

Retrospective Policy Evaluation at the European Parliament

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Abstract

The European Parliament (EP) 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' preparation of 'implementation reports' has led to an institutionalization of parliament's evaluation activities. This article discusses the rationale for, and practice of, the European Parliament's policy evaluation system in the context of the EU's Better Regulation Agenda. It explains how, when and why the European Parliament performs retrospective evaluation. Moreover, it reflects on the complementary role of parliament's evaluation work with regard to that of the European Commission and, finally, examines the value it adds in terms of accountability and agenda-setting.

Keywords: European parliament, EU legislation, post-legislative scrutiny, scrutiny of the executive, Better Regulation.

A Introduction

In the context of the EU's Better Regulation Agenda, the European Parliament (EP) has put in place a tool for retrospective policy evaluation, which helps to assess how effectively EU policy has been implemented. This post-legislative scrutiny (PLS) tool is part of the European Parliament's general oversight function of the executive, a function that has, over the years, significantly evolved as parliament's political clout in the EU's institutional architecture increased.¹

This article, drawn from the perspective of parliamentary practitioners, first outlines the evolution of parliament's evaluation capacity in the context of the EU's Better Regulation Agenda (Chapter 1). It then explains the dual character of the EP's evaluation tool, combining a political initiative with a fact-oriented research dimension, whereby the latter underpins the evidence-base of the for-

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1 The EP's control powers have expanded notably through changes in the EU Treaties, the conclusion of Interinstitutional Agreements and amendments to parliament's own Rules of Procedures.

mer (Chapter 2). Finally, it addresses the question of what parliament's evaluation capacity adds to the Commission's long-established evaluation function and how the two institutions interact in terms of policy evaluation (Chapter 3).

While there is a growing body of academic literature on Better Regulation and the Commission's evaluation function, the European Parliament's contribution has, as yet, barely been considered. "The scant existing literature" maintains "that the EP hardly uses ex post programme evaluations and impact assessments."² However, this has changed in recent years, as this article demonstrates.

I Origin of the European Parliament's Evaluation Activities

Parliament's evaluation system emanated from the institution's commitment to the EU's Better Regulation Agenda. The main objective of this agenda, which sprouted within the European Commission from around 2000, is to improve the quality of new EU legislation, among other things by backing up political decisions with impact assessment (in the preparatory stage as well as after the enactment of a law).

In 2003, the parliament, together with the European Commission and the Council of the EU, adopted the first Interinstitutional Agreement on Better Law-Making.³ In this agreement, the three institutions valued the importance of "legislation of good quality" (para. 25) and identified the use of impact assessment as one area of action.⁴ At that time, the European Parliament's use of ex-ante impact assessment was erratic and occasional, and ex-post impact assessment/evaluation was exclusively in the hands of the European Commission.

The game-changer was a parliamentary resolution on what was known as the 'Niebler Report', adopted on 8 June 2011 by a large majority.⁵ 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 2012.⁶ When this service was joined with others to create the new 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,

2 P. Zwaan, S. van Voorst & E. Mastebroek, 'Ex Post Legislative Evaluation in the European Union: Questioning the Usage of Evaluations as Instruments for Accountability', *International Review of Administrative Sciences*, Vol. 82, No. 4, 2016, pp. 674-693.

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

4 Throughout this article, unless otherwise indicated, the term 'impact assessment' is used as a generic term, referring to both ex-ante and ex-post impact assessment/evaluation.

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

6 European Parliament, Bureau decision of 4 July 2011.

from agenda-setting (including foresight) to ex-post scrutiny.⁷ With regard to the latter, a dedicated unit of (currently) 15 staff members assist parliamentary committees in all aspects of ex-post evaluation.

II *Parliament's Dual Evaluation System*

In the wake of the Niebler Report, the European Parliament gradually developed its own ex-post evaluation system, arriving at the structure in place today. This system is two-fold: it consists of a parliamentary, and thus political, resolution on the basis of a committee report which is supported by a factual research paper upstream, aimed at underpinning the report's evidence base. This process thereby serves as an example for the inter-linkage between factual evaluation and politics.⁸

1 *The Political Facet: The 'Implementation Report'*

At the core of the European Parliament's evaluation system are 'implementation reports', a specific type of own-initiative report granted to standing committees as a means of scrutinizing how effectively EU measures have been applied and enforced, in particular at national level. The subject of an implementation report is, in most cases, a piece of EU legislation (a directive or regulation), but it could also be a spending programme or an international agreement. The 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 EP level.

