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FROM IMPACT ASSESSMENT TO THE POLICY CYCLE: DRAWING LESSONS FROM THE EU'S BETTER-REGULATION AGENDA

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The European Union launched its first comprehensive better-regulation agenda in 2002 and has since then been constantly modifying and improving its toolkit aimed at guaranteeing the quality of its legislation. The first better-regulation agenda followed the pioneering experience of some of its member states and introduced a formal procedure of ex ante impact assessment (IA) as well as minimum criteria for stakeholder consultation.[1] Different variables explain the rise of EU-level IA, such as reactions to the overuse of the precautionary principle in risk analysis and health policy (especially in chemicals and tobacco);[2] pressure from finance ministers in countries such as the U.K. and the Netherlands to introduce evidence-based procedures in policy formulation, thus increasing accountability;[3] and organizational developments within the European Commission, with an expansion to regulatory policy of tools originally crafted for sustainable development policies.[4]

The EU IA model was introduced together with a communication aimed at simplifying and improving the regulatory environment and promoting "a culture of dialogue and

1 Prior to that, there had been pilot programs on business test panels and cost assessment, as well as different types of tests on policy proposals that were not integrated in a single template. Andrea Renda, "Impact Assessment in the EU: the State of the Art and the Art of the State," Monograph, CEPS (2006).

2 See, inter alia, K.E. Smith et al., "Working the System"—British American Tobacco's Influence on the European Union Treaty and Its Implications for Policy: An Analysis of Internal Tobacco Industry Documents," *PLOS Medicine* 7, 1 (2010). The precautionary principle implies that the introduction of a new product or process whose ultimate effects are disputed or unknown should be resisted. According to the European Commission, the precautionary principle may be invoked when a phenomenon, product or process may have a dangerous effect, identified by a scientific and objective evaluation, if this evaluation does not allow the risk to be determined with sufficient certainty. Recourse to the principle belongs in the general framework of risk analysis, and more particularly in the context of risk management, which corresponds to the decision-making phase.

3 C.M. Radaelli and A.C.M. Meuwese, "Hard Questions, Hard Solutions: Proceduralisation through Impact Assessment in the EU," *West European Politics* 33, 1 (2010): 136-153.

4 T.F. Ruddy and L.M. Hilty, "Impact assessment and policy learning in the European Commission," *Environmental Impact Assessment Review* 28 (2008): 90–105.

participation" within the EU legislative process.[5] As a result, the commission decided to integrate all forms of ex ante evaluation and various tests by building an integrated impact-assessment model, to enter into force on Jan. 1, 2003.[6] This model was tasked with the heavy responsibility of ensuring that adequate account was taken, at an early stage of the regulatory process, of both the competitiveness and sustainable-development goals, which ranked among the top priorities on the EU agenda.

Over the past 14 years, the better-regulation toolkit of the European Commission has been strengthened from a methodological standpoint, and expanded into a more comprehensive system that involves ex ante IAs, ex post evaluations, "fitness checks" focused on clusters of laws, and cumulative cost assessments that address specific industry sectors. At the same time, the system gradually involved other institutions, such as the European Parliament (especially from 2012) and, to a lesser degree, the Council. And in May 2015, the European Commission further re-launched the system with a much stronger emphasis on ex ante political validation of proposals, stakeholder consultation at all phases of the policy process, and comprehensive, well-structured retrospective reviews. The European Commission has completed more than 1,000 IAs since 2003 and this provides a solid basis for observing the main virtues and challenges of the system as it has evolved to date.

This paper looks at the lessons that can be drawn from the EU experience and highlights the challenges that have been successfully addressed and the ones that still remain unsolved. In discussing challenges, reference will be made to other legal systems, such as those in the United States, Canada, Australia and the United Kingdom. The paper also discusses the main novelties introduced by the recently adopted new EU Better Regulation Package, as well as the content of the proposed new Inter-Institutional Agreement on Better Lawmaking, both presented by the European Commission on May 19, 2015.

Section 1 of the paper analyzes the current role played by major EU institutions in better lawmaking and aspects of the current inter-institutional agreement that would be worth reconsidering. Key issues include the use of ex ante impact assessments in major EU institutions; the frequency, timing and relevance of stakeholder consultation throughout the policy process; problems related to the ex post evaluation, fitness checks and other forms of analyses of the stock of legislation (e.g., cumulative cost assessments). Section 2 focuses on methodology and discusses the taxonomy of costs and benefits that is now the basis for both ex ante impact assessments and ex post evaluations, including fitness checks and cumulative cost assessments. Section 3 briefly summarizes the main activities carried out in the realm of financial regulation and describes the recent consultation launched by the European Commission for a thorough revision of the whole stock of legislation in this domain. Section 4 concludes by briefly comparing the EU experience with the Canadian one.

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[5] During 2002 and early in 2003, the commission developed its action plan through eight targeted communications, at the same time defining with the European Parliament and the council an overall strategy on better law-making. The communications addressed the following issues: 1) General principles and minimum standards for consultation (COM(2002)704); 2) the collection and use of expertise (COM(2002) 713); 3) impact assessment (COM(2002) 276), including internal guidelines; 4) simplifying and improving the regulatory environment (COM(2002) 278); 5) a proposal for a new comitology decision (COM(2002) 719); 6) an operating framework for the European regulatory agencies (COM(2002) 718); 7) a framework for target-based tripartite contracts (COM(2002) 709); and 8) better monitoring of the application of community law (COM(2002) 725).

[6] "Impact assessment is intended to integrate, reinforce, streamline and replace all the existing separate impact assessment mechanisms for Commission proposals." See the commission's communication on impact assessment, COM (2002) 276, June 5, 2002, Section 1.3.

1. THE USE OF EX ANTE IMPACT ASSESSMENT IN MAJOR EUROPEAN INSTITUTIONS

The European Commission is the leading EU institution in which ex ante impact assessment has been more successfully mainstreamed into the policy process. Renda[7] distinguishes between three main "eras" in the EU better-regulation agenda, and more specifically in the use of impact assessment: (i) the early years (2003—2005); (ii) the re-launch of the system and the "plateauing era" (2006-2009); and (iii) the consolidation era (2009-2014), which led to the transition towards smart regulation and then the regulatory fitness (REFIT) agenda. As discussed below, a fourth era has just begun with the Juncker Commission and the recently adopted Better Regulation Package.

In June 2002, the European Commission launched a first integrated impact assessment (IIA) procedure, which incorporated not only the economic impact, but also the social and environmental impact of the proposals concerned. The IIA applied to all major initiatives included in the commission's annual policy cycle. However, the first years led to mixed results, due to both methodological and procedural reasons. Accordingly, after a first review of the impact-assessment system, in March 2005 a new communication on Better Regulation for Growth and Jobs in the European Union laid down important changes in the IIA procedure and re-launched the role of IA and better regulation as part of the Lisbon strategy. The communication's vibrant statement on the need to boost better-regulation initiatives at all levels resulted in the launch of three key actions, to be reviewed in 2007, devoted to: a) the design and application of better-regulation tools at the EU level; b) a closer collaboration with member states to ensure a consistent application of better-regulation principles; and c) a stronger, constructive dialogue with all EU regulators, member states and other stakeholders. After a public consultation, in December 2010 the European Commission adopted a new communication that spelled out the commission's new priorities for what is now called the "smart regulation" agenda. The term "smart" was used to denote a preference towards simpler regulation and possibly to a competitiveness-enhancing use of regulation with the minimum possible use of red tape. The communication announces a number of new features in the impact-assessment system, in particular:

- *The need to "close the policy cycle"* by ensuring that proposals that have been assessed ex ante are also monitored over time and evaluated ex post after a number of years, to check whether the rules in place have achieved the intended results. This evolution was integrated with new guidelines issued by the secretariat general of the European Commission on ex post evaluation, now part of the Better Regulation Guidelines adopted on May 19, 2015.
- *The re-cast of the administrative-burdens-reduction program and its combination with simplification initiatives*, with the acknowledgment of the work performed by the High Level Group on administrative burdens chaired by Edmund Stoiber, which acted as a stimulus for reforms that would cut red tape for the business sector in particular. The commission announced that it was "on track to exceed its target of cutting red tape by 25% by 2012," as it had tabled proposals that, if adopted, would generate annual savings of 38 billion euros for European companies out of a total estimated burden of 124 billion euros — a reduction of 31 per cent; after a few years the commission claimed to have gone even beyond the target by achieving a 33 per cent reduction in administrative burdens.
- *The idea that smart regulation is a shared responsibility* and that, accordingly, the European Commission can try to improve the quality of its documents as much as possible, but if the European Parliament, the Council of the EU and member states do not take action to

[7] Andrea Renda, "The Review of the Europe 2020 Strategy: From Austerity to Prosperity?" CEPS Policy Brief No. 322 (October 27, 2014), http://ssrn.com/abstract=2515255.

accompany this ongoing development, the impact on the final quality and smartness of EU legislation would be limited.

- *The need to strengthen the consideration of SMEs in the policy process* by refining tools such as the "SME test" that was introduced in the IA system after the adoption in 2008 of the Small Business Act for Europe, but which had not been fully operationalized in methodological terms by the European Commission to date. The smart regulation communication was then followed by a review of the Small Business Act in 2011 and, in 2013, by two important initiatives: (i) a consultation and subsequent report on the top 10 most burdensome pieces of EU legislation for European SMEs;[8] and (ii) the introduction of a new annual scoreboard that will allow the tracking of progress in the legislative cycle of proposals where a significant impact on SMEs can be expected, and will also show how different approaches to implementation by member states affect the overall impact on SMEs.

All in all, however, the smart-regulation era of the European Commission was heavily affected by a slowdown in the impact-assessment activity of commission directorate generals (only 51 IAs were concluded in 2010, against the 135 initially planned) and also by a growing tension between the approach advocated by the secretariat general, centred around the use of cost-benefit analysis and the need — strongly felt by some directorate generals of the European Commission — to depart from this method to develop more specific techniques, which would lead in some cases to a narrower approach (e.g., the focus on administrative burdens or compliance costs) or to a broader approach, very close to a multi-criteria analysis. This radical divergence has led, over time, to a worrying fragmentation of the IA system in the European Commission.

1.1 The 2015 better-regulation package

More than a decade after the launch of the EU's first comprehensive better-regulation package, it is fair to state that the system has produced mixed results. The main criticisms referred to the lack of quality of some impact-assessment documents; uncertainties over the methodology to be applied; the lack of an independent oversight body; the lack of consultation on draft impact assessments; and the short life of impact assessment documents, due to the absence of real evaluation capacity in the Council of the EU. In May 2015, the European Commission adopted a new better-regulation package, which introduced some significant changes. In particular:

- The European Commission launched a new permanent consultation platform termed "Lighten the load — have your say," which constitutes an open channel for anyone willing to provide views on aspects of EU legislation that they find irritating, burdensome or worthy of improvement. At the same time, the communication "better regulation for better results" also announced the creation of a REFIT stakeholder platform, which will involve high-level experts from business and civil-society stakeholders, as well as from all 28 member states appointed through an "open and transparent process."
- For matters concerning the scrutiny of draft impact assessments, the new features introduced by the better-regulation package are potentially far-reaching. First, the Impact Assessment Board is being replaced by a Regulatory Scrutiny Board, in which members will now operate full time, and which will now include one chairperson (with the rank of director general), three "internal" members, as well as three members (up from the two previously announced) recruited with fixed-term contracts on the basis of their specific academic competence

[8] COM(2013)446, June 18, 2013.

and expertise "via rigorous and objective selection procedures."[9] For the first time, the commission thus agreed to open the doors of its watchdog to external members: as a general rule, all members of the board should act independently and autonomously and should "disclose any potential conflict of interest to the Chairperson and can be requested not to participate in the scrutiny of any impact assessments or evaluations or fitness checks where such potential conflict of interest arises."[10]

- Moreover, the commission's communication announces that the commission will start consulting before and even "during the impact assessment process." This would happen after the publication of a new "inception impact assessment" document, which appears to be a somewhat more elaborate version of the "roadmap" that so far has been produced by the commission for each initiative on the occasion of the publication of the yearly work program.[11] What is still unclear is whether this procedure will be mandatory for all proposals subject to impact assessment and at what state of advancement of the proposal consultation would be run.
- Finally, the new Better Regulation Communication marks a long-awaited step forward on the application of better-regulation tools to delegated acts, the thousands of regulatory decisions that are taken every year to ensure the implementation of primary legislation. As a matter of fact, these rules are more similar to the types of rules on which regulatory impact analysis (RIA) is mandatory in the United States and Canada.

All in all, these are important changes, which — if properly implemented — would likely stimulate a more constructive dialogue during the early stage of policy formulation and ex ante policy appraisal within the European Commission, and as such, with the usual caveats, must be welcomed. Implementation of these changes must however be swift: at the time of writing, almost one year after the better-regulation package was presented, members of the REFIT stakeholder platforms have recently been appointed, but the new Regulatory Scrutiny Board is still incomplete, especially for what concerns the independent members.

At the same time, the European Commission proposed a revision of the 2003 Inter-Institutional Agreement on Better Law-Making and of the later 2005 Inter-Institutional Common Approach to Impact Assessment, which would in principle have led the European Parliament and the Council to carry out systematic impact assessments of their proposed major amendments on commission proposals. As already recalled, while the European Parliament actually started carrying out impact assessments since 2012 and has, since then, tried to step up its analytical efforts by gradually upgrading its workforce and sharpening its toolkit, the Council has remained virtually silent on this issue.

