

Assessment of current initiatives of the European Commission on better regulation



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Abstract

This in-depth analysis commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, looks at the past and current developments in the EU better regulation agenda. The author finds that, despite important achievements that put the EU at the forefront in this field, many of the most ambitious reforms announced over the past few years are still far from complete. The in-depth analysis offers several policy recommendations.

This document was requested by the European Parliament's Committee on Legal Affairs.

AUTHORS

Andrea RENDA, Centre for European Policy Studies and European University Institute

ADMINISTRATOR RESPONSIBLE

Mariusz MACIEJEWSKI

EDITORIAL ASSISTANT

Fabienne VAN DER ELST

LINGUISTIC VERSIONS

Original: EN

ABOUT THE EDITOR

Policy departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU internal policies.

To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

Email: poldep-citizens@europarl.europa.eu

Manuscript completed in June 2022

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This document is available on the internet at:

<http://www.europarl.europa.eu/supporting-analyses>

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EXECUTIVE SUMMARY

The EU better regulation strategy was launched two decades ago, and was accompanied by very high expectations. Since then, several features were introduced in terms of methodology, overall scope, and instruments, and today the EU can claim to have an extremely comprehensive better regulation system, as recognised i.a. by the OECD. Among the **key ongoing trends in the EU**, most noteworthy are a transition from the use of cost-benefit analysis towards multi-criteria analysis; a move from pure evidence-based towards evidence-informed and also foresight-based policies; the completion of the policy cycle with the introduction i.a. of ex post evaluations and fitness checks; the emergence of a strong (but still insufficiently supported) regulatory oversight body; the growing role of the European Parliament in the better regulation domain; and the slow and partial development of the better regulation agenda in the Member States.

This paper reviews existing trends and proposed solutions presented by the European Commission in its recent Communication on Better Regulation, “Joining Forces to Make Better Laws”. The author finds that the full implementation of the Inter-Institutional Agreement on Better Law-Making may be easier if the EU better regulation agenda completed its shift away from the use of cost-benefit analysis as key criterion to select the preferred option, towards a full mainstreaming of sustainability (i.a. the SDGs) and resilience. This does not imply that the Commission should refrain from **quantifying impacts**: to the contrary, whenever possible and appropriate impact assessments and ex post evaluations should be accompanied by quantitative estimates of impacts, to **strengthen the evidence-based nature of EU policymaking**. Moreover, the adoption of the **One-In-One-Out rule** should be made compatible with the EU’s ambitious agenda, and this requires a focus exclusively limited to “unnecessary costs”, i.e. costs that can be eliminated without compromising regulatory benefits, for example through codification or digitalisation. The author also observes that the proposed changes in **stakeholder consultation** can bring positive results in terms of lifting the burden on respondents, but are unlikely to solve the **problem of representation**; and that new EU better regulation agenda requires a better legal framework and guidance on **experimental policymaking**, as well as the use of new technologies in regulation. Finally, given the amount of measures adopted under emergency over the past two years, the European Commission should consider carrying out **post-implementation reviews** of rules that bypassed the ex ante impact assessment, in line with existing best practices in some OECD countries.

Against this backdrop, the current proposals go in the right direction, but **fall short of realising the systemic transformation that the EU better regulation agenda needs**, in order to remain a leading example of regulatory management at the global level. Future actions should, i.a., **promote coherence between EU legislative initiatives and overarching goals** (e.g. the twin transition, resilience and sustainability); **make the Better Regulation Toolbox more accessible** to Commission services; and **create more visibility and interest around better regulation and the work of the RSB**.

1. INTRODUCTION: TEN TRENDS OVER TWO DECADES OF EU BETTER REGULATION

KEY FINDINGS

The EU better regulation strategy was launched two decades ago, and was accompanied by very high expectations. Since then, several features were introduced in terms of methodology, overall scope, and instruments, and today the EU can claim to have an extremely comprehensive better regulation system, as recognised *i.a.* by the OECD.

Among the key ongoing trends in the EU, most noteworthy are a transition from the use of cost-benefit analysis towards multi-criteria analysis; a move from pure evidence-based towards evidence-informed and also foresight-based policies; the completion of the policy cycle with the introduction *i.a.* of *ex post* evaluations and fitness checks; the emergence of a strong (but still insufficiently supported) regulatory oversight body; the growing role of the European Parliament in the better regulation domain; and the slow and partial development of the better regulation agenda in the Member States.

Until the early 2000s, the European Commission did not adopt a whole-of-government approach to better regulation. There had been developments in this domain, especially the introduction of the Business Impact Assessment (BIA) introduced by the UK presidency in 1986; the SLIM project (Simplification of the Legislation on the Internal Market); the BEST (Business Environment Simplification Task Force) in 1997; and the creation of the Business Test Panel in 1998 (Renda 2006). Such a proliferation of initiatives, however, had not produced the desired cultural shift in the Commission services. It was only with the 2001 White Paper on European Governance, and the creation of a high-level advisory group in charge of drafting of an “action plan for better regulation” (the so-called ‘Mandelkern Group’) that a comprehensive, horizontal system for ensuring the quality of EU legislation was eventually introduced. The action plan on “simplifying and improving the regulatory environment” was eventually adopted in June 2002. The action plan led to the introduction *i.a.* of a fully-fledged system for the *ex ante* impact assessment of major new Commission initiatives, and of minimum standards for stakeholder consultation.

Since then, and even more after 2005, **the Commission has embraced one of the most ambitious better regulation systems in the world.** However, the early days featured at once ambition, courage and *naïveté*. On the one hand, the Mandelkern group ended up recommending the adoption of a system that was largely focused on the use of cost-benefit analysis when choosing the most desirable (read: efficient) policy alternative in *ex ante* impact assessments. This was largely due to the influence of existing models such as the U.S. Regulatory Impact Analysis, adopted in 1981 during the Reagan Administration; and the UK experience, which after an initial emphasis on compliance costs for businesses had eventually embraced fully fledged cost-benefit analysis in 1998, during the Blair years (Renda 2006). Despite clarifying that the European system would focus on the economic, social and environmental impacts of major new proposed policy initiatives, ultimately the Secretariat General has prioritised and endorsed the use of cost-benefit analysis, a methodology that allows the centre-of-government to control peripheral agencies and departments (in the case of the European Commission, the Directorate-Generals) (Posner 2001). Such methodology, typically reliant on the monetisation of both benefits and costs, is considered as a good choice for subordinate regulation, such as implementing and delegated acts, but too limited and insufficiently attentive to distributional impacts

to be usefully applied to primary legislation. Following its introduction in 2003, the EU impact assessment system immediately faced the difficulty of adapting this methodological approach to ambitious far-reaching pieces of legislation such as the Services Directive, or the Policy Approach to Asylum among others; let alone non-binding policy initiatives such as White Papers or Communications (Renda 2018). However, policy leaders such as the European Commission's Vice President Günther Verheugen continued to raise expectations as to the system's ability to uncover the "full costs and benefits" of EU legislation.¹

This **methodology mismatch** was, however, not the only "original sin" of the European Commission when launching the better regulation agenda. The scope and ambition of the system soon clashed with the **lack of preparation and skills within Commission services**, as well as the **lack of a central oversight body** in charge of quality assurance functions such as scrutinising draft impact assessments. Moreover, the ability of the Secretariat General to persuade the services to embrace the new system proved limited, and this in turn led to an **enduring fragmentation** inside the European Commission, which some DGs (e.g. Enterprise, later GROW) keen on focusing on simplification and the reduction of regulatory costs; and other DGs (namely Environment, but also Justice among others) remaining very reluctant to embrace quantification in general, and cost-benefit analysis in particular. Even more importantly, the European Commission initially declared that the *ex ante* impact assessment system was being introduced mostly for "in-house learning" purposes, rather than to strengthen the transparency and quality of EU legislation. Such an underlying motivation supported the **choice not to publish draft impact assessments for consultation**, which clashed with established good practices in other parts of the world. However, one year later the European Commission, the European Parliament and the Council signed an Inter-Institutional Agreement on Better Lawmaking, in which they acknowledged the "positive contribution of impact assessments in improving the quality of Community legislation" and committed to applying impact assessment not only to Commission (major) proposals, but also to major amendments tabled during the ordinary legislative procedure by both the Parliament and the Council.² This, in turn, meant that the "in-house learning" purpose of impact assessments had been replaced by a focus on using impact assessments throughout the ordinary legislative procedure, to improve the quality of EU legislation.

