

**RESPONSE TO THE EC CONSULTATION ON THE ‘BETTER REGULATION’ APPROACH****23 October 2018****SUMMARY**

On 23 October 2018, EuropeanIssuers responded to the public consultation on the stocktaking of the Commission’s ‘better regulation’ approach. We very much welcome the consultation as it is an opportunity to provide input to the European Commission to help assess how well the various better regulation tools work in practice and contribute to achieving the objectives of achieving the better regulation policy. EuropeanIssuers appreciates the efforts to increase transparency and quality of EU decision-making. However, more ambition is needed in terms of recognising the need of reducing undue regulatory burdens. In the evaluation, EuropeanIssuers highlighted several key issues upon which we believe there could be improvement:

- The Commission’s impact assessments should primarily focus on analysing the impact of the proposals on the competitiveness of European companies and on the European economy.
- There needs to be an appropriate balance between level 1 and level 2 legislation. (i.e. too much delegation from level 1 to level 2).
- The EC’s website is fragmented and not easy to use, thus making it difficult to ensure that we can collect all the necessary information.
- There could be further improvements regarding stakeholder involvement to ensure all relevant stakeholders are properly represented.
- Deadlines for feedback are not consistent and, in some cases, too short.
- The questionnaires and feedback are too restrictive. (e.g. limited character responses, loaded questions, and not all questions allow for additional comments).
- Questionnaires should be independently checked to ensure neutrality.

Our detailed response to the public consultation can be found below.

# Stocktaking of the Commission's 'better regulation' approach

Fields marked with \* are mandatory.

## Introduction

The European Commission is committed to being 'big on big things' and smaller on things where EU action does not add value. To help to deliver on this commitment, the Commission has put in place a 'better regulation' agenda based on three key pillars: stakeholder engagement throughout the policy cycle; evaluation to ensure that the current body of EU law remains fit for purpose; and impact assessment to ensure that new proposals reach their policy goals in the most efficient way without imposing unnecessary burdens.

Since 2015, the Commission has revamped the 'better regulation' framework to make it more effective. The results of this revision include:

- *further efforts to increase the transparency, legitimacy and accountability of our work, in particular as regards the consultation process throughout the policy cycle, including the possibility for the general public and interested parties to provide feedback on proposals, and increased availability of languages*
- *an independent Regulatory Scrutiny Board which checks the quality of the Commission's impact assessments and major evaluations*
- *a new online tool – 'Lighten the Load' – which enables those affected by EU legislation to put forward their views, plus any criticisms and ideas for improvement they may have, so as to simplify and improve existing EU laws*
- *a platform of experts including representatives of NGOs, interest groups and national governments – the 'REFIT platform' – to advise the Commission on how to make EU laws simpler and less costly without watering down the intended objectives*

**The Commission is aware that further improvements can be made. We would like to hear your views on those aspects of the better regulation framework that work well and those where you think it should be improved.**

The results of this public consultation will inform the Commission stocktaking of its better regulation framework which it will publish in Spring 2019.

The questionnaire is divided into 7 short sections. Most questions are optional. You can upload a position paper at the end should you so wish.

Relevant links:

- the Commission's 2017 communication on ['Completing the Better Regulation Agenda: Better solution for better results'](#)
- the Commission's [better regulation agenda](#)

- the Commission's [better regulation guidelines and toolbox](#)
- the Commission's [central consultation page](#) ('Have your say')
- [Regulatory Scrutiny Board](#)
- the Commission's [REFIT Programme](#)
- [REFIT platform](#)
- [Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'](#)

## About you

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\*1 You are replying

- ☐ as an individual in your personal capacity
- ☒ in your professional capacity or on behalf of an organisation

\*8 Respondent's first name

Florence

\*9 Respondent's last name

Bindelle

\*10 Respondent's professional email address

info@europeanissuers.eu

\*11 Name of the organisation

EuropeanIssuers

\*12 Postal address of the organisation

Rue Belliard 4-6,  
1040 Brussels,  
Belgium

\*13 Type of organisation

Please select the answer option that fits best.

- ☐ Private enterprise
- ☐ Professional consultancy, law firm, self-employed consultant
- ☒ Trade, business or professional association
- ☐ Non-governmental organisation, platform or network
- ☐ Research and academia
- ☐ Churches and religious communities

- ☐ Regional or local authority (public or mixed)
- ☐ International or national public authority
- ☐ Other

\* 16 Please specify the type of organisation.

