

# Better regulation in the EU: Improving quality and reducing delays<sup>1</sup>

## KEY FINDINGS

There are very **significant benefits from EU legislative initiatives** – hundreds of billions of euros for major internal market initiatives. For example, free movement of goods - €386bn; Customs Union - €189bn; free movement of services – €389bn; Digital Single Market - €177 bn. There are potential gains to the European economy (EU-28) of over **€2,200bn** that can be achieved, if legislation advocated by the European Parliament were to be adopted in a series of EU policy areas.

Understanding the quantum of net benefits from previous and proposed legislative initiatives is vital in order to enable legislators to fully understand the implications of their decisions. Nevertheless, the work of the Regulatory Scrutiny Board suggests that there is significant room for improvement in the practical implementation of better regulation, in particular in relation to quantifying actual and potential benefits and costs of EU initiatives in ex post evaluation.

The very significant level of benefits from major EU legislative initiatives means that delays in putting legislation into action can mean very **substantial costs in the form of delayed benefits**. For example, typical legislative and transposition delays in putting digital transformation policies into action could lead to an aggregate cost of **€319 billion in lost annual benefits**. Further delays in the overall process, before and after the legislative process and transposition, are likely to be adding to this cost.

**Recommendation:** European Parliament should call on the European Commission and the Regulatory Scrutiny Board (RSB) to place additional focus on quantification for evaluation, as they have done for IAs. Full quantification is of key importance for evidence-based policy and for understanding of impacts of legislation. Further measures to encourage more quantification, should include ensuring that each IA includes a ‘monitoring and evaluation plan’ that sets out the data that need to be collected in order to meet evaluation objectives.

**Recommendation:** Given the key role of strategic decisions, a quantified evidence base should also inform political inputs at the strategic stages of decision-making, such as the development of Commission priorities and work programmes.



## KEY FINDINGS [cont.]

**Recommendation:** European Parliament together with European Commission should undertake further investigations of delays in the legislative process across a wider range of policy areas and of delays in other parts of the system (pre and post legislation). This would help to provide a baseline understanding of these issues which have significant implications for the policy benefits experienced by citizens, businesses and other EU stakeholders.

**Recommendation:** European Parliament should give consideration to: how the most costly delays can be addressed; how delays and their costs can be monitored and assessed on a regular basis; which institutional mechanism can be used to ensure clear responsibility for future monitoring, assessment and recommendations for action – should this be a part of the Court of Auditors performance audit responsibilities, for example.

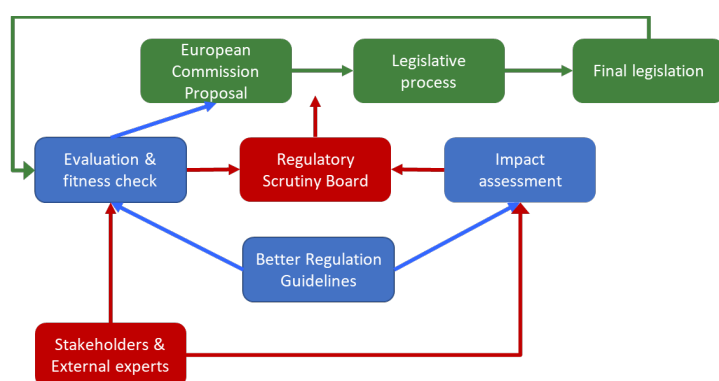
## The EU Better Regulation Ecosystem

The Interinstitutional Agreement between the European Commission, the European Parliament and the Council of 2016 sets out the EU approach to better law-making, and draws on earlier work on better regulation.<sup>2</sup> The approach recognises impact assessment (IA), ex post evaluation and stakeholder engagement as core elements of a high quality approach to law-making and regulation.

