RegWatchEurope

Further Development of Regulatory Oversight at EU-level

July 2020

Joint Discussion Paper by RegWatchEurope

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What is the RegWatchEurope network?

RegWatchEurope is an informal network of independent national scrutiny and advisory bodies from across Europe, who have a significant role in scrutinising the impacts of legislation. We advise, support and challenge our respective governments on various better regulation aspects and the overall regulatory burden of legislation. The network consists of scrutiny and advisory bodies from the Czech Republic (Regulatory Impact Analysis Board, RIAB), Denmark (Danish Business Regulation Forum, DBRF), Finland (Finnish Council of Regulatory Impact Analysis, FCRIA), Germany (National Regulatory Control Council, NKR), the Netherlands (Advisory Board on Regulatory Burdens, ATR), Norway (Norwegian Better Regulation Council, NBRC), Sweden (Swedish Better Regulation Council, SBRC) and the United Kingdom (Regulatory Policy Committee, RPC). As a network, RegWatchEurope members collaborate to exchange experiences and best practice regarding better regulation and to represent the interests of independent scrutiny and advisory bodies at the European and international level.

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Key Messages

#1 Introduce independent oversight of the decision against conducting an Impact Assessment:
The RSB should be able to scrutinise and challenge the decision by the Secretariat-General against conducting an impact assessment for a new legislative proposal. There should be an option to conduct a light impact assessment, which reviews the main costs and impacts.

#2 Make use of evidence-based consultations on Impact Assessments and key stakeholders:
The Commission consults with stakeholders on inception impact assessments and roadmaps. At this stage, providing useful and specific feedback on legislative interventions is extremely difficult as rules are still vague. Stakeholder feedback should also be sought on draft proposals and their impact assessments. The RSB should be free to contact stakeholders.

#3 Implement the "Evaluate First"-principle, and introduce quality assurance for all ex-post evaluations & fitness checks:
Ex-post evaluations and fitness checks are a key pillar of better regulation in the policy-making cycle. Subjecting all evaluations and fitness checks to RSB scrutiny would substantially enhance their quality. This will provide the basis for presenting more effective and targeted amendments, and for a successful realisation of the "evaluate first" principle.

#4 Strengthen the independent mandate of the Regulatory Scrutiny Board:
RegWatchEurope recommends strengthening the mandate of the RSB by adding new tasks (such as the ability to seek stakeholder feedback as necessary and to scrutinize decisions to not conduct impact assessments), and by bolstering arrangements for its institutional independence. Thus, greater benefits could be derived from the better regulation approach.

#5 Formally promote the application of Better Regulation principles by Parliament and Council:
Given their roles in the legislative process, Parliament and Council bear considerable responsibility for improving legislative quality through better regulation instruments. RegWatchEurope therefore suggests that they adopt the better regulation concept, ensuring its consistent application by subjecting major amendments to independent supervision.

Further Development of Regulatory Oversight at EU-level

1 Why Better Regulation at European Level?

Given the devastating impacts of the COVID-19 crisis on human life and our national economies, it is now more important than ever for legislation to deliver its intended policy objectives with minimal burden. To recover from the economic and social fallout of the COVID-19 crisis, high-quality legislation at the EU level as a sound basis for political decision-making is of critical importance for all member states. There is evidence that a considerable amount of direct compliance costs to businesses, citizens and public administrations result from EU legislation.

Better Regulation is the key instrument to ensure high quality legislation and compliance with quality standards that are vital for legislative processes to deliver the promise of good policy-making:

- Better regulation relies on evidence-based legislative proposals, which entails quantifying impacts and making underlying assumptions fully transparent and justifiable.

- Better regulation requires that stakeholders should be consulted at all relevant stages of the legislative process.

- Better regulation can ensure that important political objectives are realised in the most efficient way by causing a minimum of burdens for citizens, businesses and public administrations, and by taking into account social and environmental impacts. It will use analysis and evidence proportionately to the anticipated burdens.

The quality of legislation can only be improved and lead to net benefits for those affected by it if better regulation principles are applied at all relevant stages of the legislative process.

2 What is the State of Play of Better Regulation at EU Level?

In this section, RegWatchEurope analyses the state of play of better regulation at the EU level and its practical application. The approaches and the level of engagement vary among the key actors at EU level, which is why the better regulation practices of each actor will be considered separately hereafter.