Not surprisingly, in light of the above, the first years of implementation were rather painful, with impact assessments very often failing to fully serve their purpose inside EU institutions. Two decades down the road, several features of the EU better regulation system have changed, but many traces of the early days still remain.

At least ten main trends can be highlighted in this introductory section.

First, **the original emphasis on cost-benefit analysis has been gradually replaced by a prevailing orientation towards using multi-criteria analysis**, with the EU Better Regulation Guidelines specifying the need to test alternative options for specific impacts (e.g. impacts on SMEs), and finally culminating in the adoption of a Better Regulation Toolbox that counts, today as many as 69 different tools.³ Most of the Commission's impact assessments end up comparing policy options through scorecard approaches, in which options are ranked in terms of their ability to achieve specific objectives, as well as based on a quali-quantitative assessment of their associated costs. The cost-

¹ See Verheugen's speech at the UK Presidency's Better Regulation Conference, Edinburgh, Scotland, 23 September 2005. At https://www.parlement.com/id/vh44jlroz9zd/nieuws/verheugen_ontvouwt_plannen_voor_het

² Interinstitutional agreement on better law-making, OJ C 321, 31.12.2003, p. 1–5.

³ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox/better-regulation-toolbox-0_en

benefit analysis approach, which normally ends up with the calculation of the net present value of each option, is not common in current Commission practice.

Second, and relatedly, the Commission's approach to *ex ante* impact assessments has gradually shifted **from an initial orientation towards efficiency, towards coherence and effectiveness as key criteria for identifying the preferable policy options**. A distinctive trait of Commission impact assessments, in this respect, is the emphasis on the general and specific objectives of the intervention, and the appraisal of alternative policy options based on the extent to which options are likely to achieve those objectives. In principle, the "general objectives" should refer to the EU's medium- to long-term goals, or at least high-level sectoral goals (e.g. the objectives of the Green Deal; the Twin Transition; the Digital Decade targets; the Sustainable Development Goals, etc.): however, as will be recalled below, the extent to which this is really occurring is debatable.

Third, the emphasis on coherence and effectiveness has become even more visible after 2010, when the Commission announced for the first time its intention to **complete the policy cycle, by performing ex post evaluations** of existing legislation alongside the *ex ante* assessment of new proposals. The so-called "evaluate first" rule, regularly applied in the Commission, often obliges services to perform *ex post* evaluations "back to back" with the *ex ante* assessments of future legislation. *Ex post* evaluations, from a methodological perspective, are based on five criteria, i.e. effectiveness, efficiency, relevance, coherence and EU added value. However, the lack of systematic quantification of impacts (only partly explainable with the gradual departure from cost-benefit analysis) prevents the Commission from using *ex post* evaluations also as a means to verify the estimates made in the original impact assessment (Jones, forthcoming). This, in turn, leads the Commission to miss an important policy learning opportunity.

Fourth, the **menu of instruments in the hands of the European Commission has significantly expanded** in the past two decades. Besides *ex ante* assessments and *ex post* evaluations, the Commission has launched new types of measurements, moving from an analysis of the flow of legislation, towards comprehensive measurements of the stock. Most notable instruments in this respect are the baseline measurement of administrative burdens, launched in 2007 and covering the 43 EU directives considered to be most burdensome for businesses, and culminated in a reported (though highly criticised) 33% reduction of administrative burdens in 2012; the consultation on the TOP10 most burdensome pieces of EU legislation for small and medium-sized enterprises conducted between October and December 2021; the launch of "fitness checks" to review the *acquis* in specific policy sectors; and a limited number of "cumulative cost assessments" that looked at how different EU rules affected the costs of market operators in specific industrial sectors. This trend includes the **"one-in-one-out" rule**, a form of regulatory offsetting that is being piloted since the second half of 2021 (see below for details), which may lead the European Commission to establish a systematic link between the flow (i.e. new proposals) and the stock of EU legislation (i.e. existing legislation).

Fifth, the first two decades of EU better regulation have marked the gradual realisation of the extreme importance of oversight, and in particular the **need to establish a strong, independent regulatory oversight body**. While at the outset the Commission was reluctant to establish such a body, since 2007 a decision was made to appoint an Impact Assessment Board (IAB), which started examining draft impact assessments and requesting integrations or even rejecting drafts when insufficiently complete. The IAB was later replaced by a more independent **Regulatory Scrutiny Board (RSB)**, with seven members (four high-level Commission officials and three externally recruited), enhanced powers to accompany and monitor the policy cycle, yet unfortunately a very limited support staff. There is no doubt that the RSB has had a positive impact on the whole better regulation system in the European Commission, and the board has certainly performed its duties with utmost commitment and precision:

at the same time, its visibility and resources, as well as its ability to engage with the academic community and homologous bodies in Member States and outside the EU, have remained limited.

Sixth, the initial steps in the better regulation field were made by the Commission alone, and the **implementation of the 2003 inter-institutional agreement on better lawmaking was very slow and incomplete**. Since 2012, the European Parliament has set up a dedicated structure, later incorporated in the European Parliamentary Research Service, to increase its capacity in scrutinising legislative proposals, as well as performing ex post evaluations and even engaging in foresight. While this gradually led the EPRS to play an important role in the EU better regulation system, the original commitment to carry out the impact assessment of major amendments to Commission proposals (nested in the 2003 Inter-institutional agreement, and later renewed in the 2016 inter-institutional agreement on better lawmaking) was replaced by other activities, such as the assessment of European Commission's impact assessments, ex post evaluations and implementation assessments, as well as by a very prolific production of studies on the "EU added value" and the "Cost of non-Europe" in specific policy domains. Against this backdrop, the Council, despite some attempts, has not significantly stepped up its production of impact assessments or ex post evaluations in support of the legislative process. As a result, today Commission proposals are scrutinised along the way by the European Parliament, but as they are amended during the ordinary legislative procedure, their prospective impact is not updated to reflect the amendments tabled by the other institutions, let alone the ones achieved during trilogues.

Seventh, **the European Commission has remarkably expanded its use of stakeholder consultation throughout the years**. The strengthening of the minimum standards for consultation (extended i.a. to twelve weeks of duration), the publication of inception impact assessments subject to a short consultation period, and the introduction of a consultation process at the end of the Commission's work on legislative proposals multiplied the possibilities for stakeholders to have their voice heard during the period in which the Commission's work traditionally became akin to a "black box". The creation of the REFIT platform in 2015 institutionalised the representation of Member States and stakeholders in the better regulation system, leading to a new channel for tabling proposals to the Commission, especially in the context of the REFIT agenda, mostly devoted to legislative simplification and the reduction of administrative burdens. With the von der Leyen Commission, the REFIT platform was relabelled "Fit for Future" (F4F) platform, and its mandate was expanded beyond simplification, to encompass also opportunities provided by digitalisation and the innovation-friendliness and future-proofing of EU legislation.

