



Position Paper

March 2014

Response to the consultation on the draft Commission Evaluation Policy Guidelines

General Remarks

Better regulation and the reduction of regulatory burdens in the European Union are essential to businesses, which have to comply with the law. The EU institutions are responsible for ensuring that legislation is simple, clear, fit for purpose and delivers full benefits at minimum cost. The principles of subsidiarity and proportionality laid down in the Treaty on European Union¹ must be respected by the European institutions, both for the creation of new laws and the revision of existing ones. Rigorous evaluations are necessary to deliver policy objectives efficiently and to discontinue actions, if their effectiveness cannot be proven. As such, ex-post evaluations represent a key tool in the Smart Regulation policy to assess the performance and continued need of existing EU actions.

EUROCHAMBRES supports the Commission's efforts in conducting such evaluations and welcomes its intention to strengthen the process in order to make it more consistent, evidenced-based and transparent with more opportunities for stakeholders to contribute. The target is ambitious and the practical feasibility of conducting evaluations according to the new draft guidelines will have to be tested and assessed, while ensuring that no unnecessary and excessive red tape is created.

EUROCHAMBRES believes that the evaluation guidelines should provide a stronger focus on the assessment of administrative burden, simplification potential and impacts on SMEs. This should be a cornerstone of the evaluation work and a mandatory requirement for the evaluation of EU legislation as these are the objectives of the Commission's Regulatory Fitness and Performance Programme (REFIT).

Moreover, EUROCHAMBRES underlines that an evaluation should not be a tool to collect proof to support anticipated findings. To ensure credibility, an evaluation must be independent and impartial, with no predefined results in mind and without influence from the contracting Directorate General (DG) on the consideration and presentation of the achievements and challenges. The evaluators should have full autonomy in conducting the evaluation and reporting their findings without any interference from the contracting DG. Transparency in the process is also critical.

¹ See article 5 paragraphs 3 and 4 to the Treaty on European Union

Question 1 - Have you participated in evaluations of EU actions? With your experience in mind, do you think that by working according to these guidelines the Commission will generate useful results?

EUROCHAMBRES believes that the draft guidelines explain reasonably well the steps to be followed throughout the evaluation process. A common system and standardized guidelines will certainly improve the quality and consistency of evaluations, while enabling a better comparison of the effectiveness of the measures put in place in the different EU member states. Nevertheless, it is important to ensure that the application of the guidelines do not create excessive or unnecessary red tape and seek synergies with other Smart Regulation tools, notably impact assessments. EUROCHAMBRES therefore recommends testing the new system and reviewing it after a period of time to check that it delivers the expected results.

Furthermore, a number of elements require further reflections and can be improved.

- **The objective of reducing burdens, which underpins the Commission's REFIT, should be a cornerstone of the evaluation work and should feature more predominantly in the guidelines.** Evaluations should serve two purposes, namely: checking if EU policies are delivering the desired effects and identifying burdens, inconsistencies, gaps and ineffective measures in order to do better.
- **A better coordination between evaluations performed at EU and national level** would avoid that stakeholders are consulted twice, maybe even at the same time by the Commission and national/regional administrations. There is currently a certain consultation "fatigue" among both companies and business organisations including the Chambers of Commerce and Industry, who are frequently asked to contribute to consultations at different policy levels. A better coordination and search for synergies between the various levels is all the more important given the need for gathering data to properly assess and improve actions and that resources are limited. EU evaluations should link, whenever possible, into national simplification initiatives that the majority of the member states have in place, starting with the ABR-Plus programme.
- **Use of pre-existing national evaluation results** would avoid double investigation of data and ensure that national/regional conclusions, reflecting territorial specificities, are taken into account.
- **A good coordination of evaluations carried out by the different DGs** would avoid that the Commission staff is questioned several times on the same matter and ensure an efficient use of the resources. This would also enhance the effectiveness of evaluations, improve the comparability of results and find synergies between different areas of interest. This coordination role should be played by the Secretariat General.
- **Looking beyond the data and opinions of concerned parties in order to analyse the reasons for certain developments.** This enables the evaluator to identify risks and possible starting points for changing an EU action or providing the basis for concluding whether an EU action is necessary at all.
- **The level of analysis and data to be collected should be realistic and proportionate,** depending on the type of intervention being assessed and the stage of development of the intervention. The practical feasibility of an evaluation is not sufficiently taken into account in the draft guidelines.

