

Evaluation and Post-Legislative Scrutiny at the European Parliament

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Summary:

The European Parliament has become an active player in the evaluation of EU policy in recent years. In particular, the creation of a dedicated impact assessment capacity (both ex-ante and ex-post) within Parliament's administration and the adoption of new rules for committees' "implementation reports" led to an institutionalization of Parliament's evaluation activities.

This paper discusses the rationale and practice of the European Parliament's evaluation system in the context of the EU's Better Regulation agenda. It also reflects on the role of Parliament's evaluation work with regard to that of the European Commission and other bodies and, finally, examines the value it adds in terms of accountability, transparency and agenda-setting.

Ex-post evaluation is just one instrument used in scrutinizing the implementation of EU policies and legislation, albeit an important one. The European Parliament also has other scrutiny tools at its disposal, such as temporary committees (of inquiry or other); oral questions addressed to the executive; and monitoring reports, to name just a few. Many of these tools are similar to those of other parliaments. This paper attempts to take stock of the European Parliament's tools used to scrutinize the implementation of EU policies, legislation, spending programmes and international agreements.

Keywords:

European Parliament, EU legislation, ex-post evaluation, scrutiny of the executive, Better Regulation

*Evaluation answers the question
of whether a treatment works
in terms of reducing a problem.¹*

A central function of parliaments worldwide is the scrutiny and oversight of the executive. This holds also true for the European Parliament, which, under Article 14 TEU, enjoys a general right to "exercise functions of political control". The European Parliament's control powers evolved as its political clout in the EU's institutional architecture increased. Scrutiny powers have expanded notably through changes in the EU Treaties, the conclusion of interinstitutional agreements and amendments to Parliament's own Rules of Procedures.

This paper looks at one particular area of scrutiny, namely the European Parliament's role and activities in Post-Legislative Scrutiny, including evaluation. In fact, the European Parliament has developed a range of tools to examine and assess how effectively EU policy measures – these encompass EU legislation, spending programmes and international agreements concluded with third countries – have been implemented. They also assess whether these remain, years after they have become effective, fit for purpose. Many of these tools are similar to those of national parliaments; these are briefly outlined towards the end of this paper.

Conversely, the policy evaluation system the European Parliament put in place in the wake of the EU's Better Regulation Agenda deserves closer attention. This paper explains how, when and why the European Parliament performs retrospective evaluations, and it also addresses the question as to what Parliament's evaluation capacity adds to the Commission's long-established evaluation function, and to the evaluation activities of other institutional actors, such as the European Court of Auditors.

While there is a growing body of academic literature on Better Regulation and the Commission's evaluation function, academia has largely not yet considered the European Parliament's contribution. The scant existing literature concludes "that the EP hardly uses ex post programme evaluations and impact assessments."² This has definitely changed in recent years, as this paper explains. It reflects the perspective of a parliamentary practitioner.

1. The European Parliament's ex-post evaluation system

1.1. How parliamentary evaluation evolved

The European Parliament's evaluation system is two-fold: it combines a political with a fact-oriented research dimension, whereby the latter underpins the evidence-base of the political part. It thereby serves as an example for the inter-linkage between factual evaluation and politics.³

Parliament's evaluation system emanated from the institution's commitment to the EU's Better Regulation Agenda, which sprouted within the European Commission from around 2000 under different headings, such as smart regulation, better law-making or better regulation. Regardless of the

¹ Former OIRA administrator C. Coglianesi, Evaluating the performance of regulation and regulatory policy, OECD expert paper, 2012, p. 14.

² P. Zwaan, S. van Voorst & E. Mastenbroek, 'Ex post legislative evaluation in the European Union: questioning the usage of evaluations as instruments for accountability', International review of administrative sciences, Vol. 82(4), 2016, pp. 674-693.

³ E.g. P. Cairney, The politics of evidence-based policy making, London, Palgrave Macmillan, 2016.

terminology, the common objective of these initiatives is to improve the quality of new EU legislation, 1. by making the law-making more transparent throughout the process; 2. by backing up political decisions with impact assessment (in the preparatory stage as well as after the enactment of a law); 3. by involving stakeholders throughout the process; and 4. by cutting red tape.

In 2003, Parliament adopted the first Interinstitutional Agreement on Better Law-Making⁴ together with the European Commission and the Council of the EU. In this agreement, the three institutions valued the importance of "legislation of good quality", that is to say "clear, simple and effective" (para. 25) and identified two areas of action to achieve these objectives: an improved pre-legislative consultation process and the use of impact assessments (both ex-ante and ex-post).⁵ At that time, ex-post impact assessment was exclusively in the hands of the European Commission. Parliament's and the Council's respective roles were then limited to taking the Commission's ex-ante impact assessment duly into account and to carrying out ex-ante impact assessments of their own substantial amendments (para. 30).

In the following years, the European Parliament's use of impact assessment remained erratic and occasional. The game changer was a parliamentary resolution on what was known as the "Niebler report", adopted on 8 June 2011 by a large majority.⁶ The report not only recognized the value of impact assessment "throughout the whole policy cycle, from design to implementation, enforcement, evaluation and to the revision of legislation" (para. 2) as a "prerequisite for high-quality legislation and correct transposition, application and enforcement" (para. 3), but also called for the establishment of an independent "integrated impact assessment process within the European Parliament" (para. 56).