Eighth, **the uptake of the better regulation agenda in Member States has been patchy and extremely heterogeneous**. This was confirmed by a project jointly launched by the OECD and the European Commission, which looked at developments in 15 Member States between 2008 and 2011.⁴ While the situation has not significantly changed since then, some Member States have taken action to strengthen their ability to monitor the stock and the flow of regulation. These notably include countries with a deep vocation towards the simplification of legislation and the reduction of regulatory costs, such as the Netherlands and Germany, who grouped with like-minded administrations to form a network called RegWatchEurope, mostly oriented at exchanging good practices on the reduction of administrative burdens and regulatory budgeting, and now counting eight participants (including the UK).⁵ It also includes a few Member States (in particular Denmark), which decided to abandon rigid forms of cost reduction to reorient their better regulation system towards the Sustainable

⁴ <https://www.oecd.org/gov/regulatory-policy/better-regulation-in-europe-the-eu-15-project.htm>

⁵ <https://www.regwatcheurope.eu/>

Development Goals (see box 1). In most Member States, however, the better regulation agenda is under-developed, or tied to very formalistic mechanisms such as the Standard Cost Model for the measurement of administrative burdens.

Ninth, the European Commission has tried to improve its ability to engage in anticipatory, as well as flexible and innovation-friendly regulation by **strengthening its focus on innovation, as well as adopting new initiatives in the domain of foresight and horizon scanning, as well as “future-proofing” policy options**. The emphasis on resilience brought about by the Covid-19 pandemic has also prompted the European Parliament to start considering new tools such as the stress-testing of legislation for resilience (Fernandes and Heflich 2022). However, the integration between foresight and tools such as impact assessment and ex post evaluation seems to be in its infancy. The Commission Joint Research Centre and the Directorate-General for Research and Innovation both engage in substantial foresight activities, but examples of how these scenarios have been incorporated in the baseline options of impact assessments are still lacking. Furthermore, the introduction of an “innovation principle” in the EU better regulation toolbox, including a focus on innovation impacts of legislation, innovation deals and foresight, led to disappointing results so far (Simonelli and Renda 2019).

Last, the **better regulation agenda has climbed some steps in the European Commission’s hierarchy, and since 2015 is firmly in the hands of a Vice President of the European Commission** with an *ad hoc* mandate (Frans Timmermans in the Juncker Commission, maroš Šefčovič in the von der Leyen one). This sends a strong signal on the need to ensure coherence across Commission services, and a general orientation of the better regulation agenda towards the achievement of the EU’s political goals. Needless to say, the pandemic and the recent new economic, security and geopolitical emergency caused by Russia’s invasion of Ukraine have made it very difficult for the EU better regulation agenda to keep the pace of fast-tracked, often almost instantaneous decisions that had to be adopted. The result of this unforeseen streak of emergencies was a gradual shift towards a narrative of resilience, as well as new goals such as strategic autonomy, which were the subject *i.a.* of the Strategic Foresight Report adopted by the Commission last year (Cagnin *et al.* 2021).

As a result of these trends, today the EU can claim to have adopted an extremely ambitious, comprehensive better regulation system, which stands out as **one of the most sophisticated in the world**. At the same time, the system still suffers from a general proliferation of overall goals, with too many “north stars” resulting in a lack of clear direction. Moreover, **most of the trends described above**, from the greater political salience to the focus on innovation, the involvement of other institutions and Member States, and the opening up of the better regulation agenda to stakeholders, **appear far from complete**. There seems to be at least partial awareness of this issue in the European Commission, as testified by the launch of several new initiatives in the latest Communication on Better Regulation, released in April 2021.

2. CURRENT INITIATIVES TO IMPROVE THE BETTER REGULATION SYSTEM

KEY FINDINGS

- The full implementation of the Inter-Institutional Agreement on Better Law-Making may be easier if the EU better regulation agenda completed its shift away from the use of cost-benefit analysis as key criterion to select the preferred option
- Despite the Commission's stated intention and announced initiatives, the full mainstreaming of sustainability (i.a. the SDGs) and resilience in the better regulation agenda would require much more radical innovation at all phases of the policy cycle.
- The adoption of the One-In-One-Out rule can be compatible with the EU's ambitious agenda only if it focuses exclusively on unnecessary costs.
- The proposed changes in stakeholder consultation can bring positive results in terms of lifting the burden on respondents, but are unlikely to solve the problem of representation.
- A better legal framework and guidance are needed on experimental policymaking as well as the use of new technologies in regulation.
- The Commission should consider carrying out post-implementation reviews of rules that bypassed the ex ante impact assessment stage due to situations of urgency or emergency.

Since the inception of the von der Leyen Commission, action was announced on each of the ten main areas mentioned in the previous section. The Communication "Joining Forces to Make Better Laws", in defining the Commission's better regulation system as "one of the most advanced regulatory approaches in the world", outlines a series of possible reforms, which would potentially improve on almost all the trends and challenges outlined above, in the introductory section; and would contribute to the new goals emerged over the past two years, including the need to ensure that policies support the recovery and resilience of the EU, as well as the twin (green and digital) transition.

2.1. Reviving the Inter-institutional Agreement on Better Law-Making

The Commission reiterated its call to the European Parliament and the Council to "live up to the commitments in the Interinstitutional Agreement on Better Law-Making", and thereby assess and document the anticipated impacts of their amendments. This step, which as already mentioned can be traced back to the 2003 Inter-Institutional Agreement, may require a stronger "political dialogue". However, after two decades and in view of the emerging trends in the EU better regulation agenda, it is difficult to imagine that the realisation of the original commitments may be achieved anytime soon; at the same time, **whether living up to these commitments would be a meaningful step is increasingly questionable today**, and may warrant a renewed reflection, if not a fresh start. The reasons for this assessment include the following:

- As already mentioned, while the European Parliament has made substantial progress in its handling of better regulation tools, this has not gone in the direction of a systematic ex ante appraisal of the prospective impact of amendments. The reason for this would need to be

investigated more in-depth inside EU institutions: from the perspective of an external observer, there seem to be at least two important reasons why the Parliament took a different direction. The first is due to the timing of amendments: for important legislative files, different Parliamentary committees work on their amendments in parallel, and only at the end of the Parliament's work plenary amendments are selected and voted upon: this leaves **very little time to process such amendments**, which result from political compromise, through a structured impact assessment. The second reason is that the political work of the Parliament very often responds to **criteria and rationales that do not lend themselves easily to the technical application of assessment frameworks such as cost-benefit analysis**: accordingly, **a clearer shift towards multi-criteria analysis based on the extent to which proposals and amendments help the EU achieve its long-term goals may help the Parliament and the Commission "speak the same language"** when working on legislative dossiers. Such shift, as explained in more depth below, is currently far from evident, despite the Commission's stated intention to mainstream the Sustainable Development Goals in its better regulation agenda.

- The **capacity to carry out impact assessments in the Council is still very limited**, and this too may be related to two main reasons. First, progress on better regulation in Member States is still patchy and often focusing on a subset of the tools used by the European Commission (e.g. cost reduction), and this provides little support to Ministers when discussing the prospective impacts of legislative proposals (very few Member States, notably Germany, provide delegates with reports on the prospective impacts of proposals under discussion). Second, the political compromises struck in the Council often follow a very different logic than the one the Commission adopts in impact assessments, and this is far from surprising: as a matter of fact, it is very difficult to find examples of countries in which the impact assessment system was successfully implemented in parliaments, or at the highest level of government.
- The practice of addressing competing stances on important files in trilogues, often dictated by the need to speed up the legislative process, hardly fits a scenario in which all institutions work simultaneously on impact assessments. And the traditional slogan in the better regulation domain, *i.e.* that impact assessments should inform political decisions without replacing them, does not necessarily lead to imposing such commitment on all institutions. This, of course, does not mean that institutions such as the European Parliament or the Council should not motivate or justify why they are tabling specific amendments: but **whether they should do it by adapting to the Commission's system, or whether the latter should adapt to the ultimate logic of EU decision-making** and inform inter-institutional dialogues, is an issue that is seldom addressed in the political debate.