The proposed new Inter-Institutional Agreement introduces three new features. First, the commission commits to run an eight-week consultation after the adoption of every proposal, in order to collect comments and opinions that would then be sent to the other EU institutions to facilitate their appraisal work. This consultation should, in principle, add to the one that will be carried out "during" the impact assessment process, as the commission has now proposed to carry out consultation on "inception IAs." Second, the commission declared its availability to assist the

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9 Communication, page 7, Section 3.2. "Three members will be officials selected from within the Commission services. Three posts will be created, therefore, for officials who will work full time exclusively for the Board and be transparently selected on the basis of their expertise in accordance with prevailing Commission rules. They will be ranked as Director, Principal Adviser or Adviser. Three temporary posts will be created to permit the recruitment of the members from outside the Commission on the basis of their proven academic expertise in impact assessment, ex-post evaluation and regulatory policy generally."

10 Regulatory Scrutiny Board, "Missions, Tasks and Staff," (Strasbourg, May 19, 2015), 3.

11 It is defined as a "Roadmap for initiatives subject to an IA that sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option."

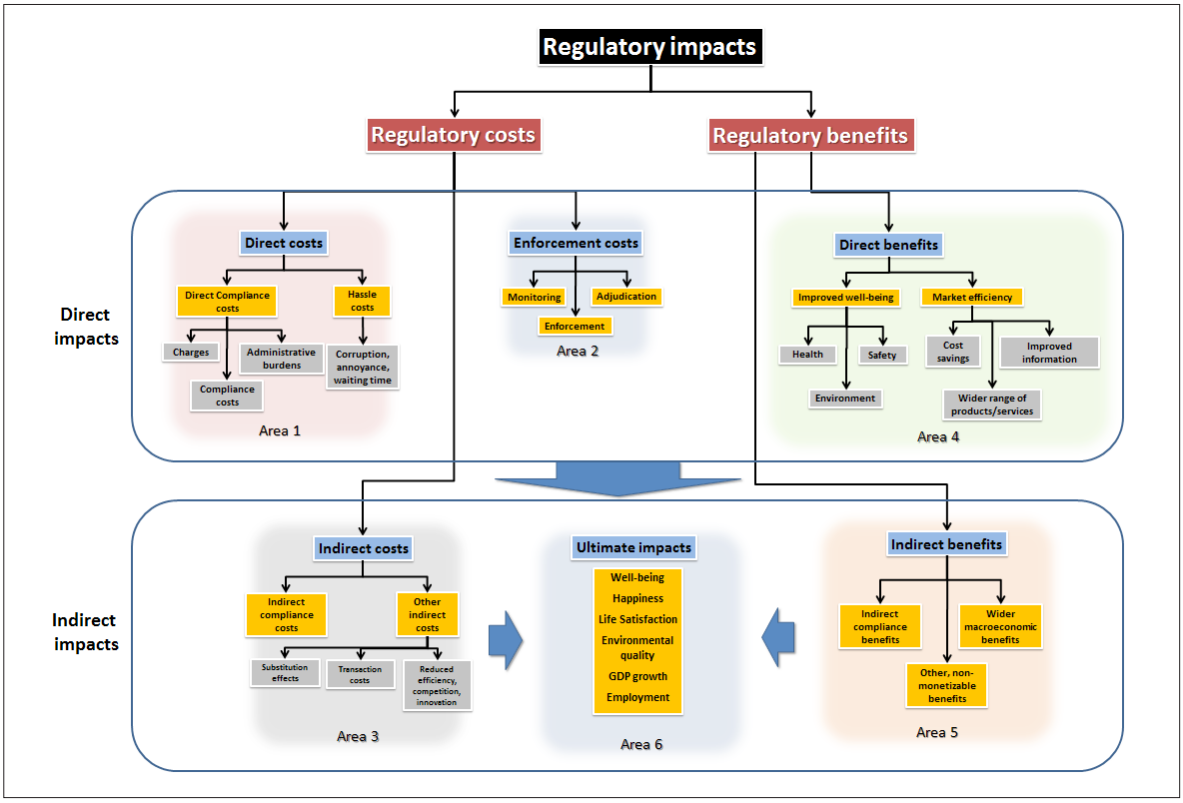
European Parliament and the Council in their assessment of the impacts, in particular by explaining in detail its impact assessment, sharing the data used, and even — in duly defined cases — integrating its impact assessment. And third, the commission proposes to establish a right for any of the three institutions to call for an independent panel of three experts (each one appointed by a different EU institution) that would carry out an assessment of the impacts of proposals that have been substantially revised compared to the original text proposed by the European Commission. The desired outcome is clear: whatever the way this result is achieved, the commission is trying to ensure that the impact of the final piece of legislation is assessed, and that such assessment is used for future evaluation work, thus helping to complete the so-called "policy cycle." While this statement does not attribute any specific responsibility to any of the three institutions, the stated outcome (if taken seriously) would represent a clear step towards the completion of a fully evidence-backed policy cycle in the EU.

2. THE METHODOLOGY FOR ASSESSING IMPACTS: A LOOK AT THE COSTS AND BENEFITS OF REGULATION

The new EU better-regulation guidelines that accompanied the new better-regulation package contain a new taxonomy of costs and benefits, accompanied by dedicated guidance on how to assess each category of cost and benefit. This taxonomy is now becoming the basis for all ex ante impact assessments and ex post evaluations, be they related to an individual piece of legislation, or to a group of laws (as in REFIT exercises and in cumulative-cost assessments).

Regardless of whether RIA is eventually based on a cost-benefit analysis or not, it is always essential to identify all relevant direct and indirect costs and benefits that would emerge if the available regulatory options are implemented. This can enable a more meaningful comparison of regulatory options. Figure 1 below shows a general map of the impacts generated by legal rules. This map is intended for ease of visualization of the full landscape of regulatory impacts: as such, it should be taken as a tentative exercise, not as an attempt to establish once and for all the categories of costs and benefits that can emerge from regulation (as a matter of fact, guidance documents on impact assessment and cost-benefit analysis from all over the world show different taxonomies and typologies of costs and benefits).

FIGURE 1 A MAP OF REGULATORY COSTS AND BENEFITS



Source: Renda et al. (2014) and European Commission (2015)

As shown in the figure, legislation normally produces both direct and indirect impacts, which in turn can generate second-order effects ("ultimate impacts"). In more detail, Figure 1 highlights six main areas of regulatory impacts. As far as costs are concerned:

- ***Area 1 includes direct costs from regulation (DC)***, such as direct compliance costs and hassle/irritation burdens.
  - *Direct compliance costs* include:
    - *Regulatory charges*, which include fees (such as spectrum and licensing), levies (e.g., copyright levies), taxes, etc.
    - *Substantive compliance costs*, which encompass those investments and expenses faced by businesses and citizens in order to comply with substantive obligations or requirements contained in a legal rule (e.g., the need to install new equipment to avoid interference between co-primary uses of the 700 MHz band); and
    - *Administrative burdens* are those costs borne by businesses, citizens, civil society organizations and public authorities as a result of administrative activities performed to comply with information obligations included in legal rules (e.g., keeping records of security incidents and notifying public authorities of each breach of security
  - *Hassle costs* are often associated with businesses, but they apply equally well to consumers: they include costs associated with waiting time and delays, redundant legal provisions, corruption, etc.
- ***Area 2 refers to enforcement costs (EC)***. These costs are often downplayed in ex ante RIA. They refer to key phases of a rule's life, such as monitoring, enforcement and adjudication. They include costs related to dispute resolution, litigation, appeals, government inspections, etc.

- ***Area 3 encompasses indirect regulatory costs (IC)***, which refer to costs incurred in related markets or experienced by consumers, government agencies or other stakeholders that are not under the direct scope of the regulation. These costs are usually transmitted through changes in the prices and/or availability and/or quality of the goods or services produced in the regulated sector. Changes in these prices then ripple through the rest of the economy, causing prices in other sectors to rise or fall, ultimately affecting the welfare of consumers.[12] These costs also include the so-called "indirect compliance costs" (i.e., costs related to the fact that other stakeholders have to comply with legislation) and costs related to substitution (e.g., reliance on alternative sources of supply), transaction costs and negative impacts on market functioning, such as reduced competition or market access, or reduced innovation or investment. For example, if a given auction design generates costs for telecom operators, which are likely to be passed on downstream in the form of higher retail prices for consumers, this should be counted as an indirect regulatory cost.

Performing an ex ante RIA requires constant awareness of the fact that total costs arising from a given regulation are given by the following sum: (**DC + IC + EC**). Any assessment that partly or fully, intentionally or inadvertently omits the analysis of one or more of these categories of costs is likely to provide an incomplete, and thus inaccurate account of the costs generated by the legal rule.

As far as benefits are concerned, Renda et al.[13] suggest the following categorization:

- ***Area 4 includes direct regulatory benefits***. Here, the following categories of benefits can be distinguished:
  - The improvement of the well-being of individuals, which in turn encompasses social and economic conditions as well as health, environmental and safety improvements; and
  - Efficiency improvements, which include, notably, cost savings but also information availability and enhanced product and service variety for end consumers, and greater productivity (as is often the case when a proposal generates enhanced access to, and usage of, information and communication technologies).
- ***Area 5 includes indirect regulatory benefits***, which encompass:
  - Spillover effects related to third-party compliance with legal rules (so-called "*indirect compliance benefits*");
  - *Wider macroeconomic benefits*, including GDP improvements, productivity enhancements, greater employment rates, etc.; and
  - O*ther non-monetizable benefits*, such as protection of fundamental rights, social cohesion, international and national stability, etc.
- ***Area 6 contains a list of "ultimate impacts" of regulation***, which overlap with the ultimate goals of regulatory intervention: even if some regulations directly aim at achieving these benefits (in which case we would include them in Area 4), normally all regulations aim, as an ultimate impact at achieving some advancement in social welfare, which can be described in terms of efficiency or in others terms: these ultimate impacts encompass well-being, happiness and life satisfaction, environmental quality, and more economic goals

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[12] For example, if a given regulation increases the cost of energy production, this will be reflected in the cost structure of a number of industries, which might then pass on part of this additional cost downstream along the value chain and eventually to end consumers. Similarly, if a certain regulation on the safety of chemical substances entails the withdrawal of certain products, downstream users will have to face replacement costs.

[13] Renda, A. et al. (2014), "Assessing the Costs and Benefits of Regulation", Study for the European Commission, Secretariat General, available at the Commission's website, at http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf.

such as GDP growth and employment. This area lies at the intersection between regulatory impacts and regulatory goals. It is important to highlight it in a visual representation of regulatory impacts for at least two main reasons. First, while the first applications of cost-benefit analysis to legal rules (as in the U.S. RIA system) chiefly looked at efficiency and thus at the calculation of net benefits for the justification of action in regulation, many governments today adopt a wider variety of regulatory goals when regulating, which leads to the measurement of distributional effects and, more generally, subjective outcomes such as life satisfaction. Second, a number of methods are being developed to track directly the ultimate impact of a given future state of the world (e.g., life satisfaction), rather than developing the analysis from the comparison of costs and benefits. These approaches (often termed "measurement of subjective well-being," or "happiness metrics") try to avoid some of the methodological shortcomings of measurements from neoclassical cost-benefit analyses: among other things, an important feature of these methods is that instead of relying on income as a proxy of happiness, they try to measure the latter directly.[14] The availability of broadband for all citizens, for example, can generate impacts in terms of life satisfaction, due to the elimination of administrative burdens, and to enhanced communication possibilities. The transition towards tele-work is another good example, as it leads to enhanced possibilities for those wishing to enjoy family life and reconcile it with working duties.

2.1 Types of regulatory costs

This section introduces a taxonomy of regulatory costs that the author developed for the European Commission in 2014, and was later introduced in the new EU Better Regulation Guidelines adopted on May 19, 2015. This taxonomy is broadly consistent with previous work done by the OECD.[15] A cost can be defined as "any item that makes someone worse-off, or reduces a person's well-being," and as such includes also those opportunities that are forgone because a particular policy measure has been implemented.[16] The practice of impact assessment entails the use of a number of different cost concepts. Of these, as suggested by several authorities around the world, the most comprehensive measure is that of "social cost," intended as a reduction of social welfare arising as a consequence of a legal rule. Simply put, social cost represents "the total burden that a regulation will impose on the economy" and is defined as "the sum of all opportunity costs incurred as a result of a regulation," where an opportunity cost is the value lost to society of any goods and services that will not be produced and consumed as a result of a regulation.[17]

To be complete, an estimate of costs should include both the opportunity costs of current consumption that will be foregone as a result of the regulation and the losses that may result if the regulation reduces capital investment and thus future consumption. The strong focus of impact assessment on the concept of opportunity cost is explained by the fact that the ultimate impact of policies should be measured based on individuals' well-being: and the latter depends also on foregone opportunities.

Moreover, it must be recalled that all costs generated by a new legal provision (just like benefits) are by definition incremental costs, i.e., they are additional with respect to the existing situation, as

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14 See Andrea Renda, *Law and Economics in the RIA World* (Amsterdam: Intersentia, 2011). See also Daniel Fujiwara and Ross Campbell, "Valuation Techniques for Social Cost-Benefit Analysis: Stated Preference, Revealed Preference and Subjective Well-Being Approaches. A Discussion of the Current Issues, Report for the UK government" (2011), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209107/greenbook_valuationtechniques.pdf.

15 See OECD, *OECD Regulatory Compliance Cost Assessment Guidance* (Paris: OECD Publishing, 2014).

16 ibid.

17 United States Environmental Protection Agency, "Guidelines for Preparing Economic Analyses," (December 2010), Chapter 8-1.

well as additional to the costs that would emerge absent legislative intervention. This means that all costs considered for the purposes of an impact assessment should exclude the so-called "business as usual" (BAU) costs, i.e., those costs that would materialize anyway, even in absence of a new policy measure.

Typically, costs can be distinguished based on various parameters:

- The type of cost *per se* (administrative, compliance costs, charges, non-monetary costs).
- The relation between the legislative act and the cost considered (direct and indirect costs).
- The frequency of occurrence of the costs (one-off costs, and recurring costs).
- The degree of certainty of the costs (costs versus risks).
- The nature of the addressee/target of the costs (businesses, citizens/consumers, public authorities, third-country actors, etc.).
- Whether they can be described as economic, social or environmental costs.