This call prompted the creation of a dedicated (ex-ante) impact assessment service – the **Directorate for Impact Assessment and European Added Value** – within Parliament's administration in January 2012.⁷ When this service was integrated into the then newly-created **Directorate-General for Parliamentary Research Services (EPRS)** in November 2013, its remit was extended to provide support to parliamentary committees throughout the entire legislative cycle, from agenda-setting (including foresight) to ex-post scrutiny.⁸ With regard to this latter, a dedicated unit of 15 staff members today assists parliamentary committees in all aspects of ex-post evaluation. Building capacities for ex-post evaluation was actually one of the major innovations in the creation of EPRS; most other services were constructed from smaller, previously-existing structures.

1.2. The political facet: the "implementation report"

In the wake of the Niebler report, the European Parliament gradually developed its own evaluation system, to the structure in place today. At the core of this system are "implementation reports", a specific type of own-initiative report granted under Parliament's Rules of Procedure to standing committees as a means of scrutinizing how effectively EU measures have been applied and enforced at national level. The subject of an implementation report is, in most cases, a piece of EU legislation (a directive or regulation) but could also be a spending programme or an international agreement. The

⁴ OJ C 321, 31.12.2003, p. 1-5. This agreement was superseded in 2016 by a new IIA.

⁵ Throughout this paper, unless otherwise indicated, the term "impact assessment" is used as a generic term, referring to both ex-ante and ex-post impact assessment.

⁶ European Parliament resolution P7-TA-(2011)0259 on guaranteeing independent impact assessments, adopted with 573 votes in favour, 22 against and 78 abstentions.

⁷ European Parliament, Bureau decision of 4 July 2011.

⁸ European Parliament, Bureau decision of 20 May 2013.

choice of topics falls within the remit of the committees, nonetheless, initiating such a report requires broad political consensus within the committee and moreover authorization at a higher level.

Implementation reports were first introduced in 2008,⁹ however, a more strategic and frequent use of the instrument emerged only in recent years.¹⁰ This shift in focus reflects Parliament's changing approach to law-making overall, from a narrow focus on the legislative phase (i.e. from the formal reception of a Commission proposal to the adoption of the final legal act) to a broader focus on the entire legislative cycle (i.e. from agenda-setting to evaluation). The shift goes hand in hand with legislative power Parliament gained through the Lisbon Treaty,¹¹ which extended the former co-decision procedure to most EU legislation (now referred to as "ordinary legislative procedure").

In the current 8th legislative term, between 10 and 15 implementation reports were tabled per year. Following encouragement at the political level,¹² most standing committees have by now applied the instrument at least once. Some committees – in particular for employment and social affairs, and environment – make quite frequent use of the possibility.¹³

Prompted by the new Inter-institutional Agreement on Better Law-Making¹⁴ (IIA) the three institutions endorsed in April 2016, and in particular the reinforced commitment to ex-post evaluation stated therein,¹⁵ Parliament undertook a major reform of its rules governing implementation reports in 2016. Under the new rules, committees have 12 months to draw up an implementation report, before voting it in committee and subsequently in plenary. The adopted resolution constitutes the formal position of the European Parliament on the issue at stake. Where appropriate, it highlights observed deficits in the performance of the legislation in question and typically calls on the executive (i.e. mostly the Commission, and to a lesser extent the Member States) to remedy these shortcomings. In the resolution, Parliament may recommend action is taken, e.g. that the legal act be revised. In fact, the political function of an implementation report is to give impetus to the review (or revision) process of an EU measure. It is important to remember that the European Parliament itself cannot start the formal revision process, since under the EU Treaties, the European Commission has the exclusive right to initiate legislation. Parliament's role is restricted to "passing the ball" to the Commission.

The Commission is required to respond to the resolution within three months (the same rule applies to any other resolution). It has to explain in detail the actions it has taken in response to the issues raised and, if applicable, to justify any non-action. Pursuant to the institutional power balance, the Commission is not formally obliged to give Parliament's recommendation a positive follow-up.¹⁶ Nonetheless, the 2016 IIA requires that the Commission include "to the extent possible" Parliament's

⁹ See R. Corbett, F. Jacobs & D. Neville, *The European Parliament*, 9th ed., London, John Harper, 2016, p. 319.

¹⁰ In the current 8th legislative term (2014-2019), committees have engaged in over 40 implementation reports, compared to ca. 20 in the previous term 2009-2014. To be noted however, direct comparison is hampered by the fact that prior to 2014 quantitative restrictions applied (i.e. a ceiling was set to one implementation report per year per committee). Generally, this figure remains modest compared with the European Commission's output, which amounts to an annual average of 100+ fully-fledged evaluations.

¹¹ See e.g. P. Craig, 'The role of the European Parliament under the Lisbon Treaty', in S. Griller & J. Ziller (eds), *The Lisbon Treaty: EU constitutionalism without a constitutional treaty?*, Vienna, Springer, pp. 109-134.

