

EDIT SOÓS\*

## Better regulation in the European Union\*\*

### I. Introduction

The European Union is founded on the rule of law and relies on law to ensure that its policies and priorities are realised in the Member States. The effective application, implementation and enforcement of the law is a responsibility entrusted to the Commission. It has been a political priority of the European Commission and part of the Commission's guide for better law-making since the 1990s.

The uniform application of EU law throughout all Member States is essential for the success of the European Union. Clear legal drafting and accessible texts contribute to legal certainty and better application in the Member States. If legislation is clear and accessible, it can be implemented effectively, citizens and economic actors can more easily understand their rights and obligations and the judiciary can enforce them.<sup>1</sup>

However, the European Union has frequently been criticised for producing excessive and badly written regulation and for meddling in the lives of citizens or businesses with too many and too detailed rules. Therefore, for a long time the European Commission, the European Parliament, and the Council have been engaged in improving the quality of law-making, reviewing existing laws, and updating them to meet the citizens' expectations. In the academic debate the process is defined better regulation or better law-making.

Better regulation – as identified in the discourse of the European Union – is a set of activities to promote evidence-based policy, policy-making. Priority of the Better regulation is to assist politicians in making informed decisions. A politics based on evidence is more likely to deliver more effective policies and safeguard the legitimacy of the decisions. Better regulation processes can help to strengthen the citizens' trust and confidence in European institutions, improve transparency, and citizens' participation in EU legislation.

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<sup>1</sup> European Commission: Communication from the Commission: EU law: Better results through better application. OJ C 18, 19. 1. 2017. p. 13.

The political will to improve the quality of law-making, review existing laws and update them where necessary is shared by the European Parliament, the Council and the Commission. The Interinstitutional Agreements on Better Law-Making of 1998, 2003, and 2016 confirm the three institutions' commitment to ensure the quality of regulation and to make sure it responds to the needs of stakeholders. Interinstitutional agreements are special contributions to the Better Legislation Agenda, in its various meanings and appellations (e.g. Better Regulation, Smart Regulation, Better Law-Making).

The objective of this study is to examine the most significant structural changes affecting the regulatory reform of the Union's legislation and to analyse different interpretations of Better regulation. Understanding the quality of legislation different Commissions have different views on some of the concrete requirements that it entails. Each political leadership has its own specific agenda in relation to Better regulation. Over time Better regulation objectives continuously promoted the development of the Better Regulation Agenda, several features have become entrenched in the EU institutional framework. The study provides an evidence-based evaluation of the reform's current situation and reviews the Juncker Commission measures to achieve better law-making, to produce higher quality legislative proposals and to ensure that existing rules deliver the important economic and societal goals more effectively.

In methodological terms, besides the traditional legal-normative approach the empirical work is based on the findings from interviews and meetings with 'better regulation' support staff of the Commission, and targeted consultation meetings with the administrative secretariats of the Committee of the Regions. The research focuses on the collection of information relating to the legal framework and operation of the better regulation system.

## *II. Historical overview*

The notion of 'Better Regulation' within the European Union is about designing EU policies and laws in the most efficient and effective way possible. Regulation is generally crucial for achieving the aims of public policy, while high quality regulation is to appraise new policies where priorities should be given to improving the regulatory framework, simplifying the Community acquis and applying the principles of subsidiarity and proportionality.

The difference between Better regulation and other public policies, like agriculture and energy or consumer protection policy is that better regulation is supposed to be systematic in its goals and activities in the case of each policy sector considered. Better regulation addresses the whole policy cycle and has its own distinctive processes, actors, problems, interinstitutional agreements and policy instruments, like impact assessment, legislative evaluation and consultation.

Better regulation is a complex objective. In the legislative process the European Commission has a key role in better regulation. Better regulation tools assist, first of all, the College of Commissioners in their decision-making by offering fact-based evidence that supports their political decisions on what the most effective and efficient ways of addressing problems are. Proposals rarely emerge from the legislative process unchanged. Commission proposals are for consideration and adoption by the co-legislators: amendments are made by

the European Parliament and the Council. Once agreed, the legal act is transposed nationally or regionally by the Member States.

Since 1985, the European Community and the Member States set a goal to simplify regulation as a precondition for the completion of the European single market.<sup>2</sup> However, it was not until the mid-1990s that the quest for better regulation and for a series of initiatives to improve regulatory quality was to take a more systematic form at both national and European levels. Coordinated action by the Community and the various countries was necessary to improve the 'regulatory environment', from the point of view of regulation to its actual application.

In 1998, the European Parliament, the Council, and the Commission signed an Interinstitutional Agreement on common guidelines for the quality of drafting of Community Legislation. The general principles highlighted that 'Community legislative acts shall be drafted clearly, simply and precisely'.<sup>3</sup> To implement these principles the Member States decided to establish a High Level Advisory Group on regulatory quality, which published the Final Report on 13 November 2001. The Mandelkern Report defined 'better regulation' as the policy of seeking to improve and simplify the regulatory conditions. Regulation should be used only when necessary and be appropriate and proportionate to the task.<sup>4</sup> The Mandelkern Report states that outside the areas where it has been granted exclusive competencies (e.g. commercial policy, international trade, customs union) regulatory action at European level must comply with the principles of subsidiarity and proportionality (regulation principle) in the EU.