2.2. Mainstreaming resilience and sustainability

These considerations point at another area, where the Commission identifies possible improvements: the mainstreaming of resilience and sustainability in the better regulation agenda. More specifically, the Commission wishes to ensure that "every legislative proposal contributes to the 2030 sustainable development agenda"; and to "ensure that the 'do no significant harm' principle is applied across all policies in line with the European Green Deal oath". At the same time, the Commission aims at incorporating resilience in the better regulation system by strengthening the use of tools such as strategic foresight.

These commitments are to be welcomed, as they align the better regulation agenda with the long-term goals of the EU, and notably with the need for a greener, more digital and resilient society. However, at least two main problems may be worthy of enhanced attention. First, the **alignment and mainstreaming announced by the European Commission require that a clear “north star” is established**: at the moment, and also as a result of the proposed changes, the better regulation agenda would need to serve a multitude of purposes, sometimes leaning towards the SDGs, sometimes towards the twin (just) transition, sometimes towards resilience, at times towards maximising net benefits, and sometimes towards reducing regulatory cost. The proliferation of (often incompatible) goals does not contribute to clarity, and may dilute the coherence and effectiveness goals that appear to be central in the EU better regulation agenda. This problem is evident also in other domains of EU legislation, such as the emerging industrial strategy (Renda 2021).

Second, **if such a paradigm shift is to be achieved, then the reforms needed to implement it in practice would need to be much more ambitious** and far-reaching than the ones proposed in the Communication on “Joining Forces to make better laws”. A good example is Denmark’s announced shift towards the SDGs in its better regulation agenda, reported in Box 1.

Box 1: The Danish better regulation agenda and the SDGs

In Denmark, following the new guidelines issued on 3 June 2021, each ministry, in proposing new government bills, must carry out a screening in relation to any consequences for the SDGs and the 169 sub-goals. The Ministry of Finance supports the ministries in the screening process. If a bill is deemed to have relevant and significant consequences on the SDGs, a separate ad hoc section must be included in the general comments on the bill. The assessment of the consequences for the SDGs consists of three steps, which are the starting point for all impact assessments: an initial assessment (screening), a scoping exercise, and a final assessment and dissemination.

Step 1 - Initial assessment (screening). A screening is carried out to assess whether the bill concerns issues that are covered by one or more of the SDGs. It can e.g. This is a bill that concerns health and well-being (SDG 3), education (SDG 4) or the climate (SDG 13). In their contributions to the legislative program, the line ministries state their immediate bid for whether the individual bills relate to themes covered by the world goals, and whether the proposals are deemed to have relevant and significant consequences for the achievement of the world goals. The Ministry of Finance reviews the contributions to the bill and, if necessary, enters into a dialogue with the line ministries regarding their assessment of which bills are immediately considered to have relevant and significant consequences for the fulfilment of the global goals. When the line ministries - possibly after dialogue with Ministry of Finance - have identified the bills that are immediately considered to have consequences for the achievement of the world goals, a more detailed assessment of the consequences of these bills must be made (step 2).

Step 2 – Scoping. The Ministry of Foreign Affairs conducts a more detailed assessment of the bills that relate to areas covered by the SDGs, with a view to selecting the bills that have significant and relevant consequences for the fulfilment of the world goals in a Danish context. It depends on a concrete assessment whether the consequences of a bill must be considered significant and relevant. In assessing materiality, particular emphasis should be placed on the extent of the consequences. The greater the consequences, the more important it is to assess the impacts. In relation to relevance, it is noted that several sub-goals state objectives that Denmark already meets, and which today are primarily of relevance to developing countries. The Leave no one behind agenda can be highlighted if it is deemed to be relevant and significant in connection with the assessment of a sub-goal. Finally, there may be concrete grounds for assessing the consequences for global development and developing countries if they can be assessed without major difficulties and assessed as relevant and significant. In the assessment, the ministry should uncover the immediate consequences for the sub-goals (in the short term). The long-term consequences can be elucidated if they can be assessed without major difficulties, and it is possible to give a reliable picture of this. Importantly, only the direct consequences of a bill must be analysed. The indirect consequences can be elucidated if they can be assessed without major difficulties.

If the line ministry concludes that a bill has significant and relevant consequences for the achievement of the SDGs, an actual impact assessment must be prepared, which is included in the comments on the bill (step 3).

Step 3 - Final assessment and dissemination (assessment). In bills that have significant and relevant consequences for the achievement of the SDGs, a separate point in this regard is included in the general comments on the bill. The point must briefly describe how the bill is expected to affect the relevant sub-objective or objectives. Normally, the analysis is qualitative, but where possible a quantitative assessment is also included.

The impact assessment of the SDGs is placed as the last item before the mandatory impact assessments (ie before the item on economic impact and implementation impact on the public sector). The title of the section is entitled “Consequences for the achievement of the UN’s world goals”. It is noted that in some areas there will be a thematic coincidence between the SDGs and existing points in the bill. Bills contain e.g. already today mandatory points on climate consequences and environmental and natural consequences, just as, where relevant, a separate point on gender equality consequences is already included today. In such cases, the section on the SDGs may be limited to a remark that the bill is assessed to have positive or negative consequences for the fulfilment of a specified sub-goal, as well as a reference to the item where the topic is discussed in more detail.

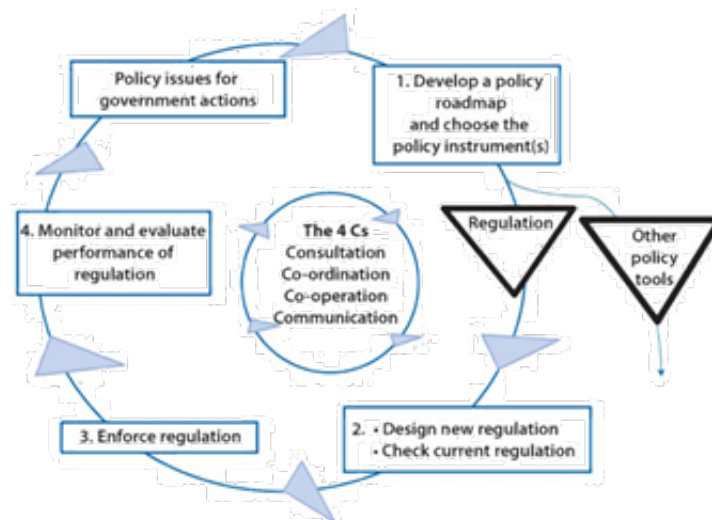
If a bill is not considered to have significant and relevant consequences, this must not be stated in the comments.

Source: <https://www.retsinformation.dk/eli/retsinfo/2021/9409>,
<https://modst.dk/media/19528/vejledning-om-konsekvensanalyser-maj-2005-afsnit-3-2-7-1-og-7-2-revideret-i-2018.pdf>.

2.2.1. Mainstreaming sustainability in impact assessment

It can be useful to imagine how full mainstreaming of the SDGs could work in the European Commission’s impact assessment system. Figure 1 below shows a stylised description of the regulatory governance cycle developed by the OECD (2011). In the cycle, administrations wishing to introduce new regulation perform an *ex ante* regulatory impact analysis, comparing alternative policy options for the achievement of a given objective, or the solution to a given market or regulatory failure; in carrying out this activity, administrations often are asked to carry out stakeholder consultation, commission external studies, and consult other institutions (e.g. competition authorities) to obtain an opinion on specific impacts. The administration is then called to regularly monitor the impacts of the regulation at hand and evaluating *ex post* whether there is a need for reform. In this constant cycle of *ex ante* RIA and *ex post* evaluation, administrations must coordinate, cooperate, consult stakeholders and other institutions, and communicate internally and to the public the process and results of their activities.

