” template, based on the suggestions made in the toolbox.

### **The European Parliament and Council seldom react directly to the Commission on its ex-post reviews**

69. A reaction from the co-legislators to ex-post reviews prepared by the Commission (e.g. have the ex-post review as an agenda item in the relevant EP committee or Council working party) within a reasonable time following the forwarding of the document to them would help the Commission in preparing its follow-up action plan. According to the toolbox, these follow-up action plans should be drawn up within six months of publication.

70. From committees' or working parties' agendas or minutes, we found that the European Parliament and the Council seldom reacted to the Commission reports submitted to them within six months of publication (17 and 27 respectively out of 77). However, this does not fully reflect the fact that the co-legislators can take account of and make use of Commission reports at a later stage or within a different context (e.g. hearings or internal working groups). The primary duty of the Commission's ex-post reviews, namely to inform co-legislators work, can thereby be considered to have been fulfilled. However, rare direct reactions to the Commission can be seen as a missed opportunity to inform its further work, potentially weakening the better regulation cycle.

### **Most new initiatives respect the "evaluate first" principle**

71. Ex-ante impact assessments should build on previous evaluation work, in line with the Commission's "evaluate first" principle, including in the case of the so-called "back-to-back" evaluations/impact assessments (evaluations that are carried out in parallel to impact assessments). The Secretariat-General of the Commission has included this principle as a key performance indicator, with a target of 60 % of impact assessments for major legislative initiatives preceded by previous evaluations.

72. Of the sample of 29 impact assessments adopted between 2014 and 2016 within scope, six of them did not respect the "evaluate first" principle as set out by the Commission in 2010. This means that these impact assessments do not refer to a previous ex-post review, and there were no apparent reasons for it (see **Box 5**). We recognise that some of these impact assessments were started before the Commission's 2013 commitment to systematically apply the "evaluate first" principle. The RSB 2016 annual report noted that

the Commission had respected the “evaluate first” principle in 50 % of the impact assessments scrutinised. The RSB’s latest figures show an improvement as 75 % of impact assessments respected the “evaluate first” principle in 2017.

**Box 5 - Failure to take account of the results of a previous ex-post review: the example of the vehicle emission approval test**

According to the main conclusions of the fitness check on the legal framework for the type-approval of motor vehicles (SWD(2013)466 final) published in November 2013: “... it is acknowledged that the test cycle and the measurement methods may not be fully representative of real world driving conditions, resulting in real life emissions being higher than the regulatory limits and having a knock-on effect on air quality targets set in other EU legislation ...”.

The fitness check, and in particular the measurement method issue, was not taken into account in the impact assessment supporting a proposal for a Regulation regarding the reduction of pollutant emissions from road vehicles (IA SWD(2014)33 final) published in January 2014.

In September 2015 so-called “*Dieseldgate*” broke out.

73. Back-to-back evaluations/impact assessments entail two inherent risks. Firstly, to the independence of the evaluation process in relation to that of the impact assessment. Secondly, to the added value of the evaluation for the impact assessment when the former is not completed in time. Of the sample of ex-post reviews carried out in the 2013-2016 period, there are five completed/ongoing back-to-back evaluations/impact assessments. For the two completed ones, the issue of timing had a material impact on the value and usefulness of the evaluations.

74. When looking at the Commission Work Programme for 2017, 27 out of 32 legislative initiatives were based on ex-post reviews. Of the remaining five, three cases were addressing new legislative areas and therefore were not concerned by the “evaluate first” principle; in one case, an exception was granted on the grounds that large amounts of evaluation work had already been carried out; in another case there was insufficient data for an ex-post review to take place.



***The REFIT programme is unclear***

75. The REFIT programme was established in 2012 to ensure that EU law is 'fit for purpose'. With the launch of the 2015 Better Regulation guidelines, the Commission kept the REFIT programme separate. With the 2017 revision, REFIT has been included in the toolbox while still being presented as a separate initiative within the Commission Work Programme. The audit examined the pertinence of the REFIT programme and its complementarity to the Better Regulation agenda.

76. The REFIT programme grew out of and built on a number of previous initiatives aiming to take a more systematic approach to burden reduction and the management of the EU's legislative acquis. However, the extent to which these legacy initiatives still define and shape REFIT is unclear, as are its defining/exclusion criteria and expected outputs. The 2015 REFIT state of play refers to "simplification initiatives" undertaken outside the remit of REFIT but there is no explanation as to what differentiates such REFIT and non-REFIT initiatives. This makes it difficult to determine clearly REFIT's strategy.

77. The REFIT process is driven by a mapping exercise "to identify the regulatory areas and pieces of legislation with the greatest potential for simplifying rules and reducing regulatory cost for businesses and citizens without compromising public policy objectives"<sup>41</sup>. This mapping exercise has been very valuable for the different DGs, as it has fostered change and improved the management of the different processes regulating the legislative cycle within the DGs. The acquis maps prepared by the DGs provide a wealth of information on each DG's legislative acquis, including all ex-post review obligations as well as own-initiative ex-post reviews carried out on specific pieces of legislation.

78. In the absence of criteria according to which evaluations are classified as REFIT or not, REFIT can be seen more as a label for ex-post review work than as an indication of any substantive difference in inputs, processes, procedures or outputs. All the DGs sampled stressed that they do not treat REFIT evaluations differently from non-REFIT ones. According to the 2015 guidelines, all REFIT evaluations were meant to be scrutinised by the RSB;

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<sup>41</sup> COM(2012) 746 final, p. 4.

however, the REFIT status of an evaluation was not a criterion used by the RSB when selecting evaluations for scrutiny.

79. The 2017 edition of the toolbox states that there is no need to consider evaluations and fitness checks as REFIT any more. At the same time, it indicates that every new initiative changing an existing law is by default a REFIT initiative unless specified otherwise. The apparent disconnect between the REFIT classification of evaluations and initiatives would not allow for the formal identification of a REFIT chain of actions along the policy cycle. Repeals and recasts are sometimes (in 2014 and 2015) included in the REFIT annex of the Commission Work Programme (CWP) and sometimes not (in 2016 and 2017). The 2015 and 2016 CWP REFIT annexes mix legislative and non-legislative measures.

80. In its 2016 annual report, the RSB stated that it was “difficult to make REFIT principles operational when assessing individual impact assessments and evaluations”.

81. Communication to external stakeholders regarding the REFIT programme is poor. As it stands, the 2017 REFIT scoreboard is not user-friendly and the results of the programme cannot be easily grasped. Given the recent evolution of the REFIT programme and its progressive amalgamation with standard procedures of the legislative cycle, the scoreboard as it is now is questionable.

## **CONCLUSIONS AND RECOMMENDATIONS**

82. Ex-post review is a key element of the EU policy cycle as it contributes to the better regulation cycle. In 2015, building on existing practices, the Commission launched the Better Regulation agenda and issued the corresponding guidelines and toolbox.

83. Overall, we concluded that the Commission’s current ex-post review system compares well to the situation in the majority of Member States. The Commission has, as a whole, a well-designed system of evaluations and fitness checks, which are well-managed and quality-controlled, thereby contributing effectively to the Better Regulation cycle.

84. However, we found some weaknesses. The main shortcomings identified relate to the lack of common definitions regarding review clauses, the unclear treatment of ex-post

reviews other than evaluations or fitness checks, and the lack of clarity of the REFIT programme.

***Widespread use of review and monitoring clauses but lack of common guidelines***

85. Despite the lack of common inter-institutional definitions and guidelines, review clauses are widely used in EU legislation and their presence in adopted legislative texts has increased in recent years. In several cases in which no review clause had been included in the Commission proposal, it was added during the legislative process. We consider this to be a positive step towards ensuring a systematic approach to reviewing legislation, although the inter-institutional agreement is not binding (see ***paragraphs 24 to 30***).

86. Nevertheless, the content of review clauses is not always clear, in particular when it comes to identifying the requested output and considering when an ex-post review should be conducted (see ***paragraphs 31 to 34***).

87. Also, the use of monitoring clauses imposing a need to collect data from Member States is not as widespread as that of review clauses, despite its relevance in ensuring good-quality ex-post reviews (see ***paragraphs 35 to 40***).

**Recommendation 1 - Enhancing the inter-institutional agreement on better law-making**

(a) The Commission, in cooperation with the European Parliament and the Council, should, in the context of the existing inter-institutional agreement, develop an inter-institutional vade-mecum on review and monitoring clauses, containing:

- a taxonomy of possible outcomes/ex-post reviews that can be requested;
- guidance on indicative timing for each type of ex-post review;
- guidance on drafting monitoring clauses both for EU institutions or bodies and Member States.

(b) The Commission should propose that the European Parliament and the Council decide, in line with article 295 of the TFEU, on the legal form and means that will enhance the

binding nature of a future inter-institutional agreement on better law-making in order to maximise its practical effects.

Target implementation date: December 2019.

### ***Uneven execution and quality control of ex-post reviews***

88. Globally, evaluations are carried out in line with the legal requirements and good practices defined in the Better Regulation guidelines. However, we have identified several shortcomings.

89. Until 2017, the guidelines did not apply to ex-post reviews other than evaluations. As a result, these ex-post reviews were conducted in a very broad variety of ways and did not follow standardised practices, despite the fact that they could sometimes include important evaluative elements or be important milestones in their own right within the Better Regulation cycle (see ***paragraphs 42 to 45***).

90. A clearly-explained methodology contributes to the understanding as well as the legitimacy and quality of an ex-post review. While the methodology chosen is usually outlined, it is not detailed enough to allow for a good understanding of its strengths and limitations (see ***paragraphs 49 to 50***).