As explained above, direct costs can be broken down into compliance costs and hassle costs. Below, we describe more in detail each of those types of costs.

2.1.1 Compliance costs

Compliance costs are often the bulk of all direct costs generated by legislation: over time, they have become the subject of specific assessment methods in various countries (e.g., the Netherlands, Germany). Within this category, it is possible to distinguish between direct charges, substantive compliance costs, and administrative burdens.

2.1.1.1 Charges

Regulation often affects businesses and consumers by imposing the payment of fees, levies, or taxes on certain stakeholders. These costs are often easy to calculate as their extent is by definition known. What is sometimes more difficult to assess is who will bear those costs as this might depend on the extent to which these costs are passed on to entities other than those targeted by the legal rule. For example, copyright levies might be passed on downstream to end consumers in the form of higher prices for certain hardware devices.

2.1.1.2 Substantive compliance costs

Regulation normally also entails less explicit costs than direct charges. This is the case of substantive compliance costs that emerge as a result of "obligations" included in legislation, defined as "individual provisions inducing direct changes in costs, time expenditure or both for its addressees," which "oblige addressees to comply with certain objectives or orders, or to refrain from certain actions," or also "demand cooperation with third parties or to monitor and control conditions, actions, figures or types of behaviour."[18]

Compliance costs can be further broken down into the following categories:

- ***One-off costs***: These are faced by actors targeted by regulation since they have to adjust and adapt to the changes in the legal rule. For example, if a new environmental standard imposes the use of new equipment, the purchase of such new equipment would be needed immediately

[18] See Federal Government of Germany, Normenkontrollrat and Destatis, "Guidelines on the Identification and Presentation of Compliance Costs in Legislative Proposals by the Federal Government" (2011), 8.

after the legal rule enters into force. Also, personnel will have to be retrained as a result of the changes in the legal regime. All these costs are not likely to be borne by the targeted stakeholder on a regular basis in the future: to the contrary, they occur only once, after the entry into force of the new regulation.

- ***Recurrent costs**:* These are those types of substantive compliance costs that are sustained by the targeted stakeholders on a regular basis as a result of the existence of a legal rule that imposes specific periodic behaviours. For example, if a new regulation imposes the periodical retraining of employees in a specific economic sector (e.g., hospitals, schools), then the cost of training courses and the opportunity cost (see below) of the time spent by employees being trained will become a regular cost. Similarly, if a new regulation imposes a periodical roadworthiness test for cars, mandating that the tests take place every second year after the purchase of the vehicle, the cost of the test for the car owner becomes a periodical compliance cost.

Compliance costs are most often calculated as a sum of capital costs, operating costs, and financial costs.

- **Capital costs (CAPEX)** occur when a company acquires or upgrades physical assets such as property, industrial buildings or equipment. This type of outlay is made by companies to maintain or increase the scope of their operations. These expenditures can include everything from repairing a roof to building a brand new factory. Once the asset is in place, capital costs generally do not change with the level of activity and are thus functionally equivalent to "fixed costs." In cost-benefit analyses, capital costs are usually "annualized" over the period of the useful life of the equipment.
- **Operating and maintenance costs (OPEX)** include annual expenditures on salaries and wages, energy inputs, materials and supplies, purchased services, and maintenance of equipment. They are functionally equivalent to "variable costs."
- **Financial costs** are costs related to the financing of investment and are thus normally considered in relation to CAPEX. However, they can also emerge with respect to OPEX whenever a new legal provision changes the structure of the working capital.

2.1.1.3 Administrative burdens

Administrative burdens are those costs borne by businesses, citizens, civil society organizations and public authorities as a result of administrative activities performed to comply with information obligations included in legal rules. More specifically, administrative burdens are the part of administrative costs caused by regulatory requirements: accordingly, they do not include so-called "BAU costs," i.e., costs that would emerge also in absence of regulation.

2.1.1.4 "Hassle" or "irritation" costs

Often linked to administrative-burden measurements, irritation costs are a residual category of direct cost, which are more difficult to quantify or monetize, and also difficult to relate to a specific information obligation. These are more subjectively felt costs that are related to the overlapping of regulatory requirements on specific entities, be they citizens or businesses. By definition, these costs are important for subjective well-being, but are very difficult to quantify or monetize (as such, they are kept as a separate, qualitative item in administrative-burden or compliance-cost measurement, as in the Netherlands, for example). Hassle costs can include costs related to administrative delays (when not directly attributable to an information obligation) and relatedly, the opportunity cost of waiting time when dealing with administrative or litigation procedures. At the

same time, irritation burdens are often accounted for in the measurement of administrative burdens (although they are normally not quantified) whenever they are related to specific information obligations, and especially in case of overlaps, redundancies or, even worse, inconsistencies between legislative provisions.

2.1.2 Indirect costs

Indirect costs are costs incurred in related markets or experienced by consumers, government agencies or other stakeholders that are not under the direct scope of the regulation. These costs are transmitted through changes in the prices, the availability and/or the quality of the goods or services produced in the regulated sector. Major indirect costs include: indirect compliance costs such as regulation-induced price increases, quality/availability reductions and other negative impacts related to the fact that someone other than the entity at hand is complying with legislation; increased transaction costs; and other secondary costs that include unintended effects, "risk/risk trade-offs," etc.[19]

2.1.2.1 Indirect compliance costs

Indirect compliance costs arise to a given agent due to the fact that other agents comply with legislation. This type of indirect costs is usually transmitted through changes in the prices of the goods or services produced in the regulated sector. Changes in these prices then ripple through the rest of the economy, causing prices in other sectors to rise or fall and ultimately affecting the welfare of consumers. Government entities can also incur indirect compliance costs. For example, if the tax base changes due to the exit of firms from an industry, revenues from taxes or fees may decline. One example of indirect compliance cost is found in heavy industries such as steel and aluminum: there, the cost of electricity supply for producers is significantly high — among many other factors — since price levels also incorporate the cost of emission allowances purchased by electricity companies in order to generate electricity: in a recent report on the aluminum industry led by CEPS, these indirect costs were estimated at approximately 60 euros per tonne, i.e., approximately 45 per cent of regulatory costs for aluminum producers.[20]

2.1.2.2 Other indirect costs

Other types of indirect costs, often termed "secondary costs," are in most cases difficult to typify since they are inherently specific to the case at hand. Below, we offer descriptions of some common types of costs that arise as a result of regulatory intervention, with no ambition to be exhaustive.

2.1.2.3 Substitution effects

Regulation will often cause people to change their behaviour and it is crucial that policy-makers understand and anticipate these changes. If regulation results in an increase in the price of a product (for example, by increasing product standards), people will usually respond by buying less

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[19] A risk-risk tradeoff is a situation that requires choosing between options where each may cause some harm; a risk-risk tradeoff can occur if, as a result of the implementation of a policy option, the remedy chosen reduces some risks but creates others. See, inter alia, W. K. Viscusi, "Risk-Risk Analysis," *Journal of Risk and Uncertainty* 8 (1994): 5-17, which illustrates several examples, including: "Chlorination of water is beneficial since it reduces the spread of a wide variety of diseases, but chlorinated water is also carcinogenic."

[20] See Andrea Renda et al., *Assessment of Cumulative Cost Impact for the Steel and the Aluminium Industry,* a report for the European Commission DG Enterprise and Industry (CEPS and Economisti Associati, October 2013).

of that product and switching instead to other substitute goods. Such substitution activity reduces the costs in utility terms to consumers, at least in the first instance. However, substitution effects may also create unintended problems. For example, reducing risks in one area may create higher risks in another.

An example of this is increasing the stringency of airline safety regulation. Such an action can be expected to reduce the number of deaths due to plane crashes. However, it will also increase the cost of flights. This increase in the cost of flights will cause some people to decide that they can no longer afford to fly and to drive to their destination instead. However, because car travel is much less safe than air travel, the increase in the number of road crash victims may well be greater than the reduction in air crash victims.

Because of the importance of these substitution effects in determining the overall impact of the regulation, officers in charge of an impact assessment should try to identify likely changes of this sort and estimate how significant these changes are likely to be, before they draw any conclusion as regards the effectiveness of the regulatory options they are assessing.

2.1.2.4 Transaction costs

Transaction costs are the costs associated with transactions between individuals in the marketplace. The smaller the amount of transaction costs, the more market exchanges are considered to be potentially efficient. Accordingly, some scholars have advocated in the past that the role of government regulation is essentially that of facilitating market transactions by minimizing the impact of transaction costs (the so-called "Coase theorem"). Today, the vision of the role of government is more articulated, but it can still be argued that, other things being equal, regulation that reduces transaction costs is likely to increase efficiency.

Transaction costs relate to many different aspects of a transaction: from the search of a counter-party to the acquisition of information related to the transaction, to the opportunity cost of the time spent negotiating the agreement, the costs related to the strategic behaviour of the parties in a contract, etc. Whenever a policy option affects these variables by increasing the cost of identifying counter-parties and negotiating with them, the possible inefficiencies generated by transaction costs have to be taken into account.

Transaction costs are often downplayed or even neglected in the analysis of regulatory costs, also due to the difficulty of calculating them. In most cases, the measurement of transaction costs can take place only through approximations such as the opportunity cost of time spent performing given activities (e.g., looking for a counter-party); or through losses of surplus and welfare associated with the dissipation of resources (e.g., in the case of strategic behaviour).

2.1.2.5 Reduced competition and inefficient resource allocation

Some regulations can reduce the amount of competition in markets, thus affecting the efficiency of resource allocation. This is a particularly important cost impact. For example, regulation can reduce competition by:

- *Making it more difficult for new competitors to enter the market*, by creating regulatory requirements that are difficult for them to meet or simply discouraging entry by artificially reducing the profitability of a given market.

- *Preventing firms from competing aggressively* — for example by setting rules that reduce price competition or restrict advertising (e.g., rules that prohibit sales below cost, or set minimum prices); or depriving market players of their minimum efficient scale by imposing market fragmentation.
- *Inducing collusion*, by making it easier for market players to co-ordinate their strategies, e.g., through increased market transparency, imposed price changes, mandatory standards adoption, etc.

2.1.2.6 Reduced market access

Certain regulations might also have, as an indirect negative impact, the loss of market access opportunities for both consumers and businesses. For example, practices and conduct such as the abuse of economic dependence can reduce the possibility, for small suppliers, of having their products distributed by large supermarket chains: the weaker bargaining position of these players vis-à-vis large retailers might lead to a loss of market access for these suppliers, and a consequent loss of product variety for consumers. These behaviours are normally not tackled by competition law, but several member states of the EU have regulation in place to avoid the issue of smaller market players being harmed by the superior bargaining strength of their counter-parties.

2.1.2.7 Reduced investment and innovation

In addition to reducing allocative efficiency, regulation can also reduce dynamic efficiency — i.e., the ability of the economy to grow and innovate in the longer term — by reducing incentives to invest in research and development or, more generally incentives to produce innovative products. A typical example is that of inefficiently designed access policy in network industries, which causes a reduction of incentives to invest in infrastructure for the incumbent players, and sometimes a reduced incentive to invest in new infrastructure for new entrants, thus reducing dynamic efficiency in the market.

2.1.2.8 Uncertainty and investment

A related negative impact that might emerge as a result of regulation is regulatory or legal uncertainty, which might affect expectations as regards return on investment, and as such limit the extent of investment in the economy. In this respect, too frequent changes in legislation can generate uncertainty among investors, thus either discouraging them altogether from investing in a given country/sector, or inducing them to postpone their investment to a later date.

2.1.3 Enforcement costs

Legal rules have to be monitored and enforced to be effective. And, when controversies arise, courts have to solve them speedily and consistently for a rule to be reliable and effective. Depending on the type of rule and the regulatory option chosen, enforcement might be very cheap or very costly for public authorities. Consider the examples below:

- Speed limits enforced via street police require a lot of police officers on the road. The use of cameras and centralized control from police stations reduces the cost of enforcement by replacing the cost of street police with a one-off cost (camera installation) and the recurrent cost of maintenance, an increase in the cost of central police control and different administrative behaviour in treating fines and claims.

- Abolishing businesses' reporting obligations on health and safety measures does not remove the desirability of monitoring the safety and health in the workplace: this will most likely lead to enhanced monitoring and inspection costs on the side of public authorities.
- Enabling citizens to report holes in city streets through a dedicated digital "app" reduces the cost of monitoring street by street and the corresponding labour costs.
- Enabling rules that encourage private antitrust-damages actions also creates the potential for enhanced enforcement costs within the legal system. This means potentially more backlog in cases handled by courts and potential indirect costs (waiting time, reduction of legal certainty, loss of credibility of the court system, etc.).

In summary, enforcement costs are an essential element to consider in any cost-benefit analysis, as their magnitude can tilt the balance in favour of regulatory options that would not be chosen in a more partial assessment. We divide enforcement costs in the following categories:

- *One-off adaptation costs*: this is typically the case in which a new legal rule forces administrations to retrain their personnel or change equipment (e.g., buy personal computers, cars, etc.)
- *Information costs and administrative burdens*. These are the costs of gathering and collecting information needed to effectively monitor compliance. When these activities entail the production of information to be delivered to third parties according to a legal provision, they are called "administrative burdens"; however, information costs can also be related to activities that are essential for carrying out enforcement actions, but do not entail any information obligation.
- *Monitoring costs*. The cost of monitoring compliance with the legislation, e.g., patrolling streets, collecting statistics, etc.
- *Pure enforcement costs*. These include the cost of running inspections, processing sanctions, and handling complaints by the enforcing authority.
- *Adjudication/litigation costs*. These are the costs of using the legal system, or an alternative dispute-resolution mechanism, to solve controversies generated by the new legal rule.