To improve the quality of regulation the Mandelkern Report identified important elements to improve the European regulatory framework. The Report distinguished policy options, impact assessment, consultation, simplification, access to legislation, structures and implementation of EU rules which should be enforceable at European level and should obey the principle of subsidiarity.<sup>5</sup> In view of experience of various administrations, there are four key elements that seem to be essential for the chosen structure to be effective.

1. Strong political support. Programmes to improve the quality of regulation must be underpinned by strong political support to deliver the desired outcome.
2. Support from the central government. The best results are often achieved with the support and participation of the head of government, at a personal and/or at least institutional level.

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<sup>2</sup> First attention for quality and quantity of EU legislation, and particularly of Commission proposals, was triggered by the Delors' Commission (1985-1994) activism.

<sup>3</sup> European Parliament, Council, Commission: Interinstitutional Agreement of 22 December 1998 on Common Guidelines for the quality of drafting of Community legislation. OJ C 73, 17. 3. 1999. p. 1.

<sup>4</sup> High Level Advisory Group on regulatory quality, chaired by Dieudonné Mandelkern. Final Report on 13 November 2001. p. 18.

<sup>5</sup> High Level Advisory Group on regulatory quality, chaired by Dieudonné Mandelkern. Final Report on 13 November 2001. p. 4.

3. A horizontal approach. It is important to involve the whole government in the process; sectoral approaches limited to individual ministers or Directorates-General will not achieve optimum results and a coherent, horizontal approach is needed.
4. A strategic approach. A close link with the strategic planning of the government/administration is of real advantage.<sup>6</sup>

Based on the work of the Mandelkern group several documents have been prepared and significant progress has been made since 2001. The political environment of the EU's Better Regulation Agenda is framed by the White Paper on European Governance from 2001 which addressed how the Union uses the powers given to it by its citizens. It promoted greater openness, accountability and responsibility of all those involved in policy-making. The aim was to bring the Union closer to its citizens in order to make more effective and relevant policies.

Following the White Paper, the Commission published three Communications to promote better law-making. The first launched the impact assessment tool to improve the quality and coherence of the policy-making process.<sup>7</sup> The second established principles and standards to promote a culture of dialogue and stakeholder participation.<sup>8</sup> The third presented an action plan to simplify and improve the regulatory environment.<sup>9</sup> These actions came into force in 2003 and together they form the basis of the better regulation policy in place today.

Under the Prodi Commission (1999-2004) the Better law-making agenda has defined primacy of accountability and accessibility behind legislative action and the need for more transparent, equitable and disputational consultation. The principles of effectiveness and proportionality were put forward as the main elements of better law-making in the 'Communication on European Governance: Better law-making' (2002).<sup>10</sup> The Commission communication emphasized the necessity to concentrate on policy priorities through the application of the principles of subsidiarity and proportionality (legislate less), the need for improved consultations, and a need for clearer, simpler and more accessible legislation (act better).

The European institutions nevertheless restated their commitment to the full application of the 1998 Agreement and concluded that the improvement of the pre-legislative consultation process and more frequent use of impact assessments would help to achieve better quality

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<sup>6</sup> High Level Advisory Group on regulatory quality, chaired by Dieudonné Mandelkern. Final Report on 13 November 2001. p. 57.

<sup>7</sup> Commission of the European Communities: Communication from the Commission on Impact Assessment, Brussels, COM (2002) 276 final, Brussels, 5. 6. 2002.

<sup>8</sup> Commission of the European Communities: Communication from the Commission. Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission. COM (2002) 704 final, Brussels, 11. 12. 2002.

<sup>9</sup> Commission of the European Communities: Communication from the Commission: Action plan. Simplifying and improving the regulatory environment. COM (2002) 278 final, Brussels, 5. 6. 2002.

<sup>10</sup> Commission of the European Communities: Communication from the Commission: European Governance: Better law-making. COM (2002) 275 final, Brussels, 5. 6. 2002. p. 1.

law.<sup>11</sup> The Commission adopted a suite of regulatory reform measures in 2002, including impact assessment.<sup>12</sup> The Commission launched integrated method for impact assessment (extended in 2005) as a tool to improve the quality and coherence of the policy development process. Impact assessments are applied to the major initiatives presented by the Commission in its Annual Policy Strategy or its Work Programme, be they either regulatory proposals or legislative and policy initiatives having an economic, social and environmental impact.<sup>13</sup>

Novelty of the Interinstitutional Agreement on Better Law-Making, agreed in December 2003, is the emphasis put on stronger coordination between the three institutions of their legislative activity throughout the entire EU legislative process.<sup>14</sup> The three Institutions emphasise the need for Member States to ensure that Community law is properly transposed into national law within the prescribed deadlines; and they deem such transposition to be essential to the consistent and effective application of that legislation by the courts, the administrations, members of the public and economic and social operators.

The better regulation agenda has led to a significant change in how the Commission makes policy and proposes to regulate. Stakeholder consultations and impact assessments became essential parts of the policy-making process. They have increased transparency and accountability, and promoted evidence-based policy-making. This system is considered to be good practice within the EU and is supporting decision-making within the EU institutions.<sup>15</sup> The Commission has simplified much existing legislation and has made significant progress in reducing administrative burdens e.g. by simplifying statistics form-filling or by modernizing the customs code to facilitate electronic exchange of information.