2.1 State of Play: EU Commission

Over the past few years, the EU Commission (hereafter only referred to as 'Commission') has refined and continuously upgraded its better regulation agenda and instruments. The Commission's better regulation package from May 2015 achieved substantive improvements. This approach is broader and more fully developed than the systems which most EU member states currently operate. This significant effort to achieve transparent and evidence-based policy-making is laudable - and there is a compelling case as to why the Commission has a special responsibility for adhering to its own better regulation principles:

- Firstly, whenever the Commission does propose new rules, they apply to the whole of the EU and therefore have a wide reach.

- Secondly, the Commission has the exclusive right of initiative for EU legislation and will rightly be held accountable if its proposals turn out to be burdensome and ineffective – or if there are significant unintended consequences.

Given this key role of the Commission in the legislative process, adhering to better regulation principles in practice will ensure that any rule proposed by the Commission will have been designed on sound evidence and analysis to achieve the most effective results, whilst the resulting regulatory burden is kept as low as it possibly can be.

However, remaining shortcomings in the Commission's better regulation approach and its practical application currently hamper the legislative quality in subsequent stages of the legislative process.

2.1.1 Opportunity to Review Decision to not Conduct an Impact Assessment

Commission guidance stipulates that a full impact assessment will normally not be done if there is little choice over the content of the initiative, or if the expected impacts are insignificant[1]. Impact assessments will be done if significant impacts are likely, or if proposals are included in its annual work programme[2].

Carrying out impact assessments for EU proposals is a demanding undertaking for the Commission. There are exhaustive guidelines covering a multitude of eventualities and constellations[3]. When the Secretariat General considers the decision for or against carrying out an impact assessment, it also considers whether the likely impacts justify this significant effort, or whether it would be disproportionate to do so. In principle, such a proportionality criterion may work well in order to direct resources at those proposals which are likely to have significant impacts. It is up to the Secretariat-General to conclude whether significant impacts might be expected from the initiative. The decision of the Secretariat-General cannot be challenged by anyone - including the Regulatory Scrutiny Board (RSB), despite this being the Commission's oversight body for assuring high-quality impact assessments and ex-post evaluations.

In recent years, almost 40 percent of the Commission's legislative proposals were submitted without impact assessments[4]. Proposals that are not based on an impact assessment only contain a brief summary of the Commission's reasoning in an explanatory memorandum. These summaries do not provide in-depth information about the rationale for intervention, underlying evidence and assumptions. They provide at most a very rough estimate of the total compliance costs. The impacts of such proposals are therefore much less transparent compared to proposals based on an impact assessment.

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1 European Commission (2017): TOOL #9: When is an impact assessment necessary? In: Better Regulation "Toolbox", https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox.pdf, July 2017.

2 European Parliament, The Council of the European Union, European Commission (2016): Tools for Better Law-Making, Section III, no. 13. In: Interinstitutional Agreement between the European Parliament, The Council of the European Union and the European Commission on Better Law-Making; 13 April 2016

3 Regulatory Scrutiny Board (2020): Section 3.1. What the RSB expects from a good quality impact assessment, In: Annual Report 2019, p. 29-30.

4 The proportion of EU Commission proposals submitted without impact assessment averaged 37% per annum between 2017 – 2019. This proportion increases to 50% for the four-year period 2017 – 2020, if the 95% of proposals without IA for COVID-19-related measures in 2020 are added to the tally; sources: 2018, 2019 and 2020 Annual Report on Impact Assessment within the Council (8900/18; 10014/19; 8532/20).

The decision to subject a legislative proposal to an impact assessment has therefore significant knock-on effects on the extent to which better regulation principles can be applied for the benefit of citizens and businesses, and the wider society across the EU.

Given that a considerable share of compliance costs for EU businesses, citizens and public administrations result from EU legislation, it is open to debate how well the Commission's analysis has been able to identify which legislative proposals would have significant impacts, hence which would warrant an impact assessment.

2.1.2 Consultations on Draft Impact Assessments

With its May 2015 better regulation package, the Commission has considerably improved its approach to stakeholder consultation. The Commission now also consults on roadmaps and inception impact assessments. This is followed by a consultation on legislative proposals and impact assessments issued by the College of Commissioners. In the period in between, however, the EU Commission does not consult with stakeholders on draft documents for impact assessments and legislative proposals. The consultation is carried out on the basis of questionnaires.

