



An abstract graphic featuring a series of 3D rectangular blocks arranged in a receding perspective. Each block is oriented so that its top and two side faces are visible. The blocks are colored in a palette of teal, orange, and light blue. The faces of the blocks are covered with regulatory and policy-related terms in a bold, sans-serif font. The text is oriented to follow the perspective of the blocks, creating a sense of depth and movement. The background is a solid, muted blue. The overall composition is modern and professional, reflecting the regulatory nature of the document.

**EUROPEAN COMMISSION**

**Regulatory Scrutiny Board**

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# ANNUAL REPORT 2020 REGULATORY SCRUTINY BOARD

**Disclaimer:** This report has been prepared in accordance with Article 11(4) of the Rules of Procedure of the Regulatory Scrutiny Board. It reflects the views of the Board, but not necessarily those of the European Commission.



# TABLE OF CONTENTS

<b>FOREWORD BY THE CHAIR</b>	<b>6</b>
<b>CHAPTER 1. ACTIVITIES OF THE BOARD IN 2020</b>	<b>7</b>
1.1. RSB in the new Commission	8
1.2. Surge in scrutiny work	10
1.3. Advice on better regulation policy and guidance	13
<b>CHAPTER 2. IMPACT ASSESSMENTS AND EVALUATIONS: TRENDS AND CHALLENGES</b>	<b>14</b>
2.1. Scrutinising packages	15
2.2. Special feature: COVID-19	17
2.3. Impact assessments: trends and challenges	18
2.4. Evaluation: trends and challenges	24
<b>CHAPTER 3. NEW BETTER REGULATION THEMES: CHALLENGES FOR SCRUTINY?</b>	<b>28</b>
3.1. Analysis of environmental and climate impacts	29
3.2. Analysis of regulatory benefits and costs	30
3.3. Integrating foresight & future proofing	31
<b>CHAPTER 4. REACHING OUT</b>	<b>34</b>
4.1. Inside the Commission	35
4.2. External stakeholders	38
<b>CONCLUSIONS</b>	<b>41</b>
<b>RSB TEAM</b>	<b>42</b>
<b>ANNEXES</b>	<b>43</b>
<b>ANNEX 1: IMPACT ASSESSMENTS AND EVALUATIONS</b>	<b>44</b>
<b>ANNEX 2: THE REVISED RSB MONITORING SYSTEM</b>	<b>47</b>
<b>GLOSSARY</b>	<b>54</b>

# Foreword by the Chair

This report covers the fifth year of operation of the Regulatory Scrutiny Board. It was a busy year, as this report will show.

President von der Leyen announced her priorities for the Commission at the end of 2019. These include a strong focus on the Green Deal and the Digital Agenda. Several interlinked initiatives were proposed in each area. An important aspect was the coherence and timing of such initiatives. In terms of ways of working, the Commission committed to reduce administrative burden where possible and to make greater use of foresight when developing policies. As the annual report shows, the Board anticipated some of these developments and used its advice function to already start sensitising Commission departments.

As for every organisation, the COVID-19 pandemic had an impact on the Board's way of working. The Board's output was not affected, however, as Commission departments continued to work and the Board continued to scrutinise. All Board meetings from the middle of March onwards were virtual. The Board offered the opportunity to Commission departments to provide written reactions to the quality checklists issued in advance of the Board meetings. This helped the Board's deliberations. Upstream meetings also continued, with the Board giving early methodological advice in 59 virtual meetings with Commission departments on upcoming impact assessments and evaluations <sup>(1)</sup>.

The composition of the Board evolved further during 2020, as one Board member's mandate came to an end and two new Board members were selected. This transition process will continue during 2021, with two more positions expected to be filled. This will complete the full transition of the Regulatory Scrutiny Board from its first iteration.

As ever, I am grateful to the Board secretariat for its dedicated support over the past year, acknowledging in particular the challenges of continuing to function effectively while working remotely.

Veronica Gaffey

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<sup>(1)</sup> When this report refers to "evaluation", this usually includes both (ex post) evaluations and fitness checks.

# CHAPTER 1

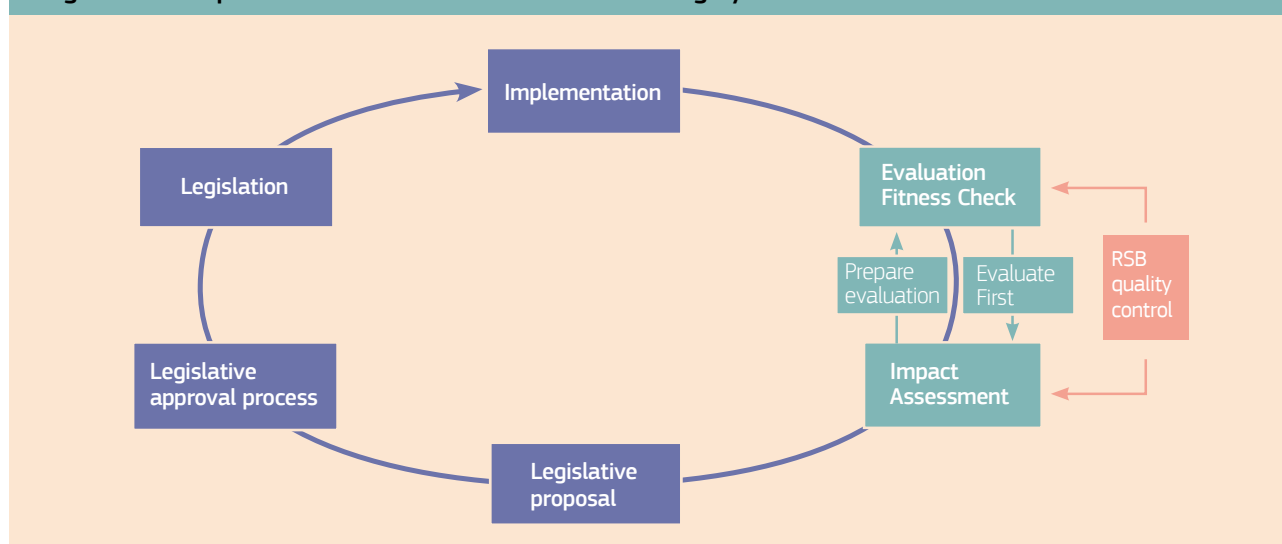
## Activities of the Board in 2020

**The Board provides independent quality control.**

The Board independently scrutinises the drafts of all impact assessments and fitness checks, and a selection of evaluations. It reports on its activities to the President of the Commission and to the Vice-President for Interinstitutional Relations and Foresight.

**Figure 1** shows how the Board acts at the early stages of preparing legislation, making sure Commission proposals are based on the best available evidence and in full knowledge of stakeholder views. It gives approval for work that is in good shape to progress quickly and it can halt the preparatory process for initiatives when the analytical work is not up to standard <sup>(2)</sup>. Any political decision to proceed with an initiative that the Board has found lacking in adequate evidence requires an explanation as to why it should go ahead.

**Figure 1: RSB position and role in the EU law-making cycle**



## 1.1. RSB in the new Commission

**The role of the Board was confirmed ...**

Coming into office, President von der Leyen established the working methods for the new Commission <sup>(3)</sup>. She confirmed the Regulatory Scrutiny Board's role as independent scrutiniser of Commission impact assessments, fitness checks and major evaluations. Mission letters to each Commissioner stated that "proposals must be evidence based, widely consulted upon and reviewed by the independent Regulatory Scrutiny Board."

<sup>(2)</sup> The full mandate of the Board can be found here: [https://ec.europa.eu/info/sites/info/files/rsb\\_decision\\_23\\_01\\_2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/rsb_decision_23_01_2020_en.pdf).

<sup>(3)</sup> Communication from the President to the Commission, The Working Methods of the European Commission, P(2019)2, Brussels 01.12.2019



## Box 1: European Commission working methods

All initiatives likely to have significant economic, social or environmental impacts should be accompanied by an impact assessment and a positive opinion from the Regulatory Scrutiny Board. In case of a negative opinion, the draft impact assessment must be reviewed and resubmitted to the Board before it can proceed. When the Board has given a negative opinion twice, it is only the Vice-President for Inter-institutional Relations and Foresight who may approve the launch of the interservice consultation on the corresponding initiative, before the Commission decides whether or not to go ahead with its adoption. The Vice-President is also responsible for validating exemptions from impact assessments, stakeholders' consultations and the 'evaluate first principle'.

**... in a renewed mandate.** The Commission President adopted a new decision <sup>(4)</sup> on the Board. It confirmed that it would play a role in supporting the implementation of the Commission's new better regulation commitments on the 'one-in, one-out' principle and the integration of foresight into policymaking. The Board will start scrutinising these aspects, once the practical implications of the new better regulation guidelines and toolbox are known.

The new decision also gave formal support for the Board's outreach activities towards external stakeholders. The Board can organise and participate in exchanges on cross-cutting, sectoral or methodological better regulation issues. However, it shall not discuss individual files with directly concerned stakeholders. This is to safeguard the independent treatment of files. The Board has reflected these developments in its Rules of Procedure <sup>(5)</sup>.

### Renewal of Board members continued

The mandate of one external Board member ended in August. The Board recruited two new members during the autumn: one internal who started in October, and one external who started in early 2021. The recruitment process for an additional external member was launched at the end of the year and is still ongoing. The near completion of the Board membership reduced the risk of repeating the experience of the previous year, when the Board lost its voting quorum for 3 months.

### The Board refined the monitoring of its performance..

In 2017, the Board introduced a detailed performance monitoring system. It covers the Board's activities, the quality of the scrutinised reports, and the content of the Board's opinions. All tables and figures in this report are based on this monitoring system. Based on 3 years of experience, the Board further refined the collected statistics in 2020. The main changes were:

- To allow a more granular quality assessment, the Board increased the number of quality components (from 10 to 13 for impact assessments, and from 6 to 13 for evaluations and fitness checks). Annex 2.1 describes the evolution of the quality components in more detail.

<sup>(4)</sup> Decision of the President of the European Commission on an independent Regulatory Scrutiny Board, P(2020)2, Brussels 23.01.2020

<sup>(5)</sup> [https://ec.europa.eu/info/sites/info/files/rsb\\_rules\\_of\\_procedures\\_-\\_revision\\_2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/rsb_rules_of_procedures_-_revision_2020_en.pdf)

- The list of monitored impacts became more complete and more structured. It now fully integrates all fundamental rights. Annex 2.2 presents the new set of impacts.
- The Board refined the indicators on quantification. With the introduction of the standard tables on quantification of benefits and costs in Annex 3 of the impact assessments, there was less need to collect quantification estimates. Instead, the monitoring system now focuses more on the degree of quantification of key cost and benefit components. Annex 2.3 contains more details.
- In a limited number of areas, the Board introduced new indicators to fill information gaps. It removed redundant indicators and clarified indicators that were not sufficiently precise. Annex 2.4 presents the full set of other indicators.

On the basis of these statistics, the Board assessed its work against three key performance indicators (KPIs):

- KPI 1 The number of impact assessments and evaluations scrutinised.
- KPI 2 On-time delivery of RSB opinions.
- KPI 3 Qualitative improvements of reports, following contacts with the Board.

The Board's delivery against these benchmarks is reported on in sections 1.2 (KPI 1, KPI 2), 2.3 and 2.4 (KPI 3).

## 1.2. Surge in scrutiny work

### The Board examined an increased number of impact assessment...

During the year, the Board saw a significant surge in its scrutiny activity (KPI 1). As illustrated in **Table 1**, the scrutiny largely focused on impact assessments. This reflected an active first year of the new European Commission, driven by an ambitious work programme to implement its political priorities. Compared to 2015, the first full operational year of the previous Commission, the number of impact assessments presented to the Board increased by around 40%. The scrutinised impact assessments covered initiatives under most of the Commission's political priorities: the European Green Deal, a Europe fit for the digital age, an Economy that works for all, Promoting the European way of life, and a New push for European democracy.

**Table 1: Overview of Board regulatory scrutiny work by year**

Year	Meetings	Cases	Negative opinions	Initial rejection rate
Impact assessments				
2015	16	29	14	48%
2016	22	60	25	42%
2017	23	53	23	43%
2018	27	76	21	28%
2019	9	1	1	100%
2020	23	41	19	46%
Evaluations				
2016*		7		
2017		17	7	41%
2018		11	3	27%
2019		17	8	47%
2020		13	4	31%

\*In 2016, evaluations received opinions with comments, without 'positive' or 'negative' mention.

### ...but fewer evaluations.

### Evaluations often slipped in timing.

The Board also scrutinised major evaluations, of which two were fitness checks covering multiple pieces of legislation in broad areas of policy. Compared to the previous year, the number of such cases decreased. There were two main reasons for the decrease. First, there was a greater focus on evaluation in 2019 as it was a transitional year (i.e. changeover of the Commission and European Parliament). Many of the evaluations supporting 2020 initiatives had already been prepared the year before. The Board, therefore, identified fewer major evaluations for scrutiny in 2020 than in previous years (see **Table 2**). Second, evaluations tend not to be delivered on time. In general, only about half of the selected evaluations are finalised in the year originally planned. This could indicate that there is less political urgency for evaluations, resulting in less pressure on their timely delivery. As a result, of the 13 cases that the Board scrutinised in 2020, only 5 concerned evaluations that were selected for 2020 delivery, while the others were originally planned to be delivered in 2019 (7 cases) and 2018 (1 case).