Figure 1 – The “regulatory governance cycle”



Source: [OECD \(2011\)](#)

The changes that will be needed in order to fully complete the mainstreaming include the following.

- During the *agenda-setting* phase, regulatory oversight bodies such as the RSB and other institutions in charge of legislative planning should assess the legislative proposals that have a significant potential impact on sustainability and its related sub-goals. They could also use the information on the urgency of tackling specific aspects of sustainability and the possible inter-linkages between sustainability indicators, in order to potentially flag the most systemically important proposals. When presenting the legislative work plan for the following period, the European Commission could develop a “heat map”, showing the sustainability areas and indicators that are most affected by the proposals to be tabled. The heat map can also become a communication tool, as well as a monitoring tool, which can flag areas that are less directly addressed by the action of the government.
- In *ex ante impact assessments*, the following changes would be needed:
 - The problem definition should not only reflect the need to address market failures or regulatory failures, but rather the need to achieve one or more of the targets through proactive policy action in specific areas. Ideally, impact assessments should identify the SDGs that are critically affected by the problem identified, as well as those indirectly affected, and justify intervention on the basis of a dynamic, prospective analysis of how the identified problem would evolve absent government intervention. **A so-called “heat map” of the targets that are directly/indirectly and positively/negatively affected by the problem identified would be a very valuable instrument** in the early phases of the *ex ante* impact assessment process.
 - When defining the *general objectives* of the proposal, the Commission services must refer to the **SDGs that will be primarily affected, and the ones that will be only marginally affected, by the proposed policy**. Ideally, every new legislative proposal should be justified in terms of its contribution to the SDG agenda. The specific objectives should then refer to the individual targets that will be affected by the proposal, whenever the need to achieve those targets is the underlying motivation for the initiative.
 - Any *public consultation* conducted on draft impact assessments should contain **specific questions related to the targets**, to help the administration collect more accurate and complete information on the possible impacts of alternative policy options. This implies, i.e. that a dedicated section is included in the consultation document, covering the possible impact of the proposed action, and calling for evidence on such impact.
 - The methodology currently used to *compare alternative policy options* would need significant **adjustments to reflect the renewed focus on long-term goals**. This involves in particular the transition from standard cost-benefit analysis, which mostly aims at economic efficiency, towards multi-criteria analysis based in adequate indicators and methods. Here too, different levels of ambition are possible. A relatively minor change would be that the Commission maintains its analysis of the costs and benefits of alternative policy options, but then ranks them also based on their effectiveness in contributing to the SDGs; more ambitious changes would imply the use of a more structured multi-criteria analysis, a structured set of weights to be given to different positive or negative policy impacts; or directly a non-linear social welfare function, which reflects the need to account for inequality and welfare distribution when dealing with policy evaluation, and could be used at least as a sensitivity analysis tool. Another possibility would consist in applying the same “SDG Synergies” approach used to prioritise specific goals to assess the impact of alternative policy options on the level of urgency,

interlinkages and overall distance from the frontier. This approach could also offer an interesting perspective for the European Parliament and the Council, in choosing among alternatives.

- The choice of *monitoring and evaluation indicators* would need to be more directly related to the **expected progress towards specified targets**. As a general rule, the Monitoring and Evaluation section of the impact assessment should always contain a reference to sustainability indicators: this would be logical and coherent, since the objectives of the proposed policy measure also refer to the sustainability agenda.
- The ultimate stage of using better regulation as a tool of policy coherence for sustainable development would be reached if *annual or six-monthly reporting on the state of advancement towards sustainability goals* was used as a **benchmark to prioritise certain impacts over others** and guide the administration in navigating uncertainty whenever trade-offs emerge among different policy goals.

2.2.2. A new frontier: incorporating resilience and well-being in the regulatory cycle

Ensuring that resilience features more prominently in the better regulation agenda would require another set of reforms, which are sketched below.

Step 1. Further strengthen the use of foresight, science advice and communication. As mentioned, the von der Leyen Commission has brought together foresight and better regulation under the portfolio of the Vice-President for Interinstitutional Relations and Foresight. This is a welcome move that should, however, be complemented with measures aimed at making more use of foresight and horizon scanning results in various steps of the better regulation system. However, **translating the findings of foresight exercises into daily policy practice is far from straightforward**, and is complicated by the fact that investing in resilience “before the event” is unlikely to be a popular decision with citizens: collective bounded rationality typically leads to “hyperbolic discounting”, or the systematic downplaying of low-probability events. This tendency, already strong in most governments, is further exacerbated by deteriorating trust in science (already before the pandemic), and also by the fact that policies are crafted and adopted in the attempt to minimize costs, and thereby often eliminate any redundancy or excess capacity in the name of efficiency (see below). Governments that speak the “less is more” language, just as businesses that pursue cost advantages in global supply chains, are unlikely to take into account resilience to a full extent. One way to promote resilience-oriented investments would be to strengthen science-based advice to policymakers, both “before” and “after the event”. In many legal systems, including the EU, existing bodies devoted to scientific advice have proven to be unable to help policymakers when the pandemic started to emerge.

Step 2. Stress-test policies periodically to check their resilience. The need to embed stress-testing of policies in the policy cycle, in the form of regular interim evaluations, was already felt by policymakers in the aftermath of the financial crisis of 2007-2008, and later with the Fukushima nuclear disaster in 2011. Stress-testing of policies should, in the post-pandemic age, be made a key step in the ongoing monitoring and evaluation of the legislative and regulatory stock (Fernandes and Heflich 2022). This implies that, rather than merely evaluating the prospective impacts of new policies (or spending programmes) at the proposal stage, and performing ex post evaluation a few years down the road, governments perform **interim evaluations that incorporate resilience-related questions during intermediate steps of the policy cycle**. Alternatively, a more systemic approach to testing the resilience of entire policy domains of a critical nature (e.g. financial markets; the agrifood chain) could

be adopted. Such an approach (which would echo the early experience of the European Commission with the so-called “fitness checks”, which however did not incorporate resilience-oriented analysis) could perhaps provide a clearer view of the robustness of entire legislative *corpora*. As of today, the practice of policy evaluation and regulatory oversight does not incorporate, in any country, suitable instruments for the analysis of systemic resilience. Future research and public sector training should be oriented towards using enhanced simulation (e.g. “digital twins”; general equilibrium models) to perform resilience testing of existing rules and policies. These implies **a rather new set of skills, which future policymakers will need to develop**. The European Parliament has launched a study on the possible stress-testing of EU policies for resilience, which may lead to interesting developments (Fernandes and Heflich 2022).