Figure 1: Better Regulation Objectives

1. EU actions based on evidence
2. Making simpler and better EU laws
3. Involving citizens, businesses & stakeholders in decision-making processes

Figure 2: Key elements of the EU Better Regulation ecosystem

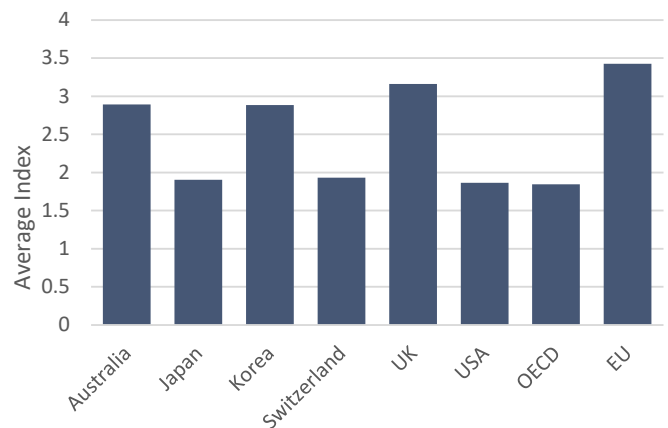


Better regulation works alongside the EU's legislative procedures, in line with the Better Regulation Guidelines, most recently updated in November 2021.<sup>3</sup>

As part of their recent review of regulatory practices, the OECD<sup>4</sup> benchmarked jurisdictions on the basis of a number of criteria relating to better regulation including, in particular, practices relating to: ex ante IA; ex post evaluation; and inputs from stakeholders.

As shown in Figure 3, the EU's system of better regulation (OECD, 2021)<sup>5</sup> performs strongly against the selected comparator jurisdictions. However, the OECD assessment is based on documented procedures and focusses on the structure and content of the regulatory system. There is less focus on the practical implementation of better regulation requirements. As illustrated in the next section, there is considerable scope for improving the way in which the requirements of the EU better regulation system are implemented.

Figure 3: OECD index of regulatory policy and governance (iREG) for selected jurisdictions



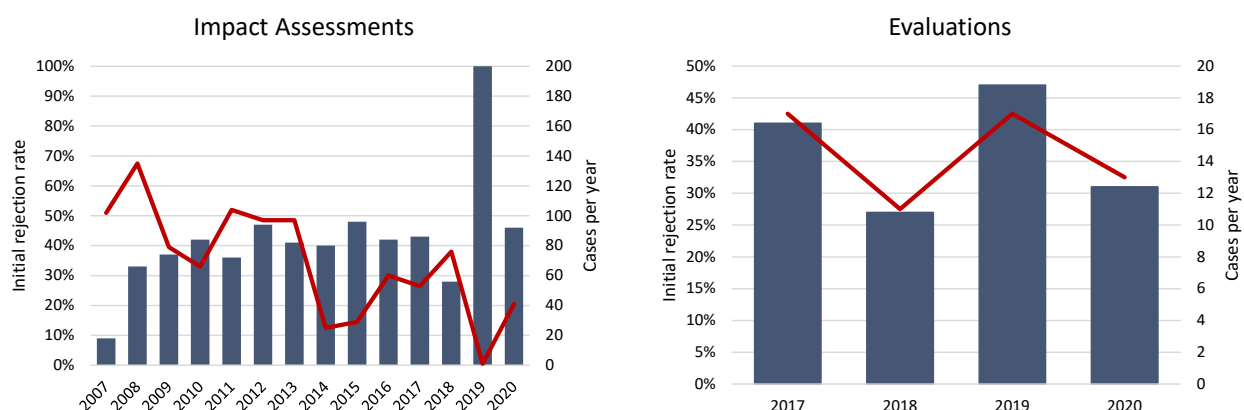
## Practice of Better Regulation: Evidence from the Regulatory Scrutiny Board

### Initial rejection rates of IAs and evaluations by the RSB are high and have not declined in recent years

Overall, the trend in the numbers of IAs reviewed by the Regulatory Scrutiny Board (RSB) is declining over the period 2007 to 2020 (Figure 4). The cyclical pattern broadly matches the 5-yearly period for each Commission, with IAs submitted declining in the final year of a Commission (as in 2019). More recently, between 2015 and 2020, the Board saw a 40% increase in the number of IAs it was presented with (from 29 to 41), mainly related to Commission priorities for 2019-24. In most years in the period 2007 - 2020, the initial rejection rate is around 35% to 45%, with no sign of this improving over time.

For evaluations, the Board did not issue overall ratings before 2017 and so it is too early to assess trends. Case numbers are much lower than for IAs – in the range of 10 to 17 each year. Initial rejection rates are in the range of 25% to 40%, so similar to IAs.

Figure 4: Initial rejection rates (left axis, blue bars) and overall cases (right axis, red line)



Source: RSB Annual Report 2020<sup>6</sup> (for 2015-2020) and Impact Assessment Board – 2014 activity statistics<sup>7</sup> (for 2007-2014).

