



# OPINION

European Economic and Social Committee

## Better Regulation

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

**Better Regulation: Joining forces to make better laws**

[COM(2021) 219 final]

**INT/919**

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**EN**

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Adopted at plenary	22/09/2021
Plenary session No	563
Outcome of vote (for/against/abstentions)	231/0/4

## **1. Conclusions and recommendations**

- 1.1 The EESC welcomes that better regulation remains a priority for the new Commission. It calls on the Commission and the EU legislators to consistently deepen and advance the EU better regulation system in all its aspects and systematically use the tools and guidelines for better regulation in their work.
- 1.2 The EESC underlines that better regulation is an essential component of good governance and law-making. It can help to ensure transparent, accountable and participative policy-making processes that deliver rules that are evidence-based, independently scrutinised, simple, clear, coherent, effective, sustainable, fit-for-purpose, proportionate, future-proof and easily implementable. This is an essential precondition for ensuring the democratic legitimacy of and public trust in the EU and its institutions.
- 1.3 The EESC stresses that the better regulation instruments must remain policy-neutral and clearly separated from political decision making, which is to be left to the designated and legitimate political bodies. Economic, environmental and social aspects of Union legislation should always be considered on an equal footing while relying on both quantitative and qualitative analysis for assessing their impacts.
- 1.4 The EESC draws attention to the fact that the COVID-19 pandemic is an unprecedented health, social and economic crisis in post-1945 Europe. It therefore calls on the Commission to pay particular attention to the multiple impacts of its proposed actions on these dimensions under the present extraordinary circumstances, in order to support a speedy and full recovery.

## **2. General remarks**

- 2.1 The EESC notes the significant delay in the delivery of the Communication. It urges the Commission to regain the time lost, clarify its proposals as per the comments below and implement its proposed actions as swiftly as possible.
- 2.2 The EESC underlines that better regulation can help create the best possible regulatory frameworks for citizens, workers, businesses and public administrations. It stresses that better regulation should contribute to completing the single market in all areas, improve its functioning and strengthen its resilience and competitiveness, enable research and innovation, spur sustainable growth and the creation of high-quality jobs, support the green and digital transition, and strengthen its social dimension and the social market economy as set out in Article 3 of the TFEU.
- 2.3 The EESC encourages the Commission to continue to promote the principles and tools of better regulation across all its services, *inter alia* through regular staff training at all levels to ensure awareness of and compliance with those principles and tools.

2.4 Referring to its previous opinions<sup>1</sup>, the EESC recalls that better regulation "is not intended to be about 'more' or 'less' regulation in the EU, or about deregulating specific policy areas or giving other areas greater priority and thus calling into question the values for which the EU stands: social protection, environmental conservation and fundamental rights"<sup>2</sup>. It furthermore stresses that better regulation must not over-bureaucratise EU policy-making nor replace political decisions by technical procedures.

### 3. **Specific remarks**

3.1 The EESC is the institutional voice of organised civil society in the EU and serves as intermediary between the EU legislators and civil society organisations and social partners. The EESC has gathered considerable experience with and expertise on all issues relating to better regulation. It presents hereafter its assessment on specific aspects covered by the Communication as well as on other aspects not covered by it which it deems necessary to stress.

#### 3.2 Subsidiarity and proportionality

3.2.1 The EESC recalls its recommendations on subsidiarity and proportionality in its previous opinions<sup>3</sup>. It reiterates that the Union should act only where these principles are fully respected and where common action adds value for all. To ensure this, the Committee encourages the Commission to fully implement the suggestions made by the "Task Force on subsidiarity, proportionality and doing less more efficiently"<sup>4</sup>.

#### 3.3 Evidence gathering and public consultations

3.3.1 The EESC welcomes the Commission's announcement to streamline and facilitate the gathering of evidence. It also welcomes the aim to better involve relevant stakeholders and the scientific community in policy-making and facilitate public access to evidence underpinning proposals.

