

LUISS



Faculté de  
Philosophie et  
Sciences sociales

Department of Political Science

Major in Public Policies

Chair of Analysis and Evaluations of  
Public Policies

Department of Philosophy and Social  
Sciences

Major in International Relations

Chair of Public Policies

# **Regulatory Fitness and Performance Programme: The key to close the policy cycle**

## **SUPERVISORS**

Prof. Efisio Gonario Espa

Prof. Fanny Sbaraglia

## **CO-SUPERVISOR**

Prof. Antonio La Spina

## **CANDIDATE**

Irene Fratellini

Luiss Student ID: 641012

ULB Student ID: 000512682

Academic Year 2020/2021



*...alla mia mamma e al mio papà,  
vi amo più di ogni altra cosa al mondo  
e spero di rendervi orgogliosi sempre.*

## Table of contents

<b>Introduction</b> .....	<b>3</b>
<b>1. The evolution of evaluation policies in the European Union</b> .....	<b>6</b>
<b>1.1. The first initiative devoted to evaluation: The action plan on Simplifying and improving the regulatory environment</b> .....	<b>6</b>
1.1.1. Preparation and presentation of the legislative proposal by the Commission.....	8
1.1.2. Discussion of the proposal by the European Parliament and the Council.....	8
1.1.3. Application of the legislative act by the Member States.....	9
1.1.4. Policy areas first concerned by the Action plan.....	9
1.1.5. Moving forward towards the Strategy for the simplification of the regulatory environment.....	10
<b>1.2. The Action Programme for Reducing Administrative Burdens</b> .....	<b>12</b>
1.2.1. The Fitness-check procedure.....	13
1.2.2. First results of the ABRplus measures gathered and evaluated.....	15
<b>1.3. The launch of Regulatory Fitness and Performance Programme</b> .....	<b>17</b>
1.3.1. <i>Ex post</i> evaluation and simplification tools.....	18
1.3.2. <i>Ex ante</i> evaluation and simplification tools.....	19
1.3.3. Monitoring process.....	21
<b>1.4. The introduction of the REFIT Platform</b> .....	<b>21</b>
1.4.1. Von der Leyen Commission replacing the REFIT Platform with the Fit-for-future- Platform.....	23
<b>1.5. REFIT champions the Annual Burden Summary</b> .....	<b>25</b>
<b>2. How the REFIT has closed the policy cycle</b> .....	<b>31</b>
<b>2.1. The choice of policy areas to be evaluated</b> .....	<b>32</b>
<b>2.2. Looking backwards through ex post evaluation</b> .....	<b>33</b>
2.2.1. Political validation.....	33
2.2.2. First round of consultations: Interservice group scrutiny.....	33
2.2.3. Evaluation of existing legislation.....	34
2.2.4. Second round of consultations and follow-up actions.....	38
<b>2.3. Looking forward through ex ante evaluation</b> .....	<b>40</b>
2.3.1. Political validation.....	41
2.3.2. First round of consultations: Interservice group scrutiny.....	42
2.3.3. Evaluation of initiatives to be proposed.....	43
2.3.4. Second round of consultations and follow-up actions.....	46
<b>2.3. Commission Proposal</b> .....	<b>47</b>
<b>2.4. Academic debate – Centralised vs polycentric evaluation</b> .....	<b>50</b>
<b>3. Empirical evidence for investigation purposes: the case study of the assessment of Regulation No 1307/2013 and the CAP post-2020 reform package</b> .....	<b>54</b>
<b>3.1. Introductory section to CAP</b> .....	<b>55</b>
<b>3.2. Ex post evaluation process of Regulation No 1307/2013</b> .....	<b>58</b>
3.2.1. Evaluation.....	58
3.2.2. The counterfactual.....	65
3.2.3. Stakeholder consultations.....	66
<b>3.3. Ex ante evaluation of follow-up proposals for CAP post-2020</b> .....	<b>69</b>
3.3.1. Policy options.....	69
3.3.2. Evaluation.....	74
3.3.3. Stakeholder consultations.....	79
3.3.4. Commission Proposal.....	82
<b>Conclusion</b> .....	<b>85</b>
<b>Bibliography</b> .....	<b>90</b>
<b>SUMMARY</b> .....	<b>98</b>

## Table of figures

<i>Figure 1</i> .....	15
<i>Figure 2</i> .....	16
<i>Figure 3</i> .....	57
<i>Figure 4</i> .....	60
<i>Figure 5</i> .....	61
<i>Figure 6</i> .....	63
<i>Figure 7</i> .....	65
<i>Figure 8</i> .....	75
<i>Figure 9</i> .....	76
<i>Figure 10</i> .....	77
<i>Figure 11</i> .....	77
<i>Figure 12</i> .....	78

## Introduction

The integration of policy evaluation mechanisms into lawmaking processes at EU level has undoubtedly been influenced by the New Public Management (NPM) strand of thought. The latter took its origin in the United Kingdom and basically consists of the application of business methodologies to the process normally followed by public administration. The aim was to “partition” the work of public authorities, making it cost-efficient and result-oriented, thus championing optimisation. It is no coincidence that the culture of evaluation entered the European dimension for the very first time under the United Kingdom Commission in 1986, and then the first real project was in 2002 with the Action plan. The evaluation and analysis system was from the outset based on a centralised and hierarchical configuration, with the European Commission at the head of structure. This final dissertation aims to support the thesis according to which the centralised evaluation typology adopted by the European Union prevails over the polycentric one in terms of functionality and effectiveness. This is because the evaluation procedure is not constrained by the existence of a monopoly of action by the European Commission, rather it distinguishes itself by the inclusion of third parties supervising Commission’s evaluation i.e. Regulatory Scrutiny Board (RSB), and consuming a consultative function i.e. stakeholders, to which it is nevertheless called to account.