Question 2 - Will published forward planning, evaluation mandates and final reports together with assessments of their quality make it easier for you to follow the process and get involved in evaluation, or do you suggest other possibilities?

EUROCHAMBRES is convinced that a more transparent process will help raise awareness of the evaluations in the pipeline or being conducted, and will lead to a greater acceptance among the stakeholders, which may result in a higher participation in consultations. Publishing planning, evaluation mandates and final reports makes sense if the information is provided in a reader-friendly format and contributes to a better understanding of the process. Forward planning is especially helpful to stakeholders in gauging when and how they can deliver their input.

Information about follow-up measures based on the evaluation results is essential to guarantee the regular involvement of a wide range of stakeholders, notably SMEs, which are harder to engage in consultations for well-documented reasons. It also underlines the seriousness of the evaluation. In this respect, EUROCHAMBRES recommends providing the stakeholders with the option to receive e-mail alerts or RSS feeds to follow the progress of the evaluation they contributed to.

EUROCHAMBRES believes that if the whole evaluation process is of adequate quality, the final evaluation report should reflect it. Efforts should therefore be invested right from the start of the process – i.e. when designing the evaluation and defining the terms of reference – to ensure that the quality of the final report will match the requirements.

Question 3 - When do you think stakeholder input is particularly useful in the process? How much advance notice do you need to prepare your input?

EUROCHAMBRES believes that an active involvement of stakeholders should be guaranteed throughout all steps of the evaluation process. The sentence “*The final report is the key document that stakeholders will see (and possible comment on)*²” raises doubts about a comprehensive inclusion of stakeholders in the process.

The involvement of stakeholders should begin as early as possible - i.e. three to four months before the start of an evaluation - to enable internal coordination. Short deadlines make it extremely difficult to provide high quality input and gather opinions from concerned businesses. Stakeholders can provide direct information from the businesses and as such play an integral part of the evaluation process.

As mentioned in the draft guidelines, “*credible efforts must be made to obtain data from a wide range of qualitative and quantitative sources*³”. Considering the difficulties in engaging and gathering the views of individual businesses – especially smaller ones - and the high number of consultations at all levels (European, national and local), EUROCHAMBRES recommends allocating a part of the evaluation budget to the collection of data by business organisations for the most important evaluations affecting business. This would help ensure the input from the business community and high-quality and evidence-based evaluations.

Public consultations are a good addition to evaluations. Nevertheless, they need to be announced well in advance (i.e. at least three month prior to their publication) and need to remain open for a longer period of time (i.e. at least three month).

Clearly and simply stated questions, a focus on the main elements of the evaluation and a publication of the consultation in the main EU languages are the key ingredients to ensure the participation of the concerned parties in a consultation and increase the objectivity of the results. Feedback to those who respond on the outcomes of consultation is also important in order to contextualize the exercise and ensure future engagements.

² Draft Commission Evaluation Guidelines page 41

³ Draft Commission Evaluation Guidelines page 21

It must be stressed that the capacity of the parties involved needs to be taken into consideration. The number and frequency of evaluations in a policy field should be limited to a reasonable amount – i.e. every three to five years according to the duration of an action and when the first reliable results can become available for analysis.

Question 4 - Where and how is it best to publish the evaluation results so that they reach the widest possible public? How important is it for you to know what follow-up action is planned?