**Table 2: Evaluation scrutiny, 2020 vs 2017-2019**

	2017-2019°	2020
<b>Selected evaluations</b>	20	12
Evaluations presented on time	10	5
Delayed evaluations	10	7
<b>Scrutinised evaluations</b>	15	13
Evaluations presented on time	10	5
Delayed evaluations	5	8

° average per year

A novelty this year was that the Board invited Commission departments to provide written reactions in advance of Board meetings, in reply to the Board's impact assessment and evaluation quality checklists. This proved particularly helpful for the Board's deliberations, as meetings passed to virtual mode from March due to the COVID-19 crisis.

**More impact assessments  
received a first negative  
opinion.**

There was an increase in the rate of negative opinions issued on first submissions of draft impact assessment reports compared to previous years. For evaluations, the rejection rate decreased, but this is based on a relatively low number of cases. Chapters 2.3 and 2.4 examine these trends in more detail.

## Box 2: Fit for purpose impact assessments and evaluations

### Impact assessments

A fit for purpose impact assessment provides the appropriate information to support sound decision-making. This means that the impact assessment clearly explains the problem to be addressed, the need to act at the EU level, the possible policy options, and a proportionate analysis of their costs and benefits. It builds on a sound methodology, data collection, and consultation strategy.

### Evaluations

A fit for purpose evaluation provides policy-makers with unbiased information on what has worked well or less well, as an input to future policy design. It asks appropriate evaluation questions and sources the data to answer those questions. It is transparent about the limitations involved and is objective in presenting its conclusions.

Both impact assessments and evaluations are based on the Commission's better regulation guidelines. They take into account the context of each initiative and the proportionality of the analysis, meaning that the depth of the analysis should correspond to the costs of that analysis and match the significance of the initiative's impacts.

**Some rejected reports were  
resubmitted rapidly ...**

**... leaving the Board with  
remaining reservations.**

Of the 19 impact assessments that received an initial negative opinion in 2020, 15 were resubmitted during the year. Fourteen of these received a positive opinion (2) or a positive opinion with reservations (12). A positive opinion with 'reservations' means that the responsible Commission department gets the Board's agreement to proceed but only on the condition that it rectifies specific aspects raised in the opinion. A concern in some cases was the speed with which Commission departments resubmitted the files, rather than taking more time to undertake further analysis. This was generally due to political commitments to deliver initiatives in the first year of the new Commission. In one resubmitted case <sup>(6)</sup>, the Board considered that the quality had not sufficiently improved and issued a second negative opinion. However, it agreed, exceptionally, to re-examine it, and the file was resubmitted again at the very end of 2020. The Board issued a positive opinion on this version in the beginning of 2021, as it had been thoroughly rewritten to respond to the Board's remarks.

<sup>(6)</sup> Strengthening the principle of equal pay between men and women through pay transparency.

For evaluations, Commission departments are not obliged to resubmit the reports in the case of a negative opinion. In 2020, the Board issued a second (positive) opinion on two resubmitted evaluations. In two other cases, the responsible Commission departments decided not to resubmit the files. In one of these cases, the report was turned into an implementation report instead. In the other case, the evaluation report was published without a second opinion from the Board.

**The Board delivered its opinions on time.**

On KPI 2, the Board issued all of its opinions on initial submissions on time, i.e. within 3 working days of the Board meeting at which it assessed the file. In almost all cases, it issued them within 2 working days. For resubmitted files, the Board usually needs to issue another opinion within 4 weeks. On average, the Board delivered its opinions on resubmitted files within less than 3 weeks. Where the scheduled adoption date was close, the Board showed flexibility in delivering second opinions on resubmitted impact assessments within an even shorter timeframe of less than 2 weeks, to allow the process to proceed. In some cases, where the Board's workload did not permit shorter handling, the timing of Commission adoption of the related proposals sometimes had to be postponed. This reconfirmed how important it is for Commission departments to factor in sufficient time for Board scrutiny in their policy preparation planning and to cater for the risk of resubmission in case of a negative opinion.

## 1.3. Advice on better regulation policy and guidance

**The Board provided methodological advice...**

The Board provided methodological and procedural advice to the Commission's Secretariat-General throughout the year.

**...based on its experience.**

The main focus of the advice was on the further development of the better regulation agenda to take account of the Commission's new better regulation commitments, such as the integration of the 'one-in-one-out' principle, foresight analysis, the Green Deal's 'do no harm' principle and the sustainable development goals.

The Board also gave advice on the revision of the better regulation guidelines and toolbox. These changes should ensure that the guidance is up-to-date and aligned with the upcoming Better Regulation Communication. The Board will align its scrutiny to these new guidelines, once they are issued.

Moreover, the Board gave advice on the ad hoc guidance issued to Commission departments on how to take account of the COVID-19 crisis in their better regulation work (see Chapter 2.2 for more details).

# CHAPTER 2

Impact assessments  
and evaluations:  
trends and challenges

**In 2020, the Board observed some new trends.**

In 2020, the Board started scrutinising the first files of the new Commission. It also provided upstream advice on cases under preparation. This allowed the Board to observe some new trends and features.

## 2.1. Scrutinising packages

**Many interlinked files increased the importance of coherence.**

Late in 2019 and early 2020, the Commission published a number of high-level political strategies. As a consequence, during 2020, the Board began to scrutinise a number of interconnected impact assessments, accompanying initiatives aiming to deliver on these political priorities. These concerned various policy areas, such as climate, digital, financial services and research. The interrelations between these initiatives created challenges for the Commission departments preparing the proposals, but also for scrutiny.

**Commission departments needed to work together to understand the interactions between initiatives**

The Board noticed this issue early on in the year. A number of points were regularly repeated in its advice and opinions for such inter-related initiatives. For instance:

- The importance of Commission departments working closely together from an early stage to ensure coherence between inter-linked initiatives and impact assessments.
- The need to be clear on common problems and objectives, and how each initiative will contribute to those objectives.
- Baselines should be coherent. It should be clear what will be decided in each specific initiative and which changes to the baseline will follow from what will be decided elsewhere.
- The options analysis should focus on open policy choices within the scope of each specific initiative.
- Impacts of the options of one initiative may influence parallel or later proposals. The analysis should therefore identify interdependencies and interactions across initiatives. It should establish how much the success of one specific initiative depends on other initiatives.
- Common enforcement or monitoring arrangements should be considered.

**The Board flagged the importance of coherence.**

In its upstream meetings with Commission departments, the issue of coherence came up in 71% of the meetings. In its scrutiny, it featured as one of the main areas for discussion in the quality checklists (in 87% of the cases). It also featured in one third of opinions in 2020 (see Table 3 below).

**Table 3: Coherence in RSB scrutiny, 2020**

Coherence mentioned in RSB opinions and quality checklists on impact assessments, 2020				
	Positive	Positive with Reservations	Negative	Total
Opinions	3	6	6	15
Quality Checklists	5	15	16	36

**Box 3: Coherence across the Climate target package**

The Commission presented the European Green Deal in December 2019. It included actions to deliver on the EU's commitment to be climate neutral by 2050. In this context, the Board scrutinised the impact assessment for the 2030 Climate Target Plan presented by the Commission in September 2020. This Plan set the scene for a political agreement to increase the EU's greenhouse gas emission reduction target for 2030 to 55% below the 1990 levels. The corresponding impact assessment established scenarios and set out the broad sectoral policy architecture to reach this new goal. As such, it provided the starting point to develop follow-up initiatives in the different sectors, and dedicated impact assessments to accompany them.

Many of these sectoral initiatives will be presented in 2021, including revisions of the EU emissions trading system, the energy taxation Directive, the renewable energy Directive, the energy efficiency Directive, the alternative fuels infrastructure Directive, etc. Most of these will be part of a "Fit for 55" package scheduled for adoption in June. However, some related initiatives will be presented separately at different times. The proposals will be strongly connected and will cover both supply- and demand-side measures for the different sectors.

The Board held upstream meetings for most of these files during 2020. Given their interconnected nature, the Board engaged pro-actively with the Commission departments, highlighting the need to co-ordinate closely in the preparation of the impact assessments. To reinforce the coherence message, the Board invited the concerned Commission departments to a joint upstream meeting to discuss the interlinkages between the different initiatives. The Board also held separate upstream meetings to discuss the specific features of each individual file. In these meetings, it invited departments to pay particular attention to the link with the 2030 Climate Target Plan, what has already been decided, what the open policy choices are, what impact the initiatives might have on each other, how coherence will be ensured and how cost-effective solutions will be ensured both within and across sectors.



## 2.2. Special feature: COVID-19

During 2020, the COVID-19 crisis affected all parts of society and the economy. This had a direct impact on the Commission's policy-making and its better regulation work.

The crisis led to a slight but not major adjustment of the Commission's planning of policy initiatives. Urgent measures to mitigate the crisis got priority, such as financial support, public health and internal market initiatives. Most of these did not have an impact assessment. Scrutiny for some other measures was rescheduled to a slightly later date.

**Better regulation analyses had to take account of the COVID-19 crisis.**

Better regulation practices also had to consider the crisis. The Commission's Secretariat-General issued ad hoc guidance to Commission departments to extend public consultation periods where possible by up to an additional 6 weeks, to allow stakeholders more time to organise their responses. It also issued guidance on how to take account of the crisis in impact assessments and evaluations.

**Baselines, options and impacts were mostly affected.**

In practice this meant that as of March, impact assessments had to consider the relevant impact of the COVID-19 crisis, inter alia when describing the context of the policy measures, when analysing the problem, when establishing the baseline (to reflect the new economic situation), when designing policy options and when assessing their impacts. For evaluations, the reports had to take account of the crisis in the "relevance" section – i.e. to assess to what extent the changed situation has affected the continued relevance of the policy.

These changes directly affected the Board's work. The Board gave the crisis immediate attention, both in its upstream advice to Commission departments and in its scrutiny of impact assessment and evaluation reports. The Board regularly asked for a better consideration of the COVID-19 crisis, both in its quality checklists and final opinions. For impact assessments, the Board raised this point in more than half of its checklists and in nearly a quarter of its final opinions. The most frequent remarks concerned the problem analysis, but also covered baseline, options and impacts. COVID-19 remarks appeared to a greater extent in the (more technical) quality checklists. They were raised to a lesser extent in opinions, and only when the related shortcomings were judged to be critical for the overall quality of the impact assessment. The Board also remarked on the crisis in its evaluation quality checklists and opinions, in relation to the context, relevance, methodology and conclusions.

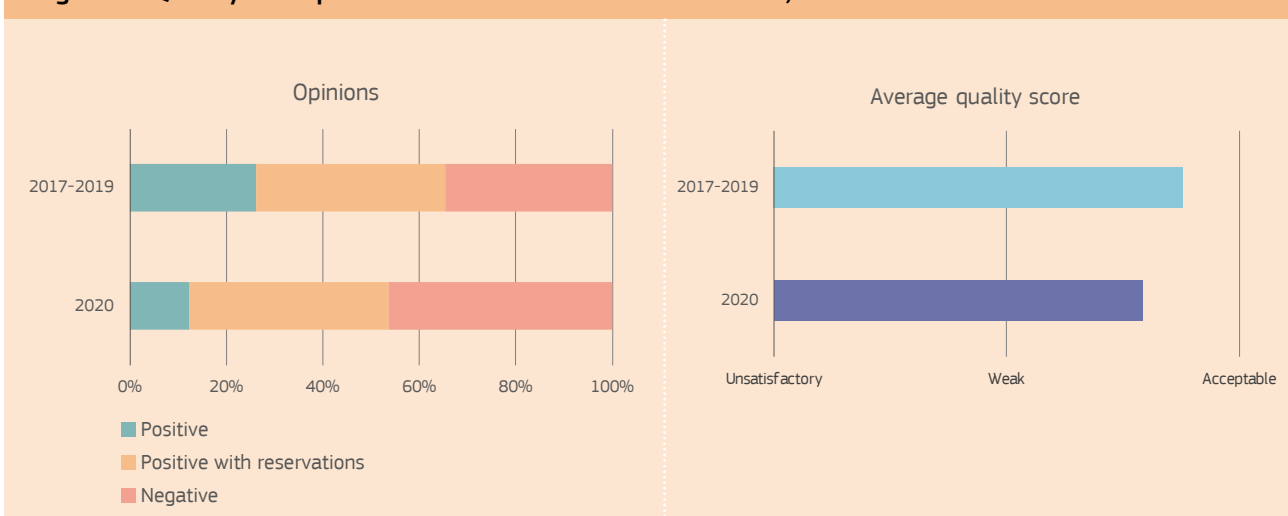
The Board observed some positive cases where Commission departments made significant efforts, in relatively short time, to account for the crisis. For example, the impact assessment supporting the 2030 Climate Target Plan went to great length to update the analysis and introduce COVID-19 effects in its modelling and in the examination of the different scenarios.

## 2.3. Impact assessments: trends and challenges

### Impact assessment quality was lower in 2020...

In 2020, the Board issued far fewer positive opinions (12% of opinions) and more negative opinions (46% of opinions), while the proportion of positive opinions with reservations remained comparable to the past. The average quality score of initial submissions was also noticeably lower than in preceding years.