In the first chapter, a historical analysis of the evaluation programs implemented by the European Union from 2002 to the present Regulatory Fitness and Performance Programme is carried out. Initially, the Commission only focused on one type of evaluation, commonly defined as *a priori*. As far as stakeholder involvement is concerned, consultations were already part of the very first projects such as the Action plan and Action Programme, respectively implemented in 2002 and 2005. Nonetheless they only included experts and institutions such as the Impact Assessment Board (IAB) in charge of evaluating the work of the evaluator, thus excluding the general public. The construction of today's structure took time before it was settled and consolidated. Each assessment programme implemented added a fundamental piece to the assessment mechanism. At the turn of 2011 and 2012, the Commission married the principle of "evaluate first", as well as understood the need for citizens to express their opinions as primary targets of policies. The urgency of promoting improvement within the evaluation system was taken to extremes during the 2008 crisis when eurosceptic sentiment was eroding the legitimacy of the Union. Since then, numerous actors have been involved in the evaluation system, which was given the name Regulatory Fitness and Performance Programme (REFUT). The Regulatory Scrutiny Board was introduced to replace the old IAB, and the REFIT Platform was integrated to allow citizens to express their views on the policies to be applied or

implemented, which became under the Von der Leyen Commission the Fit-for-Future Platform. This shows that the REFIT is the result of methodologically consulted growth.

In the second chapter, the analysis and evaluation methodology of the REFIT Programme is introduced and explained and, following, the academic debate which surrounds the nature of the EU evaluation system will be explored. Its structure turns out to be strongly articulated, but this complexity allows any drawbacks to be sidestepped indeed. For instance, it can be seen that, despite the centrality of the Commission as the evaluator of the regulatory stock, stakeholders, both institutional and non-institutional, are involved at several stages of the analytical cycle and sub-assessment stages such as *a posteriori* and *a priori* evaluation. In addition, as mentioned above, the Commission is provided with a "watchdog", recognised by the REFIT as the Regulatory Scrutiny Board, successor of the Impact Assessment Board and precursor of the Fit-for-Future Platform. As will be discussed in more detail in this section, the role of the Regulatory Scrutiny Board is crucial, as it monitors both the Commission's assessment performance and the principle of accountability. This chapter is emblematic for understanding the functionality of the programme because it first presents an overview of evaluation practice, and then analyses the academic debate between centralists and polycentrists, two strands of thought that anchor the functionality of evaluation to the nature or quantity of evaluators, omitting considerations of methodology per se. In this part it will be possible to denoise more clearly the issue raised by this dissertation, although empirical evidence to these theoretical constructs are introduced more specifically in the third chapter.

In the last chapter, a case study is explored in support of the thesis this final dissertation aims to sustain. More precisely, it concerns the evaluation carried out on Regulation No 1307/2013, part of the post-2013 CAP reform package, establishing the requirement to implement green measures in direct payments to farmers. The regulation will therefore be analysed through the various stages of the evaluation process envisaged by the REFIT Programme. In first place, there is an *a posteriori* analysis of the regulation, flanked by a section focused on the second round of consultations, mainly addressed to the cardinal institutions of the European Union such as the European Parliament, the European Council, the Committee of the Regions, but above all to citizens and relevant stakeholders. It will then be highlighted how the results produced by the evaluation of the above-mentioned legislation have underpinned the Commission's reasoning in drawing up new policies for the post-2020 CAP. If truth be held, the Commission has structured the policy options considering not only the poor implementation by the states, as the *ex post* evaluation suggests, but also the two macro-themes of debate that emerged in the consultations, namely the trade-off between economic development and climate action, and decentralisation versus centralisation of the management of

green policies. The agreement on the regulation was reached after about two years of dialogue between the parties involved, and will therefore be implemented from 1 January 2023. In the meantime, an interim regulation will be in place for this two-year period, which should be able to facilitate the transition to a stronger commitment to climate action in the agricultural sector, while also providing states with more flexibility with the New Delivery Model (NDM).

The analysis that this dissertation sets out to study is aimed at demonstrating how a *sui generis* international organization such as the European Union, whose nature has characterised the debate between intergovernmentalism and supranationality since the first years of the integration process, must necessarily base its mechanism on a centralised evaluation process. The peculiarity of the local contexts which calls for tailor-made interventions at the national level concerns more the question of competences on which to legislate, and therefore the management of the policy-making process, than the management of the evaluation of the same. The latter is considered effective if it is carried out by a single actor, in this case the European Commission, which centralises information and responsibilities, establishing comparable terms and allowing performance comparisons between states.



# **1.The evolution of evaluation policies in the European Union**

This first chapter focuses on the birth and the development of the evaluation policies that the European Union has adopted up to the present time. Among the institutions, the Commission has always been concerned with scrutinising policies and has therefore become its prerogative, which makes it the formal and hierarchical centre of the evaluation itself.

The European Commission is an unelected institution, therefore, the idea of defining it as an overseer of European legislation may be perceived as not legitimate. As we will see in the following pages, for real, the Commission is supported in its work - not only for evaluation purposes, but also of simplifying the law - by other entities, such as primarily the Impact Assessment Board, later on replaced by the Regulatory Scrutiny Board and then, the Fit-for-Future Platform, to which it is required to answer.

The first evaluation projects, considered as the forerunners of REFIT to which they left a substantial legacy in terms of knowledge on more or less effective procedures, primarily emphasised the evaluation in itself, and then finalised it to something greater, namely the simplification of the European regulatory stock, targeting SMART regulation. Therefore, the role of evaluation policies, from the “Action plan on simplifying the regulatory environment”, to the “Simplification Rolling Program”, to the “Administrative Burden Reduction Program”, led to the 2010 “Communication on Smart regulation”, in which the Commission underlines how important is the role of an efficient evaluation policy applied to the existing normative stock in order to restore value to the legislation that will be proposed and applied in the future, in such a way that it is not a surplus, rather an added value.