¹² Notably by the Conference of Committee Chairs.

¹³ The former (EMPL) has undertaken 10 and the latter (ENVI) 6 since 2014.

¹⁴ OJ L 123, 12.5.2016, p. 1-14.

¹⁵ See chapter III "Tools for Better Law-Making", para. 20-24 on "Ex-post evaluation of existing legislation".

¹⁶ Cf. Framework agreement on relations between the European Parliament and the European Commission, OJ L 304, 20.11.2010, para. 16.

"requests for in-depth evaluation of specific policy areas or legal acts" (para. 21) in its evaluation planning.

On a more general note, implementation reports are a comprehensive evaluation exercise and thus a time-consuming effort. Most importantly, to be meaningful, they need to be well-timed. If they come too early after the entry into force of an act, there may not yet be any evidence available for the report to draw upon. Also, to add real value to the policy cycle and to avoid any duplication of efforts, committees need to take the planning of the Commission's own evaluation work into account. In this respect, a dedicated rolling check-list compiled by the European Parliamentary Research Service facilitates committees' planning.¹⁷

1.3. The supporting evidence-base: the "European Implementation Assessment"

Under the current rules for implementation reports, Members in charge of the file ("rapporteurs") are entitled to various support measures to improve the available evidence base. They may request disclosure of relevant information from the European Commission, and they may request factual information from other EU bodies or national parliaments. They may also undertake fact-finding missions to investigate the situation in the Member States and organise hearings with experts and stakeholders. Furthermore, they are entitled to obtain "analytical support" (meaning impartial, factual expertise) from Parliament's research facilities, and notably the **Ex-post Evaluation Unit** within the above-mentioned **Directorate for Impact Assessment and European Added Value**. This is where politics meets the administration.

The **Ex-post Evaluation Unit** drafts studies in support of implementation reports. It does so in close cooperation with the competent committee secretariat, and, at the beginning of the process with the political rapporteur, mainly to define the scope of the study. This has become a default process. The purpose of these studies, termed "European Implementation Assessments", is to substantiate the implementation report with a strong evidence-base. The studies are in principle drawn up in-house, based on desk-research, pooling the expert knowledge on the subject within Parliament's administration and taking all relevant open-source evidence into account (documents by the European Commission and other institutions, advisory committees, EU agencies or Member States; EU case-law; statistics; academic research; stakeholders' views etc.) Under certain conditions, and in particular when technical or scientific data is missing and needed, in-house research may be complemented by external expertise through public procurement procedures. In addition, targeted stakeholder consultations may be carried out to enhance the base of qualitative information, as has been successfully tested in several cases.

From a methodological point of view, "European Implementation Assessments" (EIA) broadly follow the Commission's Better Regulation Guidelines (albeit less strictly and comprehensively than Commission evaluations). Using a similar methodology is in the spirit of the new IIA, which strongly advocates "the coherence of the overall impact assessment work" between the institutions and encourages cooperation "by exchanging information on best practice and methodologies relating to impact assessments" (para. 17). The IIA even requires that the institutions "inform each other in good time before adopting or revising their guidelines" for impact assessment (para. 24).

¹⁷ L. Schrefler, Evaluation in the European Commission: rolling check-list and state of play, European Parliamentary Research Service, 3rd ed., December 2017. This list is updated once per year.

Interestingly, the 2011 Niebler report went even further, by suggesting a "common methodological approach to impact assessments in the European institutions" (para. 59). Similarities in the respective methodology of the institutions also facilitate the comparability of evaluation results.

Consequently, Parliament's implementation studies assess the implementation of EU law and policy against the set of criteria the Commission defined in its Better Regulation Guidelines and the associated "Toolbox",¹⁸ and which are equally quoted in the IIA (para.22). These criteria are:

- **effectiveness:** to what extent were the set objectives achieved and can the effects be attributed to the measure?
- **efficiency:** are the resources (costs and time) spent to achieve the effects justified and proportionate?
- **relevance:** do the original objectives of the measure still correspond to EU needs?
- **coherence:** is the policy measure coherent in itself, with other related EU measures and with the overall EU priorities?
- **EU added value:** what is the additional value resulting from action at EU level, compared to what could have been achieved at the national or regional level? What's the added value for citizens and businesses?

When drawing up an EIA, timing is a crucial factor: these studies can only inform the political debate if they are ready before the deliberations on the draft report are held in the committee. Therefore, the main findings of this research work are presented before the committee (in a regular meeting or an expert hearing), right before the political debate on the draft report. European Implementation Assessments are, just like all other EPRS publications, published on the European Parliament's public register of documents and made accessible via its "Think Tank" website.¹⁹ As a result, EPRS publications are accessible to Members and citizens alike.

Parliamentary committees may also request evaluation studies independently of implementation reports. It is at the service's discretion to satisfy such request, depending on the scope of the study, capacities and the availability of the particular expertise required. Such studies are frequently undertaken for temporary committees, and in particular for committees of inquiry. With regard to depth of research and output, these studies are in principle similar to "European Implementation Assessment". They are published on Parliament's website (as "Ex-post impact assessments").²⁰ To date, 10 such studies have been completed.