Figure 2: Quality of impact assessments at first submission, 2020 vs 2017-2019



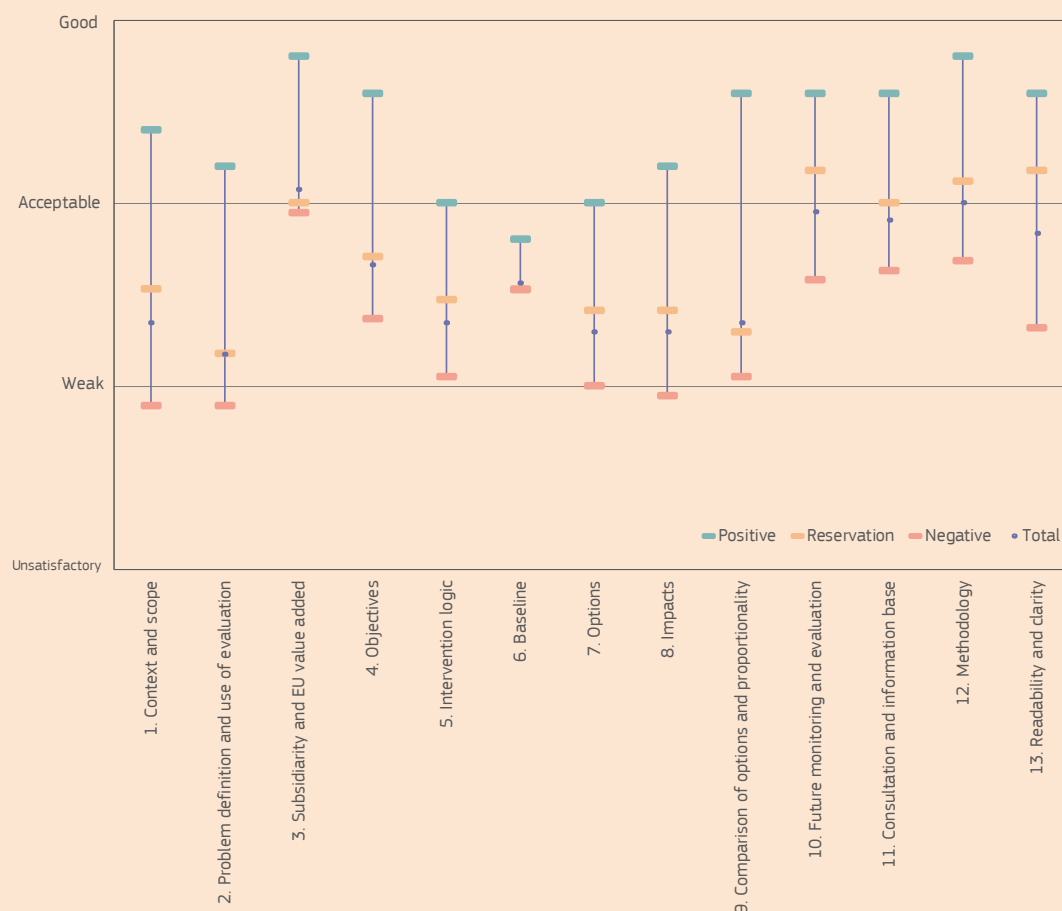
### ...partially due to time pressure.

The Board observed that in many cases the lower quality was due to a lack of sufficient time to prepare the impact assessments, given ambitious political deadlines to deliver on the new Commission's priorities. In some cases, the submitted impact assessments were even incomplete on key elements, leading almost automatically to a negative opinion.

### Problem definition was the weakest part.

In 2020, the weakest element for all impact assessments was the problem definition and use of evaluation. This quality component was weak in most impact assessments, with the exception of those receiving a positive opinion. This indicates that it is a generalised weak spot, but also that it did not determine whether the opinion was negative or positive with reservations. Observed weaknesses included that the impact assessment did not sufficiently build on evaluation conclusions, that the problem description was predetermined by the envisaged preferred option, or that the problem definition was not sufficiently supported by evidence.

**Figure 3: Quality of impact assessments at first submission by quality component, 2020**



**Subsidiarity and EU value added were the best parts.**

On average, the analysis of subsidiarity and EU value added was satisfactory, even for impact assessments that received an initial negative opinion. This was comparable to previous years. It shows that most impact assessments were successful in demonstrating the need for the EU to act and in showing the EU value added.

**The methodology and consultation were usually appropriate.**

The methodological approach was also appropriate in most impact assessments. They usually applied adequate methodologies to assess proportionally the expected impacts of the different options. In most cases, the Board also considered that the degree of quantification was appropriate (for more detail see 3.2). This also applied to the way public and targeted consultations were conducted and reported upon.

**Reports made clearer what success would look like.**

The final part of an impact assessment depicts how the success of the initiative will be measured, and how and when it will be evaluated. In previous annual reports, the Board stressed the importance of this part to strengthen the link between impact assessments and evaluations. Evaluations cannot make an appropriate assessment of the success of an initiative, if the preceding impact assessment has not well defined what it should achieve. In 2020, the Board observed a notable improvement in this area, in particular for impact assessments that received a positive (with reservations) opinion. This should improve the basis for future evaluations.

## Negative opinions noted more weaknesses:

### - Lack of coherence

The weaknesses in impact assessments with negative opinions were mostly found in the context and scope, the analysis of impacts, the options, the intervention logic, and the comparison of options and proportionality (in order of weakness). For these quality components, there was usually a bigger difference between the quality of negative opinions and of positive opinions with reservations, indicating that they determined largely whether an impact assessment received a negative opinion.

### - No clear narrative

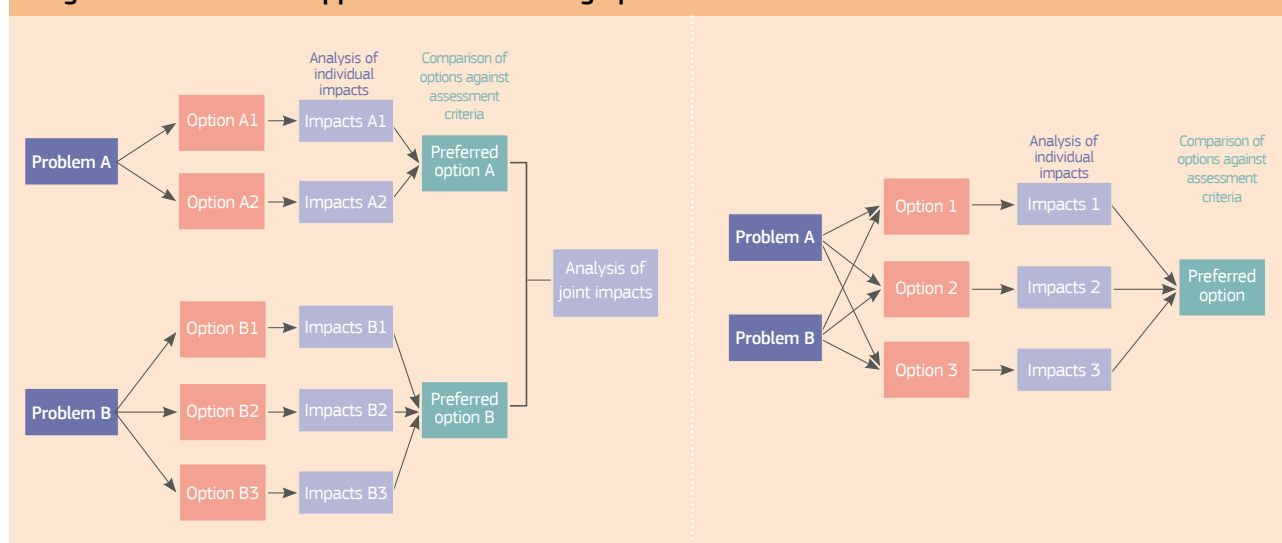
**Context and scope:** On context, weaker quality was often due to a lack of coherence with other initiatives. These impact assessments did not sufficiently present how different initiatives in bigger packages interact. They did not sufficiently explain and justify the scope, complementarity, and possible overlaps between linked initiatives. This was particularly important for key packages of measures such as on climate change or the digital economy. In other cases, the context description often assumed too much specialist knowledge of the reader.

### - Insufficient alternative options

**Intervention logic:** In many impact assessments with a negative opinion, there was no logical link between problems, objectives and options. Weaknesses in the intervention logic were most often due to the absence of a coherent story throughout the impact assessment.

**Options:** The set of options was often not complete. Options tended to focus only on the preferred (political) choice, without including alternate ones supported by the main stakeholder groups. Other impact assessments omitted key choices because departments considered that they needed to receive political guidance first. However, the purpose of an impact assessment is to present evidence and analysis for making these political choices. In other cases, the options focused only on the legal form of the initiative (for example a non-legislative initiative, a directive or a regulation), instead of on its content.

Figure 4: Alternative approaches to defining options



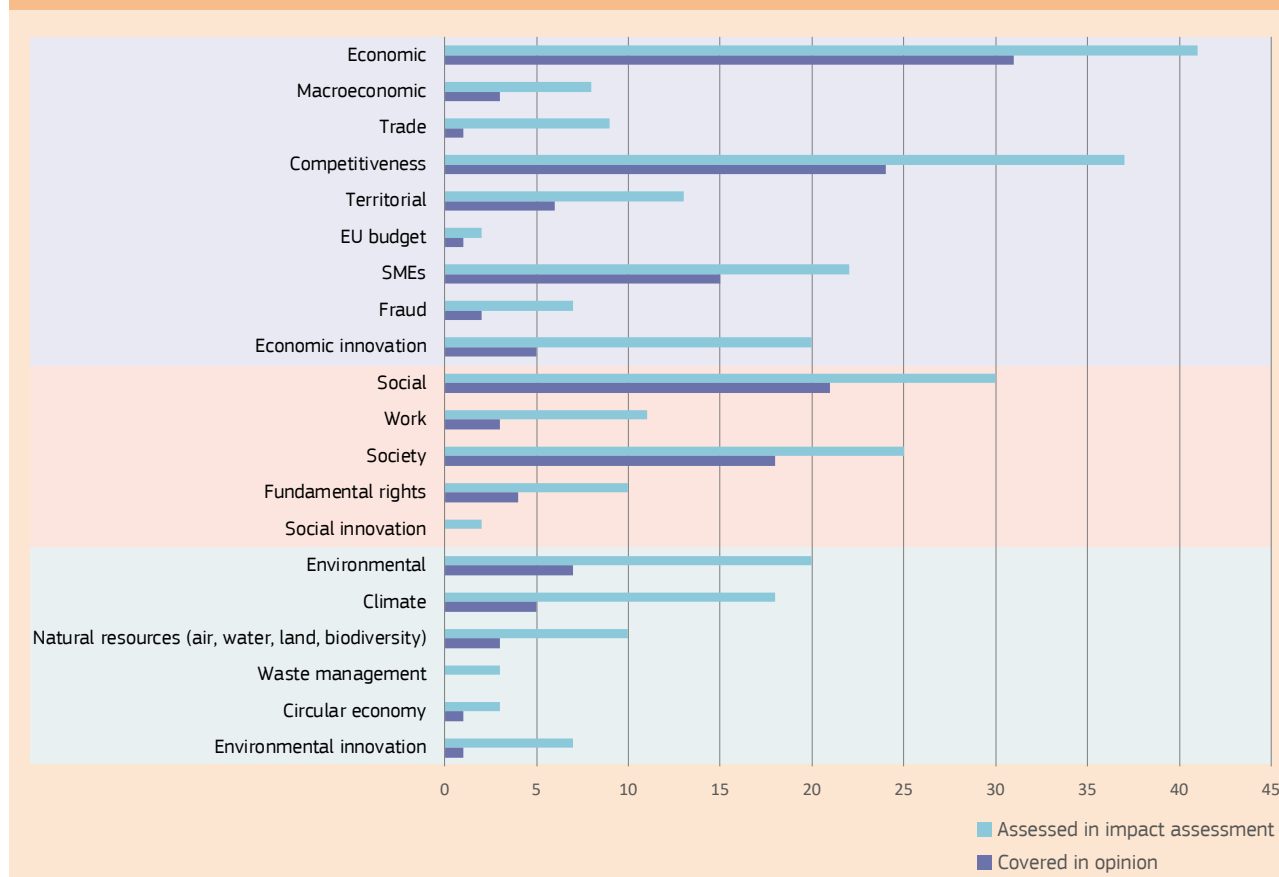
**- Options were not appropriately structured**

Options were often not organised in a way that clearly highlighted political choices that needed to be made. The Board observed that Commission departments often struggle to organise options appropriately, depending on the degree of interaction between problems and options. If problems are inter-related, options will have to address all problems simultaneously (left panel of **Figure 4**). After analysing the impacts of the alternative options, the impact assessment can come to a preferred option. When problems are independent, it is often simpler to define alternative options by problem (right panel of **Figure 4**). This results in a set of preferred options, whose impacts need to be jointly analysed. The Board advised that additional guidance on this be included in the planned revision of the better regulation toolbox.

**- Some impacts were not well analysed**

**Impacts:** Impact assessments often omitted or did not sufficiently analyse some relevant impacts. The Board frequently highlighted this in its opinions. **Figure 5** shows that it most often referred to a lack of analysis of competitiveness (often linked to insufficient analysis of costs), impacts on SMEs, and societal impacts (income distribution, health, consumers). For negative opinions, a high proportion of the Board's remarks <sup>(7)</sup> also concerned territorial impacts.

**Figure 5: Types of impacts assessed in impact assessment and covered in the RSB opinion, all impact assessments, 2020 <sup>(8)</sup>**



<sup>(7)</sup> The number of remarks on an impact the Board makes in its opinions, compared with the coverage of that impact in impact assessments.

<sup>(8)</sup> The economic, social and environmental impacts aggregate the underlying more detailed impacts. They count the number of impact assessments that concern at least one of the underlying impacts.