Enforcement costs are not only borne by public authorities: private actors face costs related to litigation when they need to use the legal system, as in the case of lawsuits: these are not strictly classified as administrative burdens, nor as compliance costs. They are costs that can be defined as the sum of the opportunity costs of the time spent dealing with litigation, plus the legal expenses that must be sustained (depending on the procedural rules that apply) in order to litigate a case as claimant or defendant.

2.2 The benefits of regulation

As already explained above, available taxonomies of benefits are not as sophisticated as the ones developed for costs, probably since benefits are at once the most apparent aspect of a regulation (they are often stated as the reason for regulating) and the most difficult to classify, since they tend to be very specific to the regulation at hand. That said, just like costs, benefits can be classified as direct and indirect, meaning that they can affect the stakeholders targeted by the legislation or go beyond the target groups and affect other groups, or even become diffuse, societal benefits (e.g., increased safety). Apart from this, available guidance documents at the international level spend very little time discussing types of benefits and normally move directly to measurement techniques. As a result, in this section we will provide our own view of how the identification of benefits should be approached in carrying out an impact assessment.

More specifically, from a methodological viewpoint (and taking into account that there might be overlaps), direct benefits can be expressed in terms of:

- *Additional utility, welfare or satisfaction for citizens* — these are mostly valued through techniques aimed at capturing the sum of individual preferences for a future state of the world, whereas these preferences are often modelled through an approximation of individuals' willingness to pay for such a state of the world.[21] Such benefits include, most notably, health, safety and environmental benefits, which we treat separately in the following sections.[22]
- *Improved market efficiency*, which might include improvements in the allocation of resources, removal of regulatory or market failures, or cost savings generated by regulation. Within this category, cost savings can be approached following the taxonomy of costs introduced in the previous sections. For example, a given regulation might lead to a reduction of administrative burdens or compliance costs: in this case, the identification process and the related definition of (saved) costs follows the same criteria described in the previous sections dedicated to costs.

Indirect benefits include the following:

- *Spillover effects related to third-party compliance with legal rules (so-called "indirect compliance benefits").* These include all those benefits that accrue to individuals or businesses that are not the addressees of the regulation, but enjoy positive effects due to the fact that others have to comply with the regulation. For example, the fact that mandatory safety standards are imposed (and enforced) on food producers might lead to important savings in monitoring costs by retailers. Also, the fact that more individuals comply with legislation mandating more healthy behaviour (e.g., no consumption of junk food) can lead to indirect benefits in the form of lower health-care costs for society over time. This category also includes benefits that are difficult to monetize, but are nevertheless important, such as enhanced legal certainty, positive externalities and spillover effects, deterrence and corrective justice.
- *Wider macroeconomic benefits* such as GDP increase, competitiveness and productivity effects, etc. For example, although with a significant degree of approximation and some rather heroic assumptions, a 25 per cent reduction of administrative burdens has been estimated to trigger a GDP increase of up to 1.5 per cent in the Netherlands, one per cent in the U.K. and 1.4 per cent at the EU level. This second-order effect depends, in particular, on the assumption that reduced red tape would lead to the reallocation of freed resources to more productive uses, and as such incorporates the concept of opportunity cost.
- *Other non-monetizable benefits*, such as the protection of fundamental rights, social cohesion, international and national stability, etc.

2.2.1 Direct benefits: improved well-being

2.2.1.1 Benefits from "lifesaving regulation"

A specific category of benefits accruing from increased social welfare or individual utility, which has been extensively covered in the literature, includes those benefits that are related to the so-

[21] At this stage, we do not comment on the difference between GDP and happiness (to be discussed with the commission).

[22] A different, controversial issue is whether one could include in this group a category of benefits per se, which contribute to societal welfare regardless of whether stated or revealed preference techniques testify to the existence of demand for them. See C.R. Sunstein and R.H. Thaler, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven, Connecticut: Yale University Press, 2008).

called "lifesaving regulation," a term used mostly to indicate regulation that can create positive effects on human health and the environment.[23] The usual caveat applies: since costs and benefits are two sides of the same coin, which we can term "impacts," cases in which regulation can lead to a reduction of these benefits can be treated as cases of costs of regulation.

Benefits from lifesaving regulation include the following:

- *Reduction of mortality*: this is the case when regulation can reduce the number of fatalities, for example by imposing stricter safety requirements (e.g., seat belts when driving), or more generally increase life expectancy and reduce the risk of premature death.
- *Morbidity benefits.* A morbidity benefit is the reduction in the risk of non-fatal health effects that can be characterized by duration and severity. This easily translates into improvements of the health of those living with diseases. This category also includes the reduction in tension or stress, and improvements in mental health.
- *Environmental or ecological benefits*: regulation can lead to several beneficial impacts on the environment, ranging from broad impacts (reduced pollution, preserving biodiversity) but including, most notably, very specific effects such as:
  - Reduction of emissions of pollutants.
  - Waste disposal and recycling.
  - Soil protection.
  - Noise reduction.
  - Air quality.
  - Water quality and availability.
  - Promotion of use of renewable resources

2.2.1.2 Direct benefits: improved market efficiency

A typical benefit of regulation is achieved whenever the latter contributes to addressing a factor due to which the interaction of market forces does not lead to an efficient outcome, a distortion that is often termed "market failure." The underlying assumptions to this statement are: (i) that market forces, when they are not hampered by market failures, would achieve efficient outcomes; and (ii) that regulation can do something about it, i.e., that the cure for a market failure is not worse than the disease.

The European Commission Impact Assessment Guidelines already address the issue of market failures, which are summarized as follows:

- *Externalities (positive or negative).* Market prices do not reflect the real costs and benefits to society ("externalities").
- *Insufficient supply of public goods* (such as clean air or safe streets).
- *Missing or weak competition* (including abuse of market or monopoly power).
- *Missing or incomplete markets.*

[23] For a more technical introduction to lifesaving regulation, see J. Graham, "Saving Lives through Administrative Law and Economics," *University of Pennsylvania Law Review* 157 (2007): 395. The term "lifesaving" is understood to encompass rules that curtail risk of nonfatal injury and illness (morbidity) as well as the risk of premature death (mortality). This use of the terminology "lifesaving" is attributed to Richard Zeckhauser, "Procedures for Valuing Lives," *Public Policy* 23 (1975): 419; and Richard Zeckhauser and Donald Shepard, "Where Now for Saving Lives?" *Law and Contemporary Problems* (Autumn 1976): 5.

- *Information failures*, such as imperfect information or lack of access to information for decision-takers (including consumers and public authorities), unless caused by a regulatory failure.

More specifically, economists normally define three different concepts of efficiency:

- *Productive efficiency* relates to the optimal use of resources in production processes, i.e., a more efficient outcome would be the possibility of producing the same quantity of output with less input.
- *Allocative efficiency* refers to the allocation of resources to those economic actors that value them the most. This is typically a result achieved through perfect competition but can be challenged since in most cases it relies heavily on individuals' willingness to pay, which is a rather controversial measurement technique when used to approximate individual preferences with regard to public goods and externalities.
- *Dynamic efficiency* refers to incentives to invest and innovate, which might imply the availability of funds for R&D investment and an investment-friendly environment.

The three concepts of efficiency are not always consistent and complementary. There has been a very long debate in economics regarding the market structure that is most conducive to allocative and dynamic efficiency, with many economists firmly believing that the latter can be achieved only at the expense of the former.

2.2.2 Indirect benefits from third-party compliance with legal rules

Regulation and legislation can often produce spillover effects, which go beyond active compliance behaviour by the addressees of the regulation. Respect of the law can indeed create benefits for other stakeholders, especially if located along the same value chain. Just as regulation can produce indirect compliance costs, in some cases it can also produce indirect compliance benefits: for example, regulation that mandates safety standards for food producers can lead to cost savings for retailers; regulation that leads to productivity improvements in the workplace can lead to lower prices for downstream market players and end consumers; etc.

In addition, third parties can also benefit from enhanced compliance with legal rules in other, less monetizable ways. This is the case when legislation discourages or deters criminal behaviour, thereby increasing safety — and more generally, every time legislation leads to the achievement of a public good.

Finally, more widespread compliance with legal rules can also produce benefits to all those players that were already complying with rules before the enactment of a new policy: this occurs whenever more widespread compliance leads to a more level playing field between all market players, avoiding cases of free riding, or distorted competition.

2.2.2.1 Wider macroeconomic benefits

Macroeconomic benefits are an important area of benefits for impact assessment, especially in those cases in which regulations have cross-cutting effects across sectors, and as such require that the assessment goes beyond partial-equilibrium analysis and approaches general-equilibrium analysis. That said, two scenarios can emerge in an impact assessment:

- *In most cases, macroeconomic benefits are to be considered as indirect benefits of legislation that aims at more specific, sectoral results*. When this occurs, the best solution is to retain a partial-equilibrium analysis, and if proportionate and appropriate use "ready-made

multipliers" to assess how sectoral, specific benefits might translate into macroeconomic benefits.[24]

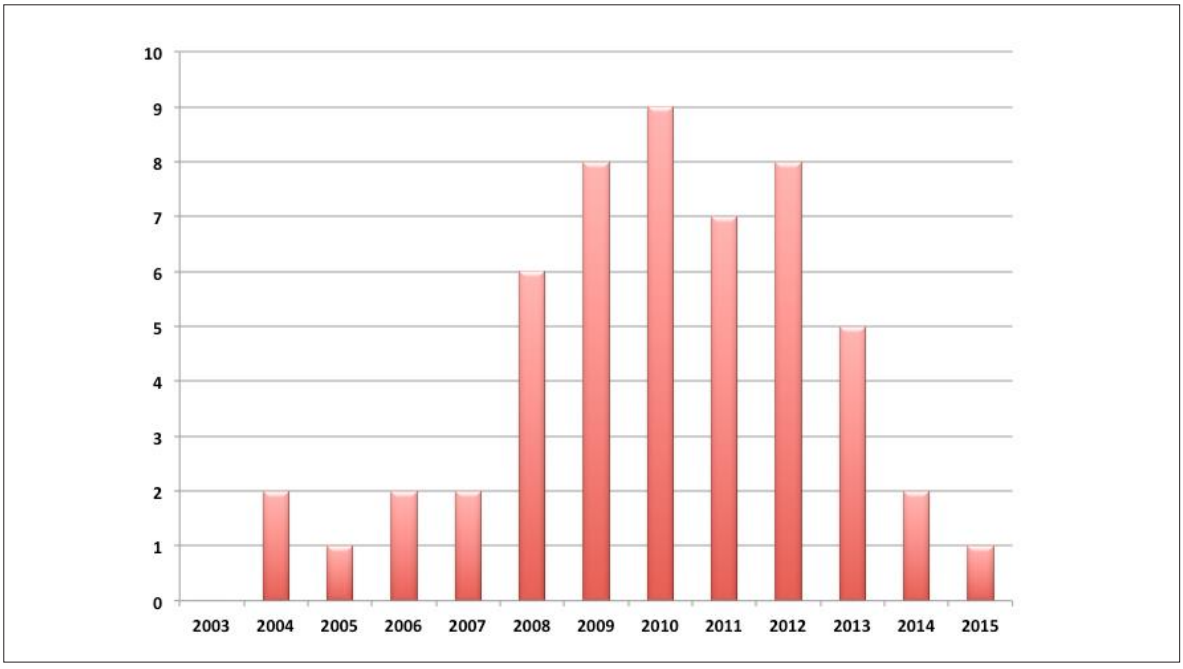
- *In some cases, macroeconomic benefits can be the direct goal of given policy initiatives*. This is the case for, among other things, impact assessments of government medium- to long-term sectoral or cross-sectoral strategies, for which the use of computational general equilibrium becomes appropriate and proportionate, as it allows for the simulation of long-term impacts on the economy.

Macroeconomic impacts include impacts on GDP, productivity and growth, and financial and macro-economic stability. The relative weight of these elements of course will depend on the specific proposal that is subject to impact assessment.

3. EU BETTER REGULATION IN THE FINANCIAL SECTOR: A LOOK AT THE CURRENT CONSULTATION

The financial sector, and in particular the banking and insurance sector, present important peculiarities when it comes to the EU better-regulation agenda. First, these sectors have gone through various waves of regulatory approaches over the past decade, which made them subject to rushed interventions due to the economic and financial crisis, which overlapped with co-regulatory interventions (e.g., in the cross-border payments system) and more general rules aimed at redesigning the governance of EU financial markets, including the recent legislation related to the creation of a banking union. All in all, the European Commission has completed 53 IAs in these sectors, first under the activities of DG Internal Market, and more recently DG FISMA (with the Juncker Commission). A full list of the IAs is available in Annex 1 of this report.

FIGURE 2 EUROPEAN COMMISSION IAS IN THE FINANCIAL SECTORS, 2003-2015



Source: Author's elaboration.

[24] The use of multipliers is, anyway, very controversial in the field of policy-impact assessment. If multipliers are used, the scientific evidence behind them has to be carefully scrutinized and quoted in the analysis.

Of the 53 IAs identified, the 36 carried out between 2003 and 2011 were scrutinized through a scorecard analysis (see Annex 3). The results suggest that IAs did not feature, on average, a very high degree of quantification of impacts, and that the comparison of alternatives took place in a rather unsystematic way. Also, the completeness of these documents does not seem to have improved significantly over the years, especially after 2008.