If the lack of improvement in initial rejection rates reflects a lack of improvement in the quality of submissions, then this is concerning. It could be consistent with increases in the quality of submissions if it is a consequence of increasing standards being applied by the RSB. However, the qualitative descriptions provided by the RSB in their Annual Report for 2020 (see Figure 5) do suggest that there is cause for concern and that the quality of initial drafts needs to be improved. They clearly have concerns about the quality of the IAs and evaluations that are submitted to them.

Figure 5: Examples of RSB Comments

"Quality of first submissions was not acceptable for most IAs"	"the quality of initial draft evaluations remained patchy"
"lack of sufficient time to prepare assessments [IAs], given ambitious political deadlines"	"The Commission teams that design and produce the evaluation may not have the necessary capacity to evaluate properly"
"the weakest element for all IAs was the problem definition and use of evaluation"	"Operational departments may have an interest in the evaluated initiative, and this can impede a frank assessment of its potential flaws [in evaluations]"
"IAs often omitted or did not sufficiently analyse some relevant impacts"	"The Board regularly expressed concerns that the conclusions [of evaluations] were selective readings of the evidence, or not clear enough on the weaknesses of the evidence collected"

Source: Regulatory Scrutiny Board (2020)

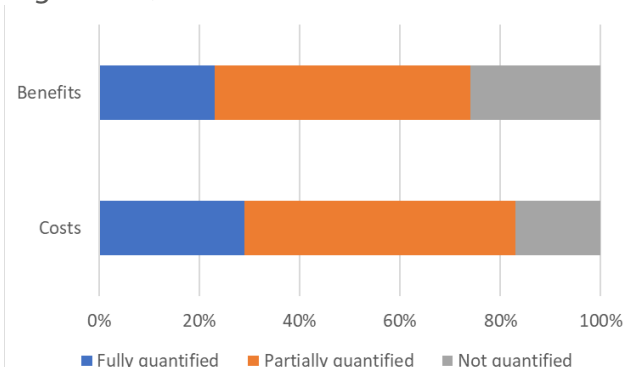
### Quantification of costs and benefits in IAs and evaluations requires improvement

Quantification of costs and benefits contributes to better policy-making and in ex post evaluation it enables the verification of the size of benefits actually achieved through EU legislation. The importance of quantification is recognised by the RSB and they monitor the extent to which IAs quantify costs and benefits.

In 2020, only 23% of IAs first submitted to the RSB had fully quantified benefits and 29% had fully quantified costs. In addition, around half had partially quantified costs and around half had partially quantified benefits. The problem of insufficient quantification has been recognised for many years, with research relating to the Digital Single Market (DSM) in 2013, for example, showing that only 40% of a small sample (10) of DSM initiatives provided a useful degree of quantification.<sup>8</sup>

There is substantial external research on the costs and benefits of EU policies especially in the context of the internal market, and digitalisation means that more and more data are becoming available from a wide range of sources.<sup>9</sup> The Commission Services should take advantage of these data sources. If they have insufficient time, or capacity, as suggested by the RSB, they need to use external expertise.

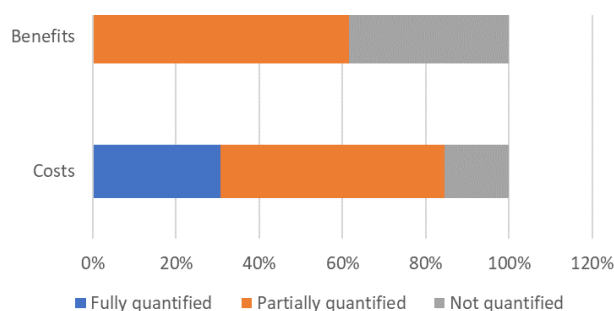
Figure 6: Quantification of costs and benefits



For evaluations, the RSB do not specifically monitor the extent of quantification though many of their comments on recent evaluations imply limited or inadequate use of evidence. They assessed data collection overall as “weak” at first submission. A brief LE Europe review of 13 evaluations and fitness checks scrutinised by the RSB in 2020 suggests that 31% had fully quantified costs and none had fully quantified benefits, with many citing problems with data availability. This suggests that quantification in the context of evaluation also requires improvement.