- ☐ Chamber of commerce
- ☒ Business organisation
- ☐ Trade Union
- ☐ Representative of professions or crafts
- ☐ Other

\* 22 Is your organisation included in the Transparency Register?

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

- ☒ Yes
- ☐ No
- ☐ Not applicable

\* 23 If so, please indicate your Register ID number.

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\* 24 Country of organisation's headquarters

- ☐ Austria
- ☒ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal

- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom
- ☐ Other

**\*26 Your contribution,**

Note that, whatever option chosen, your answers may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)

- ☒ **can be published with your organisation's information** (I consent the publication of all information in my contribution in whole or in part including the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication)
- ☐ **can be published provided that your organisation remains anonymous** (I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

## 1. The Commission and better regulation – general questions

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*This section focuses on the Commission's general approach to improving regulation (later sections will go into more detail).*

**\*27 Are you informed about the Commission's plans early enough to be able to take part in the policy-making process?**

- ☐ Yes, fully
- ☒ Yes, mostly
- ☐ Sometimes
- ☐ No, not usually
- ☐ No, not at all
- ☐ Don't know

**\*28 Are you satisfied with how the Commission involves members of the public, businesses, non-governmental organisations and other interest groups?**

- ☐ Yes, very satisfied
- ☐ Yes, satisfied
- ☐ Neither satisfied nor dissatisfied
- ☒ No, dissatisfied
- ☐ No, very dissatisfied
- ☐ Don't know

**\*29 Does the Commission provide enough evidence (e.g. evaluations, impact assessments) to back up its proposals?**

- ☐ Yes, always
- ☐ Yes, mostly

- ☒ Partially
- ☐ No, not usually
- ☐ No, not at all
- ☐ Don't know

\* 30

**Does the Commission take environmental and social impacts sufficiently into account when putting forward policy proposals (in addition to economic impacts)?**

- ☐ Yes, always
- ☒ Yes, mostly
- ☐ Partially
- ☐ No, not usually
- ☐ No, not at all
- ☐ Don't know

\* 31 **Does the Commission take subsidiarity and the role of national, regional, and local authorities sufficiently into account when putting forward policy proposals?**

- ☐ Yes, always
- ☐ Yes, mostly
- ☒ Partially
- ☐ No, not usually
- ☐ No, not at all
- ☐ Don't know

\* 32 **Are you satisfied with the Commission's efforts to simplify existing EU laws and to reduce costs where possible (REFIT)?**

- ☐ Yes, very satisfied
- ☒ Yes, satisfied
- ☐ Neither satisfied nor dissatisfied
- ☐ No, dissatisfied
- ☐ No, very dissatisfied
- ☐ Don't know

**33 Please feel free to explain your answers. We would like to know what works well (and should be kept) and what doesn't (and needs review).**

*3000 character(s) maximum*

Overall, we are informed about the Commission's plans early enough to take part in the decision-making process. Nevertheless, the Commission notifications' system could be improved. Lately EC website became more defragmented, and it became difficult to ensure that we get all notifications on the topics of interest. Also, it is sometimes complex to get all the information on the topics. It is also not easy to quickly get the links to the relevant documents.

While EC has made progress in increasing stakeholder involvement, we believe that more could be done to facilitate a more comprehensive involvement of all relevant stakeholders in the decision-making process via expert and stakeholder groups. EuropeanIssuers has noticed a trend, particularly within the financial markets regulation, that discussions are heavily dominated by financial companies. Non-financial companies are also impacted by financial markets regulation while accessing markets for financing or risk mitigating purposes while they are often underrepresented or not represented on relevant Commission expert group. Recent examples are: the Technical Expert Group on Sustainable Finance and the Expert Group on Conflict of Laws Regarding Securities and Claims. While we understand that the Commission has a difficult job in ensuring a proper balance of geographical, gender and other factors, we believe that appropriate stakeholder representation shall prevail.

Another issue are deadlines for feedback which in some cases are too short. While we appreciate that for most of the consultations there is a three-month period to respond, in some cases, we have been faced with very short feedback periods. E.g., consultation supplementing SRD II was open for less than 4 weeks, while being very technical. It also fell during the AGM season meaning it was difficult to get input from companies. Moreover, feedback was restricted to 4 000 characters on highly technical draft implementing acts of more than 27 000 characters.