Despite the results achieved, representatives of the industry, business, and local and regional authorities continued to complain about too many complex, poorly developed, and inconsistent policies. As a result of the criticism, the Barroso Commission (2004-2014) believed that it is the time to improve regulatory framework of the Union. Better regulation must become smart regulation and be further embedded in the Commission's working culture. The Commission Communication on Smart Regulation in October 2010 constitutes the formal passing from the old Better Regulation Agenda to the new Smart Regulation Agenda.<sup>16</sup> The Smart Regulation refers to 3 main themes:

First, smart regulation is about the whole policy cycle – from the design of a piece of legislation, to implementation, enforcement, evaluation and revision. The smart regulation builds on the strengths of the impact assessment system for new legislation. Second, smart

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<sup>11</sup> WELCH, JANE: *Better Law-making*. In: Stephen Weatherill (ed.): *Better Regulation*. Hart Publishing, London, 2007. p. 315.

<sup>12</sup> Commission of the European Communities: *Communication from the Commission on Impact Assessment*, Brussels, COM (2002) 276 final, Brussels, 5. 6. 2002. p. 9.

<sup>13</sup> European Commission: *Impact Assessment Guidelines*, SEC (2005) 791, 15 June 2005. p. 4.

<sup>14</sup> European Parliament, Council, Commission. *Interinstitutional Agreement on better law-making*. OJ C 321, Brussels, 31. 12. 2003

<sup>15</sup> European Court of Auditors: *Impact Assessments in the EU institutions: do they support decision-making?* Special report N. 3/2010. p. 48.

<sup>16</sup> European Commission: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Smart Regulation in the European Union*. COM (2010) 543 final, Brussels, 8. 10. 2010.

regulation remains a shared responsibility of the European institutions and of Member States. These actors have made varied progress, and the Commission will continue to work with them to ensure that the agenda is actively pursued by all. Third, the views of those most affected by regulation have a key role to play in smart regulation. The Commission has made great strides in opening its policy-making to stakeholders.<sup>17</sup>

In sum, Better regulation responds to the need to re-establish the credibility and legitimacy of effective regulation in the EU and recognizes the need for sound management of the regulatory state.<sup>18</sup>

The interinstitutional agreements (1998, 2003) on better law-making comprise an essential part of better regulation, but the general overview underlines that the set goals and activities completed have not been implemented consistently. Under the previous Commissions the EU has introduced a comprehensive set of better regulation tools and procedures. These important changes are already delivering results, but the Juncker Commission considered that further actions were needed, because the measures taken were not in-depth and satisfactory, and were not able to trigger radical changes. One of the reasons that only rarely do the co-legislators begin their consideration of a proposal with a proper review of the Commission's impact assessment. And particularly in the final stages of negotiations, deals are found without taking full account of the direct and indirect impacts that compromise amendments may trigger. Sometimes there was hesitation to agree on measures that would reduce administrative burdens. (For example, a proposal for a standard VAT declaration has been diluted and blocked by the Member States in the Council, putting at risk € 15 billion in savings.) The Member States also often went beyond what is strictly required by legislation when they implemented EU law at national level ('gold-plating'), causing unnecessary costs for businesses and public authorities.<sup>19</sup>

Between 2007 and 2014, the Commission produced over 700 impact assessments, in the same period, the European Parliament assessed the impact of around 20 of its amendments, while the Council assessed none. At the same time the number of proposals for regulations and directives made by the Commission for adoption by the European Parliament and the Council under the ordinary legislative procedure declined from 159 in 2011 to 48 in 2015. Since 2000, the number of directives and regulations adopted by Parliament and the Council under the ordinary legislative procedure has varied annually, with the highest level of legislative output in 2009 (141). In 2015, the first year of the Juncker Commission, 57 pieces of legislation were adopted.<sup>20</sup>

The overview of the better regulation process also raised criticisms among academics. Some authors considered the interinstitutional agreement as an essential part of better

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<sup>17</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Smart Regulation in the European Union. COM (2010) 543 final, Brussels, 8. 10. 2010. p. 3.

<sup>18</sup> WIENER, JONATHAN B.: *Better Regulation in Europe*. Duke Law School Working Paper Series, (65)2002. p. 12.

<sup>19</sup> Member States may pay insufficient attention to the correct interpretation and application of the law, or be late with implementation work and the communication of national transposition measures.

<sup>20</sup> EUR-Lex. Legal Acts – Statistics. Available at: <https://eur-lex.europa.eu/statistics/2018/commission-proposals-statistics.html>

regulation, but regretted that it remained only partially implemented.<sup>21</sup> Critical opinions of other scholars claim that impact assessment ought to be a strong tool for decision-making, but in practice it may be used exclusively to support a given policy choice. Impact assessment is not a decisional tool, but its role can be to lay out the evidence-based case for a certain policy preference of the Commission.<sup>22</sup> Another weakness of the EU better regulation system is the lack of a real involvement of member states. While some national governments have started to adopt sophisticated better regulation tools (in particular, the United Kingdom), and other have made significant steps in the development of methods for the assessment of regulatory costs (the Netherlands, Germany, Sweden and the Czech Republic), in most member states, despite the official adoption of better regulation tools, implementation remains poor or non-existent.<sup>23</sup> This is not merely a problem for national governments, but also for the EU level.

### *III. New start in the development of the better regulation agenda. The Juncker Commission (2014–2019)*

A better regulation provides a framework to deliver evidence-based policy-making. Since the start of its mandate, the Juncker Commission had made clear to break with the past and change the way the Commission worked and set its policies. The new Commission adopted a more comprehensive approach to policy and law-making in its Better Regulation Agenda on 19 May 2015.