As a result of its stock-take in 2019, the Commission identified shortcomings of its revised consultation approach[5]. That being said, the Commission still does not consider the draft documents relevant for consultation. This contrasts with RegWatchEurope's experience with consultation at the legislative drafting stage domestically. It indicates that allowing affected stakeholders to have their say – on the basis of methodological guidance – delivers much more robust impact assessments. Roadmaps or inception impact assessments usually only provide a very rough assessment of the most important impacts. The vast majority of roadmaps and inception impact assessments merely contain a qualitative description, without any quantification of compliance costs and transparency of underlying assumptions. As a consequence, stakeholders can only respond to these very rough assessments and descriptions. This matters because only draft impact assessments reveal quantified impacts and underlying assumptions. The quality of the impact assessments may be further enhanced if substantive assessments of impacts are shared with stakeholders for validation.

[5] European Commission (2019): Taking Stock of the Commission's Better Regulation Agenda, In: Commission Staff Working Document accompanying COM(2019)178; p.40 (Conclusions) https://ec.europa.eu/info/sites/info/files/better-regulation-taking-stock-swd_en_0.pdf

Furthermore, RegWatchEurope have found that stakeholder assessments of the nature and scope of impacts can serve as a helpful and vital plausibility check of government assessments at member-state level. This is at odds with EU-level practice where to date, the RSB is not empowered to contact stakeholders regarding draft impact assessments which it scrutinises.

2.1.3 Application of the 'Evaluate first'-Principle & Quality Assurance for Ex-post Evaluations, Fitness Checks

The purpose of ex-post evaluations and fitness checks is to determine whether newly implemented legislation has achieved its intended objectives, whether unintended consequences have occurred, and whether the rules can be simplified further. This way, if evaluations or fitness checks lead to the conclusion that the intended objectives have not been achieved, they can help determine the ways in which legislation might be amended, or whether the legislation should be repealed. As noted before, the Commission usually introduces such amendments by issuing a legislative proposal accompanied by an impact assessment – if significant impacts are expected.

The Commission has committed itself to the 'evaluate first' principle. Hence, all impact assessments and legislative proposals aimed at amending existing legislation should be based on ex-post evaluations or fitness checks. Whilst the majority of the Commission's impact assessments is indeed based on an ex-post evaluation or a fitness check, the 'evaluate first' principle is not yet being fully applied[6]. This means that there are still some proposals that may not use the best possible evidence to get better outcomes for citizens, businesses and public administrations across the EU. Furthermore, high-quality ex-post evaluations and fitness checks are imperative for the nature, the quality and effectiveness of the measures to be taken on that basis. Any quality shortcomings will negatively affect the legislative proposal or impact assessment.

As of today, only a fraction of ex-post evaluations and fitness checks undertaken by the Commission have been quality-assured by the RSB[7]. The 2019 annual report of the RSB indicates that this is probably due to insufficient resources[8].

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[6] Regulatory Scrutiny Board (2020): Section 2.1. Evaluate first, In: Annual Report 2019, p. 16, https://ec.europa.eu/info/sites/info/files/rsb_report_2019_en.pdf

[7] Regulatory Scrutiny Board (2020): Section 2.3. How scrutiny has affected evaluation quality, In: Annual Report 2019, p. 23.

[8] The Regulatory Scrutiny Board consists of seven full time members, who have to scrutinize all impact assessments and some ex-post evaluations or fitness checks; https://ec.europa.eu/info/sites/info/files/communication-on-the-regulatory-scrutiny-board-mission-tasks-and-staff_may2015_en.pdf

In 2019, the Commission drafted only one impact assessment, which the RSB had to scrutinize[9]. Nevertheless, the RSB was only able to scrutinize a fraction of the ex-post evaluations and fitness checks done by the Commission during this time span. This suggests insufficient resources for scrutinizing all ex-post evaluations and fitness checks.

The 2019 annual report of the RSB provides evidence that the quality of ex-post evaluations and fitness checks often failed to meet methodological quality standards[10]. If better regulation approaches are meant to meet expectations, it is vital that ex-post evaluations and fitness checks for future legislation adhere to certain quality standards.

2.1.4 The Nature of the Regulatory Scrutiny Board's Mandate

The RSB has substantially contributed to the progress in better regulation in the European Commission. The Board comprises four seconded Commission officials and three external experts. The work done by the Board is governed by a detailed mandate that strictly regulates the scope of scrutiny, internal procedures and contact to third parties. Many of the better regulation shortcomings presented above result from gaps in the current mandate of the RSB. Current arrangements prevent the Board from bringing its wealth of expertise to bear and improve all relevant decisions across the whole legislative cycle. This begins with the decision of whether to conduct an impact assessment and artificially limits possibilities for scrutinising the quality and plausibility of the Commission's impact assessments. Ultimately, due to these shortcomings the full benefits of the 'evaluate first'-principle may not be realised.