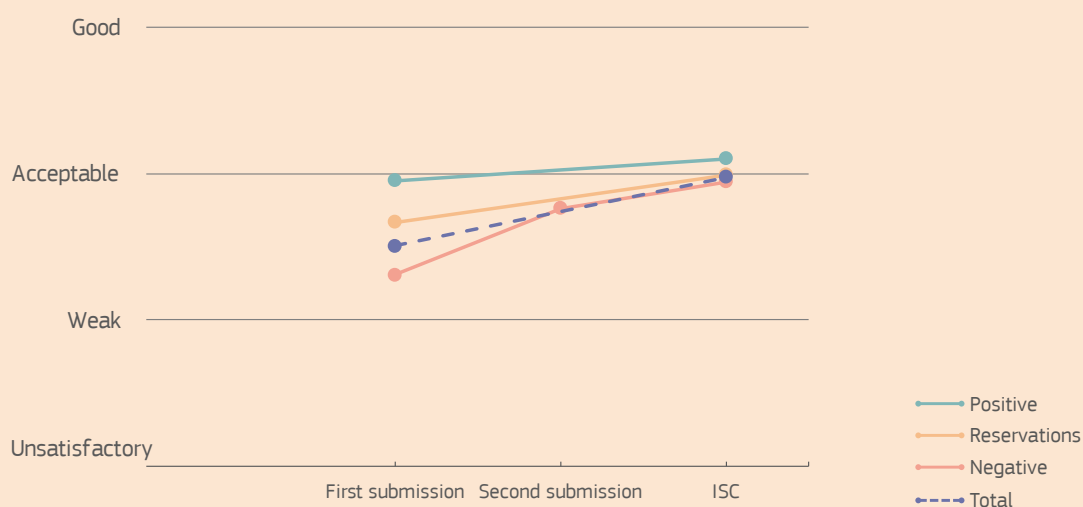
- Preferred option was insufficiently based on analysis.

**Comparison of options and proportionality:** In this part, impact assessments should summarise their analysis and draw policy conclusions, in most cases including a preferred option. Impact assessments often present the comparison of options in a summary table, where each option's performance is summarised in a qualitative score against the initiative's specific objectives. The Board often noted a lack of coherence between the analysis of impacts and these scores. In these cases, the scores tended to favour the envisaged preferred option.

The Board's scrutiny increased quality.

The purpose of the Board's scrutiny is to improve the quality of the final impact assessments (KPI 3). **Figure 6** shows that the quality of the first submissions was not acceptable for most impact assessments. After the Board's opinion(s), the average quality improved to acceptable levels for all types of initial opinions when they were submitted for interservice consultation (ISC). The biggest improvement took place between the first and second submission of impact assessments that received an initial negative opinion.

Figure 6: Evolution of impact assessment quality, 2020 <sup>(9)</sup>

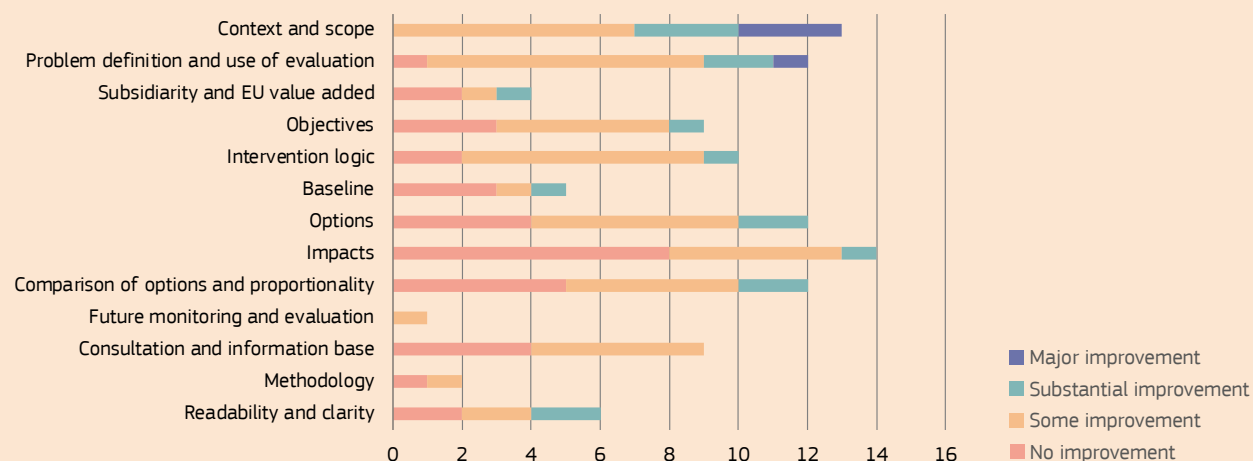


<sup>(9)</sup> **Figure 6** shows all cases where the interservice consultation (ISC) was finalised in 2020. The average scores for the positive opinions are not representative, given the low number of positive opinions in 2020.

**Analytical parts were hardest to improve.**

The impact assessments with an initial negative opinion improved most in the more descriptive parts of the report, such as the context and scope and the problem definition (see **Figure 7**). It seemed more difficult to improve the more analytical parts, in particular the analysis of impacts and the consultation and information base.

**Figure 7: Improvement between first submission and ISC for impact assessments with initial negative opinion, 2020 <sup>(10)</sup>**



<sup>(10)</sup> Figure 7 shows all cases where the interservice consultation (ISC) was finalised in 2020.

## 2.4. Evaluation: trends and challenges

The 2019 annual report found weaknesses in evaluation practice...

In its 2019 annual report, the Board extensively analysed the quality of evaluations and the role of scrutiny in improving it. The Board observed that the quality of initial draft evaluations remained patchy. The Board came up with several explanations for evaluation weaknesses:

...caused by suboptimal use of guidelines, ...

1. Existing guidance has proven hard to apply. The Board observed a tendency to use the guidance too mechanically, without sufficient reflection on how to adapt the evaluation criteria to the specific context and how the criteria fit together.

capacity problems, ...

2. The Commission teams that design and produce the evaluation may not have the necessary capacity to evaluate properly. In most cases, the responsibility for conducting evaluations lies fully with the operational departments, who do not always have evaluation expertise.

... and conflicting incentives.

3. These teams may also face conflicting incentives to ask the right questions and draw accurate and relevant conclusions from the evidence. Operational departments may have an interest in the evaluated initiative, and this can impede a frank assessment of its potential flaws.

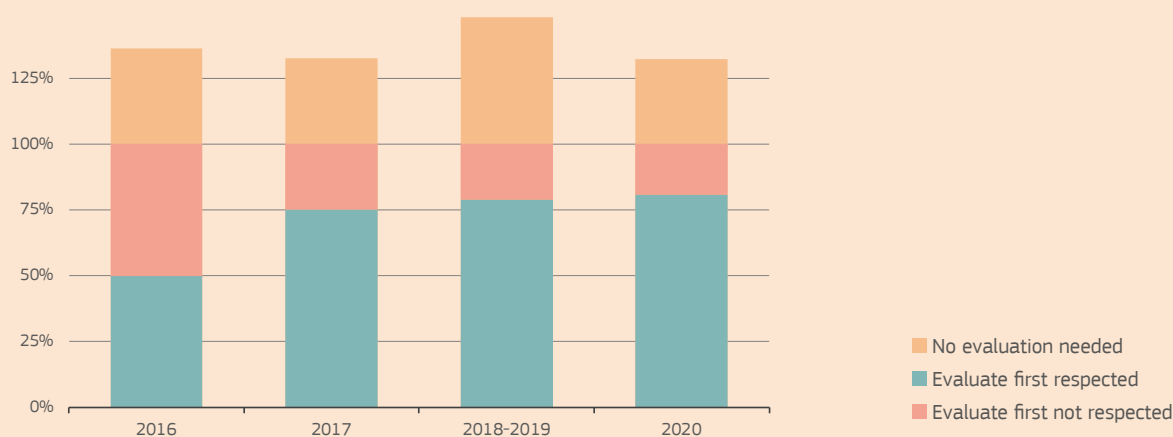
Situation was largely unchanged in 2020.

The Commission has not yet taken measures to address these issues. As a result, evaluation trends and challenges remained largely unchanged in 2020. In addition, as noted above, the number of scrutinised evaluations was relatively low in 2020, which made it difficult to draw firm conclusions on possible observed differences between 2020 and preceding years.

Evaluation first principle was generally respected.

The proportion of impact assessments on the revision of existing legislation that was preceded by an evaluation continued to increase to 81% in 2020, from 77% in 2017-2019 and 50% in 2016 (see Figure 8). Most of these evaluations were not scrutinised separately by the Board.

Figure 8: Evaluation first principle, 2020

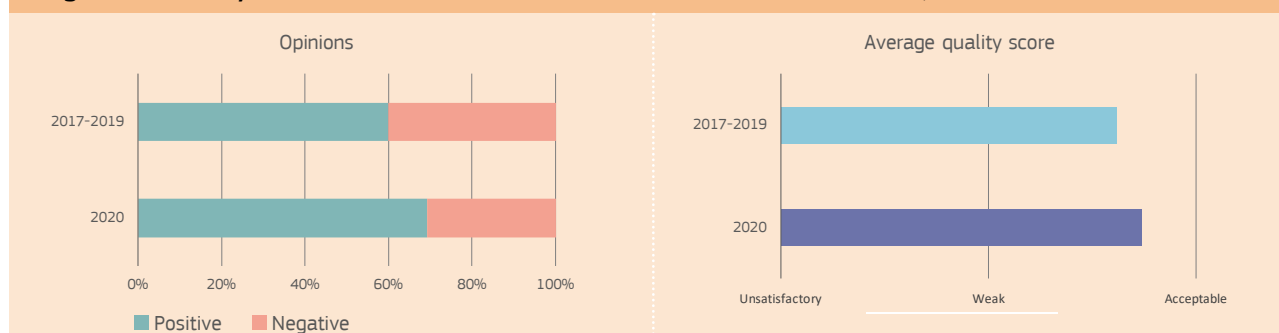




The Board observed better quality...  
...but the trend needs confirmation.

The observed overall quality of the limited number of scrutinised evaluations was better in 2020 and the proportion of negative opinions was lower than in the past (see **Figure 9**) <sup>(11)</sup>. To draw firm conclusions, this improvement needs to be confirmed in the coming years.

**Figure 9: Quality of evaluations and fitness checks at first submission, 2020 vs 2017-2019**



Many evaluations lacked a good intervention logic, ...

The Board's new extended set of quality components (see Annex 2.1) allows for a more detailed analysis of the weaknesses of evaluations. The first six criteria give a more specific view on where problems in the methodology are located. **Figure 10** shows that lack of an appropriate intervention logic was a generalised problem across evaluations in 2020. A good description of how the initiative was supposed to work and reach its objectives is an essential precondition for a targeted analysis in the evaluation of its performance in practice.

**Figure 10: Quality of evaluations and fitness checks at first submission by quality component, 2020**



<sup>(11)</sup> This observation is based on a smaller sample of evaluations than the above conclusion that most evaluations do not provide a useful basis for the corresponding impact assessment.

... and did not analyse relevance well,

Of the five evaluation criteria (quality components 7–11), relevance was the weakest across all evaluations. In many cases, the Board has observed that evaluations do not sufficiently analyse whether the initiative’s original objectives still meet current societal needs. The Green Deal, for example, has increased the EU’s environmental and climate ambitions, so the evaluation’s relevance analysis should assess whether the current initiative can deliver on these new ambitions.

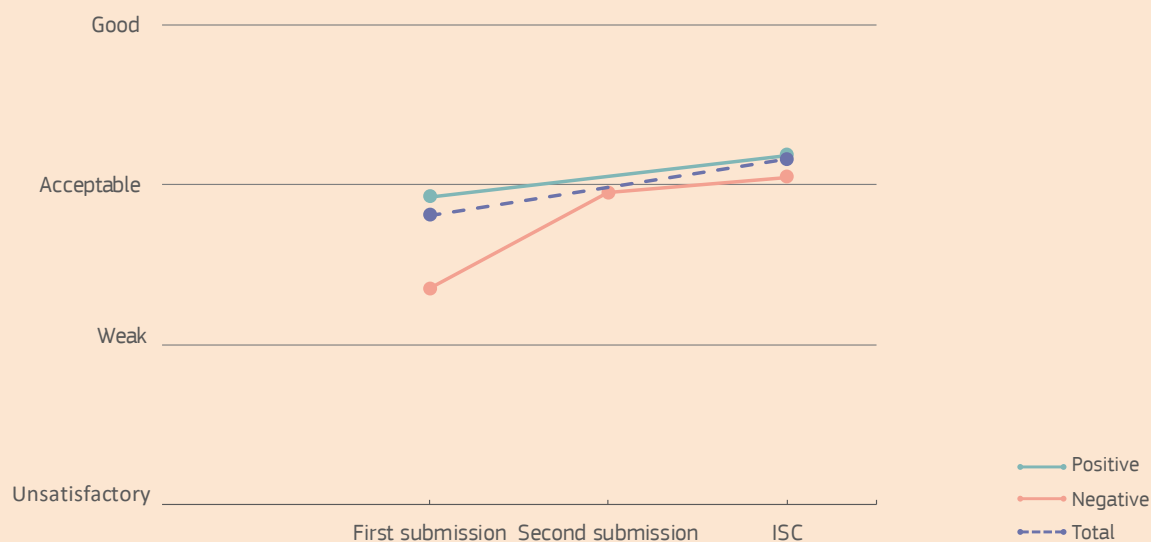
... and their conclusions did not appropriately reflect findings.