To promote further progress towards the deepening of evidence-based policy-making better regulation was taken at the core of the work of the new Commission. The streamlined annual work programmes reflect the Commissions' priorities for the upcoming year. In 2015 it included the proposal to update and strengthen the common understanding with the European Parliament and the Council in relation to better regulation – the 'Proposal for an inter-institutional agreement on better law-making'.<sup>24</sup> The new Interinstitutional Agreement on Better Law-Making, signed on 13 April 2016,<sup>25</sup> reflects the necessity for better coordination and transparency during the whole legislative cycle. Furthermore, in the Communication 'Better Regulation: Delivering better results

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<sup>21</sup> RADAELLI, CLAUDIO M. – SCHREFLER, LORNA S.: *Contribution to the Better Regulation Debate*. European Journal of Risk Regulation. Cambridge University Press, September 2015. pp. 357–358.

<sup>22</sup> DUNLOP, CLAIRE A. – RADAELLI, CLAUDIO M.: *Impact Assessment in the European Union: Lessons from a Research Project*. European Journal of Risk Regulation. March 2015. p. 4.

<sup>23</sup> RENDA, ANDREA: *Too good to be true? A quick assessment of the European Commission's new Better Regulation Package*. Centre for European Policy Studies, 2015 No. 108 / May 2015. p. 8.

<sup>24</sup> Commission Work Programme 2015. A New Start. ANNEX 1. ANNEX to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. COM (2014) 910 final, Strasbourg, 16.12.2014

<sup>25</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making. Interinstitutional Agreement of 13 April 2016 on Better Law-Making. OJ L 123, 12 May 2016.

for a stronger Union' the Commission underpinned the importance of continuous and open dialogues about application, implementation and enforcement of EU law.<sup>26</sup>

The reforms were part of the President's political priority for democratic change.<sup>27</sup> The Commission renewed the better regulation principles, tools, and procedures. The new integrated Guidelines on Better Regulation (2017)<sup>28</sup> and associated Better Regulation Toolbox<sup>29</sup> were created with the aim to legislate better and to work together better so that citizens, businesses, public authorities, and society as a whole could see the benefits of the EU legislation.

The Juncker Commission defined the need for simpler and more focused decision-making. The Commission was convinced that opening up policy-making could make the EU more transparent and accountable towards citizens and stakeholders about what worked well and what needed to change and whether the Commission's activity met the scheduled policy objectives. That is why the goal of the Commission was to strengthen the external feedback and external scrutiny at every stage of the policy-making process – from initiating proposals through the adoption of legislation and its implementation. The Commission's annual work programme in 2018 highlighted that *'2018 will be a decisive year for Europe. It must be about delivering concrete results for our citizens. We will make sure that what we deliver is simple, easy to understand and adds value so that citizens can feel the difference in their daily lives'*.<sup>30</sup>

#### *IV. Better tools for better public policies*

Good regulation starts with good planning and preparation, and covers the initial consideration of legislative proposal within the Commission, which institution is responsible for organising the supporting processes. In the European Commission the different policy teams<sup>31</sup> for individual initiatives are directly tasked with carrying out accompanying assessment.

<sup>26</sup> European Commission: Communication from the Commission to the European Parliament, the European Council and the Council: Better Regulation: Delivering better results for a stronger Union. COM (2016) 615 final, Brussels, 14. 9. 2016.

<sup>27</sup> *Priority 10: A union of democratic change*. In: Juncker, Jean-Claude: A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission. Opening Statement in the European Parliament Plenary Session. Strasbourg, 15 July 2014. p. 4.

<sup>28</sup> European Commission: Commission staff Working Document. Better Regulation Guidelines. Brussels, 7 July 2017 SWD (2017) 350.

<sup>29</sup> Guidelines set out the mandatory requirements and obligations for each step in the policy cycle, while the Toolbox provides additional guidance and advice which is not binding unless expressly stated to be so.

<sup>30</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Commission Work Programme 2018. An agenda for a more united, stronger and more democratic Europe. COM (2017) 650 final, Strasbourg, 24. 10. 2017. p. 13.

<sup>31</sup> It is estimated that between 150 and 280 full-time equivalent staffs are deployed on better-regulation-related activities and supported by external contractors providing services amounting to between EUR 10 million to EUR 37 million annually. In: European Commission: Taking Stock of the Commission's Better Regulation Agenda. p. 40.



During the Juncker Commission the ‘Better regulation’ was underpinned with three complementary and closely related pillars: the impact assessment, evaluation, and stakeholder consultation. (Table 1) For each phase of the policy cycle, there was a number of better regulation tools and procedures applied, underpinned with better regulation principles.

### 1. Evaluation

Table 1

*Better regulation activities (2015–2018)*

Years	2015	2016	2017	2018	Total
Public consultations	105	120	112	80	417
Impact assessments	29	60	53	76	218
Evaluations	53	65	74	67	259

Source: European Commission: Annual work programmes

Since 2003, the Commission has prepared 975 impact assessments in support of its proposals. The Commission has completed 688 evaluations and run 704 open public consultations since 2010. Independent quality control of the Commission's impact assessments has been in place inside of the Commission since the end of 2007.<sup>32</sup>

Better Regulation Guidelines highlight that the objective of the preparation process is to improve the quality of the Commission's legislative proposals. The new Commission wanted to complement the evaluation of individual pieces of legislation with more comprehensive policy assessment. Accordingly, the new Better Regulation Guidelines<sup>33</sup> replaced the previous standalone guidelines which had addressed impact assessment, evaluation, and implementation separately, and also included new guidance on planning and stakeholder consultation.