RegWatchEurope has found that some of these weaknesses result from a suboptimal institutional set-up that impedes the application of the RSB's analytical and methodological capabilities. In consequence, this unnecessarily limits the much-needed constructive advice and support for obtaining less burdensome and more impactful proposals. Other shortcomings result from limited resources to conduct more work, and institutional and organisational limitations to allow the RSB to carry out its mandated tasks. There is a lot of untapped better regulation potential for reflecting practical problems early on, and for achieving higher net benefits for businesses and citizens.

[9] Regulatory Scrutiny Board (2020): Section 1.1., How the Board performed in 2019, In: Annual Report 2019, p. 9, https://ec.europa.eu/info/sites/info/files/rsb_report_2019_en.pdf

[10] Regulatory Scrutiny Board (2020): Section 2.2. Evaluate properly, In: Annual Report 2019, p. 17 et seq, https://ec.europa.eu/info/sites/info/files/rsb_report_2019_en.pdf

2.2 State of Play: European Parliament and Council of the European Union

The situation of the European Parliament and the Council of the European Union contrasts with the better regulation approach of the Commission. Both Parliament and Council have no better regulation approach of their own. However, they have committed themselves to providing impact assessments for significant amendments, as stipulated in the Interinstitutional Agreement of April 2016[11]. So far, the European Parliament has provided some impact assessments[12], while the conduct of impact assessments by the Council is still pending. Both institutions do not make use of opportunities - such as subjecting proposals to independent oversight - in order to ensure the quality of the impact assessments.

This shows that better regulation principles are applied inconsistently across the entire legislative cycle within the EU. This is a missed opportunity. Re-emphasizing the important role of EU legislation for affecting businesses in the EU, RegWatchEurope calls on both Parliament and Council to take their responsibility for providing high-quality legislation more seriously than in the past and eliminate these shortcomings.

3 Advancing the European Better Regulation Approach

Many of the shortcomings identified in section 2 are either gaps and dysfunctionalities in the better regulation approach or in implementing the existing approach. RegWatchEurope's ideas on how to fix these shortcomings are derived from national experience with independent oversight and independent advice in the context of legislative procedures. RegWatchEurope's own experience demonstrates that independence is a key element for the ability to provide effective oversight and advice, as it allows the oversight body to challenge the regulatory choices of the institution to be scrutinized on methodological grounds. Independent oversight serves as an external quality assurance for impact assessments and ex-post evaluations. It reminds the institution in charge of impact assessments of systematically meeting its own commitments such as certain quality standards or its burden reduction targets.

[11] European Parliament, The Council of the European Union, European Commission (2016): Tools for Better Law-Making, Section III, no. 15, In: Interinstitutional Agreement between the European Parliament, The Council of the European Union and the European Commission on Better Law-Making; 13 April 2016, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)

[12] European Parliamentary Research Service: Activity Report 2018, p.17 https://europarl.europa.eu/EPRS/EPRS_631.723_IA-EAV-Activity_Report_2018.pdf

Advice and recommendations from independent oversight bodies are politically neutral, based on evidence and strictly adhere to methodological considerations. Members serving on such independent scrutiny bodies are usually appointed by the government or by the Head of State according to a set of transparent requirements regarding professional experience. Such a transparent selection procedure ensures that the board has the calibre required for its scrutiny and advisory role. Independent bodies do not have direct democratic legitimacy, and they are by design set up to not interfere with political decision-making. The absence of political bias in their recommendations and advice, combined with the fact that they are more like an expert third party independent of government, makes it easier for policy officials in government departments to accept their suggestions and advice.

Ultimately, the political independence of a regulatory scrutiny and advisory body is a crucial element to ensure the credibility of the impact assessments and similar estimates by the regulating institution vis-à-vis various political actors and the wider public. Independence of scrutiny as prerequisite for regulatory credibility becomes even more important if the institution, whose impact assessments are being scrutinized, has set itself a burden reduction target or operates a 'One in, one out' rule in policy-making.

3.1 How to Make the EU Commission's Better Regulation Approach More Effective

The Commission has improved its better regulation approach over the past few years. Given the Commission's central role in the legislative process, RegWatchEurope suggests eliminating the remaining shortcomings and strengthening the approach to achieve full implementation in practice.