3.3.2 On stakeholder consultation, the EESC refers to its opinion<sup>5</sup> and the opinion of the Refit Platform<sup>6</sup> which it helped to draw up. It stresses that public consultations are an essential part of evidence gathering and must never be done *pro forma* on predetermined outcomes. The Commission should always aim at consulting those most immediately affected by the proposed measures and ensure representativeness. Furthermore, public consultations should not affect the EESC's consultative role or the autonomy or prerogatives of the social partners as provided for in the Treaties, in particular with regard to social and employment matters (social dialogue).

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1 [OJ C 13, 15.01.2016, p. 192, OJ C 262, 25.07.2018, p. 22.](#)

2 COM(2015) 215 final.

3 [OJ C 487, 28.12.2016, p. 51](#) and [OJ C 262, 25.07.2018, p. 22.](#)

4 C(2017) 7810.

5 [OJ C 383, 17.11.2015, p. 57.](#)

6 REFIT Platform Opinion on submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on Stakeholder consultation mechanisms. Date of adoption: 07/06/2017.

- 3.3.3 The EESC encourages the Commission to closely adhere to the guidelines in Chapter VII of the Better Regulation Toolbox on stakeholder consultations<sup>7</sup> when planning and implementing consultations. It stresses in particular that questionnaires should always be clear, simple and user-friendly, be provided in an editable format, allow for open answer and comments, allow for the uploading of additional documents and avoid leading questions.
- 3.3.4 The EESC reminds the Commission that, given its representative function, the Committee is well suited to help identify stakeholders most affected by proposed policy measures. It calls on the Commission to consult the Committee more closely when developing consultation strategies and identifying relevant target groups.
- 3.3.5 The EESC welcomes the Commission's intention to better inform stakeholders on how their contributions were used. Proper feedback on how contributions informed the decision-making is essential to ensure the public's continued trust and participation in policy-making.
- 3.3.6 The EESC calls on the Commission to respond to the long-standing request of the EESC to explain in practical detail how it weights contributions received during public consultations according to their representativeness. In times of disinformation, mass campaigning (e.g. through social media) and the use of bots, such weighting becomes increasingly important.

#### 3.4 Impact assessments (IAs)

- 3.4.1 The EESC recalls its opinion<sup>8</sup> on how to improve the European IA ecosystem.
- 3.4.2 The EESC stresses that, by default, the Commission should substantiate every legislative proposal with a fully developed IA. If the Commission fails to do so, it needs to explain in detail the reasons for its decision and provide all information and data that underpins and/or supports the proposal.
- 3.4.3 The EESC calls on the European Parliament and Council to live up to their commitment in the Interinstitutional Agreement on Better Law-Making<sup>9</sup> and carry out their own IAs on their substantial amendments during the legislative process, including on changes made during trilogue negotiations. It suggests that the Commission and legislators together with the Regulatory Scrutiny Board (RSB) develop a joint set of criteria to help define "substantial" and better determine when amendments require additional impact analysis.
- 3.4.4 The EESC recalls its invitation<sup>10</sup> to the Commission to set up an intelligent evaluation matrix that would allow dynamic modelling of the impact of substantial amendments by the co-legislators by objectifying the impact of certain parameters but also qualitative data. In this respect, the EESC calls for the setting-up of a pilot project on intelligent modelling.

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<sup>7</sup> [Better regulation toolbox | European Commission \(europa.eu\)](#).

<sup>8</sup> [OJ C 434, 15.12.2017, p. 11.](#)

<sup>9</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN).

<sup>10</sup> [OJ C 14, 15.01.2020, p. 72.](#)