Step 3. Embed resilience (or the lack thereof) in the problem definition phase. The theory and practice of policy evaluation has traditionally emphasised problem definition as one of the most important phases of the whole better regulation toolkit, and in particular the *ex ante* impact assessment phase. However, when governments define the problem and thereby justify legislation or regulation, they are typically constrained by the need to identify either a market failure, or a regulatory failure. In other words, the mainstream approach to *ex ante* impact analysis does not contemplate acting to improve systemic resilience. This, coupled with the absence of foresight and stress-testing techniques, leaves policymakers practically without arguments backing any proactive legislative proposal aimed at remedying a lack of resilience observed in the system, or in a specific part thereof. Addressing this problem requires that better regulation guidelines recommend that governments contemplate acting to address a resilience-related problem. Importantly, resilience-related problems will often clash with the overarching criterion currently used to decide on the desirability of a given public policy, *i.e.* economic efficiency in the sense of the maximisation of net benefits (see next step). The quest for resilience-oriented public policy can become even more frustrating in the presence of badly designed “regulatory offsetting” mechanisms, or regulatory budgeting, especially since these mechanisms oblige administrations to identify one or more regulatory provisions to repeal or drastically simplify, whenever they want to propose new regulation. Such an approach, unless carefully designed, can encourage governments to slim down the regulatory stock to the essential, potentially removing resilience-enhancing provisions. **As the European Commission recently announced that it will start adopting regulatory offsetting (“one-in-one-out”), as well as foresight, the compatibility of such an approach with a resilience-oriented mindset will be put to the test.**

Step 4. Mainstream resilience in multi-criteria analysis. Alongside sustainability goals, future multi-criteria assessment of alternative policy options may have to incorporate specific resilience-oriented criteria, perhaps drawing on the work of the JRC on the resilience dashboard. This, too, may require a departure from standard cost-benefit analysis (CBA): difficulties in translating risk into monetary values often leads to an under-representation of risk in CBA frameworks; **CBA, in its most classical form, ignores distributional impacts**, which places decisionmakers in a position of virtual indifference between solutions that enhance resilience by catering for all potential systemic weaknesses, and solutions that focus on concentrating benefits in the hands of the few; and finally, several other reasons stand between the use of CBA and the objective of resilience, including methodological individualism, as well as the equation of income with well-being. More generally, the use of CBA is incompatible with resilience since it is fundamentally a “bottom-up” exercise, in which benefits from public policies can only be justified as such when they are expressed, either implicitly or explicitly, in terms of the willingness to pay of citizens for impacts triggered by policy reform.

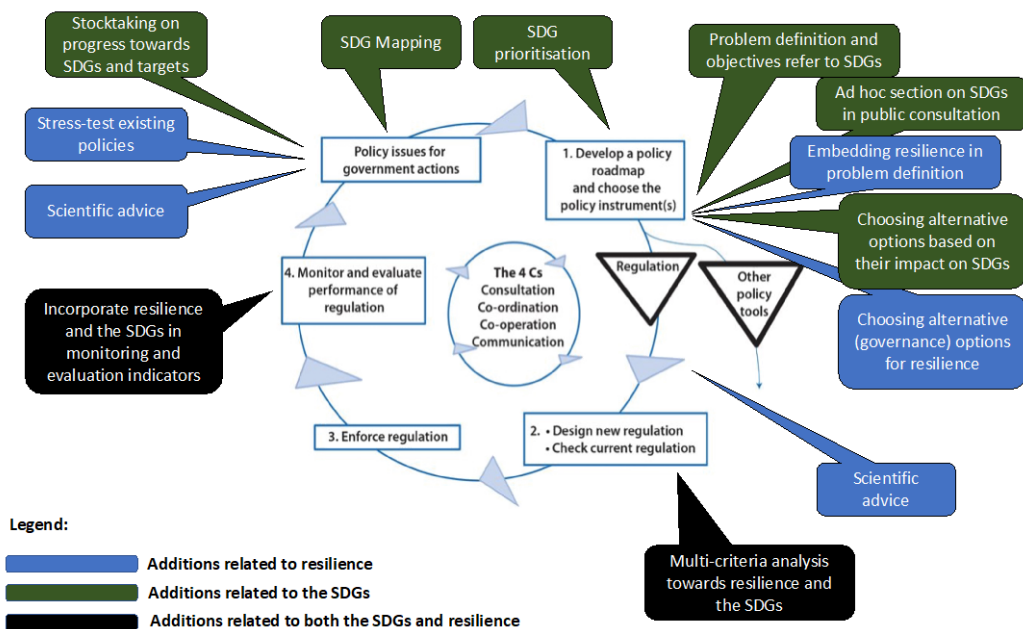
Step 5. Consider resilience in the selection and analysis of policy alternatives. One lesson learnt from the first two years of COVID-19 pandemic is that decentralised, redundant governance models appear to

be more able to absorb shocks than more centralised ones. Observing the different resilience characteristics of alternative modes of governance is not common in the daily practice of policymakers. However, **shifting towards a more resilience-oriented approach might make the consideration of alternative (more decentralised) governance options more compelling.** Guidance on this aspect is currently missing in the Better Regulation Toolbox, and not a feature of the mix of competencies requested for the members of the regulatory Scrutiny Board.

2.2.3. Towards a renewed policy cycle?

Figure 2 below summarises the way in which the steps described above would contribute to the EU policy cycle, using the traditional view of the regulatory governance cycle adopted by the OECD. When reading the Communication on “Joining Forces to Make Better Law”, it emerges that the Commission has made important steps towards introducing some of these new features, but several other steps are still missing. These include, broadly speaking, the definition of sustainability and resilience as motivations for intervening (agenda-setting); and the repurposing of assessment, monitoring and evaluation tools related to both the stock and the flow of legislation, to embrace a “beyond CBA” approach that closely echoes the Commission’s current move towards a “beyond GDP” approach in public policymaking.

Figure 2 – A resilience- and sustainability-oriented regulatory governance cycle



Source. Author’s elaboration on [OECD \(2011\)](#)

2.3. Simplifying EU legislation and the “one-in-one-out” rule

Another proposed set of reforms announced by the European Commission include the adoption of measures to ensure the reduction of regulatory costs, and the management of the costs associated with the whole regulatory stock. These include the empowerment of the EU SME envoy to help screen EU initiatives and identify where the impact on SMEs requires special attention; the launch of the Fit for Future Platform, and most notably the announcement of the piloting of a regulatory budgeting system known as “one-in-one-out” (OIOO). While the impact of the first two measures is hard to assess, and only time and implementation will provide evidence that they were helpful, some comments can be provided on the OIOO system.

The European Commission (the institutions that initiates new legislative and regulatory proposals) has traditionally been very reluctant to introduce such a rule (Renda et al. 2019). This is understandable, also since the Commission has limited control of what its co-legislators, the Parliament and the Council, do in terms of introducing costly amendments on its proposals; and since regulatory costs can also depend on the way in which EU Member States transpose and implement legislation (especially in the case of so-called gold-plating or double banking practices). In 2019, however, the newly elected President von der Leyen, announced her intention to introduce the OIOO principle “to cut red tape”.⁶ The Communication on “Joining Forces to Make Better Laws” (European Commission 2021) announced that the Commission will “strengthen the burden reduction effort further through a ‘one in, one out’ approach whereby, when introducing new burdens, we systematically and proactively seek to reduce burdens imposed by existing legislation” (European Commission 2021). The OIOO approach will now complement the REFIT program by helping the European Commission pay special attention to cumulative costs for individuals and businesses in a given policy area and by covering new initiatives.

The OIOO approach presented by the Commission is still rather vague, but the following features are already defined: for every new legislative initiative generating administrative burdens, the Commission services will need to identify one or more provisions to modify or repeal, such that the cost increase would be offset. The system allows no trading: offsets normally have to be found in the same policy area; however, if it is not possible to find an ‘out’ in the same area, the Commission can decide to take the ‘out’ from a different policy area). Moreover, the OIOO rule will be not applied mechanically, and will allow for some flexibility. The Commission states that “if an ‘out’ cannot be identified in the same year’s work programme, it will be reported in the next year”. In general, the Commission will report on the annual implementation of the OIOO approach in its Annual Burden Survey, towards the end of the solar year. Moreover, if there is political will to regulate, but it is not possible to identify an offset in the same area, the Commission can decide to exempt the regulation from the OIOO approach.

While the features of the system place it in line with the best international practice, there is reason to believe that the Commission could have made additional efforts to ensure that the OIOO rule is not implemented to the detriment of its ambitious regulatory agenda, especially considering the Green Deal and the Digital Decade programmes. In a recent report, I have explained in detail how **emphasis on “unnecessary costs”** (i.e. costs that can be reduced without impinging on the benefits, for example through digitalization, codification, consolidation of legislation) **would be absolutely necessary to accommodate a rule that, otherwise, could work against the legitimate ambition of the Commission to regulate for the twin transition.** Such focus, however, remains only in the title of the

⁶ See the inaugural speech of Ursula Von der Leyen, 10 September 2019, at https://europa.eu/rapid/press-release_IP-19-5542_en.htm.

relevant section in the Communication “Join Forces to Make Better Laws”; the text does not make any reference to this concept, and this appears to be a major issue for a rule that is surrounded by fierce criticism especially among civil society organisations.