We also have concerns with the questionnaire format used by EC to consult stakeholders. The way questions and possible answers are formed restricts the answers and may suggest certain conclusions which are not intended by the respondents. Also, not all questions allow for additional comments, further restricting possibility for stakeholders to clarify their messages. Comments also seem not well displayed in the tables displaying stakeholders' responses.

Limit on the number of characters is often overly restrictive (which is also in case of this consultation – limit of 3000 characters in on comments to 6 questions) and not always marked.

While we appreciate REFIT exercises, we believe there is room for improvement (see comments above).

## 2. Consulting the public and interested parties

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When preparing new or revising existing laws and regulations, the Commission asks interested parties for their ideas and views as well as for factual information. The idea is to give those likely to be affected by EU policies an opportunity to be heard.

Members of the public and representatives of interest groups can provide input throughout the policymaking process in a number of ways (all of which you can find on the Commission's central consultation page, Have Your Say). They can:

- comment on roadmaps and inception impact assessments (these documents present the Commission's initial ideas, announce the launch of an impact assessment process or explain its absence and also provide an overview of the planned public and targeted consultations)
- participate in public consultations
- comment on legislative proposals

- comment on draft delegated or implementing acts (these acts complement existing laws to update them or to help implement them)
- suggest ways to improve existing laws, via the 'Lighten the Load' tool

Individual Commission departments also regularly hold targeted consultations of stakeholders through events, working groups, or questionnaires published on the respective department's web page or sent to experts.

The aim of this section is to identify what parts of the stakeholder consultation processes are working well and find out how the Commission can improve them further.

**\* 34 Are roadmaps and inception impact assessments useful to help you prepare your participation in the policy-making process?**

- ☐ Yes, fully
- ☒ Yes, mostly
- ☐ Partially
- ☐ No, mostly not
- ☐ No, not at all
- ☐ Don't know

**35 Please feel free to explain your answer.**

*2000 character(s) maximum*

Roadmaps and inception impact assessments are mostly useful, although in some cases they could be clearer, and their timing is also important. For instance, EC published a Roadmap on "a simplified prospectus for companies and investors in Europe" on 24 April 2018 (giving time for feedback until 22 May 2018). We understand that the intention of the roadmap was to inform about the delegated acts. While indeed it provided information about the planned adoption of the delegate acts (although not specifying which ones), it did not mention other level 2 and level 3 measures (implementing technical standards and guidelines). It could be also questioned whether the timing was appropriate as such information would have been helpful one year before, when ESMA was starting to work on level 2 measures. Some of our members, even those involved in EU decision taking process on on-going basis, were confused.



36 Are you satisfied with the following opportunities to contribute to the policy-making process?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know	I am not aware of this tool / opportunity
* Opportunity to <b>comment on roadmaps and inception impact assessments</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* <b>Public consultations</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to <b>comment on draft delegated and implementing acts</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to <b>comment on Commission legislative proposals</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to <b>suggest ways to improve existing laws (Lighten the Load)</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

### 37 Please feel free to explain your answer.

*2000 character(s) maximum*

Overall, we are rather happy with the opportunity to respond to the public consultations and comment on roadmaps and inception impact assessments, although we have concerns over the questionnaire format of consultations. The way questions and possible answers are formed restricts the answers and may suggest certain conclusions which are not intended by the respondents. E.g. even in this consultation there isn't a possibility to respond "somewhat satisfied" which is neither "yes, satisfied" nor "Neither satisfied nor dissatisfied" (which has a 0 value) or "No, dissatisfied". Many experts in surveys would warn against the middle biases. Some public consultation questionnaires are designed to justify a position that has already been taken by the Commission. The consultation on public CBCR is in this regard a remarkable example. Also, not all questions allow for additional comments, further restricting possibility for stakeholders to clarify their messages. There are often very strict limits on the number of words / characters which are not always well marked. The format is not useful while consulting the members: some questions / options only pop up after you pick an option, while it would be useful to have a full version available, ideally in word format. Furthermore, we question whether additional comments made are truly taken into consideration while analysing the responses.

While we appreciate an opportunity to comment on consultations on EC legislative proposals and draft delegated and implementing acts, we are somewhat dissatisfied with the deadlines, often very restrictive words / characters limit and sometimes structure of consultations on EC legislative proposals and draft delegated and implementing acts. See our response to Q 35.