3.1 The CMU and the new call for evidence on cumulative impacts of financial legislation

After several years, in which regulation in this sector was approached amid the emergency of the financial crisis, at end of September 2015 the European Commission decided to open up a public consultation on the EU regulatory framework for financial services, which remained open until the end of January 2016[25]. Specifically, the commission was looking for empirical evidence and concrete feedback on:

- *Rules affecting the ability of the economy to finance itself and grow.* The rules in place to ensure financial stability and investor protection are essential for the functioning and the safety of the system and to restore investors' trust in financial services. At the same time, building on the 2014 communication on long-term financing and the Action Plan on Building a Capital Markets Union, it is important to ensure that the balance is right and that rules do not unduly discourage long-term investment and sustainable economic growth.
- *Unnecessary regulatory burdens.* There may be areas of EU legislation that impose burdens not commensurate with the intended policy objectives, for example, without proportionate associated material benefits in terms of making the system safer, or where they create unintended consequences. Burdens may also arise due to excessive complexity or duplicative reporting requirements. Some rules may also have become outdated due to technological change.
- *Interactions, inconsistencies and gaps.* EU financial rules were passed at different points over the past six years as a series of important individual measures, based on thorough impact assessments. Some rules may, taken together, give rise to unintended consequences. This may be due to, for example, duplications, inconsistencies, regulatory gaps and/or loopholes and/or lack of proper enforcement at the national level.
- *Rules giving rise to unintended consequences.* Rules to discourage excessive risk-taking or to de-risk the financial system may give rise to unintended consequences such as regulatory arbitrage or increasing pro-cyclicality.

The Commission received 288 responses to the Call for Evidence. Respondents were based in 25 different countries, including 5 non-EU countries. Of the 15 pre-defined topics for consultation, most replies related to unnecessary regulatory constraints on financing (issue 1), proportionality (issue 4), excessive compliance costs and complexity (issue 5), reporting and disclosure obligations (issue 6) and overlaps, duplications and inconsistencies (issue 12). The Commission expected that the outcome of this consultation would provide a clearer understanding of the interaction of the individual rules and cumulative impacts of the legislation as a whole, including potential overlaps, inconsistencies and gaps. The consultation should also have helped inform the individual reviews and provide a basis for concrete and coherent action where required. However, while respondents provided a number of examples and descriptions of where the rules are perceived to be inconsistent, overlapping or duplicative (e.g. reporting and disclosure requirements, definitions), limited specific information was provided as regards the compliance costs or the wider market impacts of these inconsistencies or overlaps. Similarly, the Commission observed that "feedback on the market

[25] http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm.

impacts of the different rules (e.g. their impact on funding or market liquidity or other unintended consequences) was largely qualitative or based on external studies. This may reflect the difficulty of assessing the impact of rules that are very recent (or not yet implemented or adopted). It may also reflect the difficulties inherent in isolating the impact of EU rules from other factors (e.g. monetary policy, national policy changes, macroeconomic developments) that may also play a significant role".

On 25 April 2016, the Commission took stock of the progress made in the first six months since the adoption of the Capital Markets Union Action Plan and published the first CMU status report. The commission explained that alternative sources of finance, complementary to bank financing — including capital markets, venture capital, crowdfunding and the asset management industry — are more widely used in other parts of the world, and should play a bigger role in providing financing to companies that struggle to get funding, especially SMEs and startups. Having more diversified sources of financing is good for investment and business but is also essential to financial stability, mitigating the impact of potential problems in the banking sector on companies and their access to finance. For this reason, CMU is also an important part of the work on the completion of the European Economic and Monetary Union. The commission also wants to break down barriers that are blocking cross-border investments in the EU to make it easier for companies and infrastructure projects to get the financing they need, regardless of where they are located.

The European Council of 28 June 2016 called for swift and determined progress to ensure easier access to finance for businesses and to support investment in the real economy by moving forward with the CMU agenda.As a result, on 30 September 2016 the European Commission adopted a Communication on "Capital Markets Union – Accelerating Reform", which marks a commitment towards the finalization of the first CMU measures (securitisation package, modernisation of the Prospectus rules, strengthening venture capital markets and social investments, supporting the development of national and regional capital markets in the Member States); to then move to other key CMU actions, including a proposal on business restructuring and insolvency; encouraging Member States to remove withholding tax barriers and encouraging best tax practices in promoting venture capital, such as increasing equity financing over debt, and amending insurance and banking legislation to further unlock private investment in infrastructure and SMEs. Finally, the Commission announced that it will also look at new priorities, such as supporting the development of personal pensions markets and other retail financial services; and developing a comprehensive European strategy on sustainable finance[26].

3.2 Example: the impact assessment on securitization: a synthesis

Securitization is the process where a financial instrument is created, typically by a lender such as a bank, by pooling assets (for example car loans or SME loans) for investors to purchase. This facilitates access to a greater range of investors, thereby increasing liquidity and freeing up capital from the banks for new lending. The commission is proposing a regulatory framework for securitization that is simple, transparent and standardized and subject to adequate supervisory control. According to the commission's estimates, if EU securitization issuance was built up again to the pre-crisis average, it would generate between 100 and 150 billion euros in additional funding for the economy.

[26] See COM (2016) 601 Final, 30 Sptember 2016, at http://ec.europa.eu/finance/capital-markets-union/docs/20160914-com-2016-601_en.pdf.

3.2.1 What is the problem?

Before the crisis the securitization market was a growing channel of funding to the European economy. This market performed well during the crisis, generating negligible losses. However, its post-crisis reputation was severely tarnished by practices and events taking place elsewhere, mainly in the U.S. This stigma is reflected in investors' perception of the riskiness of EU securitization as well as in securitization's regulatory treatment, which has been calibrated mainly on losses in U.S. markets. Since EU securitization losses have been a fraction of those in the U.S., they are disadvantaged by a regulatory treatment designed for their riskier counterparts. As a consequence of the stigma and the regulatory treatment, the EU securitization market is now stalled. A financing channel for the EU economy is thus lost. In the European context, where 80 per cent of financial intermediation takes place through banks, the implications for growth are substantial. The creditless recovery is protracted, slowing growth and job creation.

Emerging problems include:

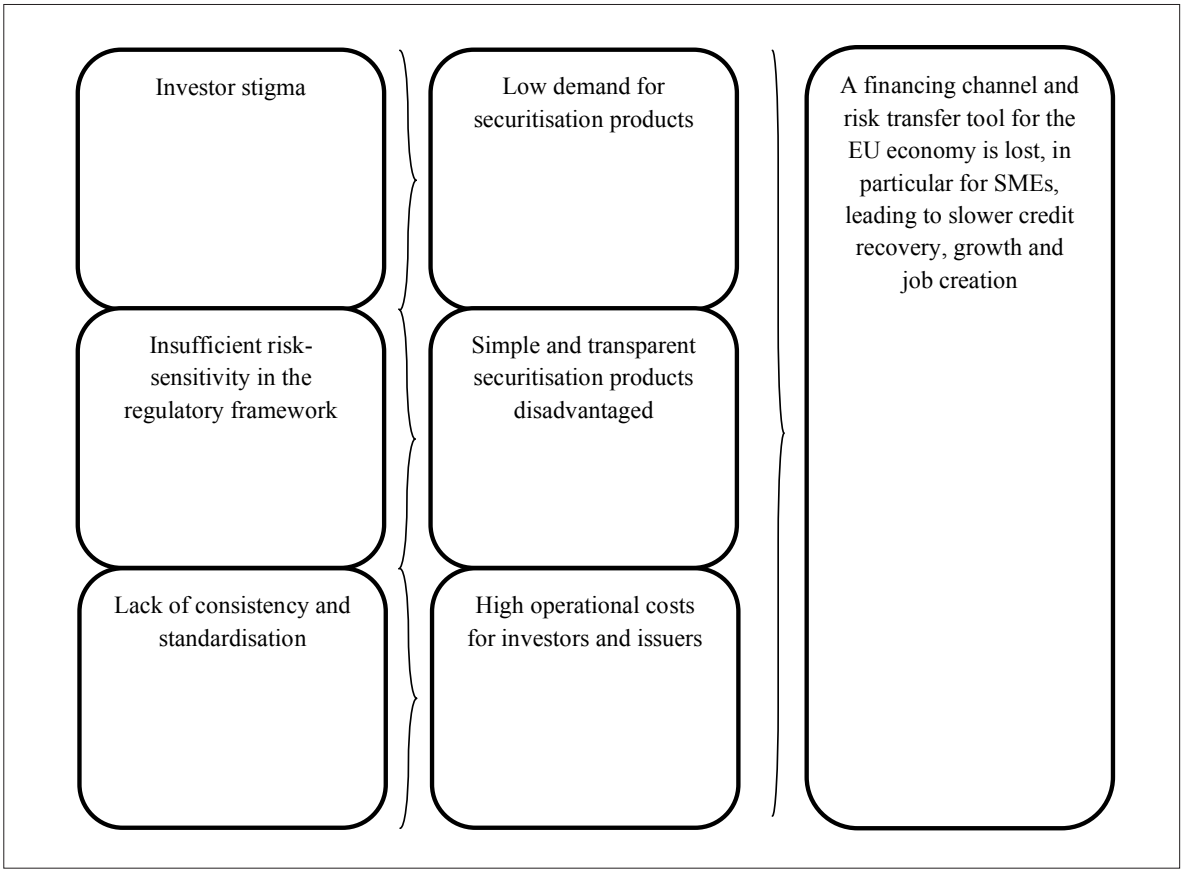
- *Low demand for securitization products.*
- *High operational costs for investor and issuers*.

Without securitization, the ability of banks to reduce their balance sheet by selling assets is indeed constrained. As a consequence, the current need for deleveraging compels banks to shrink their balance sheets by reducing credit provisions. From a long-term perspective, the moribund state of the securitization market deprives the EU economy of a capital market that could provide additional funding when the banking channel cannot because of its own dynamics.

These dynamics are less relevant in the U.S. where securitization issues have started growing again after a substantial drop in 2008. In 2014, issues in the U.S. were still less than half that in 2007 but a positive trend is clearly visible. This is however mostly ascribable to public guarantees from state agencies (Fannie Mae, Freddie Mac and Ginnie Mae), which cover the vast majority of the market. Such guarantees are however not feasible in Europe where an EU-level shared guarantee fund many times the size of currently existing supranational guarantors would be needed. It would also not be advisable as such schemes transfer risk from mortgage markets to the public sector, as recently highlighted by the IMF.[27]

[27] See IMF (2014), "Euro Areas Policies: Selected Issues", IMF Country Report No. 14/199. At http://www.imf.org/external/pubs/ft/scr/2014/cr14199.pdf.

FIGURE 3 SECURITIZATION, A VISUAL ANALYSIS OF CAUSES, PROBLEMS AND CONSEQUENCES



Source: European Commission, SWD(2015) 185 final (September 30, 2015).

3.2.2 What is the objective of the proposal?

In light of the analysis of the problems above, the general objective is to revive a safer securitization market that will improve the financing of the EU economy, weakening the link between banks' deleveraging needs and credit tightening in the short run, and creating a more balanced and stable funding structure for the EU economy in the long run. This should in turn benefit end users of credit intermediation: households, SMEs and larger corporations.

Reaching these general objectives requires the achievement of the following, more specific policy objectives:

- Remove stigma from investors and regulatory disadvantages for simple and transparent securitization products.
- Reduce/eliminate unduly high operational costs for issuers and investors.

These in turn require the attainment of the following operational objectives:

- Differentiate simple, transparent and standardized securitization ("STS") products from more opaque and complex ones. This objective will be measured against the difference in price of STS versus non-STS products. If this objective is achieved, this difference should increase. This should also trigger an increase in the supply of STS products, the reason being that the achievement of this objective will also be measured by the growth in issuance of STS products versus non-STS ones.

- Support the standardization of processes and practices in securitization markets and tackle regulatory inconsistencies. This objective will be measured against: 1) STS products' price and issuance; 2) The degree of standardization of marketing and reporting material; and 3) feedback from market practitioners on the evolution of operational costs.

3.2.3 What options were considered?

As shown in Figure 5 below, a range of options have been considered to introduce STS criteria: to adapt the regulatory framework to reflect the different risk profile of STS products and to standardize the building blocks of the securitization legislation (i.e., definitions, disclosure and due diligence requirements). In each field a no-action option, a non-legislative action option, and a legislative action option have been considered. The preferred option is a legislative action that would introduce STS criteria, introduce a differentiated regulatory framework for STS products and standardize the building blocks of the securitization legislation (i.e., definitions, disclosure and due diligence requirements). This option should achieve differentiation and render the regulatory treatment more risk-sensitive than it currently is. Furthermore, it should standardize currently heterogeneous provisions in EU legislation on securitization definition, disclosure and due diligence requirements. All this should in turn fight stigma and foster the revival of a safe and sustainable securitization market.

TABLE 1 OPTIONS CONSIDERED PER SPECIFIC PROBLEM

	Option	Description
Simple Transparent and Standardised criteria		
1.1	No action on differentiation	Take no further action at EU level to introduce STS criteria
1.2	Soft law by EU	Codes of conduct, guidelines or recommendations to encourage Member States to set up specific provisions for STS products and/or endorsement or support to private initiatives
1.3	EU legislative initiative to specify STS criteria	Introduction of a legal instrument specifying a set of criteria for STS securitisation products
Scope of differentiation		
2.1	Same scope as LCR and S2	The scope of STS securitisations would only cover 'term' securitisation (ABS with medium to long term maturity)
2.2	2.1 + ABCP	Additional criteria for identifying STS types of short term securitisations
2.3	2.2 + synthetics	Introduce criteria for both ABCP and synthetic securitisations
Compliance mechanism		
3.1	Introduce a self-attestation mechanism	Responsibility for compliance with the criteria will lie with the originator of the securitisation
3.2	3.1 + 3rd party assessment	Self-attestation by the originator complemented by assessment provided by an independent third-party
3.3	3.1 + ex-ante supervisory approval	Self-attestation by the originator complemented by ex-ante supervisory approval.

