Evaluation and ex-post impact assessment at EU level

Evaluation is an exercise which aims to assess the outcomes and relevance of an intervention – be it a policy, a piece of legislation, a project, a spending programme or an international agreement – in the light of its initial objectives and expected effects. This assessment is based, as far as possible, on empirical information that has been collected and critically analysed - the evidence-base. Evaluation looks into direct as well as indirect impacts, including consideration of undesired side-effects. At EU level, evaluation has been used for decades to assess how well EU funds are spent in financial programmes. In the wake of the European Commission’s Better Regulation agenda, the scope of the evaluation exercise has been broadened and it has now become a standard tool for assessing the performance of any policy intervention, looking into effects and seeking to identify evidence of causality between the intervention and its outcomes. As a result, in terms of overall aims, evaluation fosters transparency and accountability of EU action, policy coherence, as well as improved decision-making through policy learning.

Evaluation and impact assessment: clarifying terminology\(^1\)

In general terms, impact assessment involves the identification, analysis and quantification of the economic, social, environmental and other effects of an intervention. It supports the legislative process at each successive stage of the decision-making process, in particular before an intervention is adopted (ex-ante impact assessment) and after an intervention has been implemented (ex-post impact assessment or evaluation). While an intervention is still ongoing, an interim or mid-term evaluation may be carried out to gain an insight as to how well the measure performs. This applies notably to programmes that are limited in duration.

*Evaluation*, as the retrospective angle of impact assessment, is also referred to as *ex-post impact assessment*. Within the EU institutions, these two terms are often used interchangeably. Whilst the European Commission tends to speak rather of *evaluation*, the European Parliament commonly refers to *ex-post impact assessment*. Occasionally, other terms are also used to refer to the same concept, such as *ex-post evaluation* or *impact evaluation*. Another term used in that context is *fitness check*; this is a specific ex-post tool covering a set of related measures within a given policy area rather than one single intervention.

The function of evaluation in the legislative cycle

Evaluation of the actual implementation of the existing stock of EU legislation has been increasingly promoted in recent years, and is a core element of the Better Regulation package adopted by the Commission in May 2015. At its launch, Commission Vice-President Frans Timmermans stressed the value of evaluation: *'While the natural tendency of politicians is to focus on new initiatives, we must devote at least as much attention to reviewing existing laws and identifying what can be improved or simplified. We must be honest about what works and what doesn’t.'*\(^2\)

\(^1\) Throughout this paper, the term ‘impact assessment’ is used as a generic term, encompassing both ex-post and ex-ante impact assessment. However, it should be noted that the European Commission primarily uses the term ‘impact assessment’ to refer to ex-ante impact assessment (as opposed to ex-post evaluation).


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An unbiased retrospective assessment of an intervention generates an understanding of how well this measure, designed in theory, functions in practice and why that is so. Hence, due to its nature as a backwards looking tool, evaluation would have its natural place at the end of the legislative process, at least in a linear model. However, since the results of an evaluation provide evidence as to whether to continue, revise or repeal a policy measure, it also influences future decision-making. Given that a large proportion of EU decision-making concerns amendments or revisions of existing acts, a cyclical model of the decision-making process appears better suited than a linear one. Through the lens of the policy cycle model, ex-post impact assessment has a direct effect on ex-ante impact assessment, notably in the case of legislation that is up for revision, since the shortcomings identified in the ex-post evaluation of a legislative act will shape the design of the ex-ante impact accompanying the proposed amended act. Thus, the cyclical model closes the gap between ex-post and ex-ante impact assessment, by depicting these two stages as interlinked (see graphic).

The policy cycle concept is at the core of the Commission’s Better Regulation agenda. Consequently, the Commission attaches particular importance to performing an evaluation ahead of a forthcoming legislative revision. This principle is known as ‘evaluate first’. Apart from legislative initiatives, the Commission also applies the ‘evaluate first’ principle to recurrent programmes that run over a longer period of time. In this case the instrument of choice is an interim evaluation conducted mid-term, which generates lessons for the next programming period at a time when available data sets are not yet complete. Interim evaluation helps to prevent a delay in the adjustment of the programme design: were the evaluation to be carried out only after the end of the first programming period, when the renewed (second) programme would already be in place, the evaluation results could only feed into the subsequent (third) programming period.