Another widely occurring problem was that evaluation conclusions did not appropriately reflect the findings. The Board regularly expressed concerns that the conclusions were selective readings of the evidence, or not clear enough on the weaknesses of the evidence collected. This is a crucial deficiency as it prevents the evaluation from fulfilling its main function as a learning exercise.

Scrutiny improved evaluation quality.

As in previous years, the scrutiny of evaluations led to an improvement in their quality. After the Board’s opinion(s), the average quality improved to acceptable levels for all types of initial opinions when they were submitted for ISC. The biggest improvement took place between the first and second submission of evaluations that received an initial negative opinion.

Figure 11: Evolution of evaluation quality between submissions, 2020 <sup>(12)</sup>

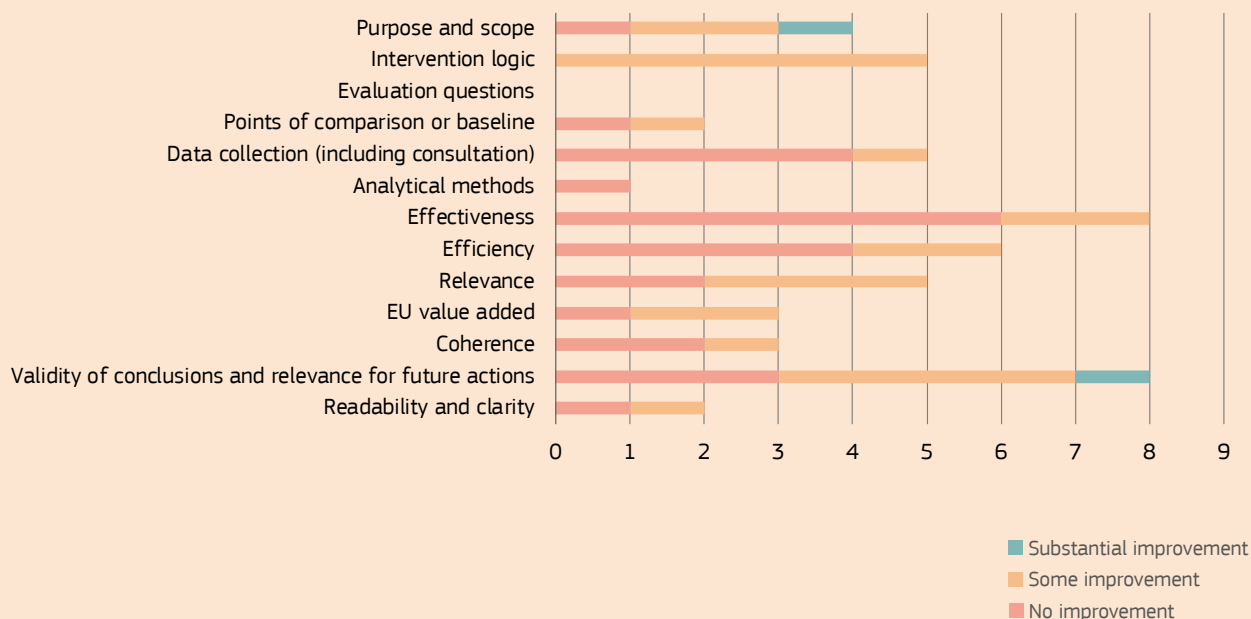


<sup>(11)</sup> Figure 11 shows all cases where the interservice consultation (ISC) was finalised in 2020. The average scores for the negative opinions are most likely not representative, given the low number of resubmitted and finalised negative opinions.

But design flaws could not be corrected.

Compared with impact assessments, the improvement of the various quality components was more limited (**Figure 7** vs **Figure 12**). Many of the quality components were hard to improve substantially for evaluations. Most of the design flaws could not be corrected after the Board had issued its opinion, because departments often relied on external contractors to conduct the data collection and do the analytical work.

**Figure 12: Improvement of evaluation quality between first submission and ISC, 2020 <sup>(13)</sup>**



<sup>(13)</sup> Figure 12 shows all cases where the interservice consultation (ISC) was finalised in 2020.

# CHAPTER 3

New better regulation  
themes: challenges for  
scrutiny?

**New better regulation themes are yet to be rolled out...**

The Board will play a role in implementing the Commission's new better regulation commitments. The better regulation guidelines and tool-box have not yet been updated accordingly, but when they have, the Board will use them as basis for its scrutiny.

**...but analyses already cover some relevant features.**

The chapter reviews the extent to which the 2020 impact assessments already reflect the priorities of the new Commission. It reports the extent to which they have analysed green impacts and regulatory costs, and how they have considered longer-term trends and 'future proof' policy solutions. The reporting in 2020 impact assessments is compared to outcomes for 2017 to 2019, taking into account methodological changes in the Board's statistics.

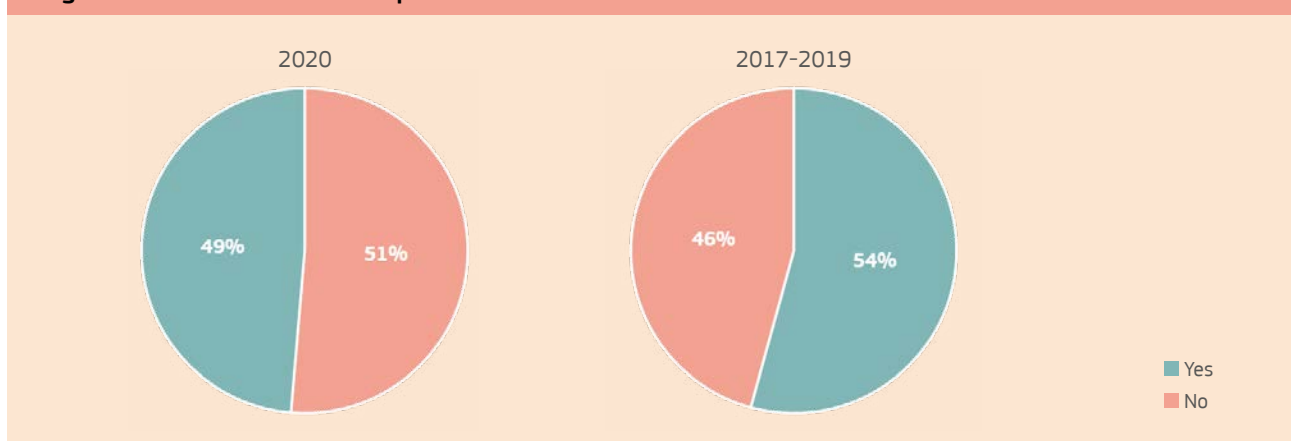
## 3.1. Analysis of environmental and climate impacts

**More 'green' policy proposals...**

In 2020, the Board saw more impact assessments with a focus on environmental or climate policy objectives. Their share increased to 38% of all cases from an average of 23% in 2017 - 2019. Environmental impacts were also analysed in other impact assessments. They were assessed in 49% of all impact assessments submitted to the Board in 2020, up from an average of 46% earlier on. The Board commented on the quality or the completeness of the environmental impact analyses more often than before. 17% of the opinions included remarks on environmental impacts, compared to 13% in 2017 - 2019.

**...and an increase in analysis of environmental impacts.**

**Figure 13: Environmental impacts assessed in 2020 and 2017-2019**



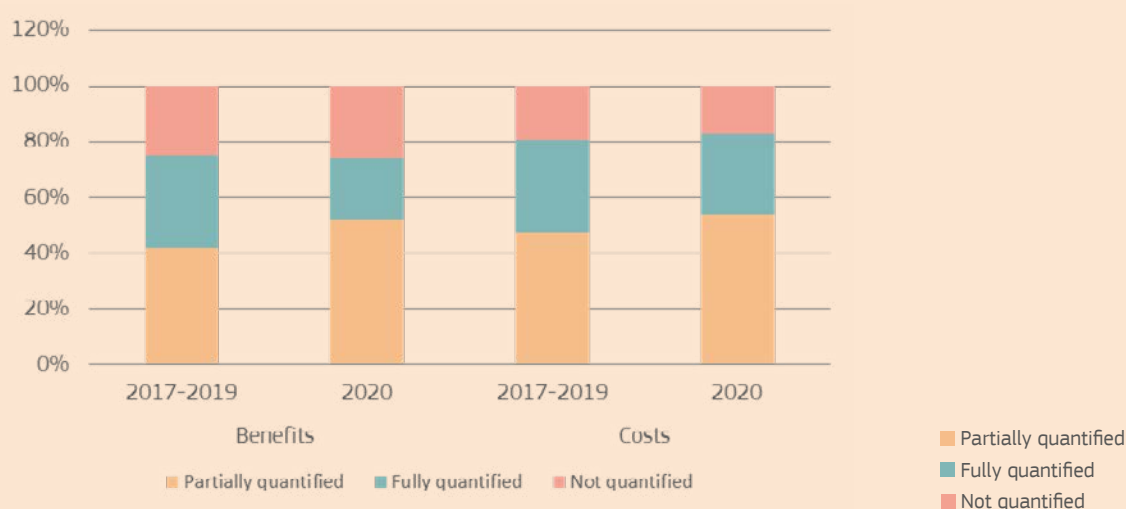
In 2020, the Board set up a more detailed accounting system for environmental impacts. 44% of all scrutinised reports examined the consequences of the initiatives for climate change. In 12% of all cases, the Board commented on climate effects in its opinions. 24% of all assessments analysed changes in the quality of air, water and land and the impact on biodiversity to include impacts on natural resources. 17% of all assessments analysed environmental innovation. 7% of all assessments reported how the initiatives improved resource cycles.

## 3.2. Analysis of regulatory benefits and costs

### Quantification of benefits remained high...

The quantification of benefits remained high. 74% of all impact assessments quantified benefits, at the same level as for the 2017 to 2019 period. The share of assessments with fully quantified benefits decreased from 29% to 23%, compensated for by an increase in cases with partial quantification. (see **Figure 14**).

**Figure 14: Trends in benefit quantification, 2020 vs 2017-2019 <sup>(14)</sup>**



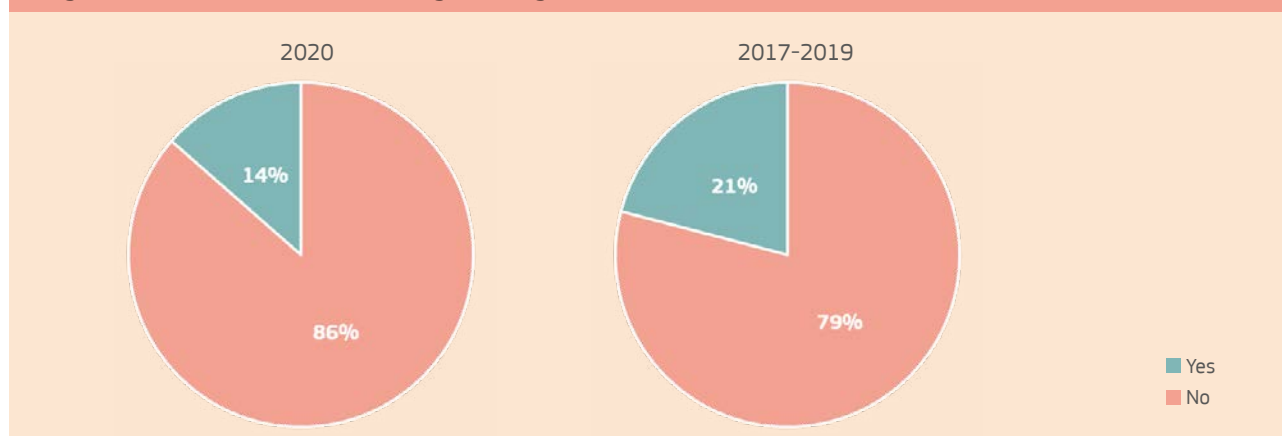
### ...as did quantification of costs.

Overall, the quantification of costs improved slightly. Only 17% of all impact assessments did not quantify costs, compared to 19% for 2017 - 2019. However, as observed for benefits, the increase in quantification came with an increase in partial quantification rather than full quantification. This shift was more pronounced on the cost side. The share of cases with partial quantification increased from 47% to 54%, while the share of assessments with full quantification decreased from 33% to 29%.

The number of cases that considered a lighter regime for SMEs decreased considerably - from 22% for 2017 - 2019 to 15% in 2020.

<sup>(14)</sup> Percentages include only cases where quantification was proportionate.

**Figure 15: Consideration of a lighter regime for SMEs**



The methods used for quantification varied across cases. While this was generally justified to best suit the specific cases and policy areas, it limits the comparability of quantified outcomes. The most frequently used method to quantify costs was the standard cost model. 50% of the REFIT cases calculated administrative burdens using this model. A more systematic use would help to track regulatory or administrative burdens over time.

### 3.3. Integrating foresight & future proofing

#### Integrating foresight insights in policy development ...

The Commission has made the greater use of foresight one of its key better regulation priorities. It has recently set out how it will integrate foresight more strategically in future proofing EU policymaking and ensure that all major initiatives are grounded in a longer-term outlook <sup>(15)</sup>.

#### Box 4: Definition of foresight

Foresight is the discipline of exploring, anticipating and shaping the future to help build and use collective intelligence in a structured, systematic and systemic way to anticipate developments. Strategic foresight seeks to embed foresight into European policymaking.

#### ... helps to better deal with uncertainty

Strategic foresight can support policy making at any point in the policy cycle, from initial problem scoping to option design and implementation, to reviewing and future proofing existing policies.