91. The unavailability of data is one of the major issues as it hinders proper evidence-based ex-post reviews. While some data limitations are always to be expected when dealing with complex issues covering the entire EU, it is important that every effort be made to minimise them. It is important that such limitations always be recognised in the ex-post reviews for legislators and stakeholders to understand the reliability and strength of an ex-post review's conclusions (see ***paragraphs 51 to 56***).

92. Quality control for evaluations and their supporting studies has been standardised through inter-service groups and quality checklists. Also, evaluations are now systematically contained in a standardised staff working document. The situation regarding ex-post reviews other than evaluations is less positive. Currently, some ex post reviews other than evaluation contain evaluative elements. However, the RSB's mandate does not foresee that it looks at them even when they have a strong evaluative dimension (see ***paragraphs 57 to 62***).

**Recommendation 2 - Better ensuring the quality of ex-post reviews by defining minimum quality standards for all ex-post reviews**

- (a) The Commission should define a set of minimum quality standards for ex-post reviews other than evaluations with a view to ensuring their quality across Commission services.
- (b) The Commission should grant the RSB, as an independent reviewer, the right to scrutinise ex-post reviews other than evaluations.
- (c) The Commission should incorporate in its minimum quality standards applicable to ex-post reviews with an evaluative element the requirement to include a detailed outline of the methodology used (i.e. including data collection and analysis tools), a justification of its choice, and the limitations.

Target implementation date: December 2019.

**Recommendation 3 - Conducting a gap analysis of data collection and management capabilities**

The Commission should conduct, at the appropriate level, gap analyses of its ability to generate, collect and (re)use the data required for sound evidence-based ex-post reviews, and implement the corresponding actions best suited to each situation.

Target implementation date: June 2019.

***Ex-post reviews generally publicly available; outcomes clear but not always used in ex-ante impact assessments***

93. Virtually all ex-post reviews are publicly available and accessible. The Commission's reports have increased in clarity over the years, with the vast majority providing a clear conclusion and next steps (see ***paragraphs 64 to 68***).

94. Regulatory quality is the responsibility of all three institutions involved in the legislative process. The Commission's reports on the ex-post reviews carried out are systematically forwarded to the co-legislators but seldom produce a direct reaction to the Commission.

Nevertheless, co-legislators may use ex-post reviews within the broader policy cycle when the subject matter of an ex-post review is the subject of legislative reform or renewal (see **paragraphs 69 to 70**).

95. Despite recent improvement, the “evaluate first” principle is still not respected in around a quarter of cases. When evaluations and impact assessments are carried out simultaneously (back-to-back), this raises doubts regarding the independence of the two processes and the effective consideration of the evaluation conclusions (see **paragraphs 71 to 74**).

#### **Recommendation 4 - Ensuring respect for the “Evaluate first” principle**

(a) The Commission should ensure that the “evaluate first” principle is systematically respected when revising existing legislation. Therefore, it should not validate a proposal the impact assessment of which is not based on previous evaluation work.

(b) The Regulatory Scrutiny Board should pay due attention to effective application of this principle. It should publish annually a list of those impact assessments which do not respect the “evaluate first” principle.

Target implementation date: December 2018.

#### ***The REFIT programme is unclear***

96. The REFIT programme has been instrumental in promoting a Better Regulation mind-set across the Commission in order to improve the quality of legislation. However, its rationale is unclear, as are the criteria by which individual initiatives have been labelled as REFIT. At the same time, the toolbox presents REFIT as a specific programme. This raises questions as to its current nature (see **paragraphs 75 to 81**).

**Recommendation 5 - Mainstreaming REFIT into the Better Regulation cycle**

The Commission should clarify the REFIT concept and mainstream its presentation and use to avoid the perception that REFIT is in some way separate from the standard Better Regulation cycle.

Target implementation date: December 2018.

This Report was adopted by Chamber II, headed by Mrs Iliana IVANOVA, Member of the Court of Auditors, in Luxembourg at its meeting of 16 May 2018.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

## ANNEX I

## List of sampled ex-post reviews

DG ENV

Type of ex-post review	Supporting studies	Commission's documents	Date of publication
Evaluation and Implementation report	Five implementation and evaluation studies launched in 2012 and 2013 and approved in 2013-2014	<b>Commission Report:</b> "Report from the Commission to the Council and the European Parliament under Article 18(2) of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage" (COM(2016) 204) <b>Commission SWD:</b> "REFIT Evaluation of the Environmental Liability Directive" (SWD(2016) 121)	14.4.16
Fitness Check	Study to support the fitness check of environmental monitoring and reporting obligations/ A summary of public consultation responses (May 2016) Support to the Fitness Check of monitoring and reporting obligations arising from EU environmental legislation, Final Report (March 2017)	<b>Commission intermediate SWD:</b> "Towards a Fitness Check of EU environmental monitoring and reporting: to ensure effective monitoring, more transparency and focused reporting of EU environment policy" (SWD (2016) 188 final)	27.5.16
Fitness Check	Evaluation Study to support the Fitness Check of the Birds and Habitats Directives (March 2016)	<b>Commission SWD:</b> "Fitness Check of the Birds and Habitats Directives" (SWD(2016) 472)	16.12.16
Fitness Check	Final Report supporting the Evaluation of the Implementation of EMAS (June 2015)	Ongoing	
Implementation Report	Supporting study not provided	<b>Commission Report:</b> "on the implementation of Regulation (EC) No 1013/2006 on shipments of waste" (COM(2015) 660 final)	17.12.15
Implementation Report	Several studies (one per Directive: <b>Preparation of implementation reports on waste legislation</b> (January 2012))	<b>Commission Report:</b> "on the implementation of the EU waste legislation period 2007-2009" (COM(2013) 06 final)	17.1.13
Implementation Report	Several studies (one per Directive: <b>Final Implementation Report</b> (July 2015))	<b>Commission Report:</b> "on the implementation of the EU waste legislation period 2010-2012" (COM(2017) 88)	27.1.17



Evaluation	Ex-post evaluation of certain waste stream Directives (April 2014)	<b>Commission SWD:</b> "Ex-post evaluation of Five Waste Stream Directives accompanying the document Proposal for a Directive of the European Parliament and of the Council" (SWD(2014) 209)	2.7.14
Specific report	Availability of Mercury-free Button Cells for Hearing Aids" (August 2014)	<b>Commission Report:</b> "Report on the availability of mercury-free button cells for hearing aids, in accordance with Article 4.4 of Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC" (COM(2014) 632)	15.10.14
Evaluation and Implementation report		(Batteries and accumulators)	Ongoing
Implementation Report	Study on "Implementation report for the ELV Directive" - 2012 and Summary report on the implementation of the ELV Directive for the periods 2008-2011 and 2011-2014 (November 2016)	<b>Commission Report:</b> "Report on the implementation of Directive 2000/53/EC on end-of-life vehicles for the periods 2008-2011 and 2011-2014" (COM(2017) 98)	27.2.17
Specific report	Review of the scope of Directive 2012/19/EU on Waste Electrical and Electronic Equipment (WEEE) (October 2013)	<b>Commission Report:</b> "on the review of the scope of Directive 2012/19/EU on waste electrical and electronic equipment (the new WEEE Directive) and on the re-examination of the deadlines for reaching the collection targets referred to in Article 7(1) of the new WEEE Directive and on the possibility of setting individual collection targets for one or more categories of electrical and electronic equipment in Annex III to the Directive" (COM(2017) 171 final)	18.4.17
Specific report	Study on collection rates of waste electrical and electronic equipment (WEEE) (October 2014)	<b>Commission Report:</b> "on the re-examination of the WEEE recovery targets, on the possible setting of separate targets for WEEE to be prepared for re-use and on the re-examination of the method for the calculation of the recovery targets set out in Article 11(6) of Directive 2012/19/EU on WEEE" (COM(2017) 173 final)	18.4.17
Specific report	--	<b>Commission Report:</b> "on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)" (COM(2017) 172 final)	18.4.17
Implementation Report	Provision and elaboration of information for the preparation of the "implementation report of Directive 2006/21/EC on the management of waste from extractive industries" (12 April 2016)	<b>Commission Report:</b> "on the implementation of Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC" (COM(2016) 553 final)	6.9.16

Mixed (different kinds of review)	Collection and analysis of data for the review required under Article 30(9) of Directive 2010/75/EU on industrial emissions (IED) (July 2013)	<b>Commission Report:</b> "Report on the reviews undertaken under Article 30(9) and Article 73 of Directive 2010/75/EU of 24 November 2010 on industrial emissions addressing emissions from intensive livestock rearing and combustion plants" (COM(2013) 286)	17.5.13
Implementation Report	Assessment and Summary of the Member States' Implementation Reports for the IED, IPPCD, SED and WID (approved in March 2016)	Ongoing	
Evaluation and Implementation report	Evaluation of Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register and its triennial review (August 2016)	Ongoing	
Implementation Report	Three years of implementation of the E-PRTR - Supporting study for the European Commission (April 2012)	<b>Commission Report:</b> "on progress in implementing Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register (EPRTTR)" (COM(2013) 111)	5.3.13
Evaluation	Evaluation of Directive 1994/63/EC on VOC emissions from petrol storage and distribution and Directive 2009/126/EC on petrol vapour recovery — final evaluation report, Amec Foster Wheeler et al.	<b>Commission SWD:</b> "REFIT evaluation of Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations and Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations" (SWD(2017) 65)	28.2.17
Implementation Report		<b>Commission Report:</b> "under Article 7 of Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations" (COM(2017) 118 final)	7.3.17
Implementation Report	Analysis of Member States' reports on the implementation of the Paints Directive (April 2013)	<b>Commission Report:</b> "Report on the implementation of Directive 2004/42/EC of the European Parliament and of the Council on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC" (COM(2013) 704)	16.10.13
Evaluation and Implementation report	Evaluation of Directive 2002/49/EC Relating to the Assessment and Management of Environmental Noise (September 2016)	<b>Commission Report:</b> "on the implementation of the Environmental Noise Directive in accordance with Article 11 of Directive 2002/49/EC" (COM(2017) 151) <b>Commission SWD:</b> "REFIT evaluation of Directive 2002/49/EC relating to the assessment and management of environmental noise" (SWD(2016) 454)	13.12.2016 (evaluation) & 30.3.2017 (IR)
Agency annual report	--	Air quality in Europe — 2013 report, EEA Report No 9/2013	2013