The planning and preparation phase is supported by ex-post evaluation of existing legislation<sup>34</sup> and impact assessments of new legislative initiatives, nevertheless there is a

<sup>32</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Better Regulation: Delivering better results for a stronger Union. COM (2016) 615 final, Brussels, 14.9.2016. p. 7.

<sup>33</sup> European Commission: Commission staff Working Document. Better Regulation Guidelines. SWD (2017) 350, Brussels, 7 July 2017. p. 5.

<sup>34</sup> The EU policies also need to be reviewed. Over time, well designed legislation may become out of date, no longer useful, relevant, or serving its purpose.

close interaction between these two tools.<sup>35</sup> Both examine how a problem should be addressed to achieve the objectives taking account of costs and benefits. Both are based on an integrated approach that addresses impacts across the environmental, social and economic pillars of sustainable development.

The Juncker Commission's better regulation agenda is based on the 'evaluate first' principle. In 2015 the better regulation agenda introduced a common approach, under which the Commission first assessed legislation before proposing a revision. Between 2015 and 2018 the Commission carried out 259 evaluations, for today it provides more than 100 evaluations a year.<sup>36</sup>

A particular category of evaluations is the 'fitness check' tool. Since 2010 it has identified overlaps and inconsistencies, addressed how several related individual legislative acts have jointly contributed to a common set of policy objectives. They assist the European Parliament and the Council during the legislative procedure through examining the Commission's impact assessments at the outset of the legislative procedure.

## *2. Impact assessment*

The Juncker Commission's commitment to a better regulation was built on the progress already made by the previous Commissions' arrangements, notwithstanding the new Commission's intension was to achieve more in the field of strengthening the planning and preparation.

The preliminary assessment gives a brief overview of the initiative. Impact assessment should cover the existence, scale, and consequences of a problem, define the sectors affected, and provide alternative solutions, using both qualitative and quantitative analyses. They also became an important communication tool for the evidence underpinning the choices made.<sup>37</sup>

With the aim to strengthen internal quality control, on 1 July 2015 the Commission established the Regulatory Scrutiny Board (RSB),<sup>38</sup> an independent body with wider autonomy than its predecessor, the Impact Assessment Board. The tasks of the Board were extended, its scrutiny activity covers not just the quality of all impact assessments, but also major evaluations and 'fitness checks' of existing legislation. (Table 2 shows the 2016 activity in comparison with earlier years.)

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<sup>35</sup> Regulatory Scrutiny Board. Annual Report 2018. Brussels, 2018. p. 39.

<sup>36</sup> While in 2016 evaluations were carried out for about half of the impact assessments, in 2017 this figure rose to over 70% and in 2018 reached 78%. In 2016, some 50% of impact assessments respected the 'evaluate first' principle. The level rose to 75% in 2017, and in 2018 it consolidated at 78%.

<sup>37</sup> The Commission has no clear guidance on when an impact assessment should be prepared. According to paragraph 13 of the Interinstitutional Agreement on better law-making (2016) the the priority areas are presented in the annual work programmes.

<sup>38</sup> The Chair and three regular members come from within the Commission. The three remaining members are recruited from outside the Commission. The Board acts independently and prepares its opinions autonomously. They share collective responsibility for the decisions of the Board.

Table 2

*Impact assessment and evaluation review by Regulatory Scrutiny Board*

Name of the board	Scrutiny year	Impact assessment	Evaluation
Impact Assessment Board (2006–)	2014	25	n. d.
	2015	29	n. d.
Regulatory Scrutiny Board (2016–)	2016	60	7
	2017	53	17
	2018	76	11

Source: RSB Annual Report 2016. p. 12.; RSB Annual Report 2018. p. 9.

During the Juncker Commission the tendency was that fewer impact assessments got negative opinions. The Board scrutinised 29 cases in 2015, while in 2016 the number of cases increased to 60. The rejection rate of impact assessments declined significantly in 2018. The negative assessments on initial submissions dropped from over 40% to less than 30%, while there is an increase in the number of positive opinions.

Table 3

*The number of impact assessments scrutinised*

	Positive (%)	Positive with reservation (%)	Negative (%)	Cases
2016	38	22	41	60
2017	23	33	43	53
2018	30	42	28	76

Source: Regulatory Scrutiny Board – Annual Reports

### 3. Public consultation

A key aim of the Commission was to promote the participation of Europeans and civil society in policy-making activities. The Commission's intension was to develop policies, based on full transparency, taking into account the views of those affected by the legislation. Building on the existing minimum standards for consultations stemming from EU treaties and obligations<sup>39</sup>, the paragraph 19 of the new interinstitutional agreement

<sup>39</sup> According to Article 11(2) of the TEU, all EU institutions are required to maintain an open, transparent, and regular dialogue with stakeholders.

has strengthened since 2016 that the Commission would, before adopting a proposal, conduct public consultation in an open and transparent way.<sup>40</sup>

The Juncker Commission introduced a requirement for public consultations for all impact assessments and evaluations. In order to find the harmonious balance between better regulation and public participation and to improve EU legislation the Commission moved towards widening the stakeholder input. Public consultation not only allows stakeholders – public authorities, enterprises, business organisations, social partners, non-governmental organisations, and individuals – to express their views on the scope, priorities, and added value of new legislative proposals, but also for the evaluation of existing regulation before proposing changes. The Commission to gather evidence to prepare its new initiatives or evaluate existing policies uses a set of new tools from open and targeted public consultations to public internet-based consultations. The number of responses varies markedly depending on the nature of the topic addressed.