1.4.Evidence-based evaluation in a political environment

Firmly committed to the EU's better law-making principles, the European Parliament recognises impact assessment (ex-ante and ex-post) as a key element of evidence-based policy-making. Nevertheless, Parliament is a political, not a technocratic institution. In that respect, the 2011 Niebler report already argued, while valuing the contribution of impact assessment to evidence-based policy-making, that impact assessment is "in no way a substitute for political debate and the legislator's

¹⁸ Better Regulation Guidelines. Update 2017. Commission Staff Working Document, SWD (2017) 350, 7 July 2017. Toolbox online available at https://ec.europa.eu/info/better-regulation-toolbox_en.

¹⁹ <http://www.europarl.europa.eu/thinktank/en/home.html>.

²⁰ The product category "European Implementation Assessment" is strictly reserved to the context of implementation reports.

decision-making process but merely serves to help the technical preparation of a political decision" (para. 4)

In any case, a parliamentary report is a political document, and thus by nature always influenced by political preferences, although the procedure in committee is designed so as to seek a political balance. When drafting an own-initiative report, the rapporteur will try to "achieve the widest possible consensus", given that the report needs to "be acceptable to a majority of members of the committee".²¹

Accordingly, the research service's evaluation studies are to be understood as a **support** to policy-making (in the sense of technical and factual background). These studies form part of the Parliament's evidence-based evaluation system, together with committees' implementation reports and the aforementioned other means of evidence-gathering provided for in the governing rules.

Consequently, it is up to the actors in the committees to choose in what way and to what extent to make use of EPRS' supporting analysis. Several elements suggest that committees do indeed use EPRS research. Firstly, it has become standard practice that study authors are asked to present their key findings before the requesting committee, before the political debate starts. Secondly, evidence and arguments provided in the supporting study typically feed into the amendments process during committee deliberations. Thirdly, evidence is regularly incorporated in the parliamentary report (and in the adopted resolution). Finally, the supporting study is usually referenced in the recital of the resolution as a source of information. However, the committee has discretion to stick to this practice or not, depending on the "political decision" highlighted in the Niebler report.

1.5. Impact of Parliament's evaluations on the policy cycle: the case of food contact materials

With regard to impact, the key question is whether Parliament's evaluations can trigger changes in EU legislation and policy. Not directly, given that the right of legislative initiative is the Commission's prerogative, as described above (chapter 1.2). Moreover, with a view to the time it takes to complete the policy cycle, it may be clearer to draw conclusions in a few years.

To date, only a few implementation reports have reached the point of recommending the policy cycle, in the sense that the European Commission has followed-up with concrete initiatives to modify the act in question. This is the case for example with the regulation on the European Citizens' Initiative (Regulation 211/2011/EU), the Copyright Framework (Directive 2001/29/EC) and the legislative framework for Food Contact Materials (Regulation 1935/2004/EC). Much could be said about all these three files, all of which were supported with EPRS studies. However, given the space restrictions, we will only consider the latter example closely, because the impact on the policy cycle is the most explicit in this file.

The resolution on the implementation report regarding "food contact materials" was adopted in plenary on 6 October 2016. The underlying "European Implementation Assessment" was published in May 2016, just in time to be taken into account in the committee deliberations and report. The study was based on a targeted stakeholder consultation carried out in-house, whereby a high response rate and the diversity of responding stakeholders ensured representativeness.

²¹ R. Corbett, F. Jacobs & D. Neville, 2016, pp. 188-189.

The study's direct impact on the parliamentary report is obvious, yet, it is not 100 % traceable, since the report could also draw on other analyses. However, a number of explicit references to the study make it clear that the rapporteur considered the EPRS study to provide an authoritative information source (e.g. the European Parliament "[u]rges the Commission, when drawing up the measures required, to take account of the European Implementation Assessment conducted by EPRS and of the national measures which are already in force or are being prepared"). A number of paragraphs are clearly influenced by the EIA, including the recommendation to prioritize certain products for harmonisation.²²

The European Commission had never before carried out any formal evaluation or review of the Food Contact Material Regulation 1935/2004/EC. In its follow-up note (dated 29 March 2017) to the parliamentary resolution it announced its intention to act. Subsequently, the Commission put forward an evaluation roadmap, on 28 November 2017, as a first step in the preparation of a fully-fledged evaluation of the current food contact materials framework. The chapter on "data collection and methodology" makes explicit reference to the EPRS study,²³ the only information source listed.

This example shows that the European Parliament's evaluation work has not only a retrospective scrutiny function, to hold the executive accountable for implementation of EU legislation, but it may – fully in line with the policy cycle concept – also act as input provider or agenda-setter for revising legislation. As was demonstrated, the evidence generated in Parliament's evaluation is currently feeding into the Commission's preparatory work to amend existing legislation.

2. The policy cycle: linking ex-ante with ex-post

The policy cycle concept is at the core of the EU's Better Regulation Agenda. Two major elements intertwine in preparatory stage of legislation with the post-legislative stage: firstly, the principle of evaluating existing legislation **before** tackling its revision, and secondly, the insertion of review clauses and performance indicators into legislation, which pave the way for **future** evaluation.