Agency annual report	--	Air quality in Europe — 2014 report, EEA Report No 5/2014	2014
Agency annual report	--	Air quality in Europe — 2015 report, EEA Report No 5/2015	2015
Agency annual report	--	Air quality in Europe — 2016 report, EEA Report No 28/2016	2016
Implementation Report	22 country assessments and five assessments of the River Basin Management Plans	<b>Commission Communication:</b> “The Water Framework Directive and the Floods Directive: Actions towards the ‘good status’ of EU water and to reduce flood risks” (COM(2015) 120 final) <b>Commission SWDs:</b> “Report on the progress in implementation of the Water Framework Directive Programmes of Measures” (SWD(2015) 50) and “Report on the progress in implementation of the Floods Directive” (SWD(2015) 51)	9.3.15
Implementation Report	Technical assessment of the implementation of the Council Directive concerning Urban Waste Water Treatment (91/271/EEC) (December 2012)	<b>Commission Report:</b> “Seventh Report on the Implementation of the Urban Waste Water Treatment Directive (91/271/EEC)” (COM(2013) 0574)	7.8.13
Mixed (IR with evaluative elements)	Technical assessment of the implementation of Council Directive concerning Urban Waste Water Treatment (91/271/EEC) (March 2015)	<b>Commission Report:</b> “Eighth Report on the Implementation Status and the Programmes for Implementation (as required by Article 17) of Council Directive 91/271/EEC concerning urban waste water treatment” (COM(2016) 105)	4.3.16
Mixed (IR with evaluative elements)		(Urban Waste Water Treatment)	Ongoing
Agency annual report	--	European bathing water quality in 2013, EEA Report No 1/2014	27.5.14
Agency annual report	--	European bathing water quality in 2014, EEA Report No 1/2015	20.5.15
Agency annual report	--	European bathing water quality in 2015, EEA Report No 9/2016	25.5.16
Fitness Check		(Classification, labelling and packaging of substances and mixture)	Ongoing
Mixed (different kinds of review)	Technical assistance related to the scope of REACH and other relevant EU legislation to assess overlaps (March 2012) Several thematic studies contracted	<b>Commission Report:</b> “in accordance with Article 117(4) REACH and Article 46(2) CLP, and a review of certain elements of REACH in line with Articles 75(2), 138(3) and 138(6) of REACH” (COM(2013)0049) <b>Commission SWD:</b> “General Report on REACH” (SWD(2013)0025)	5.2.13
Evaluation		(REACH)	Ongoing

Evaluation and Implementation report	Review of the European Union's Timber Regulation (March 2016)	<b>Commission Report:</b> "Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation)" (COM(2016) 074) Commission SWD: "Evaluation of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation)" (SWD(2016) 34)	18.2.16
Implementation Report	EEA Report Technical report No 17/2014: Mid-term evaluation report on INSPIRE implementation	Mid-term evaluation report on INSPIRE implementation, EEA Report Technical report No 17/2014	10.11.14
Evaluation and Implementation report	EEA Report Technical report No 17/2014: Mid-term evaluation report on INSPIRE implementation	<b>Commission Report:</b> "on the implementation of Directive 2007/2/EC of March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) pursuant to Article 23" (COM(2016) 478) Commission SWD: "Evaluation accompanying the document report from the Commission to the Council and the European Parliament on the implementation of Directive 2007/2/EC of March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) pursuant to article 23 of Directive 2007/2/EC" (SWD(2016) 273 final)	16.8.16

### DG GROW

Type of ex-post review	Supporting studies	Commission's documents	Date of publication
Fitness Check	"Fitness Check of the Legal Framework for the Type-Approval of Motor Vehicles Final Report" (1.3.2013)	<b>SWD:</b> Fitness Check of the EU legal framework for the type-approval of motor vehicles (SWD(2013) 466)	22.11.2013
Report	"Benefit and Feasibility of a Range of New Technologies and Unregulated Measures in the fields of Vehicle Occupant Safety and Protection of Vulnerable Road Users" (March 2015)	<b>SWD:</b> Saving Lives: Boosting Car Safety in the EU Reporting on the monitoring and assessment of advanced vehicle safety features, their cost effectiveness and feasibility for the review of the regulations on general vehicle safety and on the protection of pedestrians and other vulnerable road users (SWD(2016) 431)	12.12.2016

		<b>Commission report:</b> Report from the Commission to the European Parliament and the Council Saving Lives: Boosting Car Safety in the EU Reporting on the monitoring and assessment of advanced vehicle safety features, their cost effectiveness and feasibility for the review of the regulations on general vehicle safety and on the protection of pedestrians and other vulnerable road users (COM(2016) 787)	
Report		(L-category vehicles)	Ongoing
Report		<b>SWD:</b> General Report on REACH Accompanying the document: Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions in accordance with Article 117(4) REACH and Article 46(2) CLP, and a review of certain elements of REACH in line with Articles 75(2), 138(3) and 138(6) of REACH (SWD(2013) 25)  <b>Commission report:</b> General Report on REACH Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions in accordance with Article 117(4) REACH and Article 46(2) CLP, and a review of certain elements of REACH in line with Articles 75(2), 138(3) and 138(6) of REACH (COM(2013) 49)	5.2.2013
REFIT evaluation		(REACH)	Ongoing
FC		(Non-REACH)	Ongoing
Evaluation		(Detergents)	Ongoing
Report		<b>COM report:</b> Report from the Commission to the European Parliament and the Council pursuant to Article 16 of Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents, concerning the use of phosphorus in consumer automatic dishwasher detergent (COM(2015) 229)	29.5.2015
REFIT evaluation	"Ex-post evaluation of EU pre-packaging directives" (September 2015)	<b>SWD:</b> REFIT- Evaluation of the pre-packaging legal framework Directives 75/107/EEC, 76/211/EEC and 2007/45/EC (SWD(2016)219)	4.7.2016

		<b>Commission report:</b> Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of the pre-packaging legal framework: Directives 75/107/EEC, 76/211/EEC and 2007/45/EC (COM(2016) 438)	
Evaluation		(Machinery Directive)	Ongoing
REFIT evaluation		(Lifts)	Ongoing
Evaluation		(Toy safety)	Ongoing
Report	“Study of the need and options for the harmonisation of the labelling of textile and clothing products” (24.1.2013)  “Study on the Link Between Allergic Reactions and Chemicals in Textile Products” (7.1.2013)	<b>Commission report:</b> Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products (COM(2013) 656)	25.9.2013
Report		<b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 1007/2011 on textile fibre names and related labelling and marking of the fibre composition of textile products (COM(2014) 633)	29.10.2014
Evaluation		(Aerosol dispensers)	Ongoing
Report	“Study on specific needs for information on the content of dangerous substances in construction products” (31.10.2013)	<b>Commission report:</b> Report from the Commission to the European Parliament and the Council as foreseen in Article 67(1) of Regulation (EU) No 305/2011 (COM(2014) 511)	7.8.2014
Report	“Analysis of the implementation of the Construction Products Regulation” (July 2015)	<b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (COM(2016) 445)	7.7.2016
REFIT FC		(Construction)	Ongoing
Evaluation	“Evaluation of the Firearms Directive” (December 2014)	<b>Commission report:</b> Report from the Commission to the European Parliament and the Council Evaluation of Council Directive 91/477/EC of 18 June 1991, as amended by Directive 2008/51/EC of 21 May 2008, on control of the acquisition and possession of weapons (COM(2015) 751)	18.11.2015

Evaluation	"Evaluation of Directive 2009/43/EC on the Transfers of Defence-Related Products within the Community" (June 2016)	<b>SWD:</b> Evaluation of the Transfers Directive (SWD(2016) 398 final)  <b>Commission report:</b> Report from the Commission to the European Parliament and the Council Evaluation of Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community (COM(2016) 760)	30.11.2016
REFIT evaluation	"Ex-post evaluation of Late Payment Directive" (November 2015)	<b>SWD:</b> Evaluation of the Late Payment Directive/ REFIT Evaluation (SWD(2016) 278)  <b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (COM(2016) 534)	26.8.2016
Evaluation		(Defective products)	Ongoing
Back-to-back evaluation-IA		(Market surveillance)	Ongoing
Implementation report		<b>SWD:</b> Guidance papers on accreditation (SWD(2013) 35)  Organisation of market surveillance in the Member States (SWD(2013) 36)  <b>Commission report:</b> Product safety and market surveillance package report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the implementation of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (COM(2013) 77)	13.2.2013