- The public consultation on discontinuing seasonal changes of time and repealing Directive 2000/84/EC generated around 4.6 million replies (consultation period: 4 July 2018 – 16 August 2018).
- The European Commission’s public consultation on the ‘fitness check’ for EU Birds and Habitats Directives (EU Nature legislation) closed on 26 of July 2015. The questionnaire was made available online in 23 official languages, starting on 30 April 2015.<sup>41</sup>
- The public consultation on modernising and simplifying the Common Agricultural Policy (CAP) was launched on 2 February and closed on the 2 May 2017. It was open to all interested citizens and organised through a questionnaire available on DG AGRI website.

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<sup>40</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making. Interinstitutional Agreement of 13 April 2016 on Better Law-Making. OJ L 123, 12 May 2016. p. 5.

<sup>41</sup> European Commission: Proposal for a Directive of the European Parliament and the Council discontinuing seasonal changes of time and repealing Directive 2000/84/EC. COM(2018) 639 final. Brussels, 12. 9. 2018. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. Commission staff working document. Fitness check of the EU Nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. Brussels, 16. 12. 2016.

Table 4  
*Modernising and Simplifying the Common Agricultural Policy, 2017 (CAP)*

Type of respondent	Number of replies	Distribution of the replies
an individual in personal capacity	312,880	96.89%
in professional capacity or on behalf of an organisation	10,032	3.11%
Total	322,912	100.00%

Source: Summary of the results of public consultation<sup>42</sup>

In sum, generally the result is that progress made in consultation during the Juncker Commission and an increasing transparency of policy-making process allows views and opinions to be expressed. However, among stakeholders there is still a relatively low level of knowledge about the opportunities to participate in the consultations which draws attention to the need for developing more systematic engagement with stakeholders in decision-making.

Table 5  
*Average number of replies to public consultations*

2015	461
2016	565
2017	1838
2018	2091

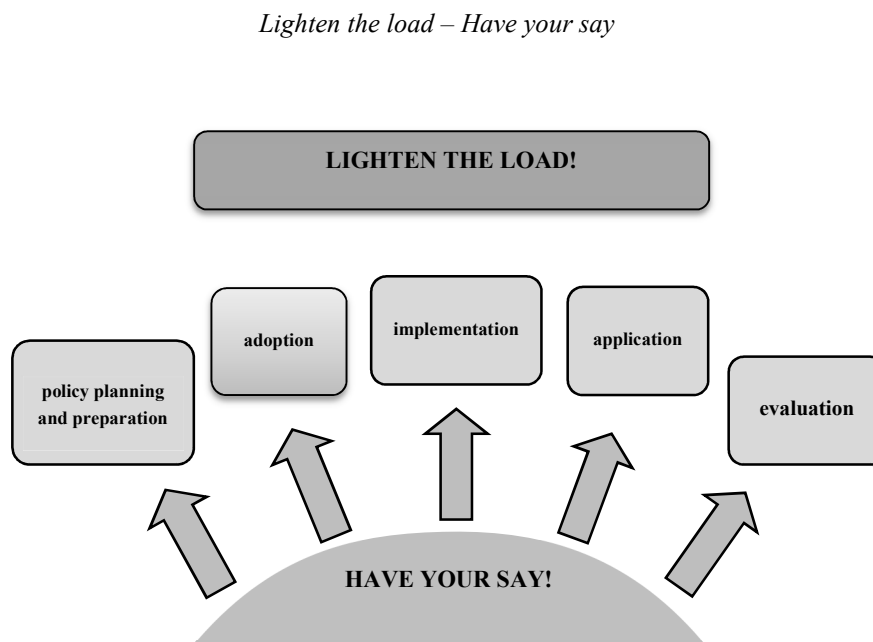
Source: *Taking stock of the Commission's Better Regulation Agenda. European Commission, 2019. p.15.*

#### 4. Public internet-based consultation – 'Lighten the Load - Have Your Say' web portal

In order to deliver better rules for better results the Juncker Commission opened up policy-making, and introduced new feedback tools to interact with those who implement and benefit from EU legislation.

<sup>42</sup> European Commission - DG AGRI: Modernising and simplifying the CAP Summary of the results of the public consultation. Brussels, 7 July 2017.

Figure 1



*Source: made by the author*

The Commission introduced new opportunities for public participation at all stages of the policy cycle. Better regulation covers the whole policy cycle: policy design and preparation, adoption, implementation (transposition, complementary non-regulatory actions), application (including monitoring and enforcement) and evaluation. Effectively using existing feedback tools and consultation activities the Juncker Commission set up a new website 'Lighten the Load - Have Your Say', which is a specific tool for reinforcing the external feedback and external verification to consultation. The 'Have Your Say' is a one-stop-shop where citizens and stakeholders can obtain information about new initiatives and express their views at all stages in the entire policy cycle. Stakeholder consultation is an essential element of both policy preparation and review. The web-based portal increased stakeholder engagement throughout the entire policy cycle. The number of visits to the portal is more than 800,000 each year.<sup>43</sup> Despite the achievements improvements are still needed in Juncker's toolbox because there is a clear demand for more engagement from EU citizens.