Similarly, the Commission’s Better Regulation guidelines require that monitoring is looked at from a policy cycle perspective. Monitoring generates systematic data (ideally time-series) on the application of an intervention, which has a direct impact on the quality of a future evaluation. Therefore, the legislative proposal should already contain monitoring obligations that define the kind of evidence to be systematically gathered during the life cycle of the intervention, and which should make it possible subsequently to assess whether the policy measure delivers the expected results. Once a piece of legislation is up for evaluation, the enshrined monitoring provisions will also be assessed to see whether they are still adequate. Any kind of monitoring, evaluation and reporting requirements in legislation, as well as review clauses, must be proportionate and not overly burdensome on Member States’ administrations.

**Evaluation criteria and principles**

The Commission’s Better Regulation guidelines establish a set of evaluation criteria against which interventions are to be assessed. The following assessment criteria define the minimum requirements for evaluations carried out by the Commission (such as ex-post and interim evaluations or fitness checks), which are meant to foster ‘a clearly defined, robust methodology intended to produce objective findings’.

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- **Effectiveness**: Have the defined objectives of an intervention been met, to what extent and why? How can the effects be attributed to the intervention (causality check)?
- **Efficiency**: Are the costs and time spent on the achieved benefits justified and proportionate?
- **Coherence**: Is the intervention coherent in itself, with other EU policy interventions, and with the overall EU priorities?
- **Relevance**: Is the intervention still relevant and do the original objectives still correspond to EU needs?
- **EU added value**: Does the intervention achieve EU added value or could the changes have been better achieved on the level of Member States (subsidiarity principle)?

Other criteria may be added on a case-by-case basis, as deemed appropriate for a specific intervention.\(^4\)

Besides the above-mentioned criteria, according to the Commission guidelines, evaluation must respect a number of **key principles**, such as:

- Proportionate analysis: the design of an evaluation should be proportionate to the resources required for the evaluation and the impact of the intervention. This principle applies in particular to the need to collect new data.
- Independence and objectivity: evaluators need to be unbiased and must not be pressured or lobbied.
- Transparent judgment: the judgments need to be based on available evidence and on clearly identified criteria.
- Evidence-base: evaluations should always be based on the broadest possible evidence; as not all sources are equally robust (e.g. an individual view by a stakeholder), it is recommended to draw evidence from a diverse range of sources and methods (‘**triangulation**’).

Moreover, the **timing** of an evaluation is an important factor. Given that the quality of an evaluation depends on the robustness of the evidence-base, it is generally accepted that an evaluation should begin no earlier than **three years** after the implementation of an intervention (meaning, in the case of directives, that the counting starts only after transposition by the Member States). If initiated too early, there is a danger that the evaluation will lack relevant data concerning the actual implementation in general and, in particular, the transposition, application, enforcement and effectiveness of the intervention.

The Commission’s **Regulatory Scrutiny Board (RSB)**, which has been in place since 1 July 2015, not only ensures **quality control** for the entirety of the Commission’s ex-ante impact assessment work, as was already the case with its predecessor, the ‘Impact Assessment Board’, but also examines **major** evaluations and fitness checks.\(^5\) With regard to evaluations, the RSB issues an opinion, together with recommendations for improvement, which are made public. The first major retrospective evaluation it examined was on the 7\(^{th}\) Research Framework Programme.\(^6\)

### Challenges in conducting evaluations

In practice, evaluators face a series of challenges, the most important being timing, data availability and the causal chain.

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\(^5\) See Better Regulation Guidelines, p 11.

With regard to **timing**, the planning of an evaluation can be difficult. The rule of thumb suggests that an evaluation should be undertaken no earlier than three years after the actual implementation of an intervention in the Member States. Indeed, the Commission advises to wait until a reasonably complete dataset for **three years** is available. While respecting this requirement will enhance the quality, it may have repercussions on the planning of the evaluation, and subsequently on the timing of any ensuing legislative revision.