2.1. "Evaluate first" – policy learning from evaluations

Evaluation bears an important policy learning function, as it generates evidence for future policy-making. Therefore, ideally, evaluation results inform the design of amended legislation. This concept is referred to as "instrumental use" in scholarly research.²⁴ In the EU, this instrumental use has become a mandatory feature for amending existing legislation. The Better Regulation Guidelines prescribe that existing legislation is amended on the basis of evidence gathered by means of a preceding evaluation. This concept is known as the "evaluate first principle". Strongly advocated by First Commission Vice-President Frans Timmermans, the Commissioner in charge of Better Regulation, evaluation is applied in an increasingly systematic manner by the various Commission services. According to the Regulatory Scrutiny Board (RSB), the Commission's own independent oversight

²² A. Silva, *New kid on the block: the European Parliamentary Research Service as a knowledge gatekeeper in reviewing the Food Contact Materials Regulation*, College of Europe, master thesis, 2016/17. See in particular pp. 52-59 for the chapter on Food Contact Materials.

²³ European Commission, *Evaluation Roadmap, Evaluation of Food Contact Materials*, 28. 11.2017. See p. 2: "In May 2016, a European Implementation Assessment report on Regulation (EC) No 1935/2004 was published by the European Parliament, which concluded that the lack of specific measures at EU level for some food contact materials negatively impacts the functioning of the internal market for the relevant material or article and its food safety."

²⁴ E.g. S. van Voorst & P. Zwaan, 'The (non-)use of ex post legislative evaluations by the European Commission', *Journal of European Public Policy*, 2018, pp. 1- 20.

body, which scrutinizes the quality of all ex-ante impact assessments as well as of major evaluations, the evaluate first principle was respected in 75 % of cases in 2017, even if the board found that "some impact assessments have not made full use of evaluation findings".²⁵ In quantitative terms, this is a steep increase compared to a rate of 50 % in 2016²⁶ and a mere 17 % in 2013.²⁷

Nevertheless, the existing scholarly literature, including the most recent example,²⁸ is quite sceptical about the Commission's effective use of evaluations in amending legislation in force, and in particular about the extent to which evaluations inform ex-ante impact assessments. Scholars argue that the Commission's "rhetoric of a regulatory policy cycle" would not hold up in practice.²⁹

The discrepancy between the figures by RSB and those provided in the cited academic research is indeed striking. However, this difference can be explained by two factors: divergent data sets and different perspectives. Researchers based their examinations on a data set of Commission evaluations undertaken in the period 2000-2014, whereas the Regulatory Scrutiny Board measures how many of the ex-ante impact assessments aiming to revise existing legislation were informed by a preceding evaluation.³⁰ Moreover, the rigorous application of the "evaluate first" principle was prescribed only in the 2015 Better Regulation Guidelines. Prior to that, it was merely considered "best practice". In view of the time it takes to prepare amendments to legislation, a few years may arguably still elapse before the policy learning effect of evaluations will be fully and more systematically reflected in the subsequent Commission impact assessments.

2.2. Review clauses

Monitoring and review provisions embedded in legislation lay the foundations for future evaluation, since they generate the data and other evidence that is needed for evaluation. This is why the Better Regulation Guidelines require consideration of future monitoring and evaluation arrangements in ex-ante impact assessment. The monitoring framework should consist of appropriate reporting, review and evaluation requirements; core indicators with benchmarks against which results can be measured; and proportionate data collection provisions. Proportionality is an important keyword in this context, as a balance needs to be struck between gathering meaningful data and reporting on the one hand and keeping administrative burdens (on Member States, businesses and citizens) at a minimum on the other. The 2016 IIA includes corresponding provisions (para. 22 and 23). In fact, most new EU directives and regulations contain a review clause.³¹

The European Parliament pays great attention to review and monitoring clauses in legislation, and frequently proposes amendments to those put forward in Commission proposals. To obtain an overview of all Commission reports prompted by review clauses and due by a certain date, committees can draw on a dedicated rolling check-list. This list, compiled and regularly updated by

²⁵ Regulatory Scrutiny Board, 2017 Annual report, 2018, p. 23.

²⁶ Regulatory Scrutiny Board, 2018, p. 22.

²⁷ Impact Assessment Board, 2013 annual report, p. 7.

²⁸ S. van Voorst & P. Zwaan, 2018.

²⁹ T. van Golen & S. van Voorst, 'Towards a regulatory cycle? The use of evaluative information in impact assessments and ex-post evaluations in the European Union', *European Journal of Risk Regulation*, Vol. 2, 2016, pp. 388-403.

³⁰ The aforementioned 75 % rate in 2017 is a purely quantitative figure; the RSB concedes that only half of them made "good use of evaluation", while the other half either did not use the preceding evaluation properly or the evaluation itself was inadequate. See Regulatory Scrutiny Board, 2018, p. 23.