- 3.4.5 The EESC notes with concern the findings of the RSB's 2020 annual report<sup>11</sup> on the quality of Commission IAs in which it states that, "in 2020, the Board issued far fewer positive opinions (12% of opinions) and more negative opinions (46% of opinions)". It continues that: "the average quality score of initial submissions was also noticeably lower than in preceding years. [...] In many cases the lower quality was due to a lack of sufficient time to prepare the impact assessments, given ambitious political deadlines to deliver on the new Commission's priorities". The EESC therefore urges the Commission to set realistic deadlines in order to always allow its services to conduct fully developed IAs.
- 3.4.6 The EESC notes with concern the RSB report's finding on the Commission's reporting of options on which it says that: "The set of options was often not complete. Options tended to focus only on the preferred (political) choice, without including alternate ones supported by the main stakeholder groups. Other impact assessments omitted key choices because departments considered that they needed to receive political guidance first". The EESC stresses that the purpose of IAs is to present evidence and analysis for making political choices and not to justify the Commission's preferred choice. It urges the Commission to refrain from biased reporting.
- 3.4.7 The EESC welcomes the Commission's intention to "mainstream the United Nations' sustainable development goals (SDGs)", which is in line with the Committee's earlier request<sup>12</sup>, and align IAs towards supporting the "twin transition". By the same token, the Committee points out that IAs must remain a factual, evidence-based and policy-neutral exercise and that the IA process must not be geared towards justifying a politically preferred outcome and must not replace political decision-making by the competent bodies. Relevant impacts must not be ranked according to political preferences but always be analysed on an equal footing. The EESC will remain particularly vigilant on the practical implementation of this mainstreaming in the course of the revision of the Better Regulation Toolbox, which it will examine in a supplementary opinion if necessary.
- 3.4.8 The EESC stresses the need to systematically "think small first" and apply the "SME-test" comprehensively in its IAs. It reminds the Commission of the ten principles to guide policy-making for SMEs as set out in the Small Business Act for Europe (SBA). It underlines that for SMEs, and especially for micro-enterprises, Union legislation must be effective and easily applicable. It welcomes the Communication's announcement to consult with the EU SME envoy during its IA deliberations and calls on the SME envoy to maintain a structured dialogue and collaboration with national organisations concerned with SME interests. Finally, the EESC calls on the Commission to limit burdens on SMEs, including micro-enterprises and more systematically assess the possibility of lighter regimes, based on a case-by-case assessment to determine whether all SMEs are affected or only micro-enterprises, as stipulated in Tool #22 of the Better Regulation Toolbox, without undermining the achievement of the objectives defined by the legislation or established norms and standards.

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<sup>11</sup> [rsb\\_report\\_2020\\_en\\_0.pdf\(europa.eu\)](#).

<sup>12</sup> [OJ C 14, 15.01.2020, p. 72.](#)

3.4.9 The EESC recalls its previous opinion<sup>13</sup> where it states that IAs can and must also be undertaken systematically for delegated and implementing acts. It reminds the Commission that "the fact of having performed an IA on the legislative text from which the delegated and implementing acts stem cannot suffice to justify the non-performance of an IA on the derived acts. Each individual act must be evaluated on its own merits [...]."

3.4.10 The EESC welcomes the Commission's announcement to integrate strategic foresight into EU policymaking and refers to its own opinion on this issue<sup>14</sup>. As the representative of a wide variety of voices from all Member States, and as an observing member of the European Strategy and Policy Analysis System (ESPAS), the EESC is ready to provide important input and information for the foresight process.

### 3.5 Regulatory Scrutiny Board

3.5.1 The EESC highly welcomes the work of the Regulatory Scrutiny Board in ensuring regulatory oversight. In order to ensure that the Board can fully deliver on its mandate, the EESC calls on the Commission to ensure that the Board has at its disposal sufficient resources and capacities.

3.5.2 The EESC points out that the Board is not formally independent. Four out of its seven members are members of the Commission. To ensure a better balance, the EESC suggests the Board be expanded to include one additional external member.

### 3.6 Burden reduction and the "one-in, one-out" approach

3.6.1 The EESC notes the Commission's intention to limit the flow of regulatory costs and burdens stemming from new regulations and reducing unnecessary existing costs and burdens on citizens, business and public administrations. By the same token, the Committee reiterates its call for a qualitative approach that operates on an equal footing with quantitative analysis, also taking into account the expected benefits of the legislation<sup>15</sup>. As the Committee stated in its opinion<sup>16</sup>, "regulatory costs need to be proportionate to the benefits they create". It therefore stresses that the principle of proportionality remains of paramount importance when introducing new legislation. Furthermore, the Commission should always assess the cost of non-action, for instance in relation to the deepening of the Single Market as well as to social and environmental challenges.