Implementation reports were first introduced in 2008;⁹ however, a more strategic and frequent use of the instrument has 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 the greater legislative power parliament gained through the Lisbon Treaty,¹¹ which extended the former co-decision procedure to most EU legislations (now referred to as 'ordinary legislative procedure').

In the current eighth legislative term (2014-2019), between 10 and 15 implementation reports are tabled per year. Following encouragement at the political

7 European Parliament, Bureau decision of 20 May 2013.

8 See, *e.g.*, P. Cairney, *The Politics of Evidence-Based Policy Making*, London, Palgrave Macmillan, 2016.

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

10 In the current eighth legislative term, committees have engaged in nearly 50 implementation reports, compared to approximately 20 in the previous term, 2009-2014. It is to be noted, however, that 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 of roughly 100+ evaluations per year.

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.

level,¹² most standing committees have made use of this instrument at least once this term. Some committees – in particular for employment and social affairs, and environment – make quite frequent use of the possibility.

Prompted by the new Interinstitutional Agreement (IIA) on Better Law-Making,¹³ endorsed by the three institutions in April 2016, and in particular by the reinforced commitment to ex-post evaluation stated therein,¹⁴ the parliament undertook a major reform of its rules governing implementation reports in 2016.¹⁵ Under the new rules, committees have 12 months to draw up an implementation report. After a subsequent vote 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, for example, 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 3 months (the same rule applies to any other parliament resolution). It has to explain in detail the actions it has taken in response to the issues raised and, if applicable, to justify not acting. Pursuant to the institutional power balance, the Commission is not formally obliged to give parliament's recommendation a positive follow-up.¹⁶

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 useful evidence available for the report to draw upon. Also, to add real value to the policy cycle and to avoid duplication of effort, committees need to take the planning of the Commission's own evaluation work into account.¹⁷ In this respect, a dedicated checklist compiled by the European Parliamentary Research Service facilitates committees' planning.¹⁸

12 Notably by the Conference of Committee Chairs.

13 OJ L 123, 12.5.2016, pp. 1-14.

14 See Chapter III 'Tools for Better Law-Making', para. 20-24 on 'Ex-post evaluation of existing legislation'.

15 European Parliament, Conference of President decision of 12 December 2002, as amended, most recently on 7 April 2016.

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

17 Ideally also the work of other EU institutions, in particular the special reports (performance audits) of the European Court of Auditors.

18 L. Schrefler, *Evaluation in the European Commission: Rolling Check-List and State Of Play*, EPRS, 3rd ed., December 2017. This list is updated once per year.

2 *The Supporting Evidence-Base Prepared by Parliament's Research Service*

Under the current rules for implementation reports, members in charge of a 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 may request factual information from other EU bodies or national authorities. They may also undertake fact-finding missions to member-states and organize hearings with experts and stakeholders. Furthermore, they are entitled to obtain 'analytical support' (meaning impartial, factual expertise) from parliament's research services, 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, in particular at the beginning of the process, with the political rapporteur, mainly to define the scope of the study. This has become a well-established regular process. The purpose of these studies, termed 'European Implementation Assessments' (EIAs), is to substantiate the committee's 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 of the European Commission and other institutions, advisory committees, EU agencies and member-states; EU case-law; statistics; academic research; stakeholders' views *etc.*). In addition, surveys/targeted stakeholder consultations may be launched to get new qualitative and quantitative information. Under certain conditions, and in particular when technical or scientific data are missing and needed, in-house research may be complemented by external expertise contracted through public procurement procedures.

Among the most meaningful information sources are regular monitoring reports compiled by the European Commission; these provide data and other evidence that are needed for evaluation. Most such reports are mandated by review clauses embedded in legislation. In fact, today, the majority of new EU directives and regulations contain a review clause.¹⁹

From a methodological point of view, EIAs broadly follow the Commission's Better Regulation Guidelines (albeit less strictly and comprehensively than Commission's evaluations), in particular for the key assessment criteria. Using a similar methodology is in the spirit of the new IIA, which strongly advocates "the coherence of the overall impact assessment work" (para. 17) between the institutions. In fact, similarities in the institutions' respective methodologies facilitate the comparability of evaluation results.