³¹ I. Kiendl Krišto, *Review clauses in EU legislation: a rolling checklist*, European Parliamentary Research Service, 5th ed. 2017, pp. 12-13.

EPRS, provides information on all review clauses contained in co-decision acts adopted since the 6th parliamentary term (since 2004), and thus facilitates the planning of work of parliamentary committees.³²

3. The interplay between the European Parliament and the European Commission

The aforementioned case study on food contact materials shows that the European Parliament's evaluation work has agenda-setting potential. The same holds true for Parliament's evaluation of the European Citizens' Initiative Regulation, and likely other files. Such success stories should however not distract from the fact that the Commission remains the main actor in the evaluation of EU policies and legislation. Within the EU institutions, it is the Commission that steers all aspects of impact assessment activities, including evaluation. Indeed, European Parliament and other actors' evaluations activities are complementary to those of the Commission.

3.1. Evaluation triggers in the Commission

Unlike the European Parliament through its implementation reports, the Commission has a legal and broad obligation to evaluate the transposition and implementation of EU law and policies. This obligation is anchored in the EU's constitutional law (Treaties) and other legal bases. Article 17 TEU confers a general right to ensure and oversee the application of EU law upon the Commission. Moreover, sector-specific Treaty provisions mandate the Commission to evaluate EU action in specific areas (e.g. justice, research, employment). In addition, Article 318 TFEU requires the Commission to submit an evaluation report on the EU's finances based on the results achieved. With regard to spending programmes, the EU's Financial Regulation prescribes mandatory evaluation of programmes and activities entailing "significant spending".³³ Finally, the Commission's internal control standards require evaluations.

While the Commission's track record of ex-post evaluation of spending programmes goes back to the 1980s, evaluation of policies and legislation that are not related to expenditure began much later.³⁴ Today, with roughly 100 fully-fledged evaluations carried out per year, ex-post evaluation has become a routine activity in the Commission. The Better Regulation Guidelines of 2015 meant a paradigm shift, as they put retrospective evaluation on an equal footing with new legislation. This was underlined by Commissioner Timmermans in 2015: *"While the natural tendency of politicians is to focus on new initiatives, we must devote at least as much attention to reviewing existing laws and identifying what can be improved or simplified. We must be honest about what works and what doesn't."*³⁵

OECD rated the Commission to be among the best performers in policy evaluation worldwide.³⁶ Likewise, the European Court of Auditors, which recently audited the Commission's evaluation

³² I. Kiendl Krišto, 2017.

³³ The threshold for such mandatory evaluation is currently defined as €5 million programme value.

³⁴ For a history of the Commission's evaluation activities see S. Højlund, 'Evaluation in the European Commission: for accountability or learning?', *European Journal of Risk Regulation*, vol. 6, issue 1, 2015, pp. 35-46.

³⁵ European Commission, press release IP/15/4988, 19.05.2015.

³⁶ OECD, *Regulatory policy outlook 2015*, pp. 128-129.

system, found that the system is generally "well-managed and quality-controlled", and that it contributes "effectively to the Better Regulation cycle".³⁷

In contrast, the RSB, which has been scrutinizing the quality of the Commission's major evaluations since 2016, is more critical about the Commission's evaluation performance. It sees large scope for improvement, in particular in the design and methodology of evaluations.³⁸ Issues raised by the RSB concern for instance the pertinence of evaluation questions, selective reporting of evaluation findings and the validity of conclusions. Also, with regard to the underlying data, RSB observed a predominance of qualitative data; thus it strongly advocates more quantification of costs and benefits.³⁹

In the European Parliament, the selection of evaluation files is a purely political choice. The Commission has some leeway for political prioritization, too, however, a large share of its evaluations are legally mandated, either by a requirement in the legal act itself (40 % of all ongoing and planned evaluations; "review clause") or through financial requirements (25 %).⁴⁰ Moreover, the Better Regulation Guidelines emphasize the principle of proportionality, therefore "major" files (in the political and economic sense) are more likely to be evaluated than smaller measures. Academic research found that far from all important EU legislation undergoes a Commission evaluation. This is explained by political considerations on the one hand, and capacity reasons on the other (evaluation work is resource-intensive).⁴¹

3.2. Parliament's use of Commission evaluations

The Commission transmits its evaluations to Parliament for information, at least the formal document (i.e. the "Staff Working Document").⁴² However, contrary to Commission ex-ante impact assessments, which are systematically scrutinized by the European Parliament, there is no follow-up procedure in place for Commission evaluations. Only in rare cases are fresh Commission ex-post evaluations (or other types of retrospective review) discussed in a committee meeting, or at the level of committee coordinators. The Court of Auditors considers this a "missed opportunity".⁴³ Academics argue that "evaluation use mainly takes place in the European Commission and less so in the European Parliament".⁴⁴

A study finds that only 16 % of Commission evaluations are followed-up by parliamentary questions posed by Members of Parliament to the Commission; and on top, that Members' motivation for asking questions is not so much accountability, than agenda-setting.⁴⁵ However, these findings must be taken with caution for several reasons. Firstly, given the range of tools Parliament has at its disposal to

³⁷ European Court of Auditors, Ex-post review of EU legislation: well-established system, but incomplete, Special Report no. 16, 2018, p. 6.