3.6.2 By the same token, the EESC emphasises that burden reduction must not lead to de-harmonisation in the Single Market or create deregulation pressure. Burden reduction must not undermine policy objectives, lower the EU's high economic, social and environmental standards, or prevent the adoption of new initiatives when these bring clear added value.

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<sup>13</sup> [OJ C 262, 25.07.2018, p. 22.](#)

<sup>14</sup> [OJ C 220, 09.06.2021, p. 67.](#)

<sup>15</sup> [OJ C 434, 15.12.2017, p. 2.](#)

<sup>16</sup> [OJ C 487, 28.12.2016, p. 51.](#)

However, burdens must be reduced when they are proven to not be necessary to achieving the policy objective.

- 3.6.3 With regard to the "one-in, one out" approach (hereafter "OIOO"), whereby every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area, the EESC notes with concern that, contrary to the Commission's announcements, the Communication does not present the operational and methodological details of OIOO. This complicates the EESC's ability to scrutinise the possible benefits and challenges relating to the application of OIOO. The Committee therefore calls on the Commission to provide these details with no further delay and reserves the right to provide additional assessment on the OIOO methodology once published.
- 3.6.4 The EESC stresses that though OIOO can be an instrument for better regulation, it must not be seen as a "stand alone" burden reduction instrument. Instead, it must serve as a complementary tool to and in synergy with the existing EU better regulation tools including IAs, public consultations, evaluations and regulatory scrutiny. The EESC welcomes the Commission's assurance that OIOO will not be applied mechanically or based on *ex ante* numerical targets, but on the basis of a case-by-case evaluation that will determine specifically what can be simplified, streamlined or eliminated, while at the same time bearing in mind the benefit of the legislation. The Committee will remain particularly vigilant that the Commission translates this assurance into practice. Furthermore, the Committee highlights the role of the Fit for Future Platform, of which it is a member, in advising the Commission on simplifying Union legislation and reducing unnecessary burdens while ensuring that the Union's policies are forward-looking and relevant in the light of new challenges, including social, environmental, geopolitical, technological and digital developments.
- 3.6.5 The EESC stresses that the implementation of the OIOO must be seen as a joint institutional effort that requires close cooperation between all EU institutions throughout the entire legislative cycle. In line with point 3.4.3 in this opinion, the EESC calls on the European Parliament and Council to ensure that Union legislation meets its objectives in the most cost-efficient way. This necessitates close cooperation between the legislators and the Commission at all stages of the policy process as well as Member States' sharing of information with the Commission on the costs and benefits resulting from EU legislation once implemented.
- 3.6.6 The EESC welcomes the Commission's intention to provide, in every impact assessment, an estimation of both administrative and adjustment costs arising from its proposed intervention. It notes, however, that only administrative costs will be offset by the OIOO instrument while adjustment costs are to be offset by other instruments such as the Recovery and Resilience Facility, the cohesion policy and agricultural funds, and the Just Transition Mechanism. Given that adjustment costs can impose a significant burden on companies, most notably on SMEs and micro enterprises, the Committee invites the Commission to include, alongside the cost estimation, concrete proposals for measures to support enterprises in adjusting to and complying with new regulatory frameworks and maintain employment stability and ensure vocational training and re-training for workers.



- 3.6.7 The EESC notes the Commission's intention to consider the replacement of 27 national regulations with one harmonised framework automatically as "out". This represents a mechanical approach that the Commission claims to refrain from. Harmonisation does not by default result in efficiency gains; its effects must be assessed case-by-case. The Committee therefore calls on the Commission to define "outs" always on the basis of an individual cost-benefit analysis.
- 3.6.8 On the flexibility arrangements for OIOO, the EESC asks the Commission to clarify the criteria upon which it will decide on exemptions as well as on "exceptional circumstances" for trading.
- 3.6.9 The EESC notes that the OIOO approach will be applied only to initiatives included in the Commission's 2022 annual work programme, thereby excluding major policy initiatives tabled during the first half of the Commission's mandate. The Commission thereby fails to deliver on the pledge of Commission President Ursula von der Leyen in her Working Methods<sup>17</sup> as well as in her Mission Letters to the Commissioners that "the College will apply the 'one in, one out' principle [...] on each legislative proposal creating new burdens."
- 3.6.10 The EESC calls on the Commission to set up an adequate reporting framework on the implementation of the OIOO approach in order to ensure a proper evaluation in the years to come.