<sup>43</sup> Better regulation: taking stock and sustaining our commitment. 15 April 2019. European Union. Luxembourg: Publications Office of the European Union, 2019. p. 8.

## V. Simplification measures

### 1. REFIT Platform

The ‘Have Your Say’ web portal also provides suggestions to the REFIT Platform, based on the proposals received and reviewed, on how to simplify specific legislation and reduce unnecessary regulatory costs.

The REFIT Platform was an innovative initiative set up by the Juncker Commission for the duration of its term. The Regulatory Fitness and Performance Programme (REFIT) is the Commission's programme for better regulation and it was established as early as 2012.<sup>44</sup> The Juncker Commission relaunched the REFIT in 2015<sup>45</sup>, building on the experience of the previous Commissions in evaluating and reducing administrative burden.

The Platform issues recommendations to the Commission how to reduce the regulatory and administrative burdens of EU laws. The key purpose of the expert group is to provide the REFIT process with bottom-up input by collecting and considering stakeholders’ views on possible improvements to legislation. The Platform comprises two groups: Government Group – representatives from each EU member states – and Stakeholder Group – with 18 members from businesses including SMEs, civil society organisations and social partners – and two representatives from the European Economic and Social Committee and the Committee of the Regions. By 31<sup>st</sup> December 2018 the Platform had processed 684 submissions from stakeholders,<sup>46</sup> The Platform responded to all of these proposals and adopted 89 opinions covering 129 of the submissions.<sup>47</sup>

The Juncker Commission proposed more than 150 REFIT initiatives to simplify Union legislation between 2015 and 2018. The REFIT initiatives reflect the strengthened approach of the Commission for a common framework for conducting assessments.

Good examples of Commission proposals to reduce regulatory burdens and red tape:

- An ambitious simplification agenda is underway for the Common Agricultural Policy, where over 20 simplification actions have already been finalised to the direct benefit of farmers and also national administrations. Further proposals are ongoing on greening in the context of REFIT. In addition, an action plan for the rules on

<sup>44</sup> European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU Regulatory Fitness. COM (2012) 746 final, Strasbourg, 12. 12. 2012.

<sup>45</sup> The Platform was set up by May 2015 Better Regulation Communication.

<sup>46</sup> European Commission: Taking Stock of the Commission's Better Regulation Agenda. SWD (2019) 156 final, Brussels, 15.4.2019. p. 33. 1. *Number of submissions by type of organisations (684)*: EU citizen (39%), Business association (35%), company (5%), public authority (3%), NGO (2%), Regional authority (2%), Government group (1%), Non-EU-citizen (2%), stakeholder group (3%), other (7%). 2. *Policy areas covered by the submissions to the REFIT Platform*: Employment (1) Agriculture (30) Financial services (13) Education (13) Internal Market (12) Justice (10) Mobility (10) Regional policy (8) Environment (6) Migration and Asylum (4) Communication networks (4) Competition (4) Energy (3) Taxation (3) Statistics (2) Chemicals (2) Maritime affairs and Fisheries (1) Health and Food Safety (1) Consumer policy (1) Horizontal (1).

<sup>47</sup> The mandate of the platform ended on 31<sup>st</sup> October 2019, and a new ‘Fit for Future Platform’ is planned to be established.

agricultural markets is underway, aiming for a substantial reduction of the initial 250 Commission Regulations to around 20 delegated and 20 implementing acts.

- A new data protection regulation has established a single, pan-European law replacing the 28 different laws of the Member States. This will reduce administrative burdens and make it easier for many companies to access new markets. The new rules will bring benefits of an estimated €2.3 billion per year.<sup>48</sup>

Summing it up, in its better law-making strategy, the Commission significantly upgrades the role of public and stakeholder consultation. Opening up policy-making is based on transparency and engagement, involving the views of those affected by legislation so that it is easy to implement. Consultation with public and stakeholders can provide an important input into the content of legislation, and can have a legitimising effect. The EU online public consultation is an instrument for participatory democracy in the EU, under which stakeholders at all levels – local, regional, national, and EU – affected by legislation have the best understanding of the impact of legislation and can provide evidence to improve it.

## 2. Reduced output of legislative proposals

Every year, the European Commission adopts a Work Programme which sets out its key legislative initiatives for the year ahead. According to Better regulation for better results – An EU agenda (2015) since the start of the Juncker Commission, the annual Work Programmes had been focused on a limited number of legislative proposals, compared to previous Commission.

Table 6

*Commission proposals (2015–2018)*

Type of legislation		2014	2015	2016	2017	2018
Regulation	basic act	58	28	38	24	65
	amending act	30	9	45	31	41
Directive	basic act	37	9	7	6	11
	amending act	10	2	18	14	10
Decision	basic act	12	1	8	3	3
	amending act	0	0	3	3	2

Source: EUR-Lex. Legal Acts – Statistics

<sup>48</sup> European Commission: Communication from the Commission to the European Parliament, the European Council and the Council. Better Regulation: Delivering better results for a stronger Union. COM (2016) 615 final, Brussels, 14. 9. 2016. p. 6.



From 2015 the Juncker Commission broke with the past and changed the way the Commission worked in order to deliver European policies with better results for citizens, businesses and public authorities. The Commission made progress in delivering results. The figures in the table indicate that the Juncker Commission reduced the amount of legislative output by around a quarter compared to the second Barroso Commission (2010–2014).