Consequently, parliament's implementation studies assess the implementation of EU law and policy in general terms, against the set of criteria the Commis-

19 I. Kiendl Krišto, *Review Clauses in EU Legislation: A Rolling Checklist*, EPRS, 5th ed., 2017, pp. 12-13.

sion defined in its Better Regulation Guidelines and the associated ‘Toolbox’,²⁰ and which are also quoted in the IIA (para. 22). These criteria are as follows:

- *Effectiveness*: to what extent were the set objectives achieved?
- *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? Is there an added value for citizens and businesses?

Timing is a crucial factor, when drawing up an EIA: it can only inform the political debate if it is ready before the deliberations on the draft report take place in the competent committee. Therefore, the main findings of this research work are presented in front of this committee (either during a regular meeting or an expert hearing), immediately before the political debate on the draft report. EIAs are, like all other EPRS analyses, published on the European Parliament’s public register of documents and made accessible via its ‘Think Tank’ website.²¹ As a result, EPRS publications are freely 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 requests, depending on the scope of the proposed study, and the capacities and availability of the particular expertise required. Such studies are frequently undertaken for temporary committees. With regard to depth of research and output, these studies are in principle similar to ‘European Implementation Assessments’. They are likewise published on parliament’s ‘Think Tank’ website (under the category ‘Ex-post impact assessment’).²²

3. Evidence-Based Evaluation in a Political Environment

The European Parliament is firmly committed to the EU’s better law-making principles and thus recognizes impact assessment as a key element of evidence-based policymaking. Nevertheless, parliament is a political, not a technocratic, institution. And a parliamentary report is a political document and, thus, by nature, always influenced by political preferences. In that respect, the 2011 Niebler Report already argued, while valuing the contribution of impact assessment to evidence-based policymaking, that “impact assessment is in no way a substitute for political debate and the legislator’s decision-making process but merely serves to help the technical preparation of a political decision” (para. 4).

20 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 (last accessed 10 September 2018).

21 See www.europarl.europa.eu/thinktank/en/home.html (last accessed 10 September 2018).

22 The product category ‘European Implementation Assessment’ is strictly reserved to the context of implementation reports.

Accordingly, the research service's evaluation studies are to be understood as a *support* to policymaking (in the sense of technical and factual background). 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 however that committees do indeed make regular use of EPRS research. First and from a procedural point of view, it has become standard practice that study authors are asked to present their key findings to the requesting committee, before the political debate starts. Second and from a substance point of view, evidence and arguments provided in the supporting study typically feed into the draft report and into the amendments process during committee deliberations. Third and from a political perspective, evidence is regularly incorporated in the final report (and in the adopted parliamentary resolution), and the study is usually referenced in the recital of the resolution as an information source. However, the committee has discretion whether to stick to this practice, depending on the 'political decision' highlighted in the Niebler Report.

III *The Interplay between Parliament and the Commission*

1 *Impact of Parliament's Evaluations on the Policy Cycle*

The European Parliament's evaluation work primarily has a retrospective scrutiny function, to hold the executive accountable for implementation of EU policy and legislation. But evaluation also bears an important policy-learning function, as it generates evidence for future policymaking. Therefore, ideally, evaluation findings inform the design of amending legislation. This concept is referred to as 'instrumental use' in scholarly research.²³ In the EU, this instrumental use has become a regular feature, as the Better Regulation Guidelines prescribe that existing legislation is amended on the basis of evidence gathered by means of a prior evaluation. This 'evaluate first principle', as it is known at EU level, is nowadays applied in an increasingly systematic manner by the various departments of the Commission.²⁴

When the European Parliament undertakes an evaluation, its starting point is usually a strong indication that the legislation in question bears some shortcomings. The purpose of parliament's evaluation is two-fold: first, to hold the Commission accountable, and second, to trigger a legislative revision. With regard to the latter, the parliament has been successful in quite a few cases, for example, with the regulation on the European Citizens' Initiative (Regulation 211/2011/EU), where the amended Commission's proposal refers in several instances to parliament's resolution and the underlying study as provider of input,²⁵ and the legislative framework for Food Contact Materials (Regulation 1935/2004/EC),

23 For example, 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.

24 Regulatory Scrutiny Board, 2017 Annual Report, 2018, pp. 22-23.

25 COM(2017) 482, 13.09.2017, see in particular pp. 2, 6 and 7.

where the Commission quotes the EPRS study in its evaluation roadmap.²⁶ Such cases suggest that the Commission duly considers parliament's evaluation work, and in particular the evidence gathered therein. The Commission may accept even more input from parliament in future, since the 2016 IIA requires that the Commission include "to the extent possible" parliament's "requests for in-depth evaluation of specific policy areas or legal acts" (para. 21) in its evaluation planning.