38 Are you satisfied with the following aspects of the Commission's *public* consultations?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know
* Clarity of questionnaires	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Length of questionnaires	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Neutrality of questionnaires	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Opportunity to make relevant comments or provide supporting material	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Availability of different language versions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Length of consultation period (12 weeks)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**39 Please feel free to explain your answer.**

*2000 character(s) maximum*

Please see our response to Q 37 and 35.

**\*40 Are you satisfied with how the Commission reports on the results of its public consultations and the other opportunities to comment?**

- ☐ Yes, very satisfied
- ☐ Yes, satisfied
- ☐ Neither satisfied nor dissatisfied
- ☒ No, dissatisfied
- ☐ No, very dissatisfied
- ☐ Don't know

**41 Please feel free to explain your answer.**

*2000 character(s) maximum*

The table which provides the responses to the consultations is not user friendly. It sometimes takes us quite many attempts to find the response of our organisation (searching by name does not always seem to work). For instance, we have been searching for our response to EC consultation on supervisory reporting and we could not find it by searching by the name of the organisation (we checked different options of how it could be written) or by the transparency register number. It only eventually worked by limiting the responses through using selective filters with pre-defined options (e.g. Transparency Register and Brussels based EU organisation). Overall, searching by typing any sort of names did not give the result. Comments also do not seem easily accessible.

**42 Do you have any other ideas for improving the Commission's stakeholder consultation practices? We would like to hear examples of good practice from both EU and non-EU countries.**

*3000 character(s) maximum*

We suggest that the Commission's questionnaires get independently checked to ensure neutrality.

### **3. Evaluating existing EU laws**

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The Commission regularly assesses how well existing EU measures - laws, policies, and financial programmes, for instance – are working.

An assessment of existing EU measures is called an '**evaluation**' (and, where several EU measures are examined collectively, a 'fitness check'). Assessments enable the Commission to decide whether particular EU measures are still justified, or whether they need to be simplified or improved (e.g. to cut out

unnecessary regulatory costs or inconsistencies, adapt measures to take account of new developments, make them work better, or even repeal them).

The REFIT programme and the REFIT platform help the Commission identify the areas where it needs to focus its efforts, to simplify legislation and reduce any burdens caused by EU action. The state of play of such initiatives are tracked by the REFIT Scoreboard.

43 Are you satisfied with the following aspects of the Commission's evaluations?

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know
* Transparent assessment of what works and what doesn't	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Usefulness of evaluations for policy-making	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Transparent information about all relevant impacts (benefits and costs) of existing legislation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Focus on simplification and cutting unnecessary costs ('REFIT programme')	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**44 Please feel free to explain your answer.**

*2000 character(s) maximum*

We welcome the principle of conducting evaluation of the existing regulation and REFIT initiatives aimed at lowering undue regulatory burdens. Our experience with REFIT programme is still limited. We have been following and contributing to the EMIR REFIT proposal, and we are rather satisfied with the outcomes but as the legislative process has not ended yet, it may be too early to say.

We have also welcomed and contributed to the EC fitness check consultation on Public Corporate Reporting and Supervisory Reporting. In these cases, it is even more premature to judge the outcomes. In case of the Public Corporate Reporting consultation, we had some concerns over the questionnaire. The way questions and possible answers were framed, was pointing in a certain direction. It was felt that respondents were not able to fully express their views through the questionnaire, while in case of several questions it was not possible to provide additional comments (or only in case of selecting a certain answer first). See our response to Q 37.

On the other hand, in the last years we have seen many new regulatory proposals which unfortunately will result in the additional burdens on companies. Therefore, we would suggest a more thorough analysis and reflection before any new proposals are issued, instead of later having to amend them. Frequent regulatory changes, even if aimed at certain alleviations, are also often burdensome for companies that need to train people and adjust their processed and IT systems.

Please see Question 47 for our remaining comments.

**\* 45 Is the REFIT platform effective in identifying areas where legislation can be simplified and unnecessary costs cut while preserving policy objectives?**

- ☐ Yes, fully
- ☐ Yes, mostly
- ☐ Partially
- ☐ No, not usually
- ☐ No, not at all
- ☒ Don't know

**46 Please feel free to explain your answer.**

*2000 character(s) maximum*

**47 Do you have any further ideas about how to improve the Commission's evaluations?** Please feel free to share examples of good practice from both EU and non-EU countries.