## **1.1. The first initiative devoted to evaluation: The action plan on Simplifying and improving the regulatory environment**

Ten years after the signing of the Maastricht Treaty, in June 2002, the European Commission, issued the Communication 278, which was to introduce the very first project of analysis and evaluation of European policies. This was called the “Action plan on Simplifying and improving the regulatory environment”. The aim of the Action plan was to guarantee normative consistency with the *aquis*<sup>1</sup>, in light of the overriding interest in the formulation and implementation of law in all its forms, i.e. in

---

<sup>1</sup> Renda, A. (2006). *Impact Assessment in the EU: The State of the Art and the Art of the State*. Centre for European Policy Studies.

the public interest. The evaluation program was supposed to cover the regulations put in place under the European Economic Community (EEC), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EAEC) as well, which were still in force, having laid down the foundations for the legislation that was later structured once the Maastricht Treaty came into force in 1993<sup>2</sup>. The first pillar of the Action plan was also identified in today's evaluation mechanisms: consultation. If truth to be hold, this project was in embryo the result of a year of consultations held and sought by the Commission with those with whom responsibility for legislation is shared, namely the Member States and the other European institutions. The object of consultations was an initial interim report, submitted to the Stockholm European Council in March 2001, "The White Paper on European Governance", adopted in July of the same year, and in the end, a policy communication addressing the Council, the European Parliament and the Member States on the main points of the Action plan<sup>3</sup>. This suggested that the European Commission's approach to the implementation of evaluation policies was extremely accurate in order to avoid misunderstandings, inequalities of application or vetoes. The Action plan was therefore to all intents and purposes a choral project. Drawing on the scientific literature, it is understood that this model of governance very much reflected a polycentric type of evaluation, put in place on a multi-level affair<sup>4</sup>. Yet, it is worth mentioning that the evaluation proposed in the Action plan was the prerogative of a single central actor, i.e. the European Commission, which leads and coordinates the multiplicity of subjects involved. As a matter of fact, the Action plan did not foresee any kind of "self-organisation" by the parties consulted in the year before 2002. Consultations were, and still are, aimed at producing a comprehensive assessment that is not biased towards a particular interest, and thus results efficient for the plethora of actors involved. Consultations therefore have a legitimising function on the side of the authority responsible for conducting the assessment, and at the same time a coordinating function, in order to harmonise the diversity of the individual states. On this basis, the role of the Commission at the centre of a formal, hierarchical evaluation is confirmed<sup>5</sup>. It is interesting to note that, despite the evolution of European evaluation mechanisms over time, the centralised structure remains in places to these days. Nonetheless, this first project was not yet intended to carry out *ex post* evaluation. The simplification of legislation therefore did not adopt a retrospective approach, rather focused on the mechanisms governing the drafting of the legislation to be implemented, reflecting a prospective *modus operandi*.

---

<sup>2</sup> Council of the European Communities, Commission of the European Communities. (1992). *Treaty on European Union*. Maastricht. Available at: [https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty\\_on\\_european\\_union\\_en.pdf](https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf)

<sup>3</sup> European Commission. (2002). Action Plan "Simplifying and improving the regulatory environment". Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0278:FIN:EN:PDF>

<sup>4</sup> Schoenefeld, J., & Jordan, A. (2017). Governing policy evaluation? Towards a new typology. *Evaluation*, 23(3), 274-293

<sup>5</sup> *Ibidem*

More precisely, the sections identified in the policy cycle to be adjusted were respectively: preparation and presentation of the legislative proposal by the Commission; discussion of the proposal by the European Parliament and the Council; and application of the legislative act by the Member States. However, the idea of implementing an impact assessment was not excluded *a priori*. In fact, the Action plan was complemented by other two satellite communications, which set out a consolidated method of impact assessment only for key initiatives on the one hand, and a minimum standard of consultation on the other. This is a clear indication of the Commission's vision of a strong and effective long-term assessment project. To do so, it is therefore necessary to reason and implement the method gradually<sup>6</sup>.

### **1.1.1. Preparation and presentation of the legislative proposal by the Commission**

Focusing on the pivotal points that the Commission wanted to explore, as far as the preparation and presentation of proposals are concerned, we know that already in the “White Paper on European Governance”, the Commission promoted quality and transparency. This promise was renewed in the Action plan with the aim of improving the effectiveness of consultations through a well-considered choice of stakeholders to be involved, and a precise structure of guidelines to present their views, in compliance with the principles of accountability, pluralism and integrity. More precisely, this objective was deepened as overtaken by the “Communication on the minimum standard of consultations”. It is also the communication that introduces the impact assessment method, so that the formulation of new policies finds legitimacy in the real, actual and empirically ascertained need that the body of law can be made more effective by expanding it with new proposals<sup>7</sup>.

### **1.1.2. Discussion of the proposal by the European Parliament and the Council**

As stated in Communication 278, “*The commission feels that the quality of legislation cannot be improved without the strong commitment of the legislator*”<sup>8</sup>. In this respect, it is recognised the need to establish an interinstitutional agreement, by the end of 2002, while calling for a more appropriate use of legislative instruments. First of all, limiting the use of regulations and directives to the circumstances initially defined by the TEU and TFEU treaties and without going further. Secondly,

---

<sup>6</sup> European Commission. (2002). Action Plan “Simplifying and improving the regulatory environment”. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0278:FIN:EN:PDF>

<sup>7</sup> *Ibidem*

<sup>8</sup> *Ibidem* p. 11

exploring alternatives to legislation when deemed appropriate, also enhancing co-regulation. In the end, a commitment by the Commission itself to propose intuitive, non-burdensome initiatives<sup>9</sup>.

### **1.1.3. Application of the legislative act by the Member States**

The third point emphasised in the Action plan is the implementation of the provisions. For this, the Commission directly addressed the Member States, which had the task of transposing European legislation into domestic law. The transposition had to take place as closely as possible to the indications given in the mother law, just as the enforcement of the policy at national level should have been implemented effectively, compatibly with the peculiarities of the state in question. In light of this, the Commission recommended Member States to appoint a correspondent responsible for coordinating the transposition and application of Community acts. In addition, the introduction of monitoring mechanisms was proposed, such as electronic notification of national transposing measures, using a standard form, and consultations and impact assessments of any supplementary provisions added to legislative acts at the time of transposition<sup>10</sup>. Policy monitoring has been defined as the “*process of observing policy implementation progress, and resource utilization, and anticipating deviations from expected policy outcomes*”<sup>11</sup>.