3.1.1 Introduce Independent Oversight of Decisions to Conduct an Impact Assessment

The decision of the Secretariat-General as to whether an Impact Assessment has to be done has significant impacts for the application of better regulation principles during the whole legislative process. RegWatchEurope therefore proposes that the RSB should be able to review these decisions. If the Secretariat-General has taken the decision not to conduct an impact assessment, the RSB should be able to publicly recommend conducting an impact assessment. The Secretariat-General could then respond under the principle of "comply or explain" to make the reasons behind its decision transparent.

In keeping with the proportionality principle, and as opposed to the current "all-or-nothing"-approach to impact assessments, it might be sensible to introduce a light impact assessment. Such a light impact assessment could make at least the most important impacts more transparent than currently done in the explanatory memorandums, e.g. by quantifying direct costs. In exceptionally urgent cases, where quick responses to a crisis are needed, it may not be possible for the Commission to conduct a full impact assessment although the proposal is expected to have significant impacts. In these cases, the RSB should have the possibility to provide recommendations on how to remedy the situation and provide more comprehensive assessments in time for subsequent negotiation stages in the European Parliament and the Council. The RSB should e.g. be able to determine a timetable to ensure that even urgent, crisis-related legislation is subjected to better regulation approaches.

3.1.2 Make Use of Evidence-based Consultations on Draft Impact Assessments

To deliver high-quality impact assessments, RegWatchEurope proposes granting stakeholders the possibility to analyse and to challenge the Commission's draft impact assessments including cost calculations and underlying assumptions on the basis of their practical experience. The RSB should also be able to contact stakeholders directly on questions regarding the plausibility of underlying assumptions and cost calculations.

As regards legislative drafts which are not accompanied by a draft impact assessment, consultation at the drafting stage would also deliver useful information for the RSB's new suggested tasks proposed above, the scrutiny of decisions, whether an impact assessment is warranted.

3.1.3 Realise 'Evaluate First'-Principle & Quality Assurance for all Ex-post Evaluations, Fitness Checks

Evaluation is a key part of the legislative process. As argued in chapter 2.1.3, due to insufficient resources, only a fraction of ex-post evaluations and fitness checks conducted by the Commission have been quality-assured by the RSB. RegWatchEurope considers ex-post evaluations and fitness checks to be essential better regulation tools in the legislative process. They ensure that policy goals are met, unwelcome side effects may be avoided and the regulatory burden is as low as it can be. RegWatchEurope therefore proposes to tackle remaining implementation deficits in this respect.

First, the 'evaluate first'-principle should be applied comprehensively. Due to its existing oversight tasks regarding ex-post evaluations, fitness checks and impact assessments, RegWatchEurope proposes mandating the RSB to ensure the comprehensive application of the principle, e.g. by public recommendations, which would have to be answered by the Commission according to the 'comply or explain'-principle. In ex-post evaluations or fitness checks, the principle of proportionality should be applied.

Second, RegWatchEurope proposes quality assurance for all ex-post evaluations and fitness checks. High-quality ex-post evaluations and fitness checks can be obtained by choosing one of two options:

- The ex-post-evaluation or the fitness check is conducted by an independent third party, which ensures that the evaluation or fitness check is not done only by a different entity within the department or a contractor subject to the Commission's instructions.

- The quality of ex-post evaluations and fitness checks is assured by an independent oversight body. In this case, it is crucial that the independent oversight body is involved right from the beginning in the evaluation process. This helps avoiding situations where systematic shortcomings in the beginning negatively affect the subsequent evaluation process[13].

To date, the majority of ex-post evaluations and fitness checks are done by the very same Commission departments that were also in charge of drafting the proposal at issue[14]. Independent oversight by the RSB could ensure good quality. Whilst the RSB is clearly mandated to conduct scrutiny of major ex-post evaluations and fitness checks, it is not sufficiently resourced to scrutinize all of them. RegWatchEurope therefore proposes to empower the Regulatory Scrutiny Board to scrutinize all ex-post evaluations and fitness checks, and to provide appropriate resources for this task.