2 *The European Commission's Evaluations*

Even if the European Parliament's evaluation work has, in some cases, agenda-setting potential, as just discussed, such success stories should not distract from the fact that the Commission remains the main actor in the evaluation of EU policies and legislation.

Contrary to the European Parliament, whose selection of files for evaluation (through its 'implementation reports') is a political choice, being decided by parliamentary committees on a case-by-case basis, the Commission has a broad obligation to evaluate the transposition and implementation of EU law and policies. A large share of Commission's evaluations are legally mandated, either by a requirement in the legal act itself (40% of all ongoing and planned evaluations) or through financial requirements (25%).²⁷ 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. However, a significant amount of important EU legislation does not undergo an evaluation by the Commission, as has been observed by academic research. This is explained by political considerations on the one hand, in the sense that the Commission has some leeway for prioritization, and capacity reasons, on the other: evaluation work is resource-intensive and time-consuming, not to mention the financial cost when externalized, as is normally the case for the Commission.²⁸

Today, with roughly 100 fully fledged evaluations carried out per year, ex-post evaluation has become a routine activity in the Commission. The OECD has rated the Commission as among the best performers in policy evaluation worldwide.²⁹ Similarly, the European Court of Auditors, which recently audited the Commission's evaluation system, found that it contributes "effectively to the Better Regulation cycle".³⁰ Nonetheless, the Commission's Regulatory Scrutiny Board, which has been scrutinizing the quality of the Commission's major evalua-

26 European Commission, Evaluation Roadmap, Evaluation of Food Contact Materials, 28 November 2017; see in particular chapter on 'data collection and methodology'. The evaluation roadmap forms the first step in the preparation of a fully-fledged evaluation.

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

28 Research quotes a 33% share for major legislation adopted between 2000 and 2012, see S. van Voorst & E. Mastenbroek, 'Enforcement Tool or Strategic Instrument? The Initiation of Ex-Post Legislative Evaluations by the European Commission', *European Union Politics*, Vol. 18, No. 4, 2017, pp. 640-657.

29 OECD, Regulatory policy outlook 2015, pp. 128-129.

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

tions since 2016, sees scope for improvement, in particular in the design and methodology of evaluations.³¹

3 *Parliament's Use of Commission's Evaluations*

Commission's evaluations are systematically transmitted to parliament for information, or at least the main formal document (*i.e.* the 'Staff Working Document').³² The competent parliamentary committee takes note of the evaluation, but there is no specific follow-up procedure in place (contrary to Commission's ex-ante impact assessments, which are systematically scrutinized by the European Parliament). Only in rare cases are new Commission evaluations discussed in a committee meeting, or at the level of committee coordinators. Beyond the fact that most committee meetings do have overloaded agendas, the Court of Auditors considers this a 'missed opportunity'.³³

Parliamentary committees and individual members use the Commission's evaluations selectively, as they fit with their agenda and political priorities. However, systematic use of Commission's evaluations is made in two specific instances: they are always considered in parliament's own evaluations (in both the implementation report and the underpinning EPRS study), and they are analysed in a specific category of EPRS briefings prepared for committees, depicting the state of implementation of an existing EU directive or regulation just before the European Commission issues a proposal for revision.³⁴

IV *Conclusions*

The gain in power 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', has favoured a climate of capacity-building in the area of impact assessment, including ex-post evaluation. Accordingly, the current legislative term has seen 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 policymaking, while being by definition driven by the political agenda of its members.

While the European Commission has a broad 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 main purpose of parliament's evaluations is to hold the executive accountable for implementation of EU legislation. However, they also have agenda-setting potential for the revision of 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

31 Regulatory Scrutiny Board, 2018, p. 30.

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

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

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

multifaceted role will in future be reflected in the growing body of academic literature on the EU's Better Regulation Agenda.