Despite the existence of monitoring provisions in many acts of EU secondary legislation, the availability of **sufficient data** on the implementation and enforcement of a specific measure is one of the greatest challenges in the everyday practice of evaluation. In a Union of 28 Member States, data sets will often not be complete. Data required for the ex-post assessment of specific aspects of an intervention may not even exist. In such case, one option is to collect them retrospectively. However, given that data collection is time- and resource-consuming, the cost of this exercise must be proportionate to the gain (proportionality principle). In general, the Better Regulation guidelines give preference to data based on systematic monitoring: ‘**Good monitoring generates factual data to improve the quality of future evaluation and the impact assessment. It provides time series data that [...] will be more reliable in explaining behaviour than one-off data collection exercises.**’

Moreover, **proving causality** between the intervention and its outcomes is not straight forward. In practice, it can be very difficult to prove that (or to what extent) an observed effect is caused by the intervention itself and not by other influencing factors, or that it would not have happened anyway (‘attribution bias’).

**Impact assessment and evaluation in the institutional triangle: a brief history**

Within the institutional architecture, it is traditionally the **European Commission** that has been steering the EU's impact assessment activities. On the ex-post side, the Commission's evaluation practice goes back to the 1980s, even if initially only **spending programmes** were subject to evaluation. Since then, in particular for reasons of accountability and improved decision-making, ex-post evaluation of programmes 'that entail significant spending' has been made a legal requirement. Findings of such evaluations constitute the basis for deciding on the renewal, modification or suspension of the programme. At present, the threshold for 'significant spending' in such cases is defined as overall programme value of € 5 million. Over the years, the Commission has expanded its evaluation activities to encompass **policies and legislation**, regardless of their budgetary implications, and evaluation has become a routine activity. Since 2010, the Commission has undertaken some 650 evaluations, of which 57 were performed in 2015.

The **Mandekern report**, adopted in November 2001, triggered the Commission’s Better Regulation agenda, which covers the entire policy cycle: policy design and preparation, adoption, transposition, implementation, application, enforcement, evaluation and revision. This report paved the way for the **2003 Inter-Institutional Agreement (IIA) on Better Law-Making** which contained a commitment by the three institutions to a more frequent use of impact assessment (both ex-ante and ex-post). This has recently been replaced by the new 2016 IIA on Better Law-Making (see below for further details).

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7 See Better Regulation Toolbox, p. 261; 'ensure at least 3 years' worth of reasonably full data'.
8 Better Regulation Guidelines, p. 43.
9 e.g. Structural funds, agriculture and fisheries funds, Research Framework Programmes, etc.
10 Article 30(4) of Financial Regulation (Regulation (EU, Euratom) No 966/2012), chapter 7: Principle of sound financial management: ‘In order to improve decision-making, institutions shall undertake both ex ante and ex post evaluations in line with guidance provided by the Commission. Such evaluations shall be applied to all programmes and activities which entail significant spending [...]’
11 See Article 18(3) of the Rules of Application of the Financial Regulation (Commission delegated regulation (EU) No 1268/2012). For multiannual programmes, periodical interim and/or ex post evaluation is required, whereas activities financed on an annual basis are to be evaluated at least every six years.
12 Data extracted from the Commission’s evaluation database.
With regard to ex-ante impact assessment, in 2002 the Commission began systematically to accompany significant legislative proposals with impact assessments. The Inter-Institutional Common Approach to Impact Assessment, agreed in 2005 (which has now also been superseded by the 2016 IIA on Better Law-Making) provided guidance on the coordination of impact assessment activities amongst the three actors, though with an exclusive focus on ex-ante assessment. In particular, it required Parliament and Council to take due account of the Commission’s impact assessment work when considering legislative proposals and also to conduct their own impact assessments prior to the adoption of any substantive amendments where they considered this to be appropriate and necessary for the legislative process.

The Council has only recently begun to engage in impact assessment work, and this rather in the ex-ante than the ex-post area. Its annual impact assessment reports suggest that the Council is paying growing attention to the Commission’s impact assessments accompanying legislative proposals, which are examined at working party level. Moreover, the Council has on various occasions acknowledged the significance of assessing the impact of EU legislation, and recently stressed the importance of cooperation between the Commission and the Member States to ensure that data required for monitoring and evaluation purposes is adequately collected.

In recent years Parliament has considerably stepped up its efforts in various aspects of impact assessment – in agenda-setting, ex-ante and ex-post impact assessment.

Firstly, in terms of agenda-setting, it plays an active role through legislative own-initiative reports (Article 225 TFEU) which are systematically supported and substantiated by a 'European Added Value assessment' drawn up by Parliament’s research service. The service also produces 'Cost of non-Europe reports', which analyse the potential benefit and economic gain of future EU action in specific areas. The latter help Parliament to identify areas where European common action or better coordination of existing national and EU policies would be cost-effective.