### 3.7 Fit for Future Platform

- 3.7.1 The EESC welcomes the creation of the Fit for Future Platform (hereafter "the Platform"). It reminds that the Platform's mandate is on ex-post evaluation and not to propose new legislation. The Committee will participate actively in its work.
- 3.7.2 The EESC points out that submissions made via the "Have your say: Simplify!" website must continue to contribute to the Platform's annual work programme, even if they are not covered by Annex II of the Commission's work programme. Furthermore, the Platform should continue to be able to advise the Commission on horizontal workflows of better regulation.
- 3.7.3 The EESC suggests that the person or organisation making a submission to the Platform receives reasoned follow-up feedback from the Commission on how the case has been dealt with.

### 3.8 Ex-post monitoring and evaluations

- 3.8.1 The EESC firmly supports the "evaluate first" principle and encourages the Commission to ensure its systematic application.

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<sup>17</sup> P(2019) 2.

- 3.8.2 The Committee is pleased with the established successful cooperation with the Commission in the ex-post evaluation work, in which its contribution has been found to be useful in enhancing the Commission's evaluations with input from the organised civil society. The Committee calls for continuous strengthening of this cooperation. It also urges the EESC evaluations to be included in the envisaged common evidence register – the Joint Legislative Portal.
- 3.8.3 On monitoring of implemented Union legislation, the EESC cautions that monitoring and reporting obligations to collect necessary information and data must always be proportionate and must not unduly burden citizens, businesses or public administrations.
- 3.8.4 The EESC notes with concern the findings of the RSB report on the Commission's evaluations. As the report states: "evaluation conclusions did not appropriately reflect the findings. The Board regularly expressed concerns that the conclusions were selective readings of the evidence, or not clear enough on the weaknesses of the evidence collected. This is a crucial deficiency as it prevents the evaluation from fulfilling its main function as a learning exercise." The EESC urges the Commission to report in an unbiased manner on the performance of Union legislation.
- 3.8.5 The EESC notes with concern that Commission services are not obliged to resubmit evaluation reports in the case of a negative opinion by the Regulatory Scrutiny Board. It suggests to apply the same regime for IAs to evaluations and oblige Commission services to revise reports in case of a negative first opinion and formally obtain a positive opinion by the Board.

### 3.9 Implementation and Enforcement

- 3.9.1 The EESC refers to its recommendations on implementation and enforcement in its opinion<sup>18</sup>.
- 3.9.2 The EESC welcomes the Commission's long term action plan for better implementation and enforcement of single market rules<sup>19</sup> and encourages it to implement its proposed actions swiftly.
- 3.9.3 The EESC reiterates that most regulatory burden for citizens and business continues to be generated at national level due to the procedure and method of transposition and inadequate application of Union law by national authorities. If national legislators – using their margin of discretion – decide to add requirements on the national level, they should do this transparently, notify the Commission and other national authorities and explain their reasons, in line with their commitment in the Interinstitutional Agreement on Better Law-Making. Member States should also keep in mind the possible impacts of their additions on the integrity and proper functioning of the single market and should, if possible, avoid measures that could cause significant distortion and fragmentation.

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<sup>18</sup> [OJ C 262, 25.07.2018, p. 22.](#)

<sup>19</sup> [communication-enforcement-implementation-single-market-rules\\_en\\_0.pdf \(europa.eu\).](#)

3.9.4 Additionally, the EESC advocates, as stated in its opinions<sup>20</sup>, to principally give priority to regulations rather than directives to avoid inconsistent regulatory frameworks across the EU and support Single Market integration. However, the EESC notes that existing levels of protection of citizens, consumers, workers and the environment must not be decreased.

Brussels, 22 September 2021

Christa SCHWENG

The president of the European Economic and Social Committee

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<sup>20</sup> [OJ C 18, 19.1.2011, p. 95.](#)