We **recommend** that the RSB places additional focus on quantification for evaluation, as they have done for IAs. Further measures that might encourage more quantification, could include ensuring that each IA includes a ‘monitoring and evaluation plan’<sup>10</sup> that sets out the data that need to be collected, as part of project implementation, in order to meet evaluation objectives.

Figure 7: Quantification of costs and benefits in fitness checks & evaluations, 2020



## Delays in delivering benefits through EU legislation

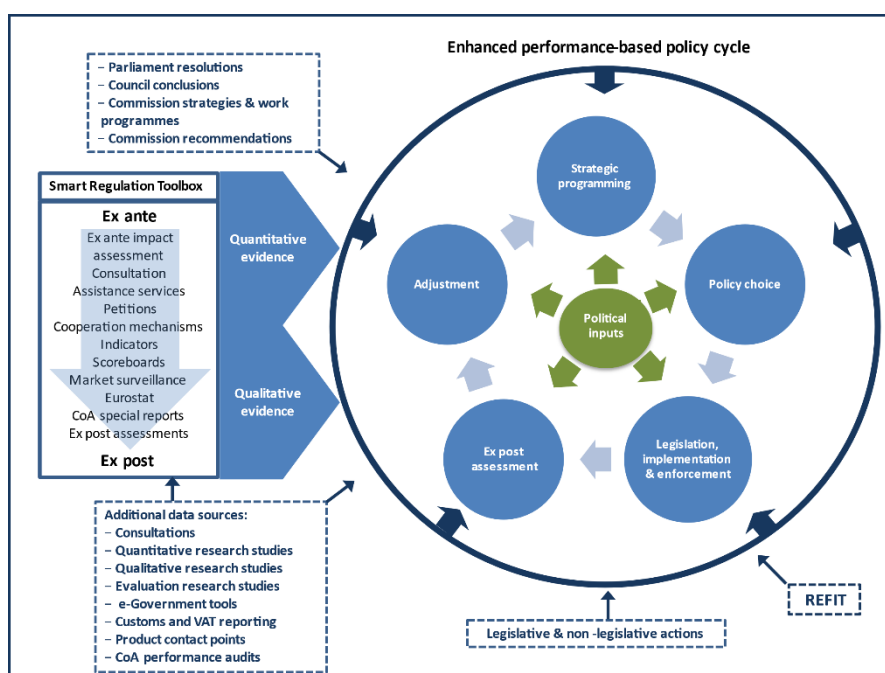
The enhanced performance-based policy cycle, developed in previous research for the IMCO committee, provides a structure within which to develop, assess, implement, monitor and evaluate policy.<sup>11</sup> The enhanced performance-based policy cycle places greater emphasis on a strategic programming phase to policy development than the EU Better Regulation Guidelines.

Timely formulation of well designed high level strategies based on quantified evidence.

The European Commission's Better Regulation Guidelines

require that the European Commission's work should ‘focus on the Commission's priorities as reflected in the President's political guidelines and the Commission's annual work programmes’. It appears however, that no assessment of potential impacts is required in the preparation of the President's political guidelines or the Commission's annual work programmes. High level strategies (‘strategic programmes’) and political agendas are an important part of the policy development process. They set the context in which many individual policy choices are made and research has suggested that the preliminary stages of decision-making strongly influence the final outcome. We **recommend** that whilst political inputs are important at the strategic programming stage, a quantified evidence base is also an important input at this early stage. It should seek to inform the political inputs.