### **1.1.4. Policy areas first concerned by the Action plan**

The simplification procedure foreseen by the Action plan established first of all the identification and selection of the policy area on the basis of prioritisation indicators, such as first, the importance it had in the European economy and in the internal market in terms of growth, competitiveness and jobs and, second, the weight it occupied in terms of its share of the EU secondary Community law and how significantly its functioning is influenced by EU legislation. Subsequently, the Commission presented a list of selected areas to frame the simplification initiatives to be implemented. To prepare simplification proposals, the Commission would have used sectoral simplifications programs, such as the Simpler Legislation for the Internal Market (SLIM), so as to provide an accurate and tailored

---

<sup>9</sup> *Ibidem*

<sup>10</sup> *Ibidem*

<sup>11</sup> Sapru, R.K. (2010). Public Policy: Art and Craft of Policy Analysis, New Delhi: PHI Learning Private Limited. p.267

analysis, integrated frameworks for impact assessment and further consultation mechanisms. In 2003, from February to September, the following areas were studied<sup>12</sup>:

- Industrial products: Motor Vehicles type-approval system
- Marketing authorisation for medicinal products
- Processed agricultural products
- Agriculture and CAP: CAP reform - a long term perspective for sustainable agriculture
- Implementing rules in the rural policy sector
- State aids exemption regulations
- Health and Food safety: Feed materials and compound feeding stuffs
- Food contact materials
- Novel foods
- Taxation and Customs: Capital duty directive
- Employment and Social affairs: Health and safety at the work place
- Equal treatment between men and women
- Drugs: European Monitoring Centre for Drugs
- Competition: Implementation rules on Merger Regulation
- Implementation rules on Antitrust Regulation
- State Aids procedures and rules
- Environment: Waste legislation
- Air quality legislation
- European contract law: Common Frame of Reference

#### **1.1.5. Moving forward towards the Strategy for the simplification of the regulatory environment**

In 2005, following the request made by the European Parliament and the European Council to further improve the policy evaluation mechanism established in 2002 with the Action plan, the Communication 97 officially introduced the program of “Better Regulation for Growth and Jobs”, building on the previous initiative. Yet, the Action plan was imprecise in its formulation and application, thus delivering uncertain guidelines and consequently increasing transaction and

---

<sup>12</sup> European Commission. (2002). Action Plan “Simplifying and improving the regulatory environment”. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0278:FIN:EN:PDF>

administrative costs<sup>13</sup>. The initiative, in Alemanno's words "*does not appear, at least prima facie, novel*", hence forcing the Commission to further improvements<sup>14</sup>. The 2005 program aimed at improving and extending the use of impact assessment for new proposals, specifically focusing on the methodologies applied to measure administrative costs. Moreover, pending legislative proposals were foreseen to be screened and eventually withdrawn (in September of the same year the Commission withdrew 68 of them)<sup>15</sup>. In addition, simplifying approaches established in 2002 were revised and new procedures were introduced. Being the initiative specific for growth and jobs, peculiar attention was dedicated to small and medium sized businesses (SMEs), which had recognised interests in championing more efficient administrative procedures which excessive costs to be paid, given their limited disposability of resources<sup>16</sup>.

For this reason, in the same year, the Communication 535 was issued reporting the need to adopt a strategy that was as overarching as possible, applicable to every policy area. The "Strategy for the Simplification of the Regulatory Environment" emphasised the importance of the following methods of simplification: repeal, codification, recasting and modification of the regulatory approach<sup>17</sup>. From 2005 to 2009, the program was supposed to evaluate 164 measures, breaking all policy areas, of which 2500 acts were removed from the *acquis communautaire*. In particular, in the area of Common Agricultural Policy which has always deserved substantial attention by the Commission, the regulation of Common Market Organisations was streamlined by 50 Council Acts and 650 legal articles<sup>18</sup>. In the first year, 5 regulations and 5 directives on Organic farming, Plant health, Quantity policy, Radiation protection and Sugar were in program to be examined. In 2006, the Common Agricultural Policy was analysed with 35 regulations and 4 directives, respectively on Common Market Organisations, Egg marketing standards, Energy crops, Foodstuffs, Fruit and vegetables (fresh and processed), Plant Protection Products, Potato starch, State aid rules and Wine. The following year, in the same sector, Cross-compliance, Feed/Animal nutrition, Foodstuffs, Fruit and vegetables - regional implementation were supposed to be studied, comprising 3 regulations and 2

---

<sup>13</sup> Renda, A. (2006). *Impact Assessment in the EU: The State of the Art and the Art of the State*. Centre for European Policy Studies.

<sup>14</sup> Alemanno, A. (2015). How much better is Better Regulation? Assessing the Impact of the Better Regulation Package on the European Union – A Research Agenda. *European Journal of Risk Regulation – Issue 3, 2015 . p.3*

<sup>15</sup> European Commission. (2005). *Implementing the Community Lisbon programme: A strategy for the simplification<sup>[1]</sup> of the regulatory environment*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0535:FIN:EN:PDF>

<sup>16</sup> European Commission. (2005). *Better Regulation for Growth and Jobs in the European Union*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0097:FIN:EN:PDF>

<sup>17</sup> European Commission. (2005). *Implementing the Community Lisbon programme: A strategy for the simplification<sup>[1]</sup> of the regulatory environment*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0535:FIN:EN:PDF>

<sup>18</sup> European Commission. (2008). "Cutting red tape at maximum speed: Citizens and enterprises save billions". *Press release*. Available at: [https://ec.europa.eu/commission/presscorner/detail/et/IP\\_08\\_115](https://ec.europa.eu/commission/presscorner/detail/et/IP_08_115)

Directives respectively. Finally, in 2008, only 2 regulations were scheduled to gain the attention of the Commission in the Dairy sector and Dried fodder<sup>19</sup>.