<sup>(15)</sup> Strategic Foresight Report, COM(2020)493 final, Brussels, 09.09.2020

Considering the results of foresight when preparing impact assessments, evaluations and fitness checks should help Commission departments to better deal with uncertainty and ensure that all major Commission initiatives benefit from:

- a clearer understanding of possible future trends and emerging issues, possible scenarios and related opportunities and challenges;
- better policy design and future proofing of options through better anticipating possible technology and other disruptive developments;
- greater coherence through a more dynamic and longer-term outlook of links and trade-offs between EU policy goals.

**Mandate to look at the foresight dimension ...**

Therefore, already at the beginning of 2020, the Commission mandated the Board to pay attention to the integration of the foresight dimension when assessing the quality of the submitted impact assessment and evaluation reports. The extended mandate aims to ensure that Commission departments take full advantage of the possibilities foresight instruments provide and that the foresight analysis incorporated in their reports is of high quality.

**... which the Board has already taken up in its scrutiny and advocacy practice.**

Anticipating the strengthened role of foresight in EU policy making, the Board already started throughout 2020 both in its upstream support meetings with Commission departments and its case scrutiny practice to sensitise departments on the relevance and usefulness of integrating a foresight dimension when preparing an impact assessment or evaluation. More broadly, the Board provided advice on the points in the policy development process at which foresight insights would be the most relevant and impactful. The Board's more specific comments related to making use of foresight tools to:

- critically assess the relevance of existing or proposed strategies against a range of future scenarios; considering possible long-term technology or disruptive developments;
- trigger new reflections about (more innovative) policy options to better tackle emerging opportunities and threats, avoid unnecessarily prescriptive measures and aim for technology neutrality;
- support the preparation of more coherent policy packages.



#### Box 5: Examples of the Board's recommendations related to foresight

- In its opinion on the *European Partnership on metrology* impact assessment, the Board requested to reinforce the foresight element of what is meaningful to invest in now to achieve the vision that Europe has for the future of metrology research.
- When providing advice on the impact assessment on the *revision of the ETS State aid guidelines*, the Board suggested paying attention to future proofing of options, including considering the need for the new guidelines to build in flexibility to adapt to future changes, such as new technologies or carbon price developments.
- In its upstream support on the *trans-European-network-transport guidelines* evaluation, the Board underlined the need to discuss how technological development and other trends in the freight sector may affect the continued relevance of the Regulation.
- On the preparation of the impact assessment informing the revision of the *Critical Infrastructure Directive*, the Board noted that this initiative could be a good candidate for including a foresight element on the desired future state of affairs. It also suggested considering how to make solutions future proof, to allow critical infrastructures to adapt flexibly when faced with shocks.
- In its opinion on the *trans-European-network-energy guidelines* draft impact assessment, the Board recommended to clarify how the revision intends to ensure technology neutrality and to specify how the new planning framework will be able to accommodate changes in objectives and technologies.
- When advising on the *Digital Services Act* impact assessment, the Board suggested to consider future proofing the options, given the likely future developments in this rapidly evolving area. Similarly, for the *Roaming Regulation* impact assessment, the Board advocated to consider the 'future proofness' of the options related to 5G developments and machine-to-machine communications and to ensure that future regulation will not constrain innovation.

#### Further implementation depends on future better regulation guidance

The Board may further refine its scrutiny & advocacy practice on foresight aspects for the more operational guidance expected under the revised better regulation guidelines and toolbox. As quality scrutiny of foresight analysis in impact assessment and evaluation reports is a relative new development, the Board will intensify discussion with other scrutiny bodies and international partners on how to best incorporate foresight elements into the scrutiny practice.

# CHAPTER 4

## Reaching out

**The Board wants to raise awareness of its role...**

Although, the Board operates independently, it does not function in a vacuum. If the Board's work is unknown, it cannot effectively deliver on its mandate. Inside the Commission, departments responsible for impact assessments and evaluations need to be aware of how the Board operates and what it looks for in its scrutiny. Making the Board better known by external stakeholders and the general public, can help boost the confidence in how the Commission prepares its proposals and in their quality. Contacts with peer organisations and experts allows the Board to exchange experiences and stay up-to-date on better regulation developments and methodologies.

**... and how it contributes to evidence-based policy-making.**

The Commission's better regulation review in 2019 <sup>(16)</sup> revealed a low awareness of the Board's activities outside of the better regulation community. Building on the new outreach mandate in the revised Board Decision, the Board included a more strategic and pro-active approach to outreach in its 2020 business plan <sup>(17)</sup>. As the COVID-19 crisis and related constraints kicked in, the ambition of these plans had to be somewhat reduced, especially for meetings and events with external stakeholders. On the contrary, internal meetings with Commission departments increased as compared to previous years.

## 4.1. Inside the Commission

**The Board increasingly met with Commission departments...**

The Board worked to raise the overall awareness of its role and activities within the Commission. For instance, the Board's Chair participated in the new Commissioners' project group on better regulation and foresight and regularly informed the Commission's senior management of the Board's work.

**...to give early advice on specific files.**

The Board also continued to offer early advice to Commission departments working on specific impact assessments and evaluations, through upstream meetings. These meetings take place at a stage when the DGs are in a sufficiently advanced stage of reflection of what they intend to do, while still being at an early enough stage in the process to allow the Board's advice to be taken on board. At these sessions, Board members provide preliminary advice in their personal capacities, without binding the Board in its subsequent opinion on the cases.

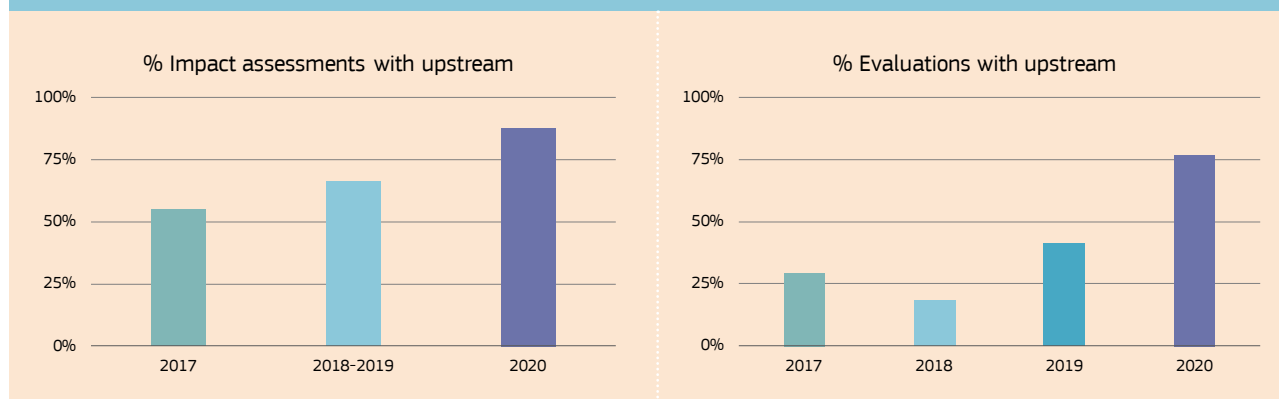
In 2020, the Board held 59 upstream meetings for impact assessments (53) and evaluations (6). This represented a significant increase from 2019, when 23 such meetings were held. This surge can be explained by the Commission's increased legislative activity at the start of its mandate, and the fact that DGs appreciate and increasingly ask for

<sup>(16)</sup> Better Regulation : taking stock and sustaining our commitment , COM(2019)178final, Brussels 15.04.2019

<sup>(17)</sup> [https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board/regulatory-scrutiny-board-business-plan-2020\\_en](https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board/regulatory-scrutiny-board-business-plan-2020_en)

such upstream meetings. **Figure 16** shows that an increasing proportion of impact assessments and evaluations scrutinised by the Board are now being preceded by an upstream meeting.

**Figure 16: Percentage of impact assessments and evaluations reviewed that had upstream meetings**



**The Board raises issues that it finds important to cover in each assessment.**

Data for 2020 shows that the Board increasingly made upstream remarks on issues such as the green/environmental dimension, foresight and future proofing, one-in-one-out and burden reduction. These themes correspond to the Commission's new better regulation commitments. While they still need to be rolled out, the Board found it important to already raise Commission departments' attention to these aspects, to be prepared and ready.

As also reported in chapter 2, a novel topic raised in upstream meetings was the need for the assessments to properly take into account the impact and consequences of the COVID-19 crisis.

The Board also increasingly raised the issue of coherence in its upstream advice, given the high prevalence of inter-linked policy initiatives under preparation. It also held joint meetings for related files to specifically discuss these issues (e.g. the 'Fit for 55' package and the digital proposals). While coherence was rarely mentioned in previous years, in 2020 the Board invited DGs to consider it in 75% of its upstream meetings.

Another regular comment was the need for a proper intervention logic, clearly linking the problem analysis with the objectives and options. The Board also invited DGs to be clear about what the success of the initiative would look like. Other recurrent advice was on how to define and structure the options analysis, and how to deal with results of stakeholder consultation or data limitations. On the latter, the Board called for comprehensive use of consultation results, a broad coverage of stakeholder groups, and a granular and unbiased representation of

stakeholder perspectives. The Board also emphasised the benefits of triangulating information coming from different sources and in being transparent in reporting data limitations. In most meetings, the Board stressed that reports should have a clear narrative and be easy to read, also for non-experts.

**It is difficult to measure the impact of upstream meetings...**

It is difficult to draw firm conclusions on the concrete impact of upstream meetings on the quality of the final impact assessment or evaluation reports. It could be assumed that if an issue has been raised in an upstream meeting, but subsequently does not feature in the Board's opinion, that it has been addressed satisfactorily in the final report.

Having compared the most common issues raised in upstream meetings with those raised in the corresponding opinions, there is no clear pattern. The main recurring issues commented on in upstream meetings generally also came back in the final opinions. This is the case for issues relating to options, impacts, context and scope or problem definition, where there was actually an increase in mentions in opinions as compared to upstream meetings. This indicates that it is sometimes difficult to identify upfront, at the time of the upstream meetings, which issues will turn out to be of critical importance in the final scrutiny of the file.

On the contrary, upstream comments relating to consultation, data and report readability, came back much less frequently in the Board's opinions of the final reports. It is difficult, however, to establish a direct correlation. While in some cases, the upstream advice may have had a positive impact on the final quality of the report, there are also other factors to consider. For instance, the Board's opinions focus on the main shortcomings of the scrutinised report, i.e. 'make-it-or-break-it' points on whether or not the report is fit to inform a policy decision. If a report has several shortcomings, some issues raised in the upstream meetings may still not be fully satisfactory, but are not judged serious enough to feature in the opinion of the final report.

**... but Commission departments find them helpful.**

Despite the difficulty in establishing their impact, upstream meetings still have value. Commission departments say they find the upstream meetings helpful in understanding key issues that the Board will look for in its scrutiny and which aspects to focus on in each specific case to produce a proportionate analysis. They also allow departments to ask for the Board's advice on particular challenges they may be facing, such as on the structuring of options, data collection or quantification. For the Board, these meetings are useful to get an initial introduction to the files and to be able to raise points that it finds particularly important to consider in each case. The Board has adopted the practice of reviewing the upstream comments, when it scrutinises the specific cases, to see whether they were addressed or not. It advises Commission departments to do the same before submitting their reports.

## 4.2. External stakeholders

### COVID-19 put a break on physical meetings...

Due to the COVID-19 crisis, external outreach came to a halt between March and May. However, video conferencing subsequently picked up. At the end of the year, the Board had held more meetings with the other EU institutions and with national authorities and counterparts than in the previous year. However, there was a slight decrease in number of meetings held with other external stakeholders, interest groups or think tanks. This reflected, at least to some extent, a lower share of seminars and meetings being organised during this period.

**Table 4: External outreach activities in 2020**

Type of interlocutor	Examples	Number of meetings/events
<b>EU inter-institutional</b>	Council Working Party, European Parliamentary Research Service, Advisory bodies	7
<b>Member state institutions, national counterparts</b>	Better Regulation Network, RegWatch Europe	13
<b>Other stakeholders</b>	Interest groups, think tanks, international representatives	12
<b>Total</b>		<b>32</b>

### ... but virtual meetings picked up in the second half of the year.

Given the constraints on physical meetings, the Board had to cancel its regular annual conference that was due to take place in May. It also had to cancel a planned seminar with national scrutiny bodies. This was replaced by a virtual event in September, bringing together 50 participants from scrutiny bodies in 17 EU Member States, Norway and the UK. The seminar concentrated on the role of scrutiny in times of changing political priorities and societal challenges. Participants shared experiences on how to deal with the integration of topical themes, such as green impacts, digitalisation, foresight and the COVID-19 crisis into better regulation practices and how it affects scrutiny. The event revealed a diversity of approaches across the EU on the scope of impact assessments (e.g. business impacts only, or also environmental or social impacts), as well as on the timing and role of scrutiny. There was general agreement that better regulation is needed more than ever, and that the current crisis has underlined the importance of evidence-based policy-making and solutions that minimise regulatory burdens.

### This allowed the Board to reach out to different stakeholders...

### ...National scrutiny bodies and networks

The Board also met separately with the RegWatch Europe network of eight European scrutiny bodies and participated in seminars that they organised. This allowed for exchanges and mutual learning on respective practices and experiences.

#### **...Other EU institutions and bodies**

Board members participated in several other meetings and seminars with Member States. The Board Chair intervened at a high-level seminar organised by the German EU Presidency on the further development of regulatory oversight. The Board also participated in meetings with national better regulation directors and in events organised by the Commission's Secretariat General on the one-in-one-out principle.