[13] The Regulatory Scrutiny Board shares this opinion: Regulatory Scrutiny Board (2020): Section 2.3. How scrutiny has affected evaluation, In: Annual Report 2019, p. 22, https://ec.europa.eu/info/sites/info/files/rsb_report_2019_en.pdf

[14] For further implications: Regulatory Scrutiny Board (2020): Foreword of the Chair of the Regulatory Scrutiny Board, In: Annual Report 2019, https://ec.europa.eu/info/sites/info/files/rsb_report_2019_en.pdf

3.1.4 Strengthen the Independent Mandate of the Regulatory Scrutiny Board

Referring to the remaining weaknesses and gaps of the Commission's better regulation approach and of the mandate of the RSB identified in section 2.1.4, RegWatchEurope has found that in order to realize the full potential of better regulation, it is the independence of oversight bodies which makes arrangements really effective. Strong independence requires certain arrangements to be in place for a robust and comprehensive scrutiny and advisory mandate. These independence arrangements cannot be blindly imposed on any system. They must be adapted to suit the given context and the political culture of the system within which the regulatory oversight body operates. The arrangements ensuring the independence of the national courts of auditors may serve as useful models. Furthermore, full commitment from the highest political level is indispensable to ensure effective scrutiny of independent bodies. For the RSB, RegWatchEurope suggests strengthening its mandate as follows:

- The mandate should include strong arrangements for institutional independence of the RSB. Institutional independence means that the board must be able to take their decisions free from any interference. This entails making sure that there is no dependency between the Board and the Commission. Principally, under normal circumstances, the Commission should not be able to recall members before the end of their mandate.

- The RSB must be able to take decisions at any time. If given a comprehensive mandate, this must be underpinned by sufficient resources required by this workload. The lack of a quorum for decision-making for an extended period of time in 2019 further highlights how resource constraints hamper the amount of work that can be undertaken in a timely manner[15].

- Decisions about internal structures and procedures for decision-making must be at the discretion of the RSB.

- Furthermore, the Board should be free to decide if it considers it necessary to contact third parties in order to fulfil their tasks properly. The RSB should also be free to decide whether to provide support to other institutions involved in the legislative process such as the European Parliament and the Council.

[15] Regulatory Scrutiny Board (2020): Section 1.2. Special task this year: renewing the Board, In: Annual Report 2019, p. 11 et seq.

3.2 Better Regulation Approaches for the European Parliament and the Council

So far, the European Parliament and the Council only adhere to the commitments made in the Interinstitutional Agreement on Better Law-Making as a framework for better regulation. These frameworks are not implemented systematically in practice and there is no quality assurance, e.g. by independent oversight.

In an ideal world, RegWatchEurope would propose tackling these shortcomings by creating a holistic better regulation approach that comprises all three institutions. Putting in charge an independent oversight body to serve all institutions equally would boost transparency and the quality of regulation across the policy-making cycle. Citizens and businesses would benefit immensely from such a quantum leap in better regulation. However, this appears unrealistic.

As a more feasible alternative, RegWatchEurope recommends the following actions:

- The European Parliament and the Council of the European Union should introduce their own better regulation approaches, each meeting high quality standards and together forming a level playing field. This approach should include the obligation to provide impact assessments for all significant amendments. In order to ensure that impact assessments present comparable results, they should be based on a common methodology.

- The principle of responsibility obliges those who introduce new amendments to provide the impact assessments. This means that either the group in the European Parliament or the Member State proposing the amendment would be responsible for drafting an impact assessment.

- Both the European Parliament and the Council should establish some form of independent scrutiny of their own ensuring full transparency, compliance to the common methodology and high quality of the impact assessments. Those mandated to carry out such independent oversight should also be mandated to raise concerns publicly if an amendment is likely to generate significant impacts and no impact assessment has been conducted so far. It is vital to ensure a certain level of transparency regarding the reasons that have prompted amendments to Commission proposals - either by a Parliamentary group or a member state. Here,

the ‘comply or explain’- principle will deliver appropriate results. This means that if Parliament or Council decide to overrule concerns raised by independent oversight in the final decision, the reasons for doing so should be explained.

A frequently raised argument is that the legislative process might be slowed down by obliging those who introduce new amendments to provide impact assessments. Opponents to impact assessments at this stage have also argued that anyone who proposes a significant amendment would have thought through what the impacts of this amendment would be. Critics have also argued that there was too much rather than too little evidence available, which would make a formal impact assessment unnecessary.

If this is indeed the case, what remains to be done at this stage is to be transparent about it. This means putting pen to paper and to disclose - based on a common methodology - whatever underlying assumptions, evidence, facts and figures may have prompted this amendment in the first place.

Needless to say, the proportionality principle should be applied to ensure that timely requirements will be met in any case. RegWatchEurope is convinced that the additional effort for getting this done would be manageable and comparatively small. However, it would be a big step towards transparency, accountability and better regulation.

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