*3000 character(s) maximum*

In our experience, the Regulatory Scrutiny Board tends to be more demanding regarding data and supporting evidence for the regulatory changes which are aimed at alleviations. Unfortunately, such data is very difficult to obtain and often would require hiring a consultant who, after well understanding the processes within a company, could make certain estimates and projections. For an association that is unfortunately not possible. In this regard, when requesting data in consultations, the Commission should provide sufficient time and clear instructions (scope and the definition of the data, for instance).

Lastly, while we appreciate efforts of the Commission in trying to adopt a more horizontal approach in its fitness checks, we believe this could go even further. E.g., we have suggested that EC shall consider Company Law and Corporate Governance rules while conducting the fitness check on the Public Corporate Reporting. Eventually they were not in the scope as they reside within the competence of DG JUSTICE. There is an issue with the timing of certain political initiatives, which does not respect the appropriate timeline initially foreseen in level 1 legislation. For instance, the Commission already announced in its Sustainable Finance Action Plan that it would update the NFID guidelines, without any previous assessment of the implementation of the NFI Directive.

## 4. Assessing new Commission proposals

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Impact assessments support the Commission's policy proposals. They assess:

- the pros and cons of a range of policy options designed to address one or more problems, using evidence from previous evaluations and consultations
- conformity with the principles of [subsidiarity](#) and [proportionality](#)
- potential for simplifying existing legislation and cutting any unnecessary regulatory costs, in line with the Commission's REFIT programme.

All impact assessments are published on a [central web page](#). Members of the public and people with a special interest in the issue at hand can comment on impact assessments accompanying legislative proposals.



48 **Are you satisfied with the following aspects of the Commission's impact assessments?**

	Yes, very satisfied	Yes, satisfied	Neither satisfied nor dissatisfied	No, dissatisfied	No, very dissatisfied	Don't know
<b>* Transparent information about all the relevant impacts (benefits and costs) of different policy alternatives</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>* Assessment of the potential for simplifying existing legislation and cutting unnecessary costs</b>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>* Usefulness to inform the Commission's decision-making</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>* Usefulness to inform the European Parliament's and the Council's decision-making</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**49 Please feel free to explain your answer.**

*2000 character(s) maximum*

Overall, we are satisfied with the EC impact assessment and we believe they are necessary before any legislative proposals are made. But in our experience, there tends to be more pressure on the industry regarding data and supporting evidence for the regulatory changes which are aimed at alleviations. Unfortunately, such data is very difficult to obtain and often would require hiring a consultant who, after well understanding the processes within a company, could make certain estimates and projections. For an association that is unfortunately not possible.

Moreover, it would be useful to consider demanding impact assessments on the amendments on the Commission proposals made in the Council and in the European Parliament, as the original impact assessment often no longer justifies the final legislative act.

**50 Do the Commission's impact assessments analyse the most relevant and important issues? (e.g. impacts on SMEs via the SME test, etc.)**

*2000 character(s) maximum*

The Commission's impact assessments should primarily focus on analysing the impact of the proposals on the competitiveness of European companies and on the European economy. Most of the time, little attention is paid to competitiveness and some Commission proposals may have a very negative impact on EU companies, leading to an unlevel playing field. Also, the legal quality of proposals should be properly assessed. Some proposals could have a very disruptive effect on legal certainty of business. Whilst it should not prevent change, legal transition should be properly ensured.

With regards to SMEs, while the Commission impact assessments tend to take the impact on SMEs into account, we believe that the Commission should also take into account the impact on small and mid-cap companies, which are fundamentally different from large blue-chip companies, as well as from SMEs (in terms of their growth potential, size, turnover, job creation, percentage shareholding of investors, and types of investors, among other things). As such, they require a different regulatory and market ecosystem, along with appropriate, tailored rules for these companies' growth needs.

Therefore, we strongly believe that the SME listing package should provide a definition of a small and mid-cap company enshrined in EU law. In line with the US JOBS Act, we would propose an upper market capitalisation threshold of €1bn. Compared with the industry small-cap fund definitions which range from €1bn to 7bn, such a threshold is rather modest. To reflect the diversity of EU markets, certain flexibility for Member States could be permitted to adjust this threshold to local market realities. Such an approach would help to achieve a European uniform and proportionate approach towards smaller quoted companies while taking into consideration the diversity of market conditions in Member States.