³⁸ Out of the 17 evaluations the RSB examined in 2017, 7 received a negative opinion (41 %). See Regulatory Scrutiny Board, 2018, p. 11.

³⁹ Regulatory Scrutiny Board, 2018, p. 30.

⁴⁰ Figures taken from L. Schrefler, 2017, pp. 17-18.

⁴¹ Research quotes a 33 % share for major legislation adopted between 2000 and 2012, see: S. van Voorst & E. Mastebroek, 'Enforcement tool or strategic instrument? The initiation of ex-post legislative evaluations by the European Commission', *European Union Politics*, Vol. 18(4), 2017, pp.640-657.

⁴² External studies underpinning the Commission's evaluation findings are in some cases difficult to access. See L. Schrefler, 2017, p.15.

⁴³ European Court of Auditors, 2018, p. 30.

⁴⁴ S. Højlund, 'Evaluation use in evaluation systems – the case of the European Commission', *Evaluation*, Vol.20(4), 2014, pp. 428-446.

⁴⁵ P. Zwaan, S. van Voorst & E. Mastebroek, 2016, p. 688.

make use of evaluations, the focus on parliamentary questions appears too narrow. Secondly, the data set builds on the past three parliamentary terms (1999-2014), while Parliament's evaluation capacity emerged only in the last few years. And thirdly, the reform of the Commission's methodology and use of evaluation, including the evaluate first principle, took place in 2015; this also prompted a change of mindset in the European Parliament, which is firmly committed to the Better Regulation agenda.

Parliamentary committees and individual Members use Commission evaluations selectively, as these fit with their agenda and political interest. Systematic use of Commission evaluations is made in two specific instances: they are always taken into account in Parliament's own evaluations, and they are analysed in a specific category of EPRS briefings, which depict the state of implementation of an existing EU directive or regulation just before the European Commission issues a proposal for revision.⁴⁶

4. Other actors in EU evaluation

Apart from the European Commission and the European Parliament, a few other actors perform retrospective evaluations, in particular

- the European Court of Auditors;
- EU agencies;
- the Committee of the Regions; for territorial impact assessments;
- the EU Member States; whereby, in most countries, evaluation falls within the realm of the executive; very few possess a parliamentary structure for evaluation.

In the parliamentary context, notably the European Court of Auditors (ECA) and national parliaments deserve closer attention. This should however not undervalue agencies' significant contribution to monitoring and assessing the application of EU law.

Apart from financial audits, the ECA also increasingly engages in performance audits, which look beyond whether the spending of EU funds was carried out "according to the book", in so far as they examine how a policy measure performs in terms of effectiveness, efficiency and economy ("the 3 Es"). Published as "special reports", performance audits can be considered as a specific type of evaluation. The ECA now produces between 25 and 35 of these "special reports" per year. Their findings are usually presented in the European Parliament, traditionally before its Committee on Budgetary Control, and progressively also before the competent policy committees.

National parliaments appear to engage only to a limited extent in scrutinizing the implementation of EU legislation. Based on a recent COSAC report⁴⁷, it seems that only a handful of national parliaments carry out evaluations of EU legislation.⁴⁸ These include the parliaments of France, Italy, Romania and Belgium.⁴⁹ However, some academics argue that there is a potential for national

⁴⁶ This format is known as "Implementation appraisal", drawn up for all acts put for amendment listed in the Commission's Annual Work Programme.

⁴⁷ COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union), 27th biannual report, May 2017, p. 14 ff.

⁴⁸ K. Auel, 'Quality of EU legislation – the role of national parliaments', in A. De Feo & B. Laffan (ed.), *Scrutiny of EU policies*, Florence, EUI, 2017, pp. 53-63.

⁴⁹ E. Griglio, 'Better law-making and the integration of impact assessment in the decision-making process: the role of national parliaments', in A. De Feo & B. Laffan (ed.), *Scrutiny of EU policies*, Florence, EUI, 2017, p. 82.

parliaments to contribute to the European Parliament's ex-post impact assessment activities, in particular with respect to "the collection of information on transposition and implementation procedures and in the monitoring of related deficiencies".⁵⁰

5. Other tools of the European Parliament for exercising post-legislative scrutiny

This paper focused on the European Parliament's recent institutionalization of ex-post evaluation. It may give the impression that evaluations are Parliament's sole tool for exercising scrutiny of the executive in terms of how EU legislation and policies have been implemented, however this is not the case. To complete the picture, this chapter outlines in a nutshell the main other ex-post scrutiny tools Parliament has at its disposal, in addition to regular committee hearings and expert workshops.

5.1. Committees of inquiry

Temporary committees of inquiry constitute Parliament's most powerful and most visible instrument for holding the executive accountable. In contrast to the other more "day-to-day tools" used to scrutinize the executive, the right of inquiry is a "heavy weapon in the armoury of the Parliament",⁵¹ providing Parliament with investigative powers, to examine "alleged contraventions or maladministration in the implementation of Union law" (Article 226 TFEU). In comparison with parliaments of Member States, the European Parliament's powers of investigation are *de iure* weak, in particular concerning summoning and questioning of witnesses, and access to information. So far, attempts to revise the rules in favour of Parliament have neither been endorsed by the Commission, nor by the Council.