Figure 8: The enhanced performance-based policy cycle



## Delays in presenting and carrying out effective legislative initiatives

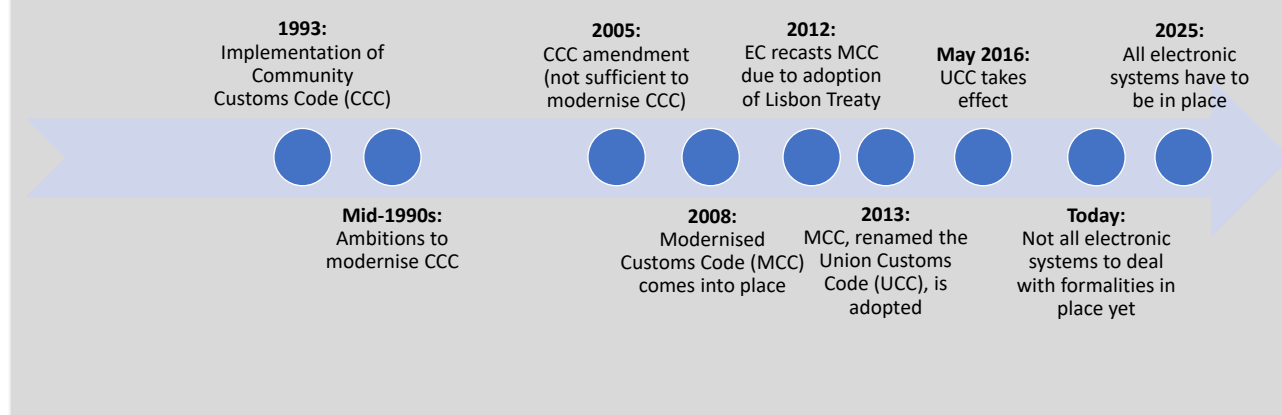
Developing effective policies - that properly consult stakeholders and make use of robust IAs - takes time. However, in some cases the timespan between recognising that there is a problem until any legislative action is implemented is very long, and means that the benefits of policy action are significantly delayed.

Delays can occur in some or all of the stages of the process illustrated in Figure 8 above. Two specific examples of long delays – the Single European Gateway and the Union Customs Code – are summarised in the boxes below. In both cases the European Parliament commissioned research from independent experts that suggested changes in policy and important benefits from reforms. Although the research had important impacts on the policies, they did not succeed in speeding up the overall policy implementation process.

### Delays in customs reform

From the mid-1990s, there was ambition to modernise the Community Customs Code (CCC). By 2008, the Modernised Customs Code (MCC) came into force. But due to the adoption of the Lisbon Treaty and the development of a new electronic system for customs administration, the MCC was recast by the Commission in 2012. This led to serious delay, since the initial proposal was to delay application of the MCC by more than 7 years. At the time, research for IMCO anticipated that the MCC might not be fully implemented until 2020 or later.\* The MCC, renamed as the Union Customs Code (UCC) was adopted in 2013, but didn't take effect until May 2016. The required electronic systems to deal with formalities are still not fully in place yet. Regulation 2019/632 permits the use of pre-existing or alternative systems until 2025.

Figure 9: Timeline of Customs Reform

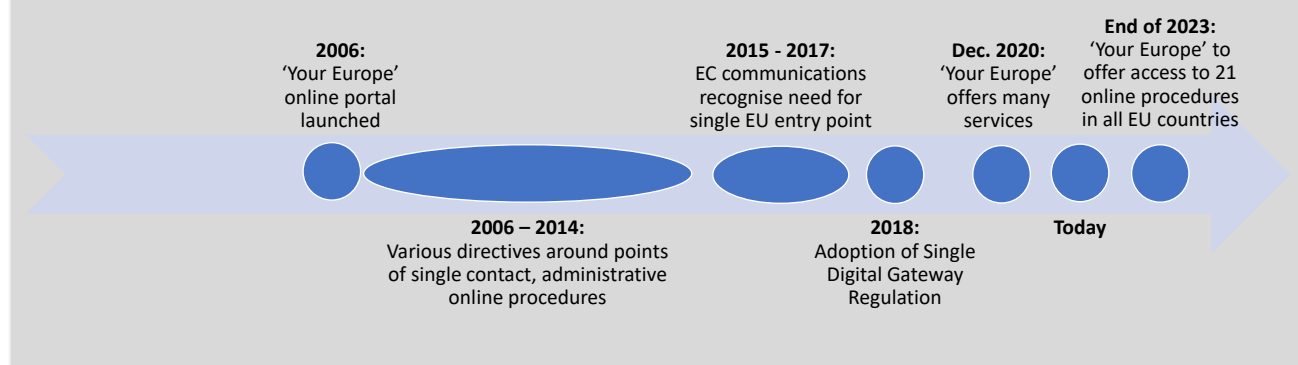


Notes: \*See PwC Belgium et al, 2012.<sup>12</sup> An update and discussion on customs reform was held at a workshop organised by the IMCO Committee in 2019.<sup>13</sup>

### Delays in the introduction of a Single European Gateway

In 2006, the online portal 'Your Europe' was established to provide information on basic rights under European law. A large number of other online services and portals have been established since. In the Charter for the electronic Points of Single Contact under Directive 2006/123/EC Member States made a commitment to provide information through single points of contact in a user-friendly manner. This was not endorsed by the Council until 2013. Research for the IMCO Committee in 2013 also proposed a Single European Point of Contact.\*\* In 2018 the single digital gateway regulation was adopted by the Parliament and the Council. Since December 2020, the gateway, provided through the 'Your Europe' portal, offers many services, though is not due for full implementation until the end of 2023.