Evaluation	"Evaluation of the Application of the mutual recognition principle in the field of goods" (June 2015)		
Back-to-back evaluation-IA		(Mutual recognition)	Ongoing
Evaluation		(Free movement of goods)	Ongoing
Evaluation		<b>SWD:</b> Analysis of the implementation of Regulation (EU) No 1025/2012 from 2013 to 2015 and factsheets (SWD(2016) 126)  <b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) No 1025/2012 from 2013 to 2015 (COM(2016) 212)	1.6.2016
Report		<b>Commission report:</b> Article 25 Report to the European Parliament and the Council on the impact of the procedures established by Article 10 of Regulation (EU) No 1025/2012 on European standardisation on the timeframe for issuing standardisation requests (COM(2015) 198)	13.5.2015
REFIT evaluation		<b>SWD:</b> evaluation of the modifications introduced by Directive 2007/66/EC to Directives 89/665/EEC and 92/13/EEC concerning the European framework for remedies in the area of public procurement/ refit evaluation (SWD(2017) 13)  <b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the effectiveness of Directive 89/665/EEC and Directive 92/13/EEC, as modified by Directive 2007/66/EC, concerning review procedures in the area of public procurement (COM(2017) 28)	Treated as ongoing because published after the deadline for the sample (24.1.2017)
Evaluation		<b>SWD:</b> Evaluation of Directive 2009/81/EC on public procurement in the fields of defence and security (SWD(2016) 407)	30.11.2016



		<b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the implementation of Directive 2009/81/EC on public procurement in the fields of defence and security, to comply with Article 73(2) of that Directive (COM(2016) 762)	
REFIT back-to-back evaluation-IA		(IPRED)	Ongoing
Evaluation		(OHIM)	Ongoing
REFIT evaluation		<b>SWD:</b> Evaluation of the Council Directive on the coordination of the laws of the Member States relating to self-employed commercial agents (Directive 86/653/EEC) / REFIT evaluation (SWD(2015) 146)	16.7.2015
Report		<b>SWD:</b> Accompanying the Commission report (below) (SWD(2015)207)  <b>Commission report:</b> Report from the Commission to the European Parliament and the Council on the application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and 2008/6/EC) (COM(2015) 568)	17.11.2015
Evaluation	“Evaluation of the Internal Market Legislation for Industrial Products” (13.1.2014)	<b>SWD:</b> Part 1: Evaluation of the Internal Market Legislation for Industrial Products (SWD(2014) 23 final)  <b>Commission communication:</b> communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: a vision for the internal market for industrial products (COM(2014) 25 final)	22.1.2014
Evaluation		(Design system)	Ongoing

**DG HOME**

Type of ex-post review	Supporting studies	Commission's documents	Date of publication
Evaluation	<p>"Evaluation of the Implementation of the Dublin III Regulation", DG Migration and Home Affairs, Final report (18.3.2016)</p> <p>"Evaluation of the Dublin III Regulation", DG Migration and Home Affairs, Final report (4.12.2015)</p>	<p><b>Commission communication:</b> "Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration" (COM(2015) 510 final)</p> <p><b>Proposal for a Regulation</b> (of the EP and Council) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (COM(2016) 270 final; 2016/0133 (COD))</p>	<p>14.10.2015</p> <p>4.5.2016</p>
Evaluation	<p><b>JRC Technical report:</b> Fingerprint recognition for children (2013)</p> <p><b>EU-LISA's input</b> for VIS overall evaluation (3.11.2015) <i>[limited]</i></p>	<p><b>Commission report:</b> "on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT Evaluation" (COM(2016) 655 final)</p> <p><b>Commission SWD:</b> "Evaluation of the implementation of Regulation (EC) No 767/2008 of the European Parliament and Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) / REFIT Evaluation" (SWD(2016) 328 final)</p>	14.10.2016
Evaluation	<p><b>Tipik's conformity check: Overall report on the transposition</b> of Facilitators' Package (June 2015)</p> <p><b>Evaluation and Impact Assessment Study</b> on a proposal for a revision of the EU legal framework related to the facilitation of irregular migration (migrant smuggling)</p>	Ongoing	Ongoing

Evaluation	The <b>overall evaluation</b> of the second generation Schengen Information System (9.5.2016) [ <i>limited</i> ] SIS technical assessment (5.2.2016) [ <i>limited</i> ]	<p><b>Commission report:</b> “on the evaluation of the second generation Schengen Information System (SIS II) in accordance with Articles 24(5), 43(3) and 50(5) of Regulation (EC) No 1987/2006 and art. 59(3) and 66(5) of Decision 2007/533/JHA” (COM(2016) 880 final)</p> <p><b>Commission SWD</b> accompanying the Commission Report: “on the evaluation of the second generation Schengen Information System (SIS II) in accordance with articles 24(5), 43(3) and 50(5) of Regulation (EC) No 1987/2006 and articles 59(3) and 66(5) of Decision 2007/533/JHA” (SWD(2016) 450 final)</p> <p><b>Two proposals for a Regulation:</b></p> <ol style="list-style-type: none"> <li>1. on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 (COM (2016) 882; 2016/0408 (COD))</li> <li>2. on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU (COM (2016) 883; 2016/0409 ( COD))</li> </ol>	21.12.2016
Fitness Check		(Legal migration)	Ongoing
Evaluation	<b>Final Report Study for an impact assessment</b> on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive") (15.9.2016)	<p><b>Commission SWD: Impact assessment</b> accompanying the document “Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment” (SWD(2016) 193 final)</p> <p><b>Proposal for a Directive</b> (of the EP and Council) on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (COM(2016) 378 final 2016/0176 (COD))</p>	7.6.2016
Evaluation		(ILOs network)	Ongoing
Conformity check	<b>Tipik’s conformity check:</b> Final Overall report on the transposition of Directive 2009/52/EC ‘Employers Sanctions’ (April 2013)	<b>Commission communication:</b> “on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals” (COM(2014) 286 final)	22.5.2014
Conformity check and evaluative study	<b>Tipik’s conformity check:</b> Directive 2008/115/EC General report on the transposition by the Member States (December 2012)	<b>Commission communication:</b> “on EU Return Policy” (COM(2014) 199 final)	28.3.2014

	<b>Evaluation on the application</b> of the Return Directive (2008/115/EC) Final Report European Commission – DG Home Affairs (22 October 2013)		
Conformity check	<b>Tipik's conformity check:</b> Final Overall report on the transposition of Directive 2004/81/EC <b>Study</b> on Council Directive 2004/81/EC on the residence permit issued to victims of human trafficking and smuggled persons - Draft Final Report (February/March 2013)	<b>Commission communication:</b> "On the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities." (COM (2014) 635 final) <b>Commission SWD:</b> "Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings" (SWD(2014) 318 final)	17.10.2014
Progress report		<b>Commission report:</b> " <u>Progress Report</u> on the Development of the Second Generation Schengen Information System (SIS II) July 2012 - December 2012" (COM(2013) 305 final)	27.5.2013
Progress report		<b>Commission report:</b> " <u>Last Progress Report</u> on the Development of the Second Generation Schengen Information System (SIS II) January 2013 - May 2013" (COM(2013) 777 final)	2.12.2013
Conformity check	<b>Tipik's conformity check:</b> Draft Overall report on the transposition of Directive 2011/93/EU (December 2016)	<b>Commission report:</b> "assessing the extent to which the Member States have taken the necessary measures in order to comply with Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography" (COM(2016) 871 final) <b>Commission report:</b> "assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography" (COM(2016) 872 final)	16.12.2016
Conformity check	<b>Tipik's conformity check:</b> Final Overall report on the transposition of Directive 2011/36/EU (December 2016)	<b>Commission report:</b> "assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23 (1)" (COM(2016) 722 final)	2.12.2016
Conformity check	<b>Tipik's conformity check:</b> Final Overall report on the transposition of Directive 2011/36/EU (December 2016)	<b>Commission report:</b> "assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23 (2) of the Directive 2011/36/EU" (COM(2016) 719 final)	

Application report	<b>Preparatory Study</b> on the <b>implementation</b> of Regulation (EU) 98/2013 on the marketing and use of explosives precursors (November 2016)	<b>Commission report:</b> “on the <b>application</b> of, and delegation of power under, Regulation (EU) 98/2013 of the European Parliament and of the Council on the marketing and use of explosives precursors” (COM(2017) 103 final)	28.2.2017
Application report		<b>Commission report:</b> “pursuant to Article 18 of Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors, examining the possibilities to transfer relevant provisions on ammonium nitrate from Regulation (EC) No 1907/2006” (COM(2015) 122 final)	12.3.2015
Conformity check		(Procedures directive 2013/32)	Ongoing
Conformity check		(Reception directive 2013/33)	Ongoing
Conformity check/ implementation report	<b>Tipik’s conformity check:</b> Final Overall report on the transposition of Directive 2011/95/EU (October 2016) <b>Evaluation of the application</b> of the recast Qualification Directive (2011/95/EU) (October 2016)	Under preparation	Under preparation
Conformity check	<b>Tipik’s conformity check:</b> Draft Overall report on the transposition of Directive 2013/40/EU (December 2016)	Under preparation	Under preparation
Conformity check	<b>Tipik’s conformity check:</b> Final Overall report on the transposition of Directive 2009/50/EC ‘EU Blue Card’ (April 2013)	<b>Commission communication:</b> “on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (“EU Blue Card”)” (COM(2014) 287 final)	22.5.2014
Study/non-implementation report	<b>Study</b> on the Temporary Protection Directive – Final report (January 2016)		No EC document
Implementation report	<b>Study</b> on the economic impact of short-stay visa facilitation on the tourism industry and on the overall economies of EU Member States that are part of the Schengen Area, DG GROW (August 2013)  Study: Schengen Visa Information on the Internet, DG DIGIT (14.2.2014)	<b>Commission report:</b> “A smarter visa policy for smart growth” (COM(2014) 165 final) <b>Commission SWD:</b> “Evaluation of the implementation of Regulation (EC) No 810/2009 of the European Parliament and Council establishing a Community Code on Visas (Visa Code)” accompanying the Commission Report (SWD(2014) 101 final)  <b>Proposal for a Regulation</b> (of the EP and of the Council) on the Union Code on Visas (Visa Code) (recast) (COM(2014) 164 final; 2014/0094 (COD))	1.4.2014