## 1.2. The Action Programme for Reducing Administrative Burdens

Despite the European Commission's dense program of initiatives related to policy evaluation in light of the public interest, in 2007, Frans Timmerman, the then Dutch State Secretary for European Affairs, identified the first signs of dissent. In the “Communication on Europe: The Reform Treaty and the future of Europe”, a *communiqué* to the lower house of the Dutch government, he made clear the need to further redevelop the fabric of European law, so as to improve the integration of civil society into the decision-making process. At the heart of this is the public interest, so that the social order and the rule of law of European citizens is not weighed down by burdensome, incoherent and ineffective regulations, but is composed of understood and legitimately accepted policies<sup>20</sup>. The question of legitimacy for the Commission, being an unelected body, and the European Union per se, found fertile ground in various circumstances, fuelling the thinking of the so-called Eurosceptics, who did not accept the idea of a supranational authority under any conditions. Eurosceptic sentiment grew together with the perception that the Union had monopolised the decision-making process, imposing an excessive burden of obligations on the population of the member states. What people were looking for was an advisory space to align the Commission's policy analysis with the direct experience of citizens, whose input could have enriched the evaluation process. In the same year, the “Action Programme for Reducing Administrative Burdens in the European Union” was initiated, introduced by Communication 23, which set the target of removing the unnecessary and excessive administrative measures by 25% by 2012. This Action plan was to focus on a specific policy area, renewing the commitment made in 2005 with the “Better Regulation for Growth and Jobs in the European Union”<sup>21</sup>. The results of this five-year strategy would have been published by the Commission later on in 2015 in the ABRPlus, the final report of the action, which will deserve more attention in the following pages. In 2008, with the bursting of the subprime bond bubble, we witnessed a real financial earthquake. Member States floundered in the multiplicity of structural mechanisms. National

---

<sup>19</sup> European Commission. (2005). *Implementing the Community Lisbon programme: A strategy for the simplification<sup>[1]</sup> of the regulatory environment*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0535:FIN:EN:PDF>

<sup>20</sup> van Noije, L. (2010). The European paradox: A communication deficit as long as European integration steals the headlines. *European Journal of Communication*, 25(3), 259–272. Available at: <https://doi.org/10.1177/0267323110373460>

<sup>21</sup> European Commission. (2007). *Action Programme for Reducing Administrative Burdens in the European Union*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0023:FIN:en:PDF>

administrations struggled against such a contingency, being their scope of action limited by their obligations towards the EU. The uncertainty sown by the crisis led to growing perplexity among people, specifically referring to the entrepreneurial élite about the administrative burden of laws. This triggered a reaction mechanism by the European institutions, which were aware of the obvious urgency of more efficient law-making, free of superfluities<sup>22</sup>.

### 1.2.1. The Fitness-check procedure

On these premises, in 2010, in the Communication 543, the Commission highlighted the importance of maintaining the regulation positive. That means that the EU, as a reference authority, has the task of effectively regulating and coordinating the Member States, so that they can benefit from the EU policies, rather than be harmed by them. The Commission recognised the progress made in the area of evaluation, such as the strengthening of stakeholder consultations and the application of impact assessment to the policy making process, in light of the Union's core principles of transparency and accountability. This has charged hand in hand the evaluation process with the virtue of mutual adjustment, due to consultations procedures, and accuracy, for the commitment towards empirical and conceptual demonstration of the functionality of the policy choices proposed by the Commission<sup>23</sup>. This has made possible the extensive work of evaluation and simplification of all existing legislation. Given the Commission's constant commitment to strengthening and extending assessment mechanisms, consolidating each step taken in a long-term project, the need to go further is reported, so that better regulation becomes smart regulation. In order to translate this project into practice, the Commission addressed the European Parliament, the European Council, The European Economic and Social Committee and the Committee of Regions with three key points of this idea in the Communication 543<sup>24</sup>. First of all, the relevance of the assessment package is reaffirmed, a procedure that necessarily had to be extended, enhanced and continuously innovated. Hence, the focus shifted from a purely *ex ante* policy implementation assessment approach to an *ex post* approach, in line with the ideas enunciated by Professor Sunstein about a decade earlier. He argued that in order to formulate new initiatives, it is *condictio sine qua non* to consult and evaluate existing ones first. Consequently, only by primarily applying a retrospective approach will it be possible to

---

<sup>22</sup> European Commission. (2012). *EU Regulatory Fitness*. Available at: [https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness\\_dec2012\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness_dec2012_en_0.pdf)

<sup>23</sup> Dunlop, C. And Radaelli, C.M. (2015). Impact assessment in the European Union: Lessons from a research project. *European Journal of Risk Regulation*.

<sup>24</sup> European Commission. (2010). *Smart Regulation in the European Union*. Available at: [https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/com/com\\_com\(2010\)0543\\_/com\\_com\(2010\)0543\\_fr.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2010)0543_/com_com(2010)0543_fr.pdf)



adopt a prospective approach that brings optimal results<sup>25</sup>. *Ex ante* evaluation is defined in the scientific literature as “a broad initial assessment aimed at identifying which alternative will yield the greatest benefit from an intended investment”<sup>26</sup> while the OECD identifies *ex post* evaluation as “an examination of an enforcement decision that tries to determine the effects that the decision has had”<sup>27</sup>. Secondly, it is recognised that “smart regulation is not an end in itself. It must be an integral part of our collective efforts in all policy areas”<sup>28</sup>. This means that, even if the role of formal evaluator is included, according to the theoretical framework adopted above, the functioning and implementation of EU legislation remains a shared responsibility.

Therefore, it is in the interest of the parties to whom Communication 543 is addressed that the evaluation and simplification programme achieves smart regulation in practice. Finally, the Commission reconfirms the commitment made and recognised in the Lisbon Treaty to create a participatory democracy. Accordingly, it promotes the process of consultation with stakeholders, giving citizens the opportunity to be directly involved and heard, and extending the duration of consultations themselves. Therefore, it is necessary that the evaluation of policies, both *ex post*, i.e. impact evaluation, and *ex ante*, i.e. impact assessment, includes scrutiny of all specificities, without neglecting details. These premises were brought together under an umbrella term that the Commission defined as a “fitness check”. The evaluation mechanisms that had been worked out, developed and enhanced up to that point led back to one main idea: any policy under analysis must, at the end of the evaluation, be able to fit seamlessly into the body of legislation and, to fit for its purpose. Thus, in 2010, a more comprehensive assessment was supposed to be applied to the broadest spectrum of legislative sectors, starting from the environmental, transport, social and industrial policies. Based on the outcome, the fitness check was extended to all policy areas the following year.