Figure 10: Timeline of Single European Gateway



### Delays in the legislative process have increased since the period 2001 – 2010

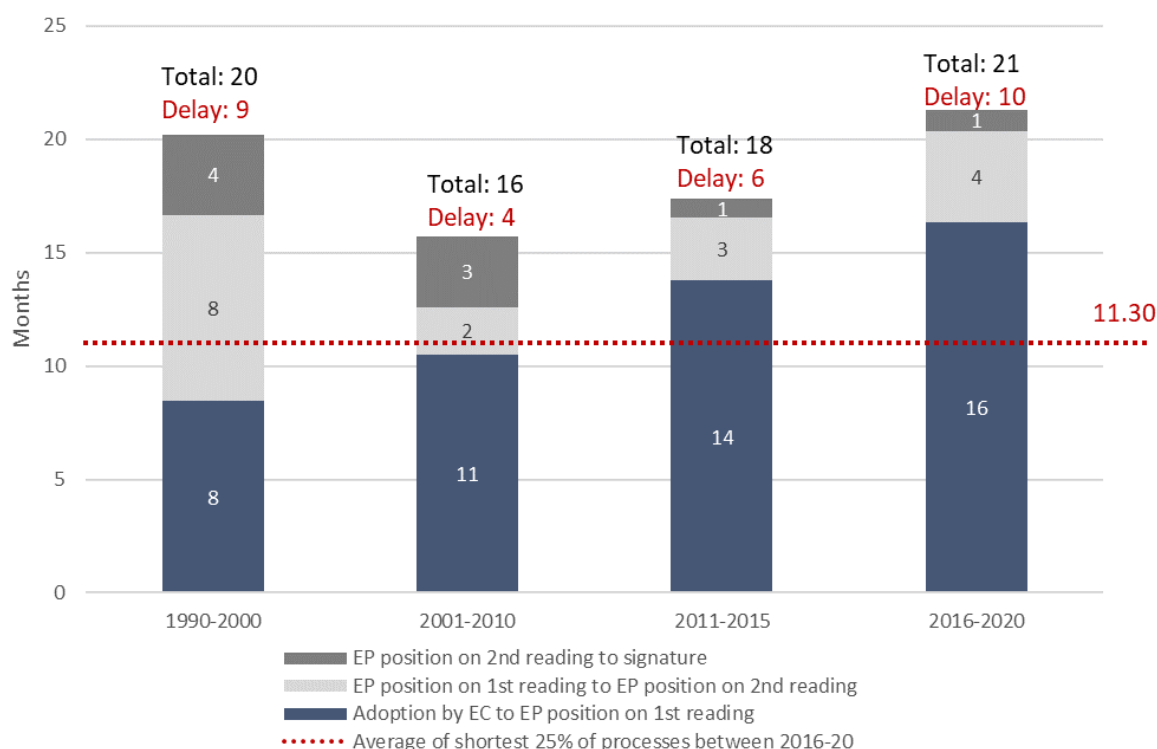
The Amsterdam Treaty called on the EU institutions to ensure that the co-decision procedure operates as efficiently as possible. Hence, there have been various efforts to speed up the average length of the EU legislative process, such as the trilogue meetings between representatives of the Parliament, the Council and the Commission.<sup>15</sup>

A review of the length of EU legislative processes for procedures within IT, telecommunications and data-processing shows that the average duration from adoption of a proposal by the European Commission to signature by the Parliament and President of the Council between 2016 and 2020 was 21 months (1.75 years). Thus, the minimum length of time between an initial policy action at the EU level and the earliest date on which legislative impact can be expected is almost 2 years. Moreover, the average length of the total legislative process appears to have increased since 2001 - 2010 (see Figure 11).

Between 2016 and 2020 the shortest 25% of all EU legislative processes over that period (16 processes in total) took on average 11.3 months from adoption of a proposal by the Commission to being signed. If this is assumed to be the fastest that legislation can be passed in the current context and reflects a legislative process without delays, then any legislative process that takes longer than this can be viewed as being delayed. On this basis, between 2016 and 2020, the average delay of the legislative process was 10 months, which is the longest average delay since 1990 - 2000.



