



## Evaluations and fitness checks

**The ‘evaluate first principle’ ensures that existing legislation is reviewed before changing the rules or introducing new ones. This is important for business because it ensures stability and coherence of EU action.**

As part of the REFIT agenda, the Commission has committed to evaluate individual pieces of existing legislation to see whether they have delivered on their objective and whether they are still fit for purpose. In some instances, this exercise is carried out in a more comprehensive manner for multiple pieces of legislation that are related (“fitness checks”). The current system of these ex-post assessments is less advanced than that of ex-ante assessments (impact assessments).

### Evaluations

Regarding the evaluations of individual pieces of legislation, these are carried out with five criteria: effectiveness, efficiency, coherence, relevance and EU added value. While we support the ‘evaluate first principle’, further improvements are needed in this area. The Court of Auditors highlights that the principle is not respected in a quarter of the cases.<sup>1</sup> And as the Regulatory Scrutiny Board (RSB) points out, the quality of the evaluations often falls short on key issues such as design and methodology.<sup>2</sup> Because it is not clear under what circumstances evaluations need to be assessed by the RSB, we would like to see additional clarifications on these criteria. In addition, we would like to point out that the leeway offered by the better regulation guidelines to go beyond the five main evaluation criteria may negatively influence the independence of the evaluators.

### Fitness checks

More extensive “fitness checks” are or have been carried out in several areas such as chemicals, social affairs and consumer affairs. The added value of these comprehensive reviews is that the Commission can assess interfaces and cumulative costs of different pieces of legislation. This cannot be done in the context of individual evaluations and is of added value in complex fields of EU legislation. Where fitness checks involve regular stakeholder meetings over a longer period of time, we find that this can have positive effects in terms of trust-building between the different stakeholder groups.

However, the selection of the pieces of legislation that are included in the fitness check is in our view not always appropriate and should be explained. Also, in several instances

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<sup>1</sup> European Court of Auditors, 12.06.2018 ‘Ex-post review of EU legislation: a well-established system, but incomplete’, under 95.

<sup>2</sup> RSB annual report 2017, p.28-30.



the consultations carried out in the context of these fitness checks had questionnaires with prejudiced questions, directing the participants towards a specific outcome (see further BusinessEurope's strategy paper on public stakeholder consultations). Finally, we note that the fitness checks can take a long time to complete (in some instances over five years).

## Recommendations

- The 'evaluate first' principle should be respected, and the execution of ex-post evaluations should be improved in particular with regards to design and methods. The Commission should take evaluations into account when revising existing or preparing new regulation; evaluations should also be discussed in Council. There should be additional clarification on when an opinion of the Regulatory Scrutiny Board on an evaluation is needed.
- For fitness checks, the roadmap should contain a reasoned explanation on the choice of the pieces of legislation that are included in the fitness check, and of the legal links and the policy links between these pieces of legislation; the roadmap should also clearly indicate the different consultation channels that are foreseen in the context of the different studies performed by external consultants for the Commission. Evaluations and fitness checks should be completed within a reasonable timeframe.