---

<sup>25</sup> Sunstein, C.R. (1996). *Congress, Constitutional Moments, and the Cost-Benefit State Legislative Foreword*. 48 *Stanford Law Review* 247. Available at:

[https://chicagounbound.uchicago.edu/journal\\_articles/8330/](https://chicagounbound.uchicago.edu/journal_articles/8330/)

<sup>26</sup> Samset, K., & Christensen, T. (2017). *Ex ante project evaluation and the complexity of early decision-making*. *Public Organization Review*, 17(1). p.2. Available at:

[https://www.researchgate.net/publication/282478785\\_Ex\\_Ante\\_Project\\_Evaluation\\_and\\_the\\_Complexity\\_of\\_Early\\_Decision-Making](https://www.researchgate.net/publication/282478785_Ex_Ante_Project_Evaluation_and_the_Complexity_of_Early_Decision-Making)

<sup>27</sup> OECD (2016). *Reference guide on ex-post evaluation of competition agencies' enforcement decisions*. p.3. Available at: <http://www.oecd.org/daf/competition/Ref-guide-expost-evaluation-2016web.pdf>

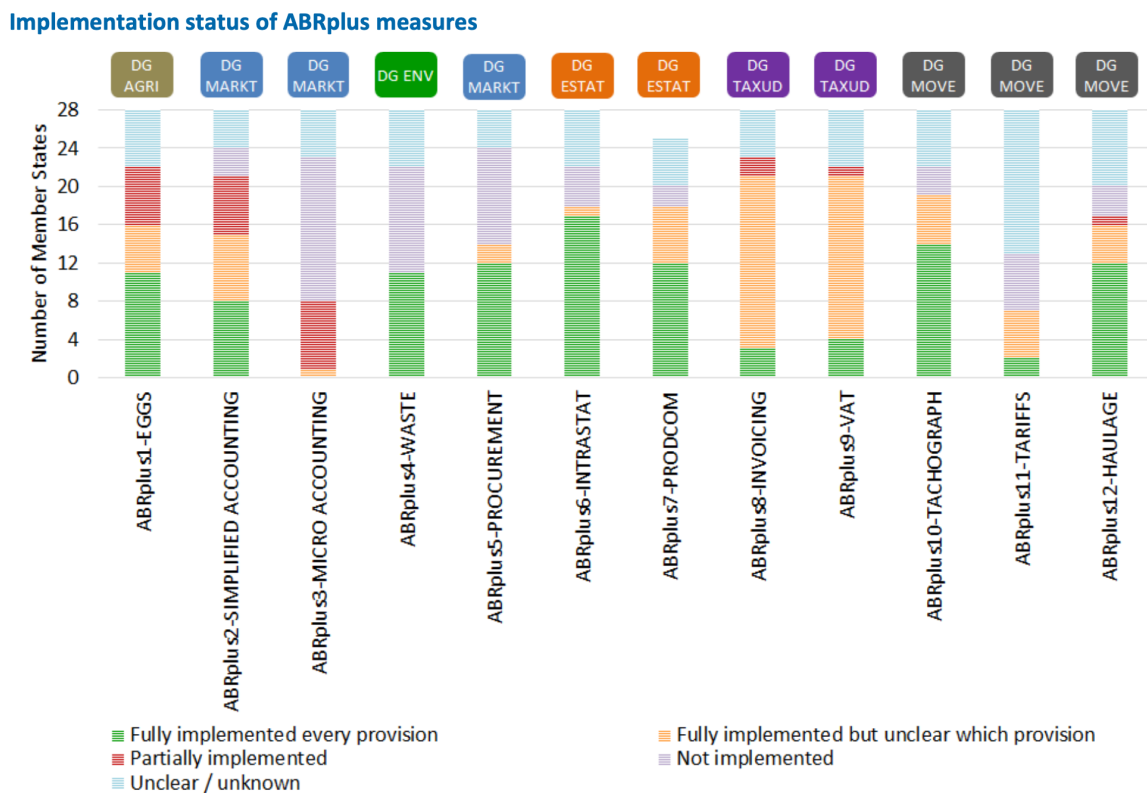
<sup>28</sup> European Commission. (2010). *Smart Regulation in the European Union*. p.3. Available at:

[https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/com/com\\_com\(2010\)0543/com\\_com\(2010\)0543\\_fr.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2010)0543/com_com(2010)0543_fr.pdf)

### 1.2.2. First results of the ABRplus measures gathered and evaluated

As mentioned above, the Action plan project initiated by the Dallas Commission in 2007 to reduce administrative burdens was coming to an end in 2012. Interestingly, the Commission constantly monitors the success and impact of the implemented evaluation measures in order to model an increasingly effective analysis methodology. In fact, in 2013, Member States were asked to complete a questionnaire, which would have provided the Commission with the necessary data to fly a qualitative and quantitative study on the actual materialisation of the objectives set by Communication 23. More precisely, the subject of the study were 12 measures, on which the Commission collected data in order to verify the status of implementation and success, thanks to an estimate of savings<sup>29</sup>.