Figure 11: Average length of EU legislative processes: IT, telecommunications &amp; data processing



Source: LE Europe analysis of EU legislation via EUR-Lex.eu.<sup>16</sup>

The first stage of the legislative process – from the adoption of a proposal by the European Commission until the European Parliament's position at first reading – takes the longest, and has increased in duration. The later stages of the legislative process following the first reading are shorter, and becoming even shorter over time. The share of legislative processes within IT, telecommunications and data-processing that are adopted after the first reading has increased from 15% before 2000 to 81% since 2016. While fewer instruments undergo second or third readings, this has been outweighed by increases in the time until the Parliament's position at first reading. Thus, it has not resulted in a decline in the overall duration of the legislative process.

### Transposition of EU legislation into national legislation is associated with delays and errors

When a new directive is adopted, it always comes with a deadline by which Member States are required to adopt it into national law. These transposition deadlines can vary from a few months to several years. For the Single Market directives, the average transposition delay (any time beyond the transposition deadline) is usually between 6 and 12 months. However, it increased by 37% in 2019, from 8.4 months in 2018 to 11.5 months in 2019.

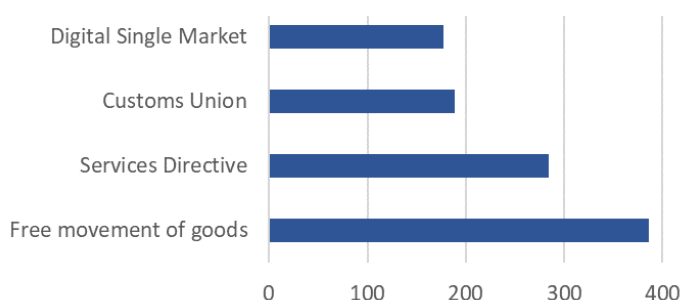
### Legislative delays can be very costly

EU legislation generates high levels of benefits for EU citizens and businesses. The 'Contribution to Growth' exercise undertaken by the IMCO Committee of the European Parliament identified high levels of potential benefits from actions linked to completion of the Single Market (e.g. free movement of goods - €386bn; Customs Union - €189bn; free movement of services - €389bn).<sup>17</sup>



Several studies have estimated the benefits of EU actions for the digital economy. Marcus et al. (2019) estimated annual benefits from completing the Digital Single Market (DSM) of €177bn.<sup>18</sup> In their 'Mapping the Cost of Non-Europe' exercise, European Parliamentary Research Service (2019).<sup>19</sup> estimated annual benefits of €178bn from completing the DSM, improving internet connectivity and enhanced cyber-security. The most recent analysis estimates the cost of non-Europe for digital transformation to be €315bn per year in 2021.<sup>20</sup>

Figure 13: 'Contribution to Growth' estimates of benefits from key Single Market actions, €bn



Mapping costs of non-Europe for 2019-2024

indicated that there are potential gains to the European economy (EU-28) of over **€2,200bn** that can be achieved, if legislation advocated by the European Parliament were to be adopted in a series of EU policy areas.<sup>21</sup>

Whilst the legislative process is underway, the EU does not capture these annual benefits (this is known as the 'cost of slow Europe').<sup>22</sup> Assuming benefits from the digital economy of €315bn per year and an average delay in the EU legislative process of 10 months, an estimate of the cost of slow Europe for the digital economy from the EU legislative process is €262bn.

Additionally, there are also costs associated with transposition delays for EU directives. The average transposition delay between 2018 and 2019 was 11.5 months. The share of directives among all legislative processes within IT, telecommunications and dataprocessing between 2016 and 2020 was 19%. Applying the same estimate of €315bn per year as cost of delay, this results in a cost of transposition delay of €57bn. Summing the cost of slow Europe for the digital economy (€262bn) and the cost of transposition delay (€57bn), the total the cost of delay for the digital economy is €319bn.

### Further investigation of delays

We have undertaken a preliminary investigation of delays in the system. Based on legislation in a limited policy area, this suggests that actions to complete legislative processes after the first European Parliament opinion are not reducing the overall duration of the legislative process as expected; and that a significant component of delays is outside (before and after) the legislative process.

We **recommend** further investigations of delays in the legislative process across a wider range of policy areas and of delays in other parts of the system (pre and post legislation). This would help to provide a baseline understanding of these issues which have significant implications for the policy benefits experienced by citizens, businesses and other EU stakeholders.