Prudential treatment		
Banking prudential treatment		
4.1	No change to the existing securitisation framework	All securitisations (both STS and non-STS) continue to be subject to the same prudential treatment set out in CRR
4.2	Develop a preferential capital treatment for STS securitisations	Amend the existing requirements in the CRR with a new framework that would differentiate between STS and non-STS securitisations with a preferential treatment for the former
Insurance prudential treatment		
4.3	No further action on Insurance prudential treatment	Solvency 2 standard formula for capital charges unchanged
4.4	Modify treatment for senior tranches of STS products	Refine existing approach - without changing the scope of the differentiated approach (i.e. improve the risk-sensitivity of the calibrations for senior tranches only).
4.5	Modify treatment for all tranches of STS products	Extend the differentiated approach to insurers' investments in non-senior tranches of STS securitisation deals and refine the existing approach

B) Options aiming at fostering the standardisation of processes and practises and tackling regulatory inconsistencies		
5.1	No further action at EU level	Finalise implementation of agreed reforms and address some remaining issues
5.2	Establish a single EU securitisation framework and encourage market participants to develop standardisation	Establish a single EU securitisation legislative framework defining securitisation, transparency, disclosure, due diligence and risk retention rules.
5.3	Adopt a comprehensive EU securitisation framework	Complementing option 5.2 with an EU securitisation framework harmonising Member States' legal frameworks for securitisation vehicles

3.2.4 What are the benefits of the preferred option?

Based on mostly qualitative analysis, the European Commission concludes that the first objective (to differentiate simple, transparent and standardized securitization products from more opaque and complex ones) is best fulfilled by a combination of options 1.3, 2.2, 3.2, 4.2 and 4.5. These are therefore the retained options. These options together should introduce an immediately recognizable STS product in EU securitization markets. Backed by an efficient compliance mechanism, STS products will be trusted by investors and can thus provide the legal basis for an amended capital treatment. This will indeed reflect more closely the risk profile of STS products, thereby allowing investors and issuers to reap the benefits of simple, transparent and standardized structures. The most effective and efficient policy option to achieve the second objective (to foster the spread of standardization of processes and practices in securitization markets and tackle regulatory inconsistencies) is option 5.2, which is therefore retained. Establishing a single and consistent EU securitization framework and encouraging market participants to develop further standardization will increase legal clarity for originators and investors and reduce current regulatory inconsistencies. This will in turn positively impact investors' and originators' administrative burden.

To the extent that the proposed policies will create a new channel of financing for the EU economy, one that is less dependent on banking sector constraints, they will reduce the effect of financial crises on credit provision and thus on growth and employment. The social costs of such crises will be reduced. Furthermore, by fostering the spread of securitization structures whose risks can be analyzed, understood and priced, the policy options will foster a securitization market conductive to better funding of the economy in a context of financial stability. Nothing would suggest that the proposed policy will have any direct or indirect impacts on environmental issues.

3.2.5 What are the costs of the preferred option?

Beyond the costs for market participants and public authorities to adapt to the new regulatory framework, there should be no relevant social and economic cost. Nothing would suggest that the proposed policy will have any direct or indirect impacts on environmental issues.

3.2.6 How will businesses, SMEs and micro-enterprises be affected?

The policy options chosen should have several positive effects on SME financing. First, the inclusion of short-term securitizations such as ABCP in the STS framework, with consequential improvement in their capital treatment, should foster the growth of this important source of SME financing. Secondly, the initiative should provide banks with a tool for transferring risk out of their balance sheets. As a consequence, freed capital should be increasingly used by banks to provide new credit to families and firms, most of which are SMEs in the EU. Finally, by introducing a single and consistent EU securitization framework and encouraging market participants to develop further standardization, the initiative should reduce operational costs for securitizations. Since these costs are higher than average for the securitization of SME loans, the fall should have an especially beneficial effect on the cost of credit to SMEs.

3.2.7 Consultation and the RSB opinion

It is important to note the following, excerpted from the EU's consultation report:

- *A public consultation on a possible EU framework for simple, transparent and standardised securitisation* was carried out between 18 February and 13 May 2015. 121 replies were received. On the whole, the consultation indicated that the priority should be to develop an EU-wide framework for simple, transparent and standardized securitization. Respondents generally agreed that the much stronger performance of EU securitizations during the crisis compared to U.S. ones needs to be recognized and that the current regulatory framework, needs modification. This would help the recovery of the European securitization market in a sustainable way providing an additional channel of financing for the EU economy while ensuring financial stability.
- *The Commission has gained valuable insights through its participation in the discussions and exchange of views informing the BCBS-IOSCO joint task force on securitisation markets*. The Commission has also attentively followed the work relating to key aspects of securitisation carried out by the Joint Committee of the European Supervisory Authorities (ESAs) as well as by its members separately (EBA, ESMA, EIOPA). Three public consultations, carried out in 2014 by ECB-Bank of England (BoE), Basel Committee for Banking Supervision (BCBS) - International Organisation of Securities Commissions (IOSCO) and EBA respectively, have gathered valuable information on stakeholders' views on securitisation markets. In its own consultation, the commission has built on these, focusing on gathering further details on key issues. Fruitful meetings and exchange of ideas with European central banks and the IMF

have enriched the debate and understanding of the issues. On the whole, these international level consultations confirm the views expressed in the commission's own consultation, and provide some additional feedback on the relative merits of some of the proposed policy options.

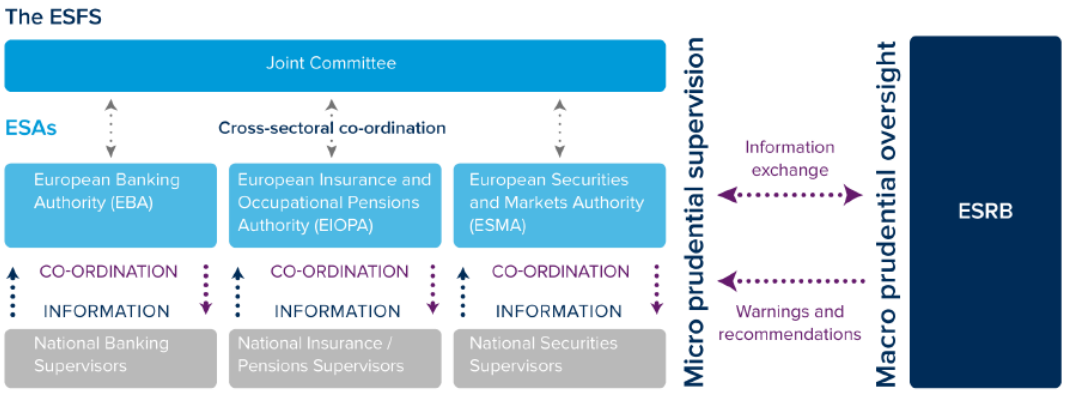
- *An impact assessment steering group was set up to ensure consistency across services.* The first meeting of the impact assessment steering group took place on 10 April 2015. The second meeting took place on 19 May 2015 and the third one on 8 June 2015. Directorate generals involved in the steering group were ECFIN, GROW, SG, LS, JUST and COMP. The meeting of the Regulatory Scrutiny Board (RSB) took place on 15 July 2015.
- *The RSB gave a positive opinion and recommended the following changes*:
  - The report should go beyond the EU level to also explain the situation in the member states. In particular, it should provide an overview of the situation of loan and securitisation markets across member states and their likely evolution in the absence of EU intervention. Moreover, it should show the differentiated impact of the policy options in member states.
  - The report should clearly link the objectives of the initiative with the identified problems. To this end, the report should describe the larger macroeconomic context and indicate the relative importance of a revival of the securitization market as one of the instruments to improve the situation of the banking sector, increase the provision of bank credit and prop-up economic activity.
  - The analysis of the impacts should provide a balanced overview of the pros and cons of each policy option and discuss possible risks that may prevent the attainment of the objectives. It should also describe existing and future risk mitigation instruments.

3.3 The European System of Financial Supervision and evolving impact assessment practices

From its onset in 2007, the global financial crisis revealed both gaps in the legislation that governs the financial system and shortcomings in the practice of financial supervision. In the European Union (EU), the crisis additionally highlighted deficiencies in the structures for cross-border crisis resolution; it shed light on the inconsistent application of the EU's legal framework for financial services and it tested supervisory co-operation and co-ordination between member states, in some cases affecting the trust between national supervisors. In order to address these issues and to achieve a more effective system of supervision, a new architecture for European financial supervision was developed based on the recommendations of the 2009 de Larosière report. This new arrangement, the European System of Financial Supervision (ESFS), was adopted in the form of regulations agreed by the European Parliament and the Council in late 2010 establishing:

- The European Systemic Risk Board (ESRB), responsible for the macro-prudential oversight of the financial system, focusing on systemic risk;
- Three European supervisory authorities (ESAs) responsible for micro-prudential supervision of financial markets and activities: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Market Authority (ESMA);
- The Joint Committee to foster co-ordination amongst the three authorities; and with participation of national competent authorities (NCAs) in the three financial sectors.

FIGURE 4 ARCHITECTURE OF THE ESFS



Source: Mazars/Oxford Analytica; **Note:** The illustration presents the current structure of the ESFS and does not reflect the introduction of the SSM in the banking sector.

The objective of the ESAs according to Article 1(5) EBA and ESMA Regulations (Article 1(6) EIOPA Regulation) is to "protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the EU economy, its citizens and businesses." Furthermore, this article specifies that the ESAs should contribute to:

- Improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision;
- Ensuring the integrity, transparency, efficiency and orderly functioning of financial markets;
- Strengthening international supervisory co-ordination;
- Preventing regulatory arbitrage and promoting equal conditions of competition;
- Ensuring the taking of related risks are appropriately regulated and supervised; and
- Enhancing customer protection.

The ESAs address these objectives through regulatory, supervisory, financial-stability and consumer-protection roles within the ESFS.

For matter concerning impact assessment, the role of the ESAs is primarily that of responding to specific requests for technical advice sent by the European Commission. However, according to the ESAs' regulation, ESAs have to carry out cost-benefit analysis when drafting implementing technical standards, and submit it for public consultation. Pursuant to this disposition, ESAs have conducted impact assessment and included both the draft standards and the whole IA process in the consultation paper, so that they can be evaluated and commented on by the stakeholders. Moreover, through its formal and informal consultation procedures, CBA/IA makes regulatory policy more transparent and thus can help to make the European Supervisory Authorities (ESAs) — EBA, EIOPA, and ESMA — more accountable. It is also a means of communication between the ESAs, the different national regulators involved, the regulated firms and other affected or interested parties. The three ESAs have produced common cost-benefit/impact-assessment guidelines to help achieve this, although the guidelines are not yet public (the current version dates back to the "Lamfalussy era," in 2008).[28]

[28] "Impact Assessment Guidelines for EU Lamfalussy Level 3 Committees" (Committee of European Securities Regulators, Committee of European Banking Supervisors, Committee of European Insurance and Occupational Pensions Supervisors, 2008), https://eiopa.europa.eu/CEIOPS-Archive/Documents/Guidelines/3L3IAGUIDELINES.pdf.

Recent examples of impact assessments are:

- ESMA's technical advice on the evaluation of the Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, available at http://www.esma.europa.eu/system/files/2013-614_final_report_on_ssr_evaluation.pdf.
- ESMA's consultation paper on MiFID II/MiFIR, published in 2014, and available at http://www.esma.europa.eu/system/files/2014-549_-_consultation_paper_mifid_ii_-_mifir.pdf.
- ESMA's impact assessment, which forms Annex III to the final report on draft technical standards under the Regulation No. 909/2014 of the European Parliament and of the Council of July 23, 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012. Available at https://www.esma.europa.eu/system/files/2015-esma-1457_-_annex_iii_-_cba_csdr_ts_on_csd_requirements_and_internalised_settlement.pdf.
- ESMA's call for evidence on the Impact of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis, available at https://www.esma.europa.eu/system/files/2015-920.pdf.
- ESMA's consultation paper on draft guidelines for the assessment of knowledge and competence on MIFID II, at https://www.esma.europa.eu/content/Draft-guidelines-assessment-knowledge-and-competence.
- EIOPA's Revised Impact Assessment on the EIOPA Solvency II Guidelines, available at https://eiopa.europa.eu/Publications/Consultations/EIOPA_EIOPA-BoS-15-039_Impact_Assessment_GL%20_set_1.pdf#search=impact%20assessment.

In the case of the EBA, reports tend to be closer to ex post evaluations of specific market risks. Also the European Systemic Risk Board occasionally performs impact assessments. One example is the March 2015 ESRB report on the regulatory treatment of sovereign exposures, which contains a simplified impact assessment.[29] During the review of the functioning of the ESA in 2014, the European Commission reported concerns expressed by stakeholders, which pointed to the lack of detailed feedback on the consultations and the frequently perceived lack of high-quality cost-benefit analysis performed by ESAs.

4. CONCLUSIONS AND IMPLICATIONS FOR CANADA

The EU Better Lawmaking agenda is deeply rooted in treaty provisions, which stress the need for EU institutions to adopt their policy initiatives in a way that is open, transparent, accountable, and in full respect of fundamental rights and key principles such as subsidiarity and proportionality. The way in which the agenda has been implemented goes very far in ensuring respect for these principles, and indeed many aspects of the EU policy process can be considered as best practices worldwide. This certainly applies to the pervasiveness of the consultation process and standards, as well as to the ever-growing use of ex ante impact assessments, monitoring and ex post evaluations throughout the policy cycle. The new better-regulation package adopted by the European Commission on May 19, 2015 further strengthens these prerogatives of the EU policy process and must be welcome in general terms for this reason. The same applies to the commission's proposed new Inter-Institutional Agreement on Better Regulation, with the caveats that will be illustrated below.

[29] "ESRB report on the regulatory treatment of sovereign exposures" (European Systemic Risk Board, March 2015), https://www.esrb.europa.eu/pub/pdf/other/esrbreportregulatorytreatmentsovereignexposures032015.en.pdf?82a33cdeb5f7ff35e07e7e7b8e548822.

Against this backdrop, there are still some gaps in the existing policy cycle at the EU level, and also some reasons to be concerned about the feasibility of some of the proposed reforms.