Figure 1<sup>30</sup>



As can be seen from the graph above, there was no homogeneous implementation of the sample measures considered. According to the study, this is due to a variety of factors. First of all, the partial implementation of mandatory measures is not excluded. This suggests that the implementation also

<sup>29</sup> European Commission. (2015). *ABRplus study – Final Report*. Available at: [https://ec.europa.eu/info/files/abrplus-study-final-report\\_en](https://ec.europa.eu/info/files/abrplus-study-final-report_en)

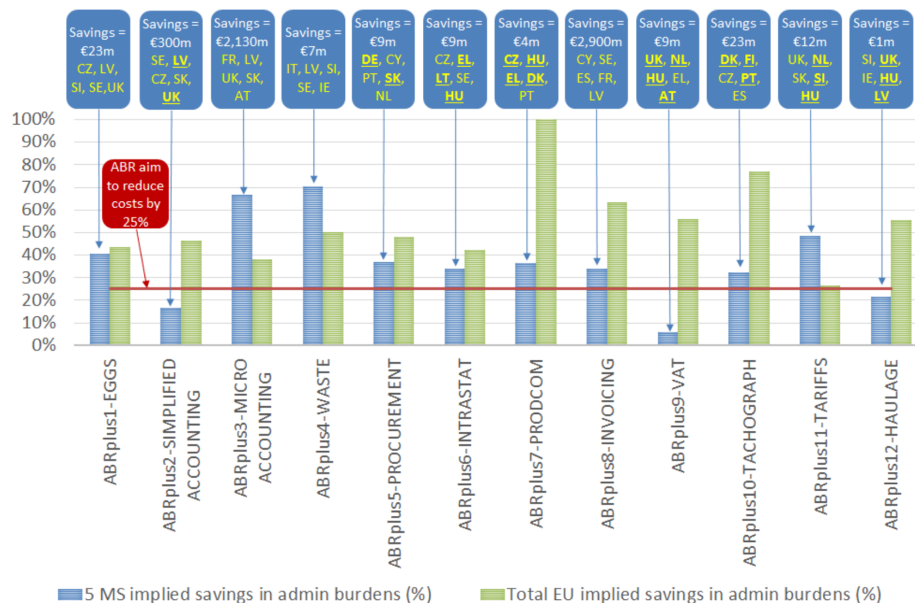
<sup>30</sup> *Ibidem* p. 45

suffers from an underlying lack of legislative foundation by the Member State. Secondly, states may have disparaged the early implementation of certain measures, while waiting for more precise indications from the Commission. In third place, we see inappropriate implementation of administrative burden reduction measures if the Member State had decided to transpose the EU directive into domestic law for other purposes. More precisely, the highest non-implementation rate recorded concerns the market DG for the micro accounting measure - 15 out of 28 Member States did not implement the measure - of which we have best practice information only in Germany and Malta, and extensive implementation in Slovakia, ensuring that 60% of companies benefit from the measure.

Although it was among the most relevant for the simplification of rules and the reduction of administrative burdens, the implementation was not *tout-court* and, where it found partial merit, it had drawbacks. In fact, the then Member State UK, in the implementation of micro-accounting exemptions, suffered from an exorbitant loss of information that harmed the ability of businesses to seek relief. In light of these limitations, coupled with the reluctance of states to provide data, it was possible to estimate the impact of the measured action plan on savings on a sample of states only, thus considering attrition bias. Together with ICF Consulting Services Limited, appointed in February 2014 to collaborate in this research, the Commission used the EU Standard Cost Model (SCM) methodology<sup>31</sup>.

Figure 2<sup>32</sup>

Implied savings in administrative burdens: estimated savings as a % of baseline administrative burdens for sample of five Member States and potential savings as a % of baseline administrative burdens for the EU



<sup>31</sup> *Ibidem*

<sup>32</sup> *Ibidem* p. 8

Based on the data reported, the Commission assessed the impact of the Action plan as positive, leading to a reduction of administrative burdens in practice. However, from the analysis of the project, it was possible to identify an important problem that should not be overlooked, namely the involvement of Member States in evaluation policies. From the very beginning in 2002, it became clear that states have a shared responsibility to ensure that policies are successful. In view of this, there is a need to pay more attention to the implementation and transposition phase of evaluation measures, while at the same time not neglecting the development of technique and methodology.

### **1.3. The launch of Regulatory Fitness and Performance Programme**

The European Commission's Communication No 746, published on 12 December 2012 and addressed to the other European institutions, opened therefore by highlighting a persistent and ongoing flaw in the system of EU legislation, despite countless evaluation initiatives. In fact, it points out that there are considerable “*costs of EU legislation and the challenges of implementing and enforcing the laws already on the statute books*”<sup>33</sup> and that “*National administrations, already under strain, find it difficult to keep up with the transposition and application of EU legislation*”<sup>34</sup>. This has led to the European Council calling on the Commission to recommit itself to an innovative strategy to “clean up” the European body of law of its inconsistencies, so that businesses, as legal persons, and citizens can benefit from a smooth and clear administration, acting in the true public interest. Thus, with “Communication 746 on EU Regulatory Fitness”, the European Commission informed the institutions that the projects adopted up to that point under the so-called “Smart Regulation Agenda” would lay the foundations for a major new project: the “Regulatory Fitness and Performance Programme”. The application of the REFIT to any policy area was also and above all intended to be transposed into the domestic law of each individual Member State, so that it would be simple, stable in time and predictable for businesses, workers and citizens.

REFIT is more than a set of procedures to analyse the effectiveness and practical implementation of European policies, it is a purpose. The genesis of the project lies in the desire to achieve not only “Smart Regulation” but also a common framework that can act as a guiding star for Member States in all circumstances, showing the flexibility to fit properly into the body of national law of each national jurisdiction and, to “fit for purpose”. It is precisely for this reason that the first pillar of the

---

<sup>33</sup> European Commission. (2012). *EU Regulatory Fitness*. p.2. Available at: [https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness\\_dec2012\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness_dec2012_en_0.pdf)

<sup>34</sup> *Ibidem* p.2

Regulatory Fitness Program is the “fitness check” approach. Therefore, minimizing regulatory burdens and simplifying legislation is not intended as an act of deregulation, rather as a smoothing of the corners of the legislation so that they can match both national legislation and the objectives initially set by the EU regulatory stock itself. The REFIT is designed to be a clear mechanism, as it is itself meant to untangle the complexities of the rules. The processes of analysis and scrutiny are therefore followed by the simplification of the rule if necessary.