**51 What more can the Commission do to justify its proposals with regard to [subsidiarity](#) and [proportionality](#)?**

*2000 character(s) maximum*

**52 Do you have any further ideas about how to improve the Commission's impact assessments?**  
Please feel free to share examples of good practice from both EU and non-EU countries.

*3000 character(s) maximum*

We suggest that especially whenever it is very difficult obtain data from the industry, the Commission hires consultants to gather the data and delivers projections needed to justify the proposals. This would be very helpful in addition to data provided by various the stakeholders, as often it is very hard or impossible for associations to get the data or ever harder to evaluate potential costs / savings certain policy changes would result in.

## 5. Scrutinising the quality of impact assessments and evaluations

The Regulatory Scrutiny Board (RSB) became operational in 2016. It is appointed by the President of the Commission. It has 7 full-time members, of which 3 are externally recruited. The Board quality controls impact assessments and major evaluations. It ensures that facts and stakeholder views are fairly presented to decision-makers. Its opinions are published.

53 Please indicate the level of your agreement with each of the following statements:

	I strongly agree	I tend to agree	I tend to disagree	I strongly disagree	Don't know
I am familiar with the Regulatory Scrutiny Board.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is sufficient regulatory scrutiny of EU impact assessments and evaluations.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory scrutiny adds value to the overall regulatory process.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board is impartial.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The Regulatory Scrutiny Board opinions are informative.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The Regulatory Scrutiny Board opinions promote evidence-based policies.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board increases the quality of Commission proposals.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board increases transparency of Commission policy-making.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Regulatory Scrutiny Board increases accountability of Commission policy-making.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

54 Do you have any comments on the Regulatory Scrutiny Board?

3000 character(s) maximum

No comments

## 6. Final questions

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**55 Please select up to three areas where the Commission has made (relatively more) progress since 2014, if any.**

*at most 3 choice(s)*

- ☒ Transparency of the policy-making process
- ☒ Consultation
- ☐ Evaluation
- ☐ Impact assessment
- ☒ Scrutiny of regulatory proposals
- ☐ How the different 'better regulation' tools work together
- ☐ Other

**57 Please select up to three areas where the Commission should make improvements in the future.**

*at most 3 choice(s)*

- ☐ Transparency of the policy-making process
- ☒ Consultation
- ☐ Evaluation
- ☒ Impact assessment
- ☒ Scrutiny of regulatory proposals
- ☐ How the different 'better regulation' tools work together
- ☐ Other

**59 How could the Commission simplify its better regulation approach to ensure the timely development of proposals while ensuring that these continue to be based on evidence?**

*3000 character(s) maximum*

We suggest that especially whenever it is very difficult obtain data from the industry, the Commission hires consultants to gather the data and delivers projections needed to justify the proposals. This would be very helpful in addition to data provided by various the stakeholders, as often it is very hard or impossible for associations to get the data or ever harder to evaluate potential costs / savings certain policy changes would result in.

## 7. Document upload and final comments

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**60 Please feel free to upload a concise document, such as a position paper. The maximum file size is 1MB.**

*Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this public consultation. The document is optional and serves as additional background reading to better understand your position.*

**61 If you wish to add any further information relevant to this questionnaire, please feel free to do so here.**

*3000 character(s) maximum*

In terms of other improvements aimed at Better Regulation, appropriate balance between level 1 and level 2 should be maintained. Over the years, we have observed a significant increase of provisions being delegated to level 2 in many financial services dossiers. Often, these are crucial issues that in our view should be tackled at level 1. This is against better regulation principles and may create regulatory uncertainty for market participants, ESAs, National Competent Authorities. It is important that EU co-legislators ensure that all crucial political issues are negotiated at level 1. A temptation of overcoming possible deadlocks at level 1 negotiations by deferring discussions on some key contentious matters by delegating them to level 2 should be avoided. Hence, the delegation of power must be clear, precise and detailed and may only aim to supplement certain non-substantive elements of the legislative acts.

Appropriate stakeholder representation on various expert and stakeholder groups is key.

To ensure Better Regulation and appropriate stakeholder consultation at all legislative stages, it would be useful to increase transparency of trialogue discussions. Moreover, we would appreciate more transparency from the Council side on the attachés in charge of different dossiers.

## **Contact**

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