The gaps that are most evident in the current EU better-lawmaking agenda can be summarized as follows:

- *There is no full certainty nor full accountability* on the part of the commission for what concerns the selection of "major" proposals that should undergo inception IAs, full impact assessments and now also consultation and impact assessments on delegated and implementing acts. The commission has always stated that, as a general rule, all legislative and non-legislative initiatives included in the commission's annual work program will be subject to ex ante IA, but has also been equally accurate in stating that this general rule can very well find exceptions, as some initiatives not included in the work program could be subject to IA, and some that are included might eventually be exempted.
- As a reflection of this lack of full accountability, *there is no judicial scrutiny* over the obligation to respect fundamental better-regulation principles throughout the process. While in other jurisdictions (e.g., the United States) a piece of regulation can be declared null and void by a federal court for material or procedural errors in carrying out the underlying cost-benefit analysis, European courts have no such gatekeeping role.
- *There are also uncertainties related to methodology.* To the extent that the pendulum keeps swinging between cost-benefit analysis and multi-criteria analysis inside the European Commission, the importance attached to issues such as respect for fundamental rights or distributional impacts will continue to be surrounded by a degree of uncertainty.
- *There is also a problem of overall scope and coherence between the EU better-lawmaking agenda and the medium- to long-term goals of the European Union*. The methodological uncertainty highlighted above is also relevant for what concerns the link between the tools used by the commission in appraising its own proposals and the ultimate targets and goals politically set in initiatives such as Europe 2020. It is, indeed, a different thing to speak of an IA system that looks at the "efficiency" of proposals (through cost-benefit analysis), and an IA system aimed at checking the consistency of proposed actions with the union's politically set targets in terms of smart, sustainable and inclusive growth. A move towards the latter approach would probably make it a lot easier to implement better-regulation principles in the European Parliament and the Council, since these institutions would feel more ownership of impact assessment if they could depart from a mere technical document that looks at the efficiency of proposals, possibly ignoring other important aspects such as distributional impacts, fairness, innovation, poverty, employment, etc.
- *As already mentioned, important gaps are found in the way the Council of the EU handles legislative proposals*: the compatibility of Council amendments with the interests of the EU citizens and the EU project as a whole is not subject to any assessment, nor is there any specific motivation for proposals that in some cases can easily be seen as worsening the original balance struck by commission and parliamentary decisions.
- *Finally, the role of member states in the process should be strengthened*. Better regulation cannot be made meaningful if the transposition, implementation and enforcement phases of EU rules are not subject to clear ex ante appraisal, monitoring and evaluation. Initiatives such as extended guidance on implementation (e.g., in the U.K.), a constant interaction between the national parliament and the EU authorities (e.g., in the Swedish parliament) and ex ante assessments of impacts of pending dossiers on national interests (as the ones Germany's Normenkontrollrat is now starting to produce) are so far too sparse to be considered as the rule, and are rather exceptions that would deserve more diffusion in member states.

As regards the concerns that current proposals raise, these include the following:

- A first element of concern, and a missing explanation, is how the European Commission plans to multiply its activities, providing for many more rounds of consultation, inception IAs, implementation plans and much more without significantly increasing the staff dedicated to these tasks. And even if more staff is allocated to these tasks, it is unclear how the right competencies can be put in the right place. Maybe this can be seen as a medium-term commitment. The suspicion here is that such an enhanced workload (and the expected lengthier duration of the policy process) would only be sustainable if the commission maintained its initial approach, which seems oriented to a drastic reduction in the number of proposals tabled on a yearly basis.
- Even if the commission very cautiously repeats in several occasions that it plans to look at social and environmental impacts, very often there seems to be an almost exclusive reference to administrative burdens and regulatory costs. To what extent this will remain the dominant refrain in the commission's better-regulation actions remains to be seen.
- The restatement of the joint responsibility of all three institutions to ensure that adequate information is provided on the prospective impacts of final piece of legislation hides the lack of a real attribution of responsibility to the Parliament and most importantly to the Council, the most reluctant of all EU institutions when it comes to evidence-based decision-making. It would be easy for a malicious commentator to observe that such a shared commitment was already emphatically stated in the 2003 Inter-Institutional Agreement on Better Law-Making, and yet very little has happened since then.
- What about self-regulation and co-regulation? Perhaps the most surprising "elephant in the room" in looking at the new proposed inter-institutional agreement is the total absence of any reference to the issue of self- and co-regulation, which were prominent in the 2003 agreement. This comes after the European Economic and Social Committee filed a rather detailed and sophisticated opinion on the issue, seeking to clarify the features that a self- or a co-regulatory scheme should display in order to be considered as potentially in line with the public interest. So far, the impact-assessment guidelines simply refer to the "principles for better self- and co-regulation" developed in the past years with respect to the advertising sector by DG SANCO, and recently made the subject of a community of practice co-ordinated by DG CONNECT. What will happen to self- and co-regulation in the European Union? This is a delicate issue, since in many sectors of the economy the growing pace of innovation and technological development call for the adoption of flexible regulatory regimes: but absent more clarity on this issue, stakeholders might be discouraged from engaging with the commission in otherwise welfare-enhancing forms of public-private co-operation in the design and enforcement of regulation.

Concerning the comparison of the EU with Canada, it is clear that suggesting that Canada adopt the EU better-regulation system would be far from appropriate, as evidence suggests that Canada can rely on a rather robust set of tools and procedures, both for regulatory impact assessment and for stakeholder consultation. In the financial sector, the use of sunset clauses (for example, the mandatory revision of the Bank Act every five years) ensures a rather complete policy cycle, and seems to be at least as advanced as the corresponding EU model. However, Canada can look at some specific practices being experimented with in the EU, which could become useful suggestions for further strengthening of the Canadian better-regulation system.

Recommendation #1 — assess cumulative effects of legislation. It is fair to state that the EU has put more emphasis than Canada has on the policy cycle. While ex post evaluation, REFIT and cumulative cost assessment is becoming the rule in Europe, the role of ex post evaluation in Canada appears weaker. In particular, the assessment of the cumulative effects of legislation

appears as a much-needed initiative, especially in the financial sector, where the consistency and overall effectiveness of the overall corpus of legislation should be appraised, in addition to the overall fitness for purpose of individual pieces of legislation.

Recommendation #2 — adopt a methodological framework for impact assessment. The analysis of the prospective impacts of new regulation in Canada would benefit from the adoption of a general framework for the identification and assessment of direct and indirect impacts, as well as emerging risks and ways to manage/mitigate them. The taxonomy of costs and benefits of regulation illustrated above can provide a starting point for the elaboration of a more systematic, comprehensive framework for all agencies in charge of impact assessment and ex post evaluation in Canada.

Recommendation #3 — consider strengthening policy appraisal at the primary legislation level. Canada seems very well equipped to scrutinize secondary legislation, but much less geared towards a thorough assessment of the prospective impacts of primary legislative proposals. Systematic appraisal in the Canadian Parliament, for example, would likely improve the overall governance of the better-regulation system in Canada. In line with recent suggestions by the OECD, parliamentary scrutiny of legislative proposals, both ex ante and ex post, could help Canada guarantee better regulation at all levels of government.

LIST OF ACRONYMS USED

ABCP	Asset-backed commercial paper
ABS	Asset-based securitization
BAU	Business as usual
CBA	Cost-benefit analysis
CMU	Capital Markets Union
CRR	Capital Requirements Regulation
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
ESAs	European Supervisory Authorities
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
IA	Impact assessment
IAB	Impact Assessment Board
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
NCA	National Competent Authority
OECD	Organization for Economic Co-operation and Development
REFIT	Regulatory fitness
R&D	Research and development
RIA	Regulatory impact analysis
RSB	Regulatory Scrutiny Board
SME	Small and medium-sized enterprises
STS	Simple, transparent and standardized (securitization)
SWD	Staff working document

ANNEX 1: EUROPEAN COMMISSION IAS IN THE FINANCIAL SERVICES SECTOR

Date	Title	IA ref.	Proposal Ref	IAB/RSB opinion ref.
4/21/04	Directive on reinsurance	SEC(2004)443pdf(328 kB)	COM(2004)273	
7/14/04	Capital adequacy Directive	SEC(2004)921pdf(324 kB)	COM(2004)486	
12/1/05	Legal Framework of Payments	SEC(2005)1535pdf(848 kB)	COM(2005)603	
9/12/06	Supervisory approval for major shareholdings in banking, insurance, securities	SEC(2006)1117pdf(110 kB) +SEC(2006)1118pdf(513 kB)	COM(2006)507	
11/15/06	White paper on enhancing the Single Market framework for investment funds	SEC(2006)1451pdf(754 kB) +SEC(2006)1452pdf(138 kB)	COM(2006)686	
7/10/07	Taking-up and pursuit of the business of Insurance and Reinsurance - Solvency II	SEC(2007)871pdf(989 kB)	COM(2007)361	SEC(2007)872pdf(128 kB)
12/18/07	White Paper on the Integration of EU Mortgage Credit Markets	SEC(2007)1683pdf(2 MB) +SEC(2007)1684pdf(164 kB)	COM(2007)807	SEC(2007)1685pdf(183 kB)
4/23/08	Proposal for a Directive amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims	SEC(2008)491pdf(455 kB) +SEC(2008)492	COM(2008)213	Final IAB Opinionpdf(120 kB)
7/16/08	Proposal for a Directive on the co-ordination of laws regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)	SEC(2008)2263pdf(894 kB) +SEC(2008)2264	COM(2008)458	SEC(2008)2265pdf(196 kB)
10/1/08	Proposal for a Directive amending Directives 2006/48/EC and 2006/49/EC as regards banks affiliated to central institutions, certain own funds items large exposures, supervisory arrangements and crisis management	SEC(2008)2532pdf(2 MB) +SEC(2008)2533pdf(41 kB)	COM(2008)602	SEC(2008)2534pdf(176 kB)
10/9/08	Proposal for a Directive on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC	SEC(2008)2573pdf(497 kB) +SEC(2008)2572	COM(2008)627	SEC(2008)2571pdf(29 kB)
10/13/08	Proposal for a Regulation on cross-border payments in the Community	SEC(2008)2598pdf(295 kB) +SEC(2008)2599	COM(2008)640	SEC(2008)2600pdf(237 kB)
11/12/08	Proposal for a Regulation on Credit Rating Agencies	SEC(2008)2745pdf(424 kB) +SEC(2008)2746	COM(2008)704	SEC(2008)2747pdf(181 kB)
4/29/09	Communication - Packaged Retail Investment Products	SEC(2009)556 +SEC(2009)557	COM(2009)204	SEC(2009)558pdf(138 kB)
4/29/09	Proposal for a Directive on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC	SEC(2009)576 +SEC(2009)577	COM(2009)207	SEC(2009)578pdf
4/29/09	Commission Recommendation on remuneration policies in the financial services sector	SEC(2009)580pdf(395 kB) +SEC(2009)581pdf(43 kB)	C(2009)3159pdf(47 kB)	SEC(2009)582pdf(276 kB)
5/27/09	Communication on financial supervision in Europe	SEC(2009)715 +SEC(2009)716	COM(2009)252	SEC(2009)717pdf(261 kB)
7/13/09	Directive amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitizations, and the supervisory review of remuneration policies	SEC(2009)974 +SEC(2009)975	COM(2009)362	Final IAB Opinionpdf(251 kB)
9/23/09	Proposal for a Directive amending directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market	SEC(2009)1223 +SEC(2009)1222	COM(2009)491	SEC(2009)1221pdf(219 kB)

Date	Title	IA ref.	Proposal Ref	IAB/RSB opinion ref.
10/20/09	Communication — An EU framework for cross-border crisis management in the banking sector	SEC(2009)1389 +SEC(2009)1390	COM(2009)561	SEC(2009)1391pdf(238 kB)
9/23/09	Proposal for a Regulation on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board	SEC(2009)1234 +SEC(2009)1235	COM(2009)499	SEC(2009)1236pdf
9/23/09	Proposal for a Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board	SEC(2009)1234 +SEC(2009)1235	COM(2009)500	SEC(2009)1236pdf
9/23/09	Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority	SEC(2009)1234 +SEC(2009)1235	COM(2009)501	SEC(2009)1236pdf
9/23/09	Proposal for a Regulation establishing a European Insurance and Occupational Pensions Authority	SEC(2009)1234 +SEC(2009)1235	COM(2009)502	SEC(2009)1236pdf
9/23/09	Proposal for a Regulation establishing a European Securities and Markets Authority	SEC(2009)1234 +SEC(2009)1235	COM(2009)503	SEC(2009)1236pdf
12/16/10	Proposal for a Regulation establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No. 924/2009	SEC(2010)1584pdf(713 kB)	COM(2010)775pdf(103 kB)	SEC(2010)1586pdf(247 kB)
12/8/10	Communication: Reinforcing sanctioning regimes in the financial services sector	SEC(2010)1496pdf(213 kB)	COM(2010)716pdf(82 kB)	SEC(2010)1498pdf(335 kB)
9/15/10	Proposal for a Regulation on Short Selling and certain aspects of Credit Default Swaps	SEC(2010)1055pdf(804 kB)	COM(2010)482pdf(142 kB)	SEC(2010)1057pdf(409 kB)
9/15/10	Proposal for a Regulation on OTC derivatives, central counterparties and trade repositories	SEC(2010)1058pdf(2 MB)	COM(2010)484pdf(211 kB)	SEC(2010)1060pdf(202 kB)
8/16/10	Proposal for a Directive amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate	SEC(2010)979pdf(346 kB)	COM(2010)433pdf(108 kB)	SEC(2010)980pdf(171 kB)
7/12/10	Proposal for a Directive on Deposit Guarantee Schemes (recast)	SEC(2010)834pdf(2 MB)	COM(2010)368pdf(342 kB)	SEC(2010)836pdf(270 kB)
7/12/10	White Paper on Insurance Guarantee Schemes	SEC(2010)840pdf(9 MB)	COM(2010)370pdf(65 kB)	SEC(2010)842pdf(214 kB)
7/12/10	Proposal for a Directive amending Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes	SEC(2010)845pdf(616 kB)	COM(2010)371	SEC(2010)847pdf(475 kB)
6/2/10	Proposal for a Regulation on amending Regulation (EC) 1060/2009 on credit rating agencies	SEC(2010)678pdf(256 kB)	COM(2010)289pdf(454 kB)	SEC(2010)680pdf(291 kB)+
12/7/11	Proposal for a Regulation on European Venture Capital Funds	SEC(2011)1515	COM(2011)860	SEC(2011)1517pdf(338 kB)
11/15/11	Proposal for a Directive amending Directive 2009/65/EC on the co-ordination of laws, regulations and administrative provisions relating to undertakings of collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of the excessive reliance on credit ratings	SEC(2011)1354	COM(2011)746	SEC(2011)1356(475 kB)
10/25/11	Proposal for a Directive amending Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Commission Directive 2007/14/EC	SEC(2011)1279	COM(2011)683	SEC(2011)1281(302 kB)
10/20/11	Proposal for a Directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast - MIFID)	SEC(2011)1226pdf(3 MB)	COM(2011)656	SEC(2011)1228pdf(419 kB)