Table 7

*Adopted acts (2015–2018)*

Type of legislation		2010	2011	2012	2013	2014	2015	2016	2017	2018
Regulation	basic act	17	23	29	56	58	16	21	19	21
	amending act	17	25	17	25	30	27	30	33	28
Directive	basic act	13	15	9	12	37	7	13	3	5
	amending act	2	8	8	9	10	7	5	11	13
Decision	basic act	4	6	3	9	12	2	3	5	3
	amending act	4	0	3	3	0	1	0	2	3

Source: EUR-Lex. *Legal Acts – Statistics*

## VI. Conclusions

Since the release of the Final Report by the Mandelkern Group on Better Regulation (2001), subsidiarity has become a key element of better regulation policy in the European Union, ensuring the balance between the democratic legitimacy and the efficiency of European law-making. Better regulation calls on Member States to raise their efforts to simplify national legislation and to adopt legal acts properly and swiftly.

The Juncker Commission's stronger commitment to evidence-based policy-making, and the guidance it provided in the better regulation guidelines and toolbox show results. Through assessments, the Commission constantly collects and analyses information on how European legislation is delivered as intended and remained relevant and fit for purpose. Impact assessments, evaluations, and the REFIT Platform stimulate EU lawmakers to simplify and reduce regulatory burdens. Experience thus far demonstrates that simpler and less burdensome legislation improves implementation and enforcement in the Member States, eventually leading to better results.

Better regulation assists politicians in making informed decisions. Internal quality control provided by the REFIT Platform and the expertise undertaken by Regulatory

Scrutiny Board are key tools to use evidence- and stakeholder-input in political decision-making. Legislative proposals based on evidence are more likely to deliver more effective policies.

The benefits of better regulation are that the Commission delivers high quality and effective legislation through informed decision-making. However, the Commission cannot deliver Better Regulation on its own. This requires a shared commitment by all EU institutions, Member States and stakeholders.

Good policy development is built on external feedback and external scrutiny. The feedback mechanism on proposals allows the public to provide its view to the content of legislative proposals. Stakeholder consultation is an essential contribution to transparency, to ensure that EU law is correctly transposed, applied, and implemented. The Juncker Commission's initiative, the 'Have Your Say' portal for communicating with and consulting citizens deserves recognition, therefore calls for a strengthening of measures to inform about and promote such consultations.

Better regulation must be a shared effort among all levels of governance. There is still much unexploited potential to improve the application of better regulation on the ground, because local and regional authorities implement and apply approximately 70 % of EU legislation, while also having the closest links to citizens. Member State expertise and experience at regional and local levels should be involved in the better regulation communication process already at early stage in the preparation of legislation. The role of the Committee of the Regions entails a bridge between the EU institutions and local and regional authorities.

Looking forward, the need for evidence-based policy-making supporting EU political priorities is growing stronger. Better regulation is increasingly an integral part of the EU's institutional culture. The work of the Commission is widely supported by stakeholders who want to be involved even more in the policy-making process and in a more meaningful way. However, there is a scope for further improvements in how better regulation processes are organised.

SOÓS EDIT

MINŐSÉGI JOGALKOTÁS AZ EURÓPAI UNIÓBAN

(Összefoglalás)

Jean-Claude Juncker elnök (2014–2019) az irányítása alatt álló Európai Bizottság feladatául tűzte ki, hogy javítsa az uniós jogalkotás és szakpolitikai döntéshozatal minőségét annak érdekében, hogy az uniós szakpolitikák eredményesebben szolgálják az állampolgárokat, a vállalkozásokat és a közigazgatási hatóságokat. A korszerű, arányos és a céloknak megfelelő jogszabályok nemcsak a jogállamiság és a közös európai értékek megőrzése, hanem a tagállami közigazgatások és vállalkozások hatékonysága szempontjából is alapvető fontosságúak.

Az Európai Uniót gyakran érte – nem ritkán jogos – kritika a túlszabályozás és a gyenge minőségben megírt jogszabályok miatt. A felesleges terhek és a bürokrácia elkerülése azt is megköveteli, hogy a jogszabályokat a várható hatások teljes körű ismeretében dolgozzák ki. Ugyanakkor a jogszabályok egyszerűsítése és a terhek csökkentése révén a végrehajtás és az alkalmazás is javul.

Az EU-jogszabályoknak a célnak megfelelőeknek kell maradniuk, és biztosítaniuk kell az uniós jogalkotók által tervezett és a nyilvánosság által elvárt eredményeket. A szakpolitikai döntéshozatal megnyitása, a szakpolitikák javítását szolgáló hatásvizsgálatok, értékelések, támogató eszközök (ideértve a minőségi jogalkotási iránymutatásokat és eszköztárat), valamint a Szabályozói Ellenőrzési Testület (2015) által biztosított független minőségellenőrzés olyan kulcsfontosságú eszközök, amelyek becsatornázzák a tényeket és az érdekelt felek hozzájárulását a szakpolitikai döntéshozatalt alátámasztó objektív elemzésbe.

A tanulmány tényeken alapuló értékelést nyújt a minőségi jogalkotás jelenlegi helyzetéről, áttekinti a Juncker-Bizottságnak a minőségi jogalkotás, a jobb minőségű jogszabálytervezetek előállítására terén elért eredményeit. A tanulmány azokra az eredményekre épül, amelyeket a Bizottság a minőségi jogalkotás és a szabályozási rendszer működésével kapcsolatban elért.