2.4. Improving consultation and communication with stakeholders

One important area in which the Commission wants to improve the better regulation agenda is stakeholder consultation. Evidence of “consultation fatigue”, especially with the proliferation of new proposals tabled by the von der Leyen Commission during its first two years in office, led the Commission to attempt to simplify the procedures, and streamline its communication channels with stakeholders. Key initiatives include the consolidation of public consultations on the same initiative into a single ‘call for evidence’, to be published on the “Have Your Say” web portal with a 12-week deadline for responding. Calls for evidence will bring together two previously separate consultation instruments, i.e. the consultation on roadmaps/inception impact assessments, and public consultations based on questionnaires. The Commission also announced that, in case of “back to back” ex post evaluations and ex ante impact assessments, it plans to consult only once, thereby reducing the burden for respondents. To further ease such burden, it will try to improve the structure, content and language of questionnaires, striving for an optimal balance between open and closed questions. Respondents will also see their submission explicitly considered by the Commission, in a summary report that will be published within eight weeks from the end of the consultation period. Finally, the Commission announced more transparency-oriented measures, including openly available repositories of models such as MIDAS, developed by the JRC.

All in all, **these appear to be rather minor adjustments to a system that, as already explained, is already extremely comprehensive. However, the Commission could have taken more ambitious steps** to explain how it plans to collect data and evidence and use it in impact assessments and ex post evaluations: at the moment, no explicit data quality standards apply in the European Commission, even if important work seems to be underway at Eurostat to support the use of data in EU policymaking. Understanding what data were used, and how, is key for stakeholders to be able to validate the findings of the Commission. Moreover, the hope is that the calls for evidence will be published on draft documents (the roadmaps, or inception IAs), which are sufficiently complete, so that the main elements of the impact assessments are already sufficiently visible. Otherwise, it would be very complicated for stakeholders to meaningfully comment on an emerging initiative. In practice, what has happened is that stakeholders end up submitting their opinions to communications of White Papers, even before they comment on roadmaps or inception IAs. At the same time, since 2015 consultation is also available after the adoption of the Commission proposal: the usefulness of this additional step, potentially very important if coordinated with the work of the European Parliament, has not been subject to sufficient debate over the past years.

Finally, **the proposed adjustments to the stakeholder consultation process, while welcome and meaningful, will not necessarily address the issue of under- or over-representation of specific stakeholders.** The Commission should, in this respect, explain what strategy it will follow to ensure that those organisations and communities that are minoritised and systematically under-represented “have their say” on an equal footing with powerful business associations and political groups. Simply promoting the Have Your Say portal may not be sufficient in this respect; at a minimum, the Commission should explain how it plans to avoid what often appears as an “availability bias”, i.e. the tendency to consider the average results of all submissions, without adequately distinguishing

between specific groups, and considering the different resources and ability of specific groups to make their voice heard. Besides, it may consider using existing and innovative means of consulting citizens and specific groups, from focus groups to dedicated workshops and even interactive digital tools that aim at promoting empathy across citizens or societal groups.

2.5. What is missing?

The proposed initiatives appear guided by an intention to fine-tune, rather than fundamentally overhaul, the better regulation agenda in the European Commission. In many respects, this is logical as the perception inside the Commission (and as explicitly stated in the Communication) is that the system is already a world-class example of better regulation agenda. At the same time, there are at least four dimensions (in addition to the ones mentioned above) that the proposed initiatives do not fully tackle, and which would warrant attention in the coming years.

First, the Commission should explicitly tackle the issue of **decisions adopted under emergency**, by adopting measures that go beyond the mere presentation of the rationale for intervention within 3 months from adoption. The problem has become more entrenched in the EU better regulation agenda, and started even before the Covid-19 pandemic, for example with the adoption of *ad hoc* simplified formats during the negotiations for the multiannual financial framework 2021-2027. With the invasion of Ukraine, and the still enduring pandemic, the cases in which the Commission will be faced with emergency decisions to adopt may become almost a "new normal". One possible solution could be the introduction of the possibility, for the Commission, to expedite a post-implementation review (PIR) of adopted decisions, which would replace the ex ante impact assessment but would still enable the possibility to gather evidence, at a slightly later stage, related to the prospective impact of recently adopted legislative initiatives. Such a possibility already existing in a fistful of OECD countries including *i.a.* Australia, where a PIR is required for major regulations with substantial impact on the economy, within two years from the implementation, whenever (i) the regulation has been introduced, removed, or significantly changed without an ex ante impact assessment; (ii) the Prime Minister granted an exemption from the impact assessment requirements when the regulation was first introduced; or (iii) an agency sufficiently diverges from best practices in their preparation of an ex ante impact assessment (OECD 2018).

Second, **the Commission should clarify how it intends to use scientific advice and data in support of regulation**. Besides foresight, already addressed in the previous sections, the many scientific advice mechanisms available to the European Commission, coupled with enhanced data availability from Eurostat, could significantly aid the drafting of comprehensive ex ante impact assessment. At the moment, however, the Joint Research Centre, I.D.E.A., the Science Advice for Policy by European Academies (SAPEA) and the Group of Scientific Advisors could provide important inputs into the shaping of the EU agenda, and some of them are increasingly geared towards serving that role in the context of the EU better regulation agenda. Taking stock of how these groups and bodies have performed during the pandemic would be a good starting point for devising solutions in this important domain. In addition, important inputs such as the Foresight Report (this year, dedicated to Strategic Autonomy) and the institution of a Strategic Compass in the domains of security and defence can further contribute to the definition of the problem, as well as of the general and specific objectives of specific new legislative initiatives.

Third, despite the plethora of tools available to Commission services in the Toolbox, **the use of experimental policymaking in the form of regulatory sandboxes and similar instruments remain orphan of a general framework at the EU level**, which would allow Member States to engage in experimental policymaking. As it stands, Tool #69 on “Emerging Methods and Policy Instruments”, however laudable, risks providing only a theoretical opportunity for Commission policymakers, rooted in the possibility to include provisions for sandboxes in the legislative texts, rather than engaging in experimentation themselves, or relying on a structured process of experimentation in Member States while proposals are still in the making.

Fourth, and relatedly, **the cases in which the Commission will have to rely on regulatory approaches that make use of technological solutions and specific technical standardisation processes are likely to become more recurrent in the practice of regulation**. Solutions such as RegTech and SupTech options, as well as reliance on algorithmic inspections (in legislation such as the Digital Services Act or the Digital Markets Act, and the Artificial intelligence Act) require guidance and *ad hoc* skills. Moreover, complementing principles-based legislation with technical standards is becoming almost inevitable in the EU digital *acquis*, as seen in the latest yearly Commission annual Work Programme on Standardisation for 2022, which features important initiatives related to the Data Act (regulation of smart contracts) and the AI Act (on Auditing of AI systems). Guidance on this aspect, and on the pros and cons of adopting more or less prescriptive legislation, to be coupled with delegated acts and/or technical standardisation, would be welcome.