#### **...Interest groups and think tanks.**

The Board continued its dialogue with other EU institutions and bodies, including the Council's 'better regulation' working party, the European Parliament's Research Service, the Economic and Social Committee and the Committee of Regions. The Board considers these contacts important to raise awareness of its work and its opinions, and to get feedback on the extent to which the other EU institutions make use of these in their legislative discussions. The Board's understanding so far is that there is generally more interest in discussing its horizontal role rather than specific opinions.

Like every year, the Board published an annual report of its activities and observations <sup>(18)</sup>. This was used as a basis for the Board's outreach. The Board also revamped its web-site on Europa <sup>(19)</sup> to make it more accessible and easier to navigate.

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<sup>(18)</sup> [https://ec.europa.eu/info/publications/regulatory-scrutiny-board-annual-report-2019\\_en](https://ec.europa.eu/info/publications/regulatory-scrutiny-board-annual-report-2019_en)

<sup>(19)</sup> <https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board/>

**CONCLUSIONS**

**RSB TEAM**



# Conclusions

Scrutiny of impact assessments and evaluations contributes to higher quality information to support decision making and to inform the public. In 2020, the Regulatory Scrutiny Board had a busy year with the first new initiatives of the von der Leyen Commission beginning to come through. Planning for 2021 suggests that it will be an even busier year.

Chapter 2 of this report reflects the Board's analysis of the quality of impact assessments and evaluations examined during 2020. It was notable that the Board issued fewer positive opinions on first submitted impact assessments, while the assessment of evaluations was more positive (although based on a smaller sample). It was also notable that some impact assessments were incomplete on first submission – almost guaranteeing a negative opinion. The other noteworthy aspect, which will continue in 2021, is the close interlinkage between related initiatives. Coherence needs to be carefully considered when assessing these linked initiatives, such as in the European Green Deal and the Digitalisation Agenda.

Outreach activities were hampered by the COVID-19 pandemic and the shift to distance working. However, the Board kept up its upstream meetings with Commission departments on future initiatives. From September onwards, the Board engaged in more (online) outreach meetings with external bodies.

As well as the intense work programme of scrutiny, the Board will continue its outreach work during 2021. It will also initiate regular meetings with the SME envoy once appointed. As noted in Chapter 2 of this report, the Board pays particular attention to impacts of Commission initiatives on SMEs.

With the adoption of the Commission's Better Regulation Communication in 2021 and the related revision of the better regulation guidelines and toolbox, the Regulatory Scrutiny Board will review its approach to scrutiny and the statistics it gathers.

As the Board reaches full membership, it will be fully occupied. Board members are committed to their role to provide independent scrutiny and advice to Commission departments with the aim of improving impact assessments' and evaluations' quality.

## RSB team



**Starting from the top left:** Claudia Di Dio, Assistant, Bernard Naudts, Member of the Board, Dorota Denning, Member of the Board, Michael Gremminger, Member of the Board, Antonina Cipollone, Board Secretary, Mona Björklund, Member of the Board, Andreas Kopp, Member of the Board, Veronica Gaffey, Chair, Corinne Taily, Assistant.

The Board expresses its great appreciation and deep gratitude to its former member who left in 2020.



**Nils Björksten**  
Member of the Board

# ANNEXES

# Annex 1: Impact assessments and evaluations

## IMPACT ASSESSMENTS

The Board's opinions are published with the impact assessment once adopted by the Commission.

Impact assessments reviewed in 2020	First opinion	Second opinion	'Evaluate first' principle
Amendments to the Capital Requirements Regulation and the Capital Requirements Directive	Ongoing		
European Partnership for clean hydrogen	●		✓
European Partnership for safe and automated road transport	●		no evaluation needed
European Partnership for innovative small and medium-sized enterprises	●	●	✓
European Partnership on metrology	●	●	✓
EU Single Window environment for customs' initiative	●	●	✓
Proposal for a Council Directive amending Directive 2011/16/on measures to strengthen the exchange of information framework in the field of taxation	●		✓
European Partnership for smart networks and services	●		✓
European Partnership for key digital technologies	●	●	✓
European Partnership for innovative health	●		✓
EU-Africa Global Health Partnership	●		✓
Benchmark Regulation review	●	●	✗
Protection of workers from risks related to carcinogens	●		✓
Airport Charges Directive 2009/12/EC	Ongoing		
Regulation on digital operational resilience for the financial sectors	●		✗
Directive/regulation establishing a European framework for markets in crypto assets	●		no evaluation needed
European Partnership for a circular bio-based Europe	●	●	✓
European Partnership for transforming Europe's rail system	●		✓
European Partnership for integrated air traffic	●		✓

Positive opinion ●  
 Negative opinion ●  
 Positive with reservations ●

European Partnership for clean aviation	●		✓
Revision of the ETS State aid guidelines	●		✓
2030 climate target plan	●	●	✗
Delegated regulation on a climate change mitigation and adaptation taxonomy	Ongoing		
Modernising the EU's batteries legislation	●	●	✓
Governance of common European data spaces	●	●	no evaluation needed
Strengthening the principle of equal pay between men and women through pay transparency	●	● 3 <sup>rd</sup> opinion (20) ●	✓
Initiative on strengthening Europol's mandate	●	●	✗
Fair minimum wages in the EU	●	●	no evaluation needed
Revision of Non-Financial Reporting Directive	Ongoing		
Internet-connected radio equipment and wearable radio equipment	Ongoing		
Revision of the Trans-European Energy Networks (TEN-E) Regulation	●	●	✓
Digital Services Act	●		✓
Digital Markets Act	●	●	no evaluation needed
Additional measures on critical infrastructure protection	●		✓
Revision of the Network and Information Security Directive	●		✓
Revision of the Roaming Regulation	●		✗
EU strategy on adaptation to climate change	Ongoing		
Anti-money laundering package	Ongoing		
Revision of the mandate of the European Monitoring Centre for Drugs and Drug Addiction	Ongoing		
Implementing act on the high-value datasets	Ongoing		
Proposal for a regulation laying down requirements for artificial intelligence	Ongoing		

Positive opinion ●  
 Negative opinion ●  
 Positive with reservations ●

(20) The Board agreed, exceptionally, to examine a third version of the report. It gave a positive opinion on this version in January 2021.

## EVALUATIONS

Evaluations reviewed in 2020	First opinion	Second opinion
Evaluation of the Distance Marketing of Financial Services Directive	●	
Evaluation of the Consumer Credit Directive	●	
Evaluation of the legislation on medicines for children and rare diseases	●	●
Evaluation of Directive 2013/30/EU on safety of offshore oil and gas operations	Ongoing	
Evaluation of the impact of the CAP on generational renewal, local development and jobs in rural areas	Ongoing	
Evaluation of the Directive on the protection of the environment through criminal law	●	
Industrial Emissions Directive	●	
Evaluation of the Vertical Block Exemption Regulation	●	
Fitness check on endocrine disruptors	●	
Fitness check of the 2012 State aid modernisation package, railways guidelines and short term export credit insurance	●	
Evaluation on the impact on the internal market of certain State aid measures in the agriculture and forestry sectors	Ongoing	
Trans-European transport network guidelines	Ongoing	
Rail freight corridors	Ongoing	

Positive opinion ●  
Negative opinion ●

## Annex 2: The revised RSB monitoring system

In 2017, the Board started using a detailed monitoring system. It covered the Board's activities, the quality of the scrutinised reports, and the content of its opinions. It measured changes in quality by having statistics on first submissions of each report, possible second (or third) submissions, and on the version of the report that was submitted in interservice consultation.

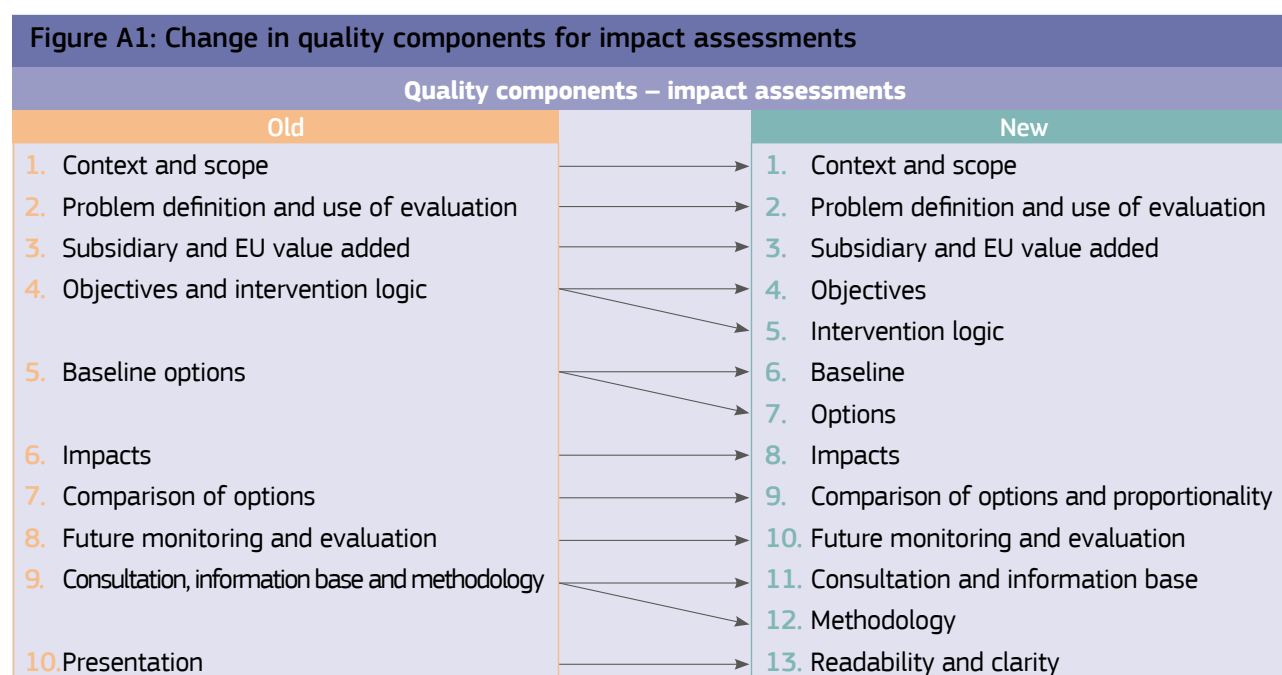
Based on 3 years of experience, the Board further refined the collected statistics in 2020. The main changes were:

- To enable a more granular quality assessment, the Board increased the number of quality components. Annex 2.1 describes the evolution of the quality components in more detail.
- The list of monitored impacts became more complete and more structured. Annex 2.2 presents the new set of impacts.
- The Board refined the indicators on quantification. Annex 2.3 provides more details.
- In a limited number of areas, the Board introduced new indicators to fill information gaps. It also removed redundant indicators and clarified indicators that were not sufficiently precise. Annex 2.4 presents the full set of other indicators.

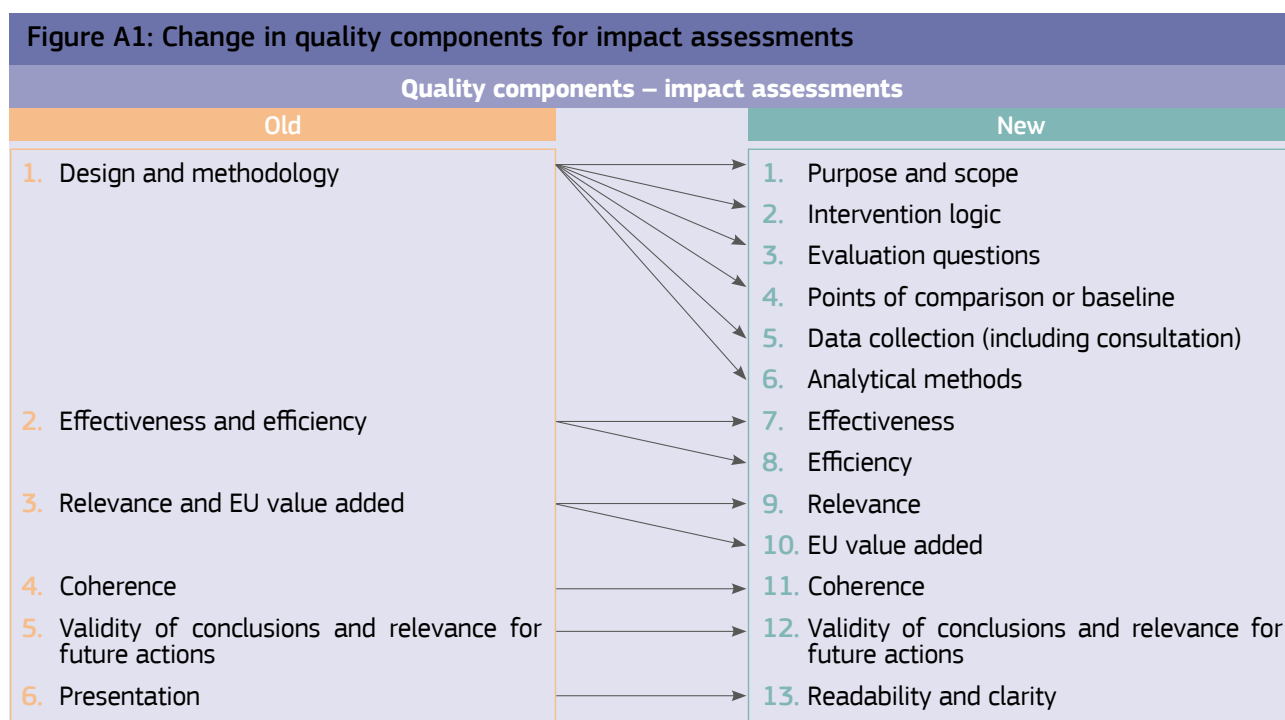
### Annex 2.1: Quality components

Some of the old quality components were too aggregated, which sometimes complicated their interpretation. For example, for evaluations and fitness checks, effectiveness and efficiency received a joint quality score. This did not allow drawing separate conclusions on the quality of the effectiveness and efficiency analysis.