Date	Title	IA ref.	Proposal Ref	IAB/RSB opinion ref.
7/20/11	Proposal for a Regulation on prudential requirements for credit institutions and investment firms	SEC(2011)949	COM(2011)452	SEC(2011)951pdf(281 kB)
7/20/11	Proposal for a Directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate	SEC(2011)952	COM(2011)453	SEC(2011)954pdf(303 kB)
7/18/11	Commission Recommendation on access to a basic payment account	SEC(2011)906pdf(814 kB)	C(2011)4977pdf(35 kB)	SEC(2011)908pdf(349 kB)
12/19/12	Commission delegated Regulation supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision	SWD(2012)386pdf(687 kB)	C(2012)8370pdf(553 kB)	SEC(2012)645pdf(616 kB)
7/5/12	Commission delegated Regulation supplementing Regulation (EU) No. 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events	SWD(2012)198pdf(493 kB)	C(2012)4529pdf(93 kB)	SEC(2012)417pdf(462 kB)
7/3/12	Proposal for a Regulation of the European Parliament and of the Council on key information documents for investment products	SWD(2012)187	COM(2012)352	SEC(2012)403pdf(449 kB)
7/3/12	Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions	SWD(2012)185	COM(2012)350	SEC(2012)402pdf(284 kB)
7/3/12	Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast)	SWD(2012)191	COM(2012)360	SEC(2012)412pdf(279 kB)
6/6/12	Proposal for a Directive establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EEC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No. 1093/2010	SWD(2012)166	COM(2012)280	SEC(2012)353pdf(454 kB)
3/30/12	Commission delegated Regulation amending Regulation (EC) No. 809/2004 as regards the format and the content of the prospectus, the base prospectus, the summary and the final terms and as regards the disclosure requirements	SWD(2012)77pdf(266 kB)	C(2012)2086pdf(342 kB)	SEC(2012)226pdf(401 kB)
3/7/12	Proposal for a Regulation on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC	SWD(2012)22	COM(2012)73	SEC(2012)131pdf(408 kB)
9/18/13	Proposal for a Regulation on indices used as benchmarks in financial instruments and financial contracts	SWD(2013)336	COM(2013)641	SEC(2013)479pdf(261 kB)
9/4/13	Proposal for a Regulation of the European Parliament and of the Council on monetary funds	SWD(2013)315	COM(2013)615	SEC(2013)452pdf(292 kB)

Date	Title	IA ref.	Proposal Ref	IAB/RSB opinion ref.
6/26/13	Proposal for a Regulation on European long-term investment funds	SWD(2013)230	COM(2013)462	SEC(2013)368pdf(246 kB)
7/24/13	Proposal for a Regulation on interchange fees for card-based payment transactions	SWD(2013)288	COM(2013)550	SEC(2013)434pdf(307 kB)
5/8/13	Proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features	SWD(2013)164	COM(2013)266	SEC(2013)250pdf(223 kB)
10/10/14	Commission delegated Regulation supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)	SWD(2014)309pdf(2 MB)	C(2014)7230pdf(2 MB)	SEC(2014)520pdf(111 kB)
1/29/14	Proposal for a Regulation on reporting and transparency of securities financing transactions	SWD(2014)30	COM(2014)40	SEC(2014)79pdf(119 kB)
1/29/14	Proposal for a Regulation on structural measures improving the resilience of EU credit institutions	SWD(2014)30	COM(2014)43	SEC(2014)79pdf(119 kB)
9/30/15	Proposal for a Regulation laying down common rules on securitization and creating a European framework for simple, transparent and standardized securitization and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) 1060/2009 and (EU) 648/2012	SWD(2015)185pdf(3 MB)	COM(2015)472pdf(2 MB)	SEC(2015)382pdf(90 kB)

ANNEX 2: EX POST EVALUATIONS IN THE FIELD OF FINANCIAL MARKETS

Title: Review of Transparency Directive 2004/109/EC (evaluation related study)

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2010

Documents:

- Evaluation report - English (The review of the operation of Directive 2004 109 EC emerging issues accompaning document to the report.pdf)
- Evaluation report - English (Report on the operation of Directive 2004 109 EC.pdf)

Title: Ex ante Evaluation of financing of EFRAG

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2009

Documents:

- Evaluation report - English (financing-decision-evaluation_en.pdf)

Title: Evaluation of the economic impacts of the Financial Services Action Plan

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2009

Documents:

- Evaluation report - English (FSAP_economic_impact_en.pdf)
- Annex - English (FSAP_cost_of_compliance_en.pdf)

Title: Evaluation of Conditional Access Directive (CAD)

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2008

Documents:

- Evaluation report - English (Final evaluation report EN.pdf)
- Evaluation report - English (Study on the impact of the CAD - FINAL REPORT December 2007.pdf)
- Executive summary - English (EXECUTIVE SUMMARY.pdf)
- Annex - English (Final evaluation report ANNEX EN.pdf)
- Annex - English (ANNEX I.pdf)
- Annex - English (ANNEX II.pdf)
- Annex - English (ANNEX III.pdf)
- Annex - English (ANNEX IV ver novemebr2007.pdf)
- Annex - English (CAD Study Presentation.pdf)

Title: FSAP Evaluation. Part 1: Process and Implementation

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2007

Documents:

- Evaluation report - English (070124_part1_en.pdf)
- Annex - English (070124_annex_b_en.pdf)
- Annex - English (070124_annex_a_en.pdf)
- Annex - English (070124_annex_c_en.pdf)
- Annex - Français (070124_summary_en.pdf)

Title: Evaluation of FINUSE

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2007

Documents:

- Evaluation report - English (Final Report.pdf)

Title: Evaluation of Financial Collateral Arrangements Directive

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2006

Documents:

- Evaluation report - English (COMM_NATIVE_COM_2006_0833_F_EN_ACTE.pdf)
- Annex - English (AnnexFCD.pdf)

Title: Evaluation application to legal profession 2nd Money laundering Directive (91/308/EEC)

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2006

Documents:

- Evaluation report - English (SEC_2006_1793.pdf)

Title: Evaluation of the E-Money Directive 2000/46/EC

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union
Year: 2006
Documents:
- Evaluation report - English (External evaluation report.pdf)
- Evaluation report - English (Final document - Commission Staff Working Document.pdf)

Title: Evaluation report on the Settlement Finality Directive 98/26/EC

Directorate General: FISMA - Financial Stability, Financial Services and Capital Markets Union

Year: 2005

Documents:

- Evaluation report - English (1142.pdf)

ANNEX 3: SCORECARD ANALYSIS OF THE 36 IAS CARRIED OUT IN THE FINANCIAL SECTOR BETWEEN 2003 AND 2011

Year	2004	2005	2006	2007	2008	2009	2010	2011	TOTAL
IA number	2	1	2	1	6	8	9	7	**36**
Policy options									
Considers the zero option	1	1	2	1	6	8	6	7	**32**
Considers some alternative that is not the status quo	2	1	2	1	6	8	6	7	**33**
Considers improvements in implementation and enforcement	0	0	1	1	3	5	5	5	**20**
Considers reliance on international standards or private governance schemes	0	0	0	0	0	0	1	1	**2**
Considers self-regulation	1	1	0	1	2	2	2	3	**12**
Considers the provision of information and guidelines	0	0	2	1	4	4	4	2	**17**
Considers market-based instruments	0	0	0	0	0	3	3	5	**11**
Considers co-regulation	0	1	0	0	2	1	0	0	**4**
Considers prescriptive regulatory actions (command and control)	2	0	2	1	6	8	6	7	**32**
Preferred Policy Option									
IA indicates one or more preferred options	0	0	0	0	0	0	6	7	**13**
Chooses the zero option	0	0	0	0	0	0	0	0	**0**
Chooses prescriptive regulatory actions (command and control)	0	0	0	0	0	0	6	7	**13**
Consultation									
IA reports consultation	2	1	2	1	6	8	5	7	**32**
IA presents the different positions expressed and how they were considered	2	1	2	1	1	6	5	6	**24**
The IA used the consultation to gather factual data	2	1	1	0	3	0	2	0	**9**
Data									
IA reports information on data sources	0	0	0	0	0	0	6	7	**13**
IA reports information on data collection	0	0	0	0	0	0	3	0	**3**
Estimation of costs									
Provided best estimate of total cost	0	0	0	0	0	1	1	0	**2**
Provided range for total costs	0	0	0	0	0	1	0	0	**1**
Estimation of benefits									
Provided best estimate of total benefits	0	0	0	1	1	1	1	0	**4**
Provided range for total benefits	0	0	0	0	1	0	0	1	**2**
Comparison of Costs and Benefits									
Calculated net benefits	0	0	0	1	0	0	1	0	**2**
Calculated cost-effectiveness	0	0	0	0	0	0	0	0	**0**
Evaluation of alternatives									
Cost-effectiveness of alternatives	0	0	0	0	1	0	0	0	**1**
Net benefits of alternatives	0	0	0	0	1	0	1	0	**2**
Risk assessment									
IA performs risk assessment	0	1	0	0	0	1	0	1	**3**
Risk-risk analysis	0	0	0	0	0	0	0	0	**0**

Affected parties									
IA clarifies who is affected by the regulation									
EU citizens	1	1	1	1	3	4	2	0	**13**
Citizens of a specific territory	0	0	0	1	0	0	0	0	**1**
Specific categories of citizens	0	0	0	1	3	1	0	0	**5**
Consumers	0	1	0	1	3	4	5	1	**15**
The economic sector at large	2	1	1	1	5	6	6	7	**29**
A few large firms	0	0	0	0	1	1	3	0	**5**
SMEs	0	0	0	0	0	0	2	2	**4**
The not-for-profit sector	0	0	0	0	0	1	0	0	**1**
Non-EU parties (including third countries)	1	0	0	0	1	5	3	2	**12**
The EU as a whole	1	1	0	0	4	8	3	7	**24**
The member states	1	1	2	0	5	8	5	6	**28**
Other	1	1	2	1	5	7	2	0	**19**
IA clarifies the immediate beneficiaries of the regulation									
EU citizens	1	0	1	1	3	5	2	0	**13**
Citizens of a specific territory	0	0	0	1	0	0	0	0	**1**
Specific categories of citizens	0	0	1	1	3	1	0	0	**6**
Consumers	0	1	1	1	3	6	5	1	**18**
The economic sector at large	2	1	1	1	5	5	5	7	**27**
A few large firms	0	0	0	0	0	0	1	0	**1**
SMEs	0	0	0	0	0	0	2	2	**4**
The not-for-profit sector	0	0	0	0	0	0	0	0	**0**
Non-EU parties (including third countries)	0	0	0	0	0	5	1	2	**8**
The EU as a whole	1	0	0	0	0	8	3	7	**19**
The member states	1	0	1	0	0	8	4	6	**20**
Other	0	0	2	1	3	7	1	0	**14**
Economic impacts explicitly assessed									
Competitiveness	2	0	1	1	3	7	2	4	**20**
Competition	2	1	1	1	5	7	3	4	**24**
SMEs	1	0	0	1	4	7	4	5	**22**
SMEs ("SME Test")	0	0	0	0	0	0	0	0	**0**
Investment/innovation	0	0	1	1	4	6	5	5	**22**
Single market	0	1	2	1	4	7	5	1	**21**
GDP/growth	0	0	0	1	0	0	0	2	**3**
Trade	0	0	0	1	1	2	0	0	**4**
Inflation	0	0	0	0	0	0	0	0	**0**
Economic Impacts on Third Countries	0	0	0	0	2	6	3	2	**13**
Macroeconomic impacts	0	0	0	1	2	5	2	1	**11**
Administrative burdens (no SCM)	1	0	0	0	3	2	5	5	**16**
Administrative burdens (SCM)	0	0	2	1	1	1	0	2	**7**
Does IA quantify administrative costs or only administrative burdens?	0	0	0	0	3	0	0	0	**3**
Does IA quantify administrative burdens for businesses?	0	0	0	0	4	1	0	4	**9**
Does IA quantify administrative burdens for citizens?	0	0	0	0	0	0	0	0	**0**

Does IA quantify administrative burdens for public administrations?	0	0	0	0	3	0	0	1	**4**
Other	1	0	0	1	4	5	4	6	**21**
Monitoring and evaluation									
The IA contains a section on monitoring and evaluation	2	1	2	1	6	7	6	7	**32**
The IA discusses a review clause for the proposal	0	1	2	0	6	3	5	1	**18**
The IA contains indicators for evaluating the proposal overtime	0	1	1	0	6	5	3	5	**21**

About the Author

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