Implementation report		<b>Commission report:</b> "Report on the implementation and functioning of Regulation (EU) No 1342/2011 of the European Parliament and of the Council amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad oblast and certain Polish administrative districts in the eligible border area and on the bilateral agreement concluded thereof between Poland and the Russian Federation" (COM(2014) 74 final)	19.2.2014
Implementation/ application report	Study on the requirements specific to children travelling alone or accompanied, legally entering or leaving the Member States/Associated Countries (December 2012)	<b>Commission report:</b> "on the requirements for children crossing the external borders of the Member States" (COM(2013) 567 final)	2.8.2013
Application report		<b>Commission report:</b> Annual report to the European Parliament and the Council on the activities of the EURODAC Central Unit in 2012 (COM (2013) 485 final) <b>Commission SWD:</b> "on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints" (SWD(2015) 150 final)	28.6.2013 27.5.2015

## DG SANTE

Type of ex-post review	Supporting studies	Commission's documents	Date of publication
Report	Evaluative study on the cross-border healthcare Directive (2011/24/EU)	<b>Commission Report</b> on the operation of Directive 2011/24/EU on the application of patients' rights in cross-border healthcare (COM(2015) 421 final)	4.9.2015
Evaluation		(General food law)	Ongoing
Evaluation		(European Medicines Agency)	Ongoing
Fitness Check		(Pesticides)	Ongoing
Evaluation		(Blood and Tissue legislation)	Ongoing
Evaluation		(Better Training for Safer Food)	Ongoing
Evaluation	Evaluation of the benefits of the Better Training for Safer Food Programme - Final Report (24.5.2013)	Note for the attention of Mrs Paola Testori, Director General, DG SANCO, Subject: Evaluation of the Benefits of the Better Training for Safer Food Programme – Final Report	18.9.2013

Implementation Report		<p><b>Commission Report</b> on the implementation of Directives 2002/98/EC, 2004/33/EC, 2005/61/EC and 2005/62/EC setting standards of quality and safety for human blood and blood components (COM(2016) 224 final)</p> <p><b>Commission SWD</b> on the application of Directive 2002/98/EC on setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC (accompanying the report) (SWD(2016) 129 final)</p> <p><b>Commission SWD</b> on the implementation of the principle of voluntary and unpaid donation for human blood and blood components as foreseen in Directive 2002/98/EC on setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC (accompanying the report) (SWD(2016) 130 final)</p>	21.4.2016
Subject-specific report	Study on the Establishment of a European Fund for Minor Uses in the Field of Plant Protection Products	<p><b>Commission Report</b> on the establishment of a European fund for minor uses in the field of plant protection products (COM(2014) 82 final)</p>	18.2.2014
Implementation report		<p><b>Commission Report</b> on the implementation of Directives 2004/23/EC, 2006/17/EC and 2006/86/EC setting standards of quality and safety for human tissues and cells (COM(2016) 223 final)</p> <p><b>Commission SWD</b> on the implementation of the principle of voluntary and unpaid donation for human tissues and cells (accompanying the report) (SWD(2016) 128 final)</p>	21.4.2016
Implementation report		<p><b>Commission report</b> on the implementation of Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation (COM(2016) 809 final)</p> <p><b>Commission SWD</b> on the implementation of Directive 2010/53/EU (accompanying the report) (SWD(2016) 451 final)</p>	10.3.2015
Report on the delegation of powers		<p><b>Commission report</b> on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on the standards of quality and safety of human organs intended for transplantation (COM(2015) 123 final)</p>	10.3.2015

Implementation report	"One-year report on human medicines pharmacovigilance tasks of the European Medicines Agency". Reporting period: 2 July 2012 to 1 July 2013	<b>Commission report</b> on Pharmacovigilance-related activities of Member States and the European Medicines Agency concerning medicinal products for human use (2012–2014) (COM(2016) 498 final) <b>Commission SWD</b> (accompanying the report) (SWD(2016) 284 final)	8.8.2016
Report on the delegation of powers		<b>Commission report</b> on the exercise of the delegation conferred on the Commission pursuant to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use and pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (COM(2015) 138 final)	30.3.2015
Application report	Summary of the responses to the public consultation	<b>Commission report</b> in accordance with Article 25 of Regulation (EC) No 1394/2007 of the European Parliament and of the Council on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004 (COM(2014) 188 final)	28.3.2014
Report on MS experience		<b>Commission Working Document</b> Experience of Member States with Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified microorganisms (recast) for the period 2009-2014 (COM(2016) 808 final) <b>Commission SWD</b> accompanying the Commission Working Document (SWD(2016) 445 final)	20.12.2016
Subject specific report		<b>Commission Report</b> regarding trans fats in foods and in the overall diet of the Union population (COM(2015) 619 final) <b>Commission SWD</b> Results of the Commission's consultations on 'trans fatty acids in foodstuffs in Europe' (SWD(2015) 268 final)	3.12.2015
Report on the delegation of powers		<b>Commission Report</b> on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 1169/2011 on the provision of food information to consumers (COM(2016) 138 final)	11.3.2016
Subject-specific report		<b>Commission Report</b> on young child formulae (COM(2016) 169 final) <b>Commission SWD</b> Young child formulae: background information (SWD(2016) 99 final)	31.3.2016
Subject-specific report	Study on food intended for sportspeople (June 2015)	<b>Commission Report</b> on food intended for sportspeople (COM(2016) 402 final)	15.6.2016



Subject-specific review	Analysis of measures geared to the sustainable use of biocidal products (May 2015)	<b>Commission Report</b> on the sustainable use of biocides pursuant to Article 18 of Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (COM(2016) 151 final)	17.3.2016
Report on delegation of powers		<b>Commission report</b> on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (COM(2016) 650 final)	11.10.2016
Subject specific report	Study on the mandatory indication of country of origin or place of provenance of unprocessed foods, single ingredient products and ingredients that represent more than 50 % of a food (10.9.2014)	<b>Commission report</b> regarding the mandatory indication of the country of origin or place of provenance for unprocessed foods, single ingredient products and ingredients that represent more than 50 % of a food (COM(2015) 204 final)	20.5.2015
Report on the functioning of the legislation		<b>Commission report</b> on the functioning of Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council (COM(2015) 56 final)	16.2.2015
Application report		<b>Commission Report</b> on the application of Regulation (EC) No 1523/2007 banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur (COM(2013) 412 final)	13.6.2013
Implementation report		<b>Commission report</b> on the implementation of Council Directive 98/58/EC concerning the protection of animals kept for farming purposes (COM(2016) 558 final)	8.9.2016
Subject-specific review		(Animal slaughter)	Ongoing
Subject-specific report		<b>Commission report</b> on food and food ingredients treated with ionising radiation for the year 2015 (COM(2016) 738 final)	25.11.2016

Subject-specific report	Study on the identification of potential risks to public health associated with the use of refillable electronic cigarettes and development of technical specifications for refill mechanisms (May 2016)	<b>Commission report</b> on the potential risks to public health associated with the use of refillable electronic cigarettes (COM(2016) 269 final)	20.5.2016
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**ANNEX II****List of the sampled pieces of legislation (July 2014- end of 2016)**

<b>DG ENV</b>
Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species
Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants
Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union
Regulation (EU) No 660/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EC) No 1013/2006 on shipments of waste
Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment
Directive 2015/720 /EU of the European Parliament and of the Council of 29 April 2015 amending Directive 94/62/EC as regards reducing the consumption of lightweight plastic carrier bags

<b>DG GROW</b>
Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC
Regulation (EU) 2015/758 of the European Parliament and of the Council of 29 April 2015 concerning type-approval requirements for the deployment of the eCall in-vehicle system based on the 112 service and amending Directive 2007/46/EC
Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast)
Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC
Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts
Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast)
Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC
Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts
Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement

Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)
Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure
Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification)

<b>DG HOME</b>
Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast): COM(2013) 0151
Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers: COM(2010) 0379
Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer: COM(2010) 0378
Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994: COM(2015) 668
Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code): COM(2015) 8 (codification)
Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union: COM(2013) 0197
Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union: COM(2012) 085
Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime: COM(2011) 32

<b>DG SANTE</b>
Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (Commission proposal: COM(2012) 369 final)
Regulation (EU) No 334/2014 of the European Parliament and of the Council of 11 March 2014 amending Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products, with regard to certain conditions for access to the market (Commission proposal: COM(2013) 288 final)
Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (Commission proposal: COM(2013) 260 final)
Regulation (EU) 2015/1775 of the European Parliament and of the Council of 6 October 2015 amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010 (Commission proposal: COM(2015) 45)

Regulation (EU) No 653/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and labelling of beef (Commission proposal: COM(2012) 639)

Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (Commission proposal: COM(2013) 267 final)

European Parliament's replies to the observations of the European Court of Auditors on its Special Report entitled "Ex-post Review of EU Legislation: A well-established system, but incomplete"

**VII.** In the European Parliament, the relevant committees take note of the Commission's ex-post reviews and related reports. Each committee has an established internal process, where a decision is taken, usually at the level of the coordinators (the representatives of each political group in every committee), whether and how to provide a follow-up to them.