EUROCHAMBRES agrees with the central publication of the evaluation reports as well as the mandates and planning of Commission evaluations. In addition, EUROCHAMBRES recommends publishing the evaluation reports on the website of the responsible DG together with the DG's 5 year indicative evaluation rolling plan. When necessary, the reports should also feature on other websites as in the case of the structural funds or when the evaluation touches competences of several DGs. This will increase transparency and involvement of stakeholders in evaluations. As far as possible, the full reports should be published.

In addition, the stakeholders involved in an evaluation (e.g. business representative organisations in the case of evaluations affecting businesses) should be encouraged to disseminate the information to their members and a part of the evaluation budget could be used for this activity.

Follow-up measures should derive from every evaluation. However, if no clear conclusion can be drawn from the findings, this should be clearly stipulated so as to avoid unrealistic expectations. Stakeholders – notably the representative organisations – should be kept informed about the the planned follow-up measures in order to be able to contribute to further consultations and to actively follow the next steps in the process. A six month deadline after the completion of the final evaluation for the identification of follow-up measures seems a reasonable period.

Question 5 - Do you think that the guidelines cover all relevant issues? Tell us about anything we have not covered well enough.

In addition to the comments made above, EUROCHAMBRES would like to underline the four following points:

1. **Systematic assessment of administrative burden, simplification potential and impacts on SMEs for the evaluation of EU legislation.** EUROCHAMBRES is surprised that such an assessment is mentioned in the guidelines as optional (“*Where appropriate, evaluation of regulation should include ...⁴*”). This should be mandatory in the guidelines for the evaluation of EU legislation as these are the objectives of REFIT.
2. **The importance of having clear and common guidelines and following a neutral approach as regards the outcome of the evaluation.** In our experience, the desired outcome of an evaluation is often already predefined and the questions asked in the consultation are used to confirm the expected results. Sometimes the questions, which are not asked, are those that matter most. The Commission must genuinely apply the definition of retrospective evaluation (“*a critical, evidence-based judgment of whether an intervention has met the needs it aimed to satisfy and actually achieved its expected effects⁵*”), as well as the five mandatory evaluation criteria (relevance, effectiveness, efficiency, EU-added value and coherence⁶) mentioned in the draft guidelines.

⁴ Draft Commission Evaluation Guidelines page 39

⁵ Draft Commission Evaluation Guidelines page 7

⁶ Draft Commission Evaluation Guidelines page 10

3. **Mandatory comparison between the anticipated impacts of a measure presented in the Impact Assessment and the reality.** Where a prior Commission impact assessment exists, the evaluation mandate should systematically include an assessment of whether the expected impacts have materialized with a specific focus on the impacts on SMEs for business related measures. Any over or under-estimation should be identified. This requirement should be more explicitly presented in the evaluation guidelines.
4. **Criteria for selecting measures that should be evaluated is missing.** In Germany for example, every measure that costs more than €1 million per year has to be evaluated. A similar rule should be put in place at EU level to ensure that the choice of measures to evaluate is not arbitrary.

Question 6 - Are you aware of 'good practice' elsewhere that could motivate other improvements?

Having standardized rules is an important requirement for a successful evaluation. EUROCHAMBRES believes that it is also essential to have independent institutions, which have the means and incentive to perform impartial and high quality evaluations. It is to be seen if the Steering Group and cross-DG Quality Review Panel, whose creation is suggested in the draft guidelines in order to guarantee the quality of the evaluations, will be capable and willing to work independently. EUROCHAMBRES reiterates its preference for the establishment of **an independent body at EU level in charge of ensuring that evaluations are impartial and of high quality.** National watchdogs such as the "Normenkontrollrat" in Germany, ACTAL in the Netherlands, the Regelradet in Sweden and the Regulatory Policy Committee in the UK are good examples.

Regular coordination between the Commission, Parliament, member states and stakeholders through their representative organisations should become an integral and permanent part of all EU activities in order to reduce regulatory burdens from new and existing EU actions. However, the capacity of each actor to deliver should be taken into due consideration. Effectiveness and outcome orientation should be the priority.

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