Once further information about current delays in the legislative process is available, we **recommend** that consideration be given to: how the most costly delays can be addressed; how delays and their costs can be monitored and assessed on a regular basis; which institutional mechanism can be used to ensure clear responsibility for future monitoring, assessment and recommendations for action – should this be a part of the Court of Auditors performance audit responsibilities, for example.

- <sup>1</sup> This Briefing benefits from discussions at a JURI Workshop on 15 March 2022, see: <https://bit.ly/3MAZKmf> and Renda, A. (2022). Assessment of current initiatives of the European Commission on better regulation. Study for the JURI Committee, European Parliament.
- <sup>2</sup> Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
- <sup>3</sup> European Commission (2021). Better Regulation Guidelines. SWD(2021) 305 final.
- <sup>4</sup> OECD (2019). Better Regulation Practices across the European Union. DOI: 10.1787/9789264311732-en
- <sup>5</sup> OECD (2021). OECD Regulatory Policy Outlook 2021. DOI: 10.1787/9789264528925
- <sup>6</sup> Regulatory Scrutiny Board (2020). Annual Report 2020.
- <sup>7</sup> Impact Assessment Board (2015). 2014 Activity Statistics.
- <sup>8</sup> Muller, P et al (2013). Performance-based Full Policy Cycle for the Digital Single Market. Study for the IMCO Committee, European Parliament. DOI: 10.2861/32290.
- <sup>9</sup> More detailed discussion of the use of a wider range of data sources is provided in both Muller et al (2015). Smart Single Market Regulation. Study for the IMCO Committee, European Parliament. DOI: 10.2861/409255; and Veenstra et al (2013). Ubiquitous Developments of the Digital Single Market. Study for the IMCO Committee, European Parliament. DOI: 10.2861/32258.
- <sup>10</sup> For more information see [https://ec.europa.eu/neighbourhood-enlargement/monitoring-and-evaluation\\_en](https://ec.europa.eu/neighbourhood-enlargement/monitoring-and-evaluation_en).
- <sup>11</sup> See, for example, Jones, S. (2019). Identifying Optimal Policy Making and Legislation. Briefing requested by the IMCO Committee, European Parliament. DOI: 10.2861/846827.
- <sup>12</sup> PwC Belgium et al (2012). Implementation of the Modernised Customs Code. Study requested by the IMCO Committee, European Parliament. IP/A/IMCO/ST/2011-11. PE 475.094.
- <sup>13</sup> Dobrita, A. (2019). Proceedings of a Workshop on "Strengthening Competitiveness of the Internal Market by Developing the EU Customs Union and its Governance". DOI: 10.2861/651384
- <sup>14</sup> Duke et al (2013). A European Single Point of Contact. Study requested by the IMCO Committee, European Parliament. DOI: 10.2861/25755.
- <sup>15</sup> European Parliament (2021). Understanding trilogue.
- <sup>16</sup> Available here: <https://eur-lex.europa.eu/> [last accessed: 12/04/2022]
- <sup>17</sup> See Pelkmans, J. (2019). Contribution to Growth: The Single Market for Services. Study requested by the IMCO Committee, European Parliament. DOI: 10.2861/618622 and Poutvaara, P., Rhode, C., Stitteneder, T and Madhinee, V. (2019). Contribution to growth: Free movements of goods. Study requested by the IMCO Committee, European Parliament. DOI: 10.2861/937711
- <sup>18</sup> Marcus, J. S., Petropoulos, G. and Yeung, T. (2019). Contribution to growth: The European Digital Single Market. Study requested by the IMCO Committee, European Parliament. DOI: 10.2861/100108
- <sup>19</sup> European Parliamentary Research Service (2019). Europe's two trillion euro dividend: Mapping the Cost of Non-Europe, 2019-24. DOI: 10.2861/46766
- <sup>20</sup> European Parliamentary Research Service (2022). Digital Transformation: Cost of Non-Europe. DOI: 10.2861/409750
- <sup>21</sup> European Parliamentary Research Service (2019). Europe's two trillion euro dividend: Mapping the Cost of Non-Europe, 2019-24. DOI: 10.2861/46766
- <sup>22</sup> For an earlier use of this concept, see Godel et al (2016). Reducing Costs and Barriers for Businesses in the Single Market. Study for the IMCO Committee, European Parliament. DOI: 10.2861/961227.

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