Within the European Parliament, the follow-up to such Commission documents can be given, inter alia, in the form of a debate in the coordinators meeting, as part of the structured dialogue of a committee with the relevant Commissioner, as an element of the debate when discussing new legislative proposals and voting on possible amendments, or by initiating a report on the implementation of a certain EU policy, legislation, or spending programme, or can constitute an important basis for a hearing or workshop organised by the relevant committee.

The European Commission's ex-post reviews/reports are also considered by the relevant services, namely the Directorate-General for Parliamentary Research Services, the Directorate-General for Internal Policies of the Union and the Directorate-General for External Policies of the Union when providing background research information to Members. Such background information is generally made publicly available on the European Parliament's website (EP Think Tank).

**25.** The development of such guidelines within the European Parliament would need to leave Members the freedom of political choice in order to freely exercise their mandate.

**26.** The European Parliament has started to draw up this comprehensive Rolling Checklist, since such information did not exist before, at least in a form available to the Parliament. This publicly available document is mainly used by the committee secretariats in order to advise their Members on how to potentially prioritise committee work within the limited meeting time available.

**35.** In the context of monitoring the transposition of EU law into national law, the European Parliament, the Council and the Commission have signed the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents (OJ C 369/15 of 17 December 2011) and the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents (OJ C 369/14 of 17 December 2011).

In order to monitor the implementation and application of legislation, it is also necessary to receive information on the transposition of EU law into national law. In the framework of the above-mentioned joint political declarations, such information should be provided by the Member States to the Commission. This information would also be useful for Parliament, since as a co-legislator it has an interest in knowing whether EU law is properly transposed into national law in order to allow it to develop its intended effects. Such information could also provide an idea of where Member States might have gone in their transposition beyond that which is required by EU law.

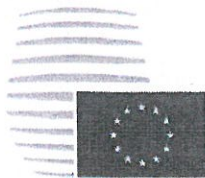
**70.** In the European Parliament, the relevant committees take note of the Commission's ex-post reviews and related reports. Each committee has an established internal process, where a decision is taken, usually at the level of the coordinators (the representatives of each political group in every committee), whether and how to provide a follow-up to them.

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**Recommendation 1 (a)** - The need and feasibility of this Recommendation would clearly first need to be debated at the political level among the three institutions concerned.

**94.** According to the European Parliament committee's political priorities, Commission reports on ex-post reviews will certainly be considered, either in the run up to legislative proposals being tabled, as they are tabled or otherwise at any point in the legislative cycle, possibly also in an internal committee process. See also the reply to paragraph VII and 70.



Council of the  
European Union

56918/03756

Brussels,

20 -04- 2018

LT 116/18

Mr Klaus-Heiner LEHNE  
President of the Court of Auditors  
Rue Alcide de Gasperi, 12  
1615 LUXEMBOURG  
LUXEMBOURG

Sir,

**Subject:** Preliminary observations of the European Court of Auditors on the "Ex-post review of EU legislation: a well-established system but incomplete"

I would like to thank you for your letter of 17 January 2018 to Ms ZAHARIEVA, President of the General Affairs Council, in which you communicated the preliminary observations of the European Court of Auditors on the "Ex-post review of EU legislation: a well-established system but incomplete".

In line with Article 163(1), second indent, of the Financial Regulation, the six-week period for providing the Council's reply was suspended by letter of the General Secretariat of the Council to the Court dated 14 February 2018 with a view to obtain feedback from Member States in order to finalise the Council's reply.

The Council would like to provide the following replies on the points and recommendations concerning the Council.

**As regards points 25 and 28:**

The Council is fully committed to the implementation of the Interinstitutional Agreement on Better Law-Making of 13 April 2016 where the importance of the ex-post evaluation of legislation is duly acknowledged by the three institutions in paragraphs 20 to 24. In this context, the three institutions have confirmed the importance of the greatest possible consistency and coherence in organising their work to evaluate the performance of Union legislation. In paragraph 23 of the Interinstitutional Agreement on Better Law-Making, they have also agreed to "*systematically consider the use of review clauses in legislation*".

According to paragraph 24 of the Interinstitutional Agreement on Better Law-Making, the three Institutions committed to "*inform each other in good time before adopting or revising their guidelines*". No obligation to issue guidelines is provided for in the Interinstitutional Agreement on Better Law-Making. It is the Commission's prerogative to submit legislative proposals and hence to propose monitoring and review clauses. As indicated in the preliminary observations, the Commission has adopted its own guidelines regarding legal provisions on monitoring and evaluation.



Given the above, the Council considers that it is at the present time not necessary to issue guidelines on drafting monitoring and review clauses and to take a general position on the presence or the content of review clauses in EU legislation. It is also recalled that the co-legislators have to examine review clauses on the basis of the specific needs of each legislation. As regards these issues, the Council will carefully examine the Court of Auditors' final report and recommendations, taking all relevant factors into account.

Concerning the legal effects of the Interinstitutional Agreement on Better Law-Making, the term "agreement" indicates the joint acceptance of certain clauses and the intention to respect them. Pursuant to Article 295 TFEU, the purpose of an interinstitutional agreement is to set up arrangements for the cooperation between the three Institutions concerned. The legal effects of an interinstitutional agreement exist whether the clauses provided in it are termed "binding" or not. The binding character of an interinstitutional agreement is to be determined having regard to the intention of its authors, which is to be deduced from the content and the wording of the text, and based on a provision-by-provision analysis.

As regards point 45:

The Council underlines that pursuant to Article 17 TEU, it is the Commission that "*shall oversee the application of Union law under the control of the Court of justice*". The Commission is therefore notably responsible for monitoring and evaluating the implementation of EU law.

As regards the title introducing points 69-70 and point 70:

The Council reiterates the importance it attaches to the Commission's ex-post reviews. However, the Council considers that the title introducing points 69-70 ("*The European Parliament and Council seldom react directly to the ex-post reviews*") may be misleading. It is not because a report is not discussed as such in the Council or in its preparatory bodies that it is not given proper consideration in the legislative process, especially during the preparation of Member States' positions at national level. The co-legislators can take account and make use of the Commission reports at a later stage or within a different context.

As regards Recommendation 1: enhancing the interinstitutional agreement on better law-making

Recommendation 1(a): "*The Commission, in cooperation with the European Parliament and the Council, should, in the context of the existing inter-institutional agreement, develop an inter-institutional vade-mecum on review and monitoring clauses, containing:*

- *a taxonomy of possible outcomes/ex-post reviews that can be requested;*
- *guidance on indicative timing for each type of ex-post review;*
- *guidance on drafting monitoring clauses both on EU institutions or bodies and Member States.*"

In addition to the comments made as regards point 25, the Council would like to underline that the development of an inter-institutional vade-mecum on review and monitoring clauses is not provided for in the Interinstitutional Agreement on Better Law-Making.

Therefore, the Council can partially agree with recommendation 1(a) in so far as it concerns the role of the Commission.

Recommendation 1(b): *"The Commission should propose that the European Parliament and the Council decide on the legal form and means that will enhance the binding nature of a future inter-institutional agreement on better law-making in order to maximise its practical effects"*.

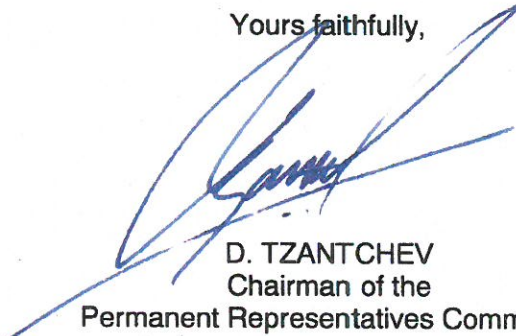
The Council would like to point out that according to Article 295 TFEU, a future interinstitutional agreement on better law-making will have to be agreed among all the institutions concerned, i.e. the European Parliament, the Council and the Commission. It would be for the three institutions to decide whether to enhance the binding nature of a future interinstitutional agreement on better law-making.

On the substance, the Council considers that the Interinstitutional agreement on Better Law-Making of 13 April 2016 is adapted to its purpose and that there is no need at the moment to conclude a new interinstitutional agreement to enhance its practical effects.

Therefore, the Council can partially agree with recommendation 1(b) in so far as it refers to Article 295 TFEU.

I hope that this reply is helpful with regard to the finalisation of the report of the Court of Auditors. I would like to underline that this reply is made without prejudice to the examination by the Council of the Court of Auditors' final report and recommendations. I look forward to receiving the final version of the report.

Yours faithfully,



D. TZANTCHEV  
Chairman of the  
Permanent Representatives Committee



# **REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS**

## **"EX-POST REVIEW OF EU LEGISLATION: A WELL-ESTABLISHED SYSTEM, BUT INCOMPLETE"**

### **EXECUTIVE SUMMARY**

VI. Since 2017, the Better Regulation Guidelines in tool 42 make clear reference to, and gives a short definition of, intermediate reports which may be inputs to evaluations. Tool 43 contains Box 3 on 'Activities which need not necessarily be evaluated in the standard way'. The Guidelines make clear that while such work would not generally constitute an evaluation, it "should nonetheless broadly follow the concepts and principles of evaluation" and it should do so in a proportionate way. Where there are doubts about how such reports should be handled, Commission services should discuss the specific case with the Secretariat-General.