3. CONCLUDING REMARKS: THE WAY FORWARD

KEY FINDINGS

The EU better regulation system is certainly very sophisticated. However, the recently announced initiatives of the European Commission in the field of better regulation appear insufficiently ambitious, since they:

- Insufficiently mainstream sustainability and resilience in the better regulation system;
- Lack clarity on the focus of the One-In-One-Out rule and its relation with the EU's proactive regulatory agenda;
- Do not take steps to make the Better Regulation Toolbox more accessible to Commission services;
- Do not introduce a clear legal framework for experimental policymaking;
- Do not provide guidance on how data and new technologies can be used in regulation, monitoring and oversight.
- Do not create more visibility and interest around better regulation and the work of the RSB. One possible change going forward, to be subject to further discussion, could be the appointment of a Chair of the RSB recruited from outside the Commission.

This Study has explored the main ongoing trends and recent initiatives in the EU better regulation agenda. While consolidated and well-established, the agenda would require more courageous steps to ensure that it becomes the engine of the realisation of the EU's long-term vision of resilience and sustainability, rather than a technical exercise disconnected from the policy priorities. At the moment, despite clear evidence of steps in the direction of coherence with EU priorities, the agenda remains halfway between systems originally conceived for purely technical decisions (the United States), and a system that backs ambitious policies and regulatory agendas with evidence and tools for monitoring and oversight.

The main recommendations that emerge from this analysis can be summarised as follows:

- *Insufficient mainstreaming of resilience and sustainability.* The Commission should make additional steps to fully mainstream its long-term goals into the ex ante impact assessment and ex post evaluation tools. This requires a series of changes, which may not necessarily be incremental, but may also mark a clearer change of direction for an institution willing to move away from a growth-based logic, towards a new compass for policymaking. The future of the Inter-institutional Agreement on Better Lawmaking may be linked to a clearer shift towards multi-criteria analysis focused on EU long-term goals, which may greatly help the Parliament and the Council in their contribution to the shaping of new policies.
- *Lack of clarity on One-In-One-Out.* It is essential that the European Commission provides guidance to its services on the notion of unnecessary costs, in a way that reconciles the legitimate goal of reducing costs with the EU priorities, linked to sustainability and resilience.
- *Improve accessibility of the Better Regulation Toolbox.* The toolbox is becoming longer and more complex at every update, to the extent that its user-friendliness for services can be questioned. Focusing more clearly on key decisions on how to approach specific problems and turning the

toolbox into an interactive, user-friendly guide, may offer services an easier and more informative access to this very valuable repository of tools.

- *Experimental regulation is still largely undefined and lacks a legal framework.* A general experimentation clause, coupled with a suitable governance for defining the key features of experiments, coordinating national initiatives and sharing best practices, could greatly benefit the practice of adaptive regulation in Europe.
- *Foresight does not yet translate into a coherent approach to the baseline.* The move towards more integrated foresight is as challenging as it is laudable. The key additional steps would be to define ways for Commission services to integrate strategic foresight (i) in the definition of objectives in ex ante impact assessments; (ii) in the definition of the baseline, by inspiring common or at least coherent baseline options across the Commission; and (iii) in the approach to the “relevance” criterion in ex post evaluations.
- There is a need for *greater guidance and oversight of how data and new technologies* (e.g. AI) can be used in support of better regulation, in particular for what concerns new approaches to regulation (e.g. SupTech) and the possible role of technical standards as complements to regulation.
- The establishment of the Regulatory Scrutiny Board has certainly been a positive step, with a small but cohesive group of experts performing their function with great commitment. That said, the RSB has not been able to achieve the level of visibility and engagement with the outside community (in particular, academia) that similar bodies (e.g. OIRA in the United States) have managed to achieve over the past decades. Its ability of “speaking truth to power”, as well as tabling innovative approaches to known and unknown problems, has remained constrained by its institutional design, which in turn condemned the better regulation agenda, despite its crucial importance, to remain rather hidden in the debate on the governance of the EU. One possibility to step up the importance and contribution of the RSB, in addition to hiring technical support staff, could be the *appointment of one of the external members (normally, academics or expert practitioners) as chair of the RSB*, and tilt the internal balance towards a majority (4-3) of external experts.

Table 1 below contains a summary of the outstanding problems in the EU better regulation agenda, the solutions proposed by the Commission, and the recommendations formulated in this Study.

Table 1: Summary of main issues, solutions and recommendations

Key issue/need	Commission's proposed initiatives	Recommendations in this paper
<i>Fully implementing the Inter-Institutional Agreement on Better Law-Making</i>	<ul style="list-style-type: none"> - Commission urged the Parliament and Council to document the effect of their amendments in terms of anticipated impacts. - Member States should provide the Commission with feedback on its estimates of the benefits and costs associated with specific pieces of legislation after they have implemented them. 	<ul style="list-style-type: none"> - Departing from cost-benefit analysis may facilitate the dialogue between the three institutions involved in the ordinary legislative procedure - Member States could usefully contribute to a dialogue based on sustainability and resilience, by offering analysis related to territorial impacts
<i>Embracing the EU sustainability agenda</i>	<ul style="list-style-type: none"> - Commission will identify relevant SDGs for each proposal and examine how the initiative will support their achievement. - Links to the SDGs will be included throughout evaluations and impact assessments. 	<ul style="list-style-type: none"> - Measure and prioritise SDGs (or related goals, e.g. Green Deal targets) at the agenda-setting phase; and identify synergies between SDGs/targets - Embed SDGs in the problem definition and in the general and specific objectives - Publish a "heat map" on SDGs to the inception IA - Specific modules and questions on the SDGs to stakeholder consultation - Compare alternative policy options in terms of their impact on the SDGs (multi-criteria analysis) - Monitor and evaluate adopted pieces of legislation in terms of their progress on the relevant SDGs
<i>Embracing the resilience agenda</i>	<ul style="list-style-type: none"> - Integrating Strategic Foresight in policymaking - Future-proofing EU policies through strategic and science-based foresight 	<ul style="list-style-type: none"> - Strengthen and integrate scientific advice - Foresight and horizon scanning results should contribute to a common or at least coherent baseline for all Commission proposals - List the need to strengthen resilience as a motivation to intervene with policy measures - Embed resilience in the problem definition - Compare options, where relevant, in terms of their impacts on indicators of resilience (multi-criteria analysis)

		<ul style="list-style-type: none"> - Stress-test policies based on their resilience (“relevance” criterion in interim evaluations) - Monitor and evaluate the impacts of implemented policies with the aid of the resilience dashboard
<i>Expansion of tools to simplify the regulatory stock and reduce administrative burdens</i>	<ul style="list-style-type: none"> - Launch of the “one-in-one-out” system - Fit For Future platform 	<ul style="list-style-type: none"> - Need to focus the “one-in-one-out” system on unnecessary costs
<i>Lack of impact assessment for decisions adopted under emergency</i>	<ul style="list-style-type: none"> - Publish the rationale within 3 months 	<ul style="list-style-type: none"> - A post-implementation review within two years of implementation
<i>Focusing on innovation, regulatory sandboxes and foresight</i>	<ul style="list-style-type: none"> - Fit for Future platform - New Tool#69 in the Toolbox 	<ul style="list-style-type: none"> - A clear legal framework and guidance to Member States on experimental policymaking - Guidance on how to regulate by using new technologies (e.g. SupTech) - The Toolbox should become an interactive atlas, easier to consult for civil servants
<i>Stronger regulatory oversight board</i>	None	<ul style="list-style-type: none"> - Consider appointing a highly reputed Chair that is external to the Commission services

Source: Author

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This in-depth analysis, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, looks at the past and current developments in the EU better regulation agenda. The author finds that, despite important achievements that put the EU at the forefront in this field, many of the most ambitious reforms announced over the past few years are still far from complete. The study offers several policy recommendations.

PE 734.766
IP/C/JURI/IC/2022-019

Print	ISBN 978-92-846-9658-1		doi: 10.2861/093195		QA-08-22-253-EN-C
PDF	ISBN 978-92-846-9657-4		doi:10.2861/141760		QA-08-22-253-EN-N