5.2. Temporary special committees

In addition to committees of inquiry, Parliament reserved itself the right to set up temporary special committees. These are not provided for in the Treaties, but in Parliament's Rules of Procedure (Rule 197). They are more flexible in scope, but more limited in powers, than inquiry committees. At present, three such committees are operating.⁵²

5.3. Annual activity and monitoring reports

The European Parliament draws up a number of annual activity and monitoring reports (currently 28). Similar to implementation reports, these reports are formally a subcategory of own-initiative reports. Most of Parliament's monitoring reports are drawn up in response to reports submitted by the Commission or other EU bodies, due to reporting obligations enshrined in the Treaties or in acts of secondary law. These reports address, inter alia, issues related to transposition, implementation and enforcement of enacted EU legislation. They usually also refer to evaluation work done in the area within the reporting period and compare key findings with previous reports. The resolutions on these reports typically contain recommendations. Examples of monitoring reports include:

- Report on monitoring and application of EU law;
- Better Law-Making – Application of the principles of subsidiarity and proportionality;

⁵⁰ E. Griglio, 2017, p. 80.

⁵¹ Ch. Syrier: *The investigative function of the European Parliament: holding the EU executive to account by conducting investigations*, Oisterwijk, Wolf Legal Publishers 2013, p. 13.

⁵² These deal with: 1. Terrorism; 2. EU authorization procedure for pesticides; 3. Financial crimes, tax evasion and tax avoidance.

- Annual reports on the implementation of the CFSP, CSDP and Common Commercial Policy.

Parliament has a justified interest in overseeing the transposition of EU law by the Member States. However, apart from receiving an annual report from the Commission on the application of EU law and responding to it by means of a report and resolution, Parliament's level of political oversight in this regard is weak. Parliament calls in particular for better access to cases involving infringements of EU law.

5.4. Committee implementation sessions

Some parliamentary committees regularly devote a part of their meetings to the scrutiny of the actual performance of existing legislation within their realm. Different terms are used for this concept, e.g. "implementation session" or "legislative scrutiny time". This format provides for an exchange of view, or question time with Commission representatives on the state of implementation of one or more legislative acts in the Member States, sometimes triggered by the issuance of a Commission monitoring or implementation report or evaluation. Occasionally, an exchange of view with the Court of Auditors also takes place in this format.

5.5. Questions

The right to question the executive is a traditional right of parliamentary oversight familiar to most national parliaments. The European Parliament distinguishes between two different types: written questions posed by individual Members or groups of Members, and oral questions put during plenary sessions. Parliamentary questions may address any policy issue, including transposition and implementation.

Questions for oral answer with debate can be tabled by a committee, a political group or 40 individual Members. They figure on the plenary agenda and may be followed by a resolution. On an annual average, in the last years, some 150 oral questions were submitted by Parliament. Written questions have become an instrument of inflationary use, rocketing to over 15,000 in 2015 and thus putting a strain on the Commission administration. Their sheer quantity seems to impact on the quality of the answers.

5.6. Petitions

Finally, the European Parliament's Committee on Petitions (PETI) also plays a role in the ex-post scrutiny of existing legislation. By means of petitions, EU citizens and residents can, provided they are directly affected, complain or comment about late, incomplete or otherwise non-compliant transposition/application of EU law. They can hence point at issues they – subjectively – deem not to be working well. Petitions can therefore serve as an indicator of potential flaws/failures in Member States' compliance with existing EU law. Moreover, petitions can also help "to identify loopholes in EU law and to assess impacts of absence of regulation in certain fields, hence becoming a trigger for further legislative efforts".⁵³

⁵³ European Parliament resolution P8_TA (2016) 0512 of 15 December 2016 on the activities of the Committee on Petitions 2015.

6. Conclusions

The power gained through the Lisbon Treaty encouraged the European Parliament to broaden its interest from the purely legislative phase to the entire legislative cycle. This factor, together with the institution's firm commitment to "Better Law-Making" favoured a climate of capacity building in the area of impact assessment, including ex-post evaluation. Accordingly, this current legislative term saw a rise in awareness regarding the utility of evaluation. Today, the European Parliament has an institutionalized system of retrospective evaluation in place, which recognizes the virtues of evidence-based policy-making, while being by definition driven by the political agenda of its Members.

While the European Commission has a broad legal obligation to monitor and assess the implementation of EU law and policies, the European Parliament's evaluation work is rooted in the institution's oversight function. Therefore, the purpose of Parliament's evaluations is to hold the executive accountable for implementation of EU legislation. However, in line with the policy cycle concept, they also have agenda-setting potential for revising existing legislation; Parliament has demonstrated on several occasions that its evaluations can indeed make an impact on the EU policy cycle, in particular as valuable input for new proposals. It is to be hoped that this multifaceted role will in future be reflected in the growing body of academic literature on the EU's Better Regulation agenda.