Secondly, in the area of ex-ante impact assessment, Parliament’s research service routinely scrutinises the quality of each Commission impact assessment accompanying a legislative proposal, and, on request of the parliamentary committee concerned, provides assessments of substantive amendments and undertakes complementary or substitute impact assessments on aspects of the legislative proposal that are deemed not to be (adequately) dealt with in the Commission impact assessment.

Thirdly, Parliament has developed ex-post capacities to assess the transposition, implementation and enforcement of EU law, spending programmes and international agreements. These capacities are explained in more detail in a separate section below.

The co-legislators’ increasing role in impact assessment work is reflected in the 2016 IIA on Better Law-Making, which entered into force on 13 April 2016, replacing both the aforementioned earlier agreements in this field. Unlike its predecessor, the 2016 IIA includes a specific chapter on 'ex-post evaluations of existing

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13 The Council started off with three pilot cases in the first year (2013/14), examined 11 Commission impact assessments in 2014/15 and, according to the 2016 draft report, as many as 21 in 2015/16. See Docs 8406/13, 10882/14 and 8749/15. The 2016 annual report on Impact Assessment within the Council is currently in preparation (Doc. 9786/16).
14 Cf. Council conclusions on Better Regulation to strengthen competitiveness, adopted on 26/05/2016, Doc 9580/16.
16 See the synthetic document 'Mapping the cost of non-Europe', which allows to visualise and compare the relative potential gains in different policy areas and which is annually updated.
18 Between July 2012 and July 2016, 126 Commission impact assessments were examined in form of initial appraisals. Moreover, following committee requests, five detailed appraisals, four complementary or substitute impact assessments, and impact assessment on six sets of amendments were produced (covering 32 amendments).
legislation’, as one of the available better law-making tools. With regard to evaluation, the three institutions agreed:

- to organise their evaluation work in a consistent and coherent manner;
- that the Commission provides the co-legislators with information on its multiannual evaluation planning;
- that the Commission includes, to the extent possible, Parliament’s and Council’s requests for in-depth evaluation of specific policy areas or legal acts;
- that evaluations provide the basis for impact assessment of options for further action (incl. amended proposals);
- that monitoring, evaluation and reporting requirements be included in legislation, while, however, avoiding overregulation and administrative burden, and
- that evaluations be based on effectiveness, efficiency, coherence, relevance and EU added value.

The 2016 IIA underpins the policy cycle model by, on the one hand, maintaining the idea that the Commission's initial impact assessment and any additional impact assessment work conducted during the legislative process by the institutions, taken together, can serve as basis for evaluation (point 18); and, on the other hand, stipulating that evaluations provide the basis for impact assessment of options for further action (incl. amended proposals) (point 22).

Ex-post impact assessment at the European Parliament

Implementation reports

Parliament has its own ex-post impact assessment tool at its disposal, in the form of so-called implementation reports. This specific type of own-initiative report, provided for in Parliament’s Rules of Procedure (Annex XVII, Article 1, indent 1(e)),20 allows parliamentary committees to scrutinise how EU legislation, soft law instruments and international agreements have been transposed into national law, implemented and enforced. Once adopted in plenary, implementation reports become Parliament’s position on the performance of a legal act (or other intervention). Thus, they are a strong and visible evaluation tool. The Commission is bound to inform Parliament of action taken in response to specific requests addressed to it in Parliament’s resolutions; there is, however, no obligation for a positive follow-up.21

To strengthen this specific type of own-initiative report and to foster its efficiency and use, the rules guiding implementation reports have recently undergone a reform. These reports are now split into two parts:

- an explanatory statement providing factual evidence, and
- a motion for resolution containing specific political recommendations; this is the part to be put to the vote in committee, within 12 months following the authorization to draw up the report,22 and subsequently in plenary.

Rapporteurs of implementation reports have the backing of Parliament's President to request disclosure of relevant information from the Commission. If deemed appropriate, they can also request factual information from national parliaments or EU bodies. Moreover, they are entitled to obtain expertise from Parliament’s research facilities, notably the policy departments and the relevant unit in the Directorate General for Parliamentary Research Services (EPRS).