VIII. The Commission points out that REFIT has undergone an evolution since its launch in 2012 progressively enlarging its scope with the aim of increasing the strength and the visibility of the Commission efforts to identify and exploit opportunities for simplifying rules and reducing regulatory cost for businesses and citizens without compromising public policy objectives.

Initially REFIT started with a mapping exercise to identify the regulatory areas and pieces of legislation with the greatest potential for this. "REFIT" evaluations and fitness checks were thus launched in these areas with a view to making policy proposals.

In 2015, REFIT was strengthened by creating the REFIT Platform to help to identify such cases. In the Commission Work Programme for 2017, on the basis of experience to date, it was announced that all revisions of existing legislation should examine whether the legislation is fit for purpose, and look at the scope for simplification and cost reduction. This approach is also explained in the Communication "Better solutions for Better results"<sup>1</sup> of October 2017 and in the revised Better Regulation Guidelines of July 2017 (tool 2).

The Commission considers that with the 2017 revision, the rationale of REFIT has been clarified and its scope extended to its natural breadth. It considers that the programme continues to demonstrate added value, including by flagging the importance of considering simplification and burden reduction opportunities during the policy design stage, providing visibility to the Commission's efforts for regulatory simplification and burden reduction and facilitating the monitoring of their impact during the phases of legislative adoption and implementation.

The Inter-Institutional Agreement on Better LawMaking confirms the importance the three institutions attach to REFIT.

### **INTRODUCTION**

4. The Commission considers that additional elements of paragraph 22 and paragraph 23 of the Inter-Institutional Agreement on Better Law-Making are important such as:

- avoiding overregulation and administrative burden in particular on Member States and
- taking account of the time needed for implementation and for gathering evidence on results and impacts.

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<sup>1</sup> COM(2017)651final.

5. The Commission underlines that ex-post reviews are carried out for different purposes and are therefore often tailored to the specificities of the legislation. Apart from defining evaluations, the Better Regulation Guidelines (tool 42) also provide a definition of transposition, implementation and monitoring reports, while tool 43 provides guidance on how to carry them out.

## **OBSERVATIONS**

40. The Working Group on Monitoring & Quantification has met 7 times. Its outputs so far include 15 presentations on best practices and tools by 12 Directorate-Generals and background documents. Those outputs are available on a collaborative workspace to promote the exchange of best practices among DGs and to disseminate knowledge to a broader audience with an interest in evaluation.

44. Since 2017, the Better Regulation Guidelines do apply to reviews other than evaluations. Tool 42 makes clear reference to, and gives a short definition of, intermediate reports, which may be inputs to evaluations. There are three types of such report: transposition/legal compliance reports, implementation reports and monitoring reports. As explained in tool 43, other activities, including "performance at an early point in the implementation of the intervention, when information on the longer term changes (results and impacts) is not yet available" should nonetheless broadly follow the concepts and principles of evaluation.

However, given the variety of situations tackled by the different reviews, the Guidelines and toolbox have to be applied proportionally. The same principle of proportionality underpins the quality control, which is ensured at two stages:

- if support studies are carried out by external consultants, their report is subject to qualitative assessment primarily by the Directorate-General itself or in an Inter-service group if one has been created;
- during the Inter-service consultation process, which is compulsory for all the Reports that the Commission submits to the other Institutions, concerned services comment on the quality and substance of ex-post reviews.

The Guidelines make clear that while such work would not generally constitute an evaluation, it "should nonetheless broadly follow the concepts and principles of evaluation" and it should do so in a proportionate way. Where there are doubts about how such reports should be handled, the Commission services should discuss the specific case with the Secretariat-General. Internal quality control mechanisms should also make a proportionate use of available resources.

47. The Commission takes note of the comment made by the ECA on the need to explain more formally the delays encountered to the co-legislators. The Commission stresses that, apart from the reasons raised by the ECA in paragraph 48, delays can often be explained by delays in transposition by Member States (which delay compliance assessment for example), the late implementation and/or reporting from Member States.

56. The Commission underlines that the Better Regulation Toolbox clearly indicates that Staff Working Documents prepared by the Commission services at the end of an evaluation must contain a clear summary of any insufficiencies in the data used to support the conclusions and the robustness of the results. The Better Regulation Guidelines also stipulate that any limitations to the evidence used and the methodology applied, particularly in terms of their ability to support the conclusions, must be clearly explained in the evaluation reports. This guidance was strengthened in the 2017 revision of the Better Regulation Guidelines/Toolbox, which should lead to further improvements.

57. See Commission reply to paragraph 44.

62. The Commission does not consider that the role played by the RSB Chair in the REFIT Platform or the absence of a dedicated secretariat hierarchically separated from the Secretariat-General of the Commission could pose a risk to the independence of the Board deliberations. This is safeguarded, inter alia, by the Board's deliberatory process, which is set out in the Board's rules of procedures. The Commission is also not aware that either of these two risks has materialised and does not share the concern that they are indeed risks.

RSB comment:

The Board is also de jure functionally (if not administratively) independent, as specified in the Decision by the President of the European Commission on the establishment of an independent Regulatory Scrutiny Board (C(2015)3263). The ECA specifies two possible risks to the Board's independence:

- On the REFIT Stakeholder Platform: The involvement of the Chair of the RSB as alternate Chair (replacing the First Vice-President) does not endanger the independence of the Board. The role of the Chair is mainly a role of moderator of the debates. The RSB Chair is not involved in the follow-up to the opinions of the REFIT Platform: this work which is more closely linked to policy is under the responsibility of the SG.
- In addition, chairing the REFIT Platform allows the RSB Chair to be directly informed about representative stakeholder views and pre-occupations on relevant files. This organised contact with stakeholders avoids having frequent, individual and possibly unbalanced contacts between RSB members and stakeholders, which would have been a higher risk to the perception of independence of the Board.

The absence of a dedicated RSB secretariat does not directly pose a threat to the independence of the Board, as it maintains full ownership of its work.

72. Of the impact assessments, which the ECA considers did not follow "the evaluate first principle", the situation is as follows:

- Impact assessment SWD(2014)127 which accompanied the Shareholders Rights Directive 2 (Directive (EU)2017/828) was accompanied by evaluation elements that took the form, among others, of two Green papers and two external studies<sup>2</sup>.
- The other four impact assessments were carried out in a period when the Commission was still phasing in the "evaluate first" approach (see COM(2010)543 of 8 October 2010), and self-standing evaluations before impact assessment were not yet in principle compulsory.

**Box 5 - Failure to respect “evaluate first” principle: the example of the vehicle emission approval test**

Second indent: Fitness check (2013)466 provided the analysis that was used to prepare the legislative proposal for a new Framework Regulation on vehicle type approval. The "evaluate first principle" was therefore respected.

The impact assessment SWD(2014)33 proposed six technical amendments to the pollution emissions legislation which were not covered by the fitness check. Regarding the measurement

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<sup>2</sup> Green Paper on corporate governance in financial institutions and remuneration policies (COM(2010)284), the 2011 Green Paper on the EU corporate governance framework (COM(2011) 164) and two external studies on the monitoring and enforcement of corporate governance rules in Member States in 2009 [http://ec.europa.eu/internal\\_market/company/docs/ecgforum/studies/comply-or-explain-090923\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923_en.pdf) and one on directors' duties and liability in 2013 [http://ec.europa.eu/internal\\_market/company/docs/board/2013-study-analysis\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/board/2013-study-analysis_en.pdf) and other specific evaluative elements linked to the new measures.

method issue, since 2011 the Commission had already initiated work (see JRC statement at European Parliament EMIS hearing 16/4/2016) that resulted in three Commission Regulations adopted between 2015-2016.

The impact assessment SWD(2014)33 includes an evaluative assessment as part of its problem definition section which was common practice before COM(2013)686, as explained in paragraph 72.

Third indent: The Commission points out that this reference is not relevant since the Dieselgate concerns the manipulation of test results by car manufacturers with illegal defeat devices. It has no relevance to the stringency of the test or their representativeness of the real world driving conditions.

73. The Commission points out that there is neither an overriding reason nor any evidence that carrying out a back-to-back impact assessment and evaluation should raise doubts as to the independence of each process. The terms of reference clearly separate the two processes and contain the requirements to consider all relevant conclusions in the impact assessment. Back to back evaluations/ impact assessments tend to be done because of time constraints when it is not possible to carry them out sequentially.

The Commission stresses that the possibility of carrying out a back to back even in situations of time constraint ensures that an evaluation can be performed in time to inform the policy decision. The main challenge is to ensure the overall quality of this exercise in the context of a limited time frame.

75. The Commission considers that while the REFIT programme has evolved over time, its nature is now clear. It offers a comprehensive framework for improving the efficiency and effectiveness of EU law, it is fully mainstreamed into the Commission's decision-making cycle and benefits from strong stakeholder engagement.

REFIT is an integral part of the Commission's annual Work Programme. Since 2017, it has been mainstreamed into the decision-making process of the Commission and has been applied to all initiatives by the Commission to revise existing EU law.

76. The Commission considers that the REFIT programme has a clear and well defined profile as the Commission's horizontal programme for regulatory simplification and burden reduction. Legacy programmes have been fully integrated into REFIT. As of 2017 all legislative revisions and evaluations are considered REFIT.