For impact assessments, the Board increased the number of quality components from 10 to 13 (see **Figure A1**). All components that covered multiple independent quality elements were split. Where the quality elements are closely related and likely to evolve in the same way (such as context and scope, and subsidiarity and EU value added), they were kept together in one component. Use of evaluation did not become a separate quality component because not all impact assessments are preceded by an evaluation.



For evaluations and fitness checks, the number of quality components more than doubled from 6 to 13 (see **Figure A2**). This steep increase mainly concerns design and methodology, which was split into six different components. The Board's earlier analysis on the quality of evaluations and fitness checks had revealed that many overall weaknesses originated from deficiencies in design and methodology. The Board, therefore, wanted to obtain more insight on the exact problem areas, through a more differentiated assessment of design and methodology. The Board also created separate quality components for the individual evaluation criteria, which should enable a more granular analysis of the quality of evaluations.



As the new quality components are simply a more detailed version of the old ones, it is still possible to aggregate the new components to the old ones. This allows comparing the quality of impact assessments and evaluations across years, using the old quality components. For that purpose, the Board has fixed aggregation weights for each split component. The experience of the first year of implementation has shown that the chosen weights result only in small changes of average aggregate quality scores.

## Annex 2.2: Impacts

The old list of impacts lacked structure and was incomplete. In particular, fundamental rights were only partially integrated. The new set of impacts is divided among economic, social and fundamental rights, and environmental impacts. When indicating which impacts are assessed in the reports or on which impacts the opinions identify room for improvement, only the most detailed level is used. The other levels are obtained by aggregation.



**Table A1: Structure of impacts**

<b>Economic impacts</b>	<i>Macroeconomic</i>	
	Trade	<i>Impact on third countries</i>
		Foreign direct investment
	<i>Competitiveness</i>	Internal market
		Sectors
	Territorial impacts	<i>Member states</i>
		Regions
	EU budget	
	SMEs	
	Fraud	
	<i>Economic innovation</i>	
<b>Social impacts and fundamental rights</b>	Work	Employment
		Working conditions and job quality <sup>(21)</sup>
		Health and safety
		Governance, participation, social dialogue <sup>(22)</sup>
	Society	Income distribution, social inclusion, social security
		Good administration, public services and citizen's rights <sup>(23)</sup>
		Public health <sup>(24)</sup>
		Consumers' protection <sup>(25)</sup>
		Education / culture
	Fundamental rights: Human dignity <sup>(26)</sup>	

<sup>(21)</sup> Including the following fundamental rights concerning solidarity: right of access to placement services; protection in the event of unjustified dismissal; fair and just working conditions; prohibition of child labour and protection of young people at work, family and professional life; social security and social assistance.

<sup>(22)</sup> Including the following fundamental rights concerning solidarity: workers' right to information and consultation within the undertaking; right of collective bargaining and action.

<sup>(23)</sup> Fundamental rights concerning citizen's rights: right to vote and to stand as a candidate at elections to the European Parliament; right to vote and to stand as a candidate at municipal elections; right to good administration; right of access to documents; Ombudsman; right to petition, freedom of movement and of residence, diplomatic and consular protection.

Including the following fundamental right concerning solidarity: access to services of general economic interest.

<sup>(24)</sup> Including the following fundamental right concerning solidarity: health care.

<sup>(25)</sup> Including the following fundamental right concerning solidarity: consumer protection.

<sup>(26)</sup> Human dignity; right to life; right to the integrity of the person; prohibition of torture and inhuman or degrading treatment or punishment; prohibition of slavery and forced labour.

<b><i>Social impacts and fundamental rights</i></b>	Fundamental rights: Freedoms <sup>(27)</sup>
	<i>Fundamental rights: Equality <sup>(28)</sup></i>
	Fundamental rights: Justice <sup>(29)</sup>
	Social innovation
<b><i>Environmental impacts</i></b>	Climate
	Natural resources: air/water/land/biodiversity <sup>(30)</sup>
	Waste management
	Circular economy
	Environmental innovation
<i>Impacts in italics were also included in old structure of impacts.</i>	

Those impacts that were also part of the old set of impacts (in italics in **table A1**) continue to be scored based on the new impacts. This allows a partial comparison across years, based on the old impacts.

### Annex 2.3: Quantification

The old system tried to record the degree of quantification in great detail, including figures on the value of different categories of costs and benefits. Experience has shown that these figures are not very useful as they are often not comparable enough to be aggregated. In addition, with the introduction of the standard tables on quantification of benefits and costs in Annex 3 of the impact assessments, there was less need to collect quantified statistics.

The new statistics focus more on the qualitative degree of quantification of key cost and benefit components. The structure of the quantification statistics is now better aligned to the standard quantification table in Annex 3 of every impact assessment. The structure of the statistics is the same for costs and benefits, and for impact assessments and evaluations. It distinguishes between direct and indirect costs and benefits, and between one-off and recurrent costs and benefits. Furthermore, it records whether costs and benefits are distinguished by affected group (citizens/consumers, business, and administrations). There is also a summary assessment of the degree of quantification of costs and benefits. The details are presented in **Table A2**.

<sup>(27)</sup> Right to liberty and security; respect for private and family life; protection of personal data; right to marry and right to found a family; freedom of thought, conscience and religion; freedom of expression and information; freedom of assembly and of association; right to education; freedom to choose an occupation and right to engage in work; freedom to conduct a business; right to property; right to asylum; protection in the event of removal, expulsion or extradition.

<sup>(28)</sup> Equality before the law; non-discrimination; cultural, religious and linguistic diversity; equality between men and women; the rights of the child; the rights of the elderly; integration of persons with disabilities.

<sup>(29)</sup> Right to an effective remedy and to a fair trial; presumption of innocence and right of defence; principles of legality and proportionality of criminal offences and penalties; right not to be tried or punished twice in criminal proceedings for the same criminal offence.

<sup>(30)</sup> Including the following fundamental right concerning solidarity: environmental protection.

Table A2: Structure of quantification statistics		
Indicator	Possible values	IA/Eval
Benefits/costs identification	<ul style="list-style-type: none"> <li>Identified</li> <li>Not identified</li> <li>Cannot be identified reasonably</li> </ul>	IA Eval
If benefits/costs identified		
One-off/recurrent benefits/costs	<ul style="list-style-type: none"> <li>Distinguished</li> <li>Not distinguished</li> <li>Cannot be distinguished reasonably</li> </ul>	IA Eval
Direct benefits/costs	<ul style="list-style-type: none"> <li>Quantified</li> <li>Not quantified</li> <li>Cannot be quantified reasonably</li> </ul>	IA Eval
Indirect benefits/costs	<ul style="list-style-type: none"> <li>Quantified</li> <li>Not quantified</li> <li>Cannot be quantified reasonably</li> </ul>	IA Eval
Benefits/costs quantification	<ul style="list-style-type: none"> <li>Quantified</li> <li>Partially quantified</li> <li>Not quantified</li> <li>Cannot be quantified reasonably</li> </ul>	IA Eval

## Annex 2.4: Overview of other indicators

In a limited number of areas, the Board introduced new indicators to fill information gaps. It removed redundant indicators and clarified indicators that were not sufficiently precise. **Table A3** gives an overview of all other indicators.

Table A3: Other indicators		
Indicator	Possible values	IA/ Eval
Evaluate first principle	<ul style="list-style-type: none"> <li>Respected</li> <li>No prior evaluation</li> <li>No evaluation needed</li> </ul>	IA
If evaluate first principle respected		
Evaluation scrutiny	<ul style="list-style-type: none"> <li>Preceding evaluation reviewed by RSB</li> <li>Draft evaluation submitted with IA</li> <li>Preceding evaluation not reviewed by RSB</li> </ul>	IA
If evaluation reviewed by RSB or submitted with impact assessment		
Adequate evaluation	<ul style="list-style-type: none"> <li>Yes</li> <li>No</li> </ul>	IA
If adequate evaluation		
Evaluation results properly used in IA	<ul style="list-style-type: none"> <li>Yes</li> <li>No</li> </ul>	IA
Scope	<ul style="list-style-type: none"> <li>Sufficiently defined</li> <li>Partially defined</li> <li>Not defined</li> </ul>	Eval

Baseline included	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
If baseline included		
Baseline quantification	<ul style="list-style-type: none"> <li>• Sufficiently quantified</li> <li>• Not sufficiently quantified</li> <li>• There is no need to quantify</li> </ul>	IA
Baseline sufficiently reflects future developments	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Baseline or points of comparison appropriately defined	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	Eval
Intervention logic appropriately describes how intervention was expected to work	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	Eval
Intervention logic is used appropriately	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	Eval
Simplification objective included	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Sufficient analysis on simplification	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Self/co-regulation option considered	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Lighter regime for SMEs considered	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Appropriate range of options considered	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Implementation and enforcement requirements of options considered	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Preferred option identified	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA
Types of impacts as in original impact assessment	<ul style="list-style-type: none"> <li>• Defined as in original IA</li> <li>• Not defined as in original IA</li> <li>• No original IA was made</li> </ul>	Eval
Impacts analysed against the predicted impacts of the original impact assessment	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	Eval
Evidence base	<ul style="list-style-type: none"> <li>• Adequate</li> <li>• Partial</li> <li>• Not adequate</li> </ul>	Eval
External study/ies used	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	Eval
Public consultation	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Targeted consultation	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Summary of all consultation results appropriately presented in Annex 2	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Stakeholders' views appropriately collected	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Stakeholders' views appropriately analysed	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval

Stakeholders' views appropriately reported in staff working document	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Quantitative tools used	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Predominantly qualitative tools used	<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	IA Eval
Readability statistics for executive summary	<ul style="list-style-type: none"> <li>• Percentage of passive sentences</li> <li>• Flesch Reading Ease indicator</li> <li>• Flesch-Kincaid Grade Level indicator</li> </ul>	IA Eval

# GLOSSARY

# Glossary

## BETTER REGULATION

“Better regulation” means designing EU policies and laws so that they achieve their objectives at minimum cost. It is a way of working to ensure that political decisions are prepared in an open and transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders. Better regulation covers the whole policy cycle, from policy design and preparation, to adoption, implementation (transposition, complementary non-regulatory actions), application (including enforcement), evaluation and revision [1].

## CONSULTATION

Consultation describes a process of gathering feedback, comments, evidence or other input on a particular measure from outside the Commission. There are various forms of consultation, including internet-based public consultation open to a broad audience and targeted consultation with the most concerned stakeholders.

## EVALUATION

An evaluation is an evidence-based judgement of the extent to which an existing policy, programme or legislation is effective, efficient, relevant given the current needs, coherent internally and with other EU interventions and has achieved EU added value. In the Commission, the evaluation report is the Staff Working Document prepared by Commission departments. These reports are often based on underlying studies carried out by external consultants. The Regulatory Scrutiny Board examines major evaluations.

## FITNESS CHECK/FITNESS CHECK REPORT

A Fitness check is an evaluation of the effectiveness, efficiency, coherence, relevance and EU added value of a number of related EU measures in a policy area or business sector. It identifies excessive burdens, inconsistencies and obsolete or ineffective measures and helps to identify the cumulative impact of legislation.

A Fitness check report is prepared by the lead department. The Regulatory Scrutiny Board checks the quality of all Fitness check reports.

## IMPACT ASSESSMENT

Impact assessment is an aid to policy-making. It collects evidence on the problem, assesses if future legislative or non-legislative EU action is justified and how such action can be best designed to achieve the desired policy objectives. In the Commission, the lead department prepares impact assessment reports, which need to be submitted to the Regulatory Scrutiny Board for quality check. A positive opinion from the Board is in principle required in order to launch the interservice consultation for the related initiative.

## INITIATIVE

An initiative is a policy proposal prepared by the European Commission to address a specific problem or societal need. An impact assessment assesses options to inform the policy content of the initiative.

## INTERSERVICE CONSULTATION

Before the Commission takes its decisions, all relevant Commission departments are consulted on the draft legislative or non-legislative documents via “interservice consultations”.

## INTERVENTION LOGIC

The intervention logic is the logical link between the problem that needs to be tackled (or the objective that needs to be pursued), the underlying drivers of the problem, and the available policy options (or the EU actions actually taken) to address the problem or achieve the objective. This intervention logic is used in both prospective impact assessments and retrospective evaluations.

## REFIT

REFIT is the European Commission's Regulatory Fitness and Performance programme. Under REFIT, action is taken to make EU law simpler, lighter, more efficient and less costly, thus contributing to a clear, stable, least burdensome and most predictable regulatory framework supporting growth and jobs.

## STAKEHOLDER

Stakeholder is any individual or entity impacted, addressed or otherwise concerned by an EU measure.

[1] More information on “better regulation” is available at: [http://ec.europa.eu/info/strategy/better-regulation-why-and-how\\_en](http://ec.europa.eu/info/strategy/better-regulation-why-and-how_en)