Parliament’s research service supports implementation reports by providing background analysis, in the form of ‘European Implementation Assessments’. These are in principle drafted in-house, based on desk research

20 The new rules on implementation reports were endorsed by Parliament’s Conference of Presidents on 7 April 2016, with immediate effect. However, their publication in the form of an amended annex to the Rules of Procedure is still pending at the time of writing.
21 Cf. Framework agreement on relations between the European Parliament and the European Commission, point 16: Within 3 months after the adoption of a parliamentary resolution, the Commission shall provide information to Parliament in writing on action taken in response to specific requests addressed to it in Parliament’s resolutions, including in cases where it has not been able to follow Parliament’s views. OJ L 304, 20.11.2010, p. 47.
22 This deadline can be extended upon reasoned request (see point 4 of annex 3).
and surveys. In justified cases, they may also be outsourced, in full or in part, to external experts. Compared to the Commission’s fully-fledged evaluations, which can be very technical and easily comprise hundreds of pages, and which can take up to 18 months (or more) from design to delivery, Parliament’s ‘European Implementation Assessments’ are tailored to parliamentarians’ needs, with a focus on ease of use. Recent topics include the review of the EU copyright framework, the Employment Equality Directive, the UN Convention on the Rights of Persons with Disabilities, and food contact materials.

Other support in the area of ex-post impact assessment

In support of parliamentary committees’ scrutiny work in the area of ex-post impact assessment, Parliament’s research service also provides other types of analysis, notably succinct appraisals of the state of implementation of all legislative acts the Commission has listed for revision in its Annual Work Programme. These ‘implementation appraisals’ summarise how the existing legislation has been working in practice, before the Commission puts forward the amending proposal.

In addition to that, a number of scrutiny tools in the form of rolling check-lists facilitate agenda-setting and planning activities of parliamentary committees, in particular on:
- review, evaluation and reporting provisions in legislative acts;\(^{23}\)
- the European Commission’s ongoing and planned evaluations;
- review and monitoring clauses in international agreements, and
- special reports of the European Court of Auditors.

Furthermore, again in the form of a rolling check-list, Parliament’s research service monitors the conclusions of European Council meetings with regard to the delivery of the commitments made. Finally, it evaluates the implementation of the Country-Specific Recommendations (CSR) adopted by the EU Council of Finance Ministers (EcoFin Council) each year, following endorsement by the European Council, within the framework of the European Semester, in the form of an annual CSR scoreboard.\(^{24}\)

The evolution of Parliament’s impact assessment work and support

Unlike the Commission, which has a long record of impact assessment activities (both ex-ante and ex-post), it was only relatively recently that Parliament became an active player in the institutional impact assessment structure. This development was triggered by the 2011 Niebler report,\(^{25}\) which called for the establishment of an ‘integrated impact assessment process within the European Parliament’ in support of parliamentary committees (point 56). A dedicated EP impact assessment service\(^{26}\) was subsequently set up in January 2012 within Parliament’s administration. Initially, the focus of this service was on ex-ante impact assessment and European added value (see above).

In November 2013, the service became part of the newly created Directorate General for Parliamentary Research Services and broadened its remit to include ex-post evaluation, thus covering the entire legislative cycle, from agenda-setting to scrutiny.\(^{27}\) This was also in the spirit of the Niebler report, which invited the EU institutions to adopt a holistic approach to impact assessment, ‘throughout the whole policy cycle, from design to implementation, enforcement, evaluation and to the revision of legislation’ (point 2) and which stressed the necessity to ‘evaluate more accurately whether the objectives of a law have actually been achieved and whether a legal act should be amended or retained’ (point 25).

\(^{23}\) The check-list includes acts adopted in the European Parliament since the 6th parliamentary term, i.e. since 2004.

\(^{24}\) All analyses and studies in support of parliamentary committees and Members of the European Parliament are published on the Europarl Think Tank website and the institution’s Public Register of Documents.


\(^{26}\) Directorate for Impact Assessment and European Added Value; initially set up within DG Internal Policies, it is now part of DG EPRS.

The importance of both ex-ante and ex-post impact assessment for evidence-based policy making in the context of better law-making was recently reconfirmed in Parliament’s resolution\(^\text{28}\) on the state of play and outlook on REFIT (Kaufmann report).

**Impact assessment support to Parliament’s committees throughout the legislative cycle**

![Diagram](image)


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