78. The Commission clarified in 2017 in the updated Better Regulation Toolbox that it considered all evaluations and Fitness Checks as REFIT given that they assess the performance of EU law and can lead to legislative revisions to improve regulatory efficiency and effectiveness.

79. The Commission admits that tool 2 of the Guidelines could be clearer on this issue. Since 2017, the Toolbox is clear that "all initiatives to amend existing legislation are ... included in the REFIT programme ...". It is also clear that "all evaluations and fitness checks contribute to the REFIT programme". An element of confusion is introduced by the rest of that sentence which states that there "is no need to attach the REFIT label to any individual evaluation or fitness check" – because all evaluations and fitness checks are by definition REFIT.

Both evaluations and legislative initiatives are included in the REFIT Scoreboard<sup>3</sup> to demonstrate the REFIT chain of actions along the policy cycle.

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<sup>3</sup> REFIT Scoreboard: <http://publications.europa.eu/webpub/com/refit-scoreboard/en/index.html>.

81. The Commission does not consider that REFIT programme communication is poor. Communication to external stakeholders regarding the REFIT programme has been challenging because of its complexity and the difficulties of estimating its results in quantitative terms. However, the Commission has made a significant effort to make the REFIT scoreboard more user-friendly in the digital edition produced in October 2017. It provides the state of play in the implementation of all REFIT initiatives, includes information by policy priority on qualitative and quantitative results.

A direct link to the "Lighten the Load" stakeholder feedback form will be added to the REFIT scoreboard in 2018.

## **CONCLUSIONS AND RECOMMENDATIONS**

84. The Commission considers that the REFIT programme offers a comprehensive framework for improving the efficiency and effectiveness of EU law. It is fully mainstreamed into the Commissions decision-making cycle and benefits from strong stakeholder engagement.

85. The Commission acknowledges that, despite the existence of the Inter-Institutional Agreement, there are no common Guidelines for the three Institutions on drafting monitoring and reviews clauses for ex-post reviews.

86. The Commission is ready to discuss with the co-legislators how to best deal with the lack of common definitions while preserving its right of initiative. It underlines, however, that monitoring and evaluation needs are often specific to the legislation in question, and any common definitions would need to take this into account.

87. The Commission points out that, in line with the Inter-Institutional Agreement on Better Law-Making, monitoring and evaluation requirements in legislation should be included, where appropriate, in legislation while avoiding overregulation and administrative burdens, in particular on Member States and should be proportionate in terms of the burden imposed for reporting obligations for stakeholders and SMEs.

### **Recommendation 1 – Enhancing the inter-institutional agreement on better law-making**

(a) The Commission accepts the recommendation as far as the Commission itself is concerned.

In the 2017 revision of the Guidelines and Toolbox on Better regulation, the Commission added a specific tool to address this issue (tool 42). On this basis it is ready to discuss with the co-legislators how to develop a taxonomy of possible outcomes/ex-post reviews, guidance on indicative timing for each type of ex-post review and on drafting monitoring clauses. Any such taxonomy would have to take into account that specific pieces of legislation might always need specific monitoring arrangements, and would have to preserve the Commission's right of initiative.

(b) The Commission does not accept this recommendation. Under Article 295 TFEU, there is no obligation for an inter-institutional agreement to be binding.

The three Institutions decided jointly in 2016 to make the Inter-Institutional Agreement on Better Law-Making legally non-binding. There are a number of legal and institutional concerns that all institutions wanted to avoid when negotiating the agreement and these concerns are still valid.<sup>4</sup> There is no plan to revise the current Inter-Institutional Agreement on Better Law-Making.

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<sup>4</sup> Among these issues there are the following questions: would such a binding agreement create rights and obligations only to the parties, or also for third parties? Would the ECJ be competent to judge on possible violations of such a binding agreement and what would the remedies be? Should there be an arbitration procedure in case the parties did not want to go to the Court? How would that be organised? These are pertinent questions that should be addressed when considering the issue of binding nature of Inter-Institutional agreements.

89. The Commission points out that, since the revision of 2017, the Better Regulation Guidelines do apply to reviews other than evaluations.

See Commission reply to paragraph 44.

90. The Better Regulation Toolbox clearly requires that the methodology used be clearly described, and this applies – proportionately – for other types of ex-post review.

91. The Commission agrees that clarity on these issues is important. It underlines that the Better Regulation Toolbox clearly indicates that Staff Working Documents prepared by the Commission services at the end of an evaluation must contain a clear summary of any insufficiencies in the data used to support the conclusions and the robustness of the results. Moreover, the Better Regulation Guidelines stipulate that any limitations to the evidence used and the methodology applied, particularly in terms of their ability to support the conclusions, must be clearly explained in the evaluation reports. This guidance was strengthened in the 2017 revision of the Better Regulation Guidelines/Toolbox which should lead to further improvements.

92. See Commission reply to paragraph 44. The RSB mandate does not foresee this as ex-post reviews are not intended to contain significant evaluative elements.

### **Recommendation 2 – Better ensuring the quality of ex-post reviews by defining minimum quality standards for all ex-post reviews**

(a) The Commission accepts the recommendation and will build on the guidance already provided in its toolbox (tool 42). The success of this action will however, depend on a future agreement with the European Parliament and the Council as indicated in recommendation 1 (a).

(b) The Commission partially accepts the recommendation.

The Commission is ready to look into this aspect when considering the overall need for a possible change in the mandate of the Regulatory Scrutiny Board. It will do so as a function of the following elements:

- The Commission's concern is to ensure that RSB resources are used where they add most value in terms of improving legislative revisions; and
- any extension of the RSB mandate will depend on an agreement on the taxonomy of ex-post reviews amongst institutions and setting minimum standards while preserving the Commission's right of initiative.

RSB comment:

The Board sees the logic of the recommendation to extend the scope of the Board's scrutiny to include also ex-post reviews other than evaluations. Based on a clear taxonomy and agreed minimum standards, the Board could focus its resources on the most relevant ex-post reviews. Therefore, the Board would have to make a selection, based on an exhaustive long-term planning of these reviews.

(c) The Commission accepts the recommendation which is dependent on delivery of recommendation 2 (a) and 1 (a).

### **Recommendation 3 - Conducting a gap analysis of data collection and management capabilities**

The Commission partially accepts the recommendation.

Commission services, including the competence centre on microeconomic evaluation within the Joint Research Centre have been active in taking stock of the various databases developed by and/or available to the Commission. Taking into account the associated administrative burdens and costs



these services will, where appropriate, focus this work on identifying gaps in the generation, collection and reuse of data at corporate level which could merit specific action.

In any event it will frequently be the case that for a specific piece of legislation, there will be a need for ad hoc mechanisms to generate, collect, and (re)use the data required for sound evidence-based ex-post reviews, and implement the corresponding actions best suited to that particular situation.

95. The evaluate first principle now applies to around 75% of impact assessments accompanying revisions of legislation.

Concerning the back to back, the Commission refers to its reply in paragraph 73.

#### **Recommendation 4 - Ensuring respect for the “Evaluate first” principle**

(a) The Commission partially accepts the recommendation.

The Commission is fully committed to applying the "evaluate first" principle as far as practicable. Better Regulation is a tool to provide the basis for timely and sound policy decisions, but it cannot replace political decisions. In certain circumstances, for example in urgent cases, the Commission may need to proceed without following all of the steps of the Better Regulation approach, in full compliance with its right of initiative.

(b) The Regulatory Scrutiny Board accepts the recommendation:

The Board already plays an active role in flagging the importance of this principle and in its monitoring and reporting.

96. See Commission’s reply to paragraph VIII.

The Commission points out that REFIT has undergone an evolution since its launch in 2012 progressively enlarging its scope with the aim of increasing the strength and the visibility of the Commission efforts to identify and exploit opportunities for simplifying rules and reducing regulatory cost for businesses and citizens without compromising public policy objectives.

The Commission considers that with the 2017 revision, the rationale of REFIT has been clarified and its scope extended to its natural breadth. It considers that the programme continues to demonstrate added value, including by flagging the importance of considering simplification and burden reduction opportunities during the policy design stage, providing visibility to the Commission's efforts for regulatory simplification and burden reduction and facilitating the monitoring of their impact during the phases of legislative adoption and implementation.

The Inter-Institutional Agreement on Better Law-Making confirms the importance the three institutions attach to REFIT.

#### **Recommendation 5 - Mainstreaming REFIT into the Better Regulation cycle**

The Commission partially accepts the recommendation.

The Commission considers that the REFIT concept has now been clarified. It accepts the need to improve communication on REFIT as part of the Better Regulation cycle.

<b>Event</b>	<b>Date</b>
Adoption of Audit Planning Memorandum (APM) / Start of audit	26.10.2016
Official sending of draft report to Commission (or other auditee)	17.01.2018
Adoption of the final report after the adversarial procedure	16.5.2018
Commission's (or other auditee's) official replies received in all languages	EP: 27.3.2018 Council: 25.4.2018 Joint EC and RSB: 9.4.2018

Ex-post review of legislation is a key part of the EU Better Regulation policy, which aims at facilitating the achievement of public policy objectives at minimum cost and improving the added value of EU interventions. We assessed whether the EU system of ex-post review of legislation had been properly planned, implemented, managed and quality-controlled, thereby contributing effectively to the Better Regulation cycle. We found that the Commission's current system of reviewing laws compares well overall with its equivalents in the Member States. However, we identified a number of weaknesses related mostly to the lack of common inter-institutional definitions regarding review clauses, the unclear treatment of some kinds of reviews as well as the lack of clarity of the Regulatory Fitness and Performance (REFIT) programme.



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