In this regard, the Commission can adopt different strategies depending on the situation in which it finds itself, namely: codification, recasting and repeal in the *ex post* analysis, and withdrawal, revision/review or sunset clauses, adoption of lighter alternatives or regulations instead of directives (according to cases) in the *ex ante* analysis. Therefore, its structure is homogeneous and relocates the act of assessment to three moments of the policy cycle: *ex post*, *in itinere*, *ex ante* the implementation of the legislative instrument<sup>35</sup>.

### **1.3.1. *Ex post* evaluation and simplification tools**

The *ex post* evaluation that the Commission carries out while applying the REFIT is based on the principle of "evaluate first", which logically runs alongside the "looking backward" theory formulated by Professor Sunstein, as cited in the preceding pages<sup>36</sup>. The Commission honours this principle because there is no reason to formulate new legislative proposals as long as we do not have a comprehensive picture of what has been implemented so far to regulate a given policy. By the same principle, if new proposals are formulated, they cannot be considered without first carrying out a proper scrutiny of the existing material.

One year after the implementation of the REFIT Programme, the Commission wasted no time in approving the withdrawals of 53 pending proposals. At the same time, aware of the forthcoming legislative areas to be examined, it even avoided drawing up new projects; not before scrutinising the existing ones. Indeed, in 2013 the waste, food, occupational safety and health sectors waited for the due repeal to present new ideas<sup>37</sup>. As mentioned above, impact assessment of European policies is carried out in a formal, hierarchical form by a single body that transmits the finished product of analysis pyramidally to lower levels of government. In this respect it is interesting to ask, as

---

<sup>35</sup> Better Regulation Insight Tool (BRIGHT). (2019). *REFIT*. Available at: [https://bright-tool.eu/theory\\_module/refit/](https://bright-tool.eu/theory_module/refit/)

<sup>36</sup> Sunstein, C.R. (1996). *Congress, Constitutional Moments, and the Cost-Benefit State Legislative Foreword*. 48 *Stanford Law Review* 247. Available at: [https://chicagounbound.uchicago.edu/journal\\_articles/8330/](https://chicagounbound.uchicago.edu/journal_articles/8330/)

<sup>37</sup> Eurobusiness. (2014). *Regulatory Fitness and Performance Programme (REFIT)*. Available at: <https://www.eubusiness.com/topics/eulaw/refit>

Alemanno himself asked in 2009, "Quis Custodiet Custodes?" i.e. while the European Commission supervises the work of the Union in drafting legislation, who supervises the overseer? This is a legitimate question, to which an answer was found back in 2006 with the establishment of the Impact Assessment Board<sup>38</sup>. The existence of the Impact Assessment Board does not call into question the formal, centralised structure of the assessment per se, as it can only give opinions, which nevertheless enrich the assessment carried out by the Commission and give the system a democratic element.

Between the establishment of the IAB in 2006 and the launch of the REFIT (2012), 700 opinions had already been published, and the Commission, in the same Communication 746, also announced the creation of a new Directorate for Impact Assessment in the European Parliament, given that regulation itself can impose costs, more specifically in terms of compliance and innovation, which undermine the objective of the policy itself<sup>39</sup>.

As previously mentioned, after analysing and evaluating the impact of the EU regulatory stock, the Commission adopts simplification tools to lighten the legislation. For example, deeming a given body of rules sufficient and not burdensome, it is possible to bring them together under a single legal act, as much as in Italy the Testo Unico was opted for in the 1990s<sup>40</sup>, and therefore a codification of the rules. Similarly, a codification can take shape in conjunction with some changes made to the legislation in question, and this is called a recast. In addition to the simplification tools adopted by the Commission in the *ex post* analysis phase, it is possible to abrogate, i.e. the removal of the law itself, where the Commission considers that it is not necessary in its entirety, or that a modification to the original is as much as more inconclusive than a new formulation<sup>41</sup>.

### 1.3.2. *Ex ante* evaluation and simplification tools

As regards the *ex ante* evaluation, the latter in the political cycle is placed at the moment of the drafting of the bill. So, why placing it after the impact assessment phase? Precisely because it was set up by the latter and complementary to it. The proposal is therefore analysed with the mechanisms provided by the REFIT considering that it must be able to bring added value to the legislation. Therefore, if the proposal does not bring within the necessary and missing gaps found by the

---

<sup>38</sup> di Donato, L. (2014). *Impact Assessment Board (IAB)*. Bankpedia Review, Vol. 4, n. 2., 4. 27-45. Available at: [https://www.researchgate.net/publication/284074179\\_Impact\\_Assessment\\_Board\\_IAB](https://www.researchgate.net/publication/284074179_Impact_Assessment_Board_IAB)

<sup>39</sup> European Commission. (2012). *EU Regulatory Fitness*. p.2. Available at: [https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness\\_dec2012\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness_dec2012_en_0.pdf)

<sup>40</sup> Cammelli, M. (2000). Il Testo Unico, il commento e... ciò che resta da fare. *Aedon*, (2), 0-0. Available at: <http://www.aedon.mulino.it/archivio/2000/2/cammelli.htm>

<sup>41</sup> Better Regulation Insight Tool (BRIGHT). (2019). *REFIT*. Available at: [https://bright-tool.eu/theory\\_module/refit/](https://bright-tool.eu/theory_module/refit/)

Commission at the time of the impact evaluation of the existing legislation, it can still be modified so that, once come into force as law, it will fill the regulatory gaps. Moreover, it is recognised in this phase too, once again, the role of the Impact Assessment Board which, independently, is supposed to express the said opinion before a decision is taken on a given proposal. It is also not certain that the Commission decides to always advance new proposals, as well as to rule out the hypothesis that some of them are rejected. In fact, as mentioned above, this happened in the first year of REFIT's mandate in which the commission decided that in 6 policy areas such as safety and health at work for hairdressers, musculoskeletal disorders and screens, environmental tobacco smoke and carcinogenic and mutagenic agents. The *ex ante* assessment, by definition, will evaluate the consistency elements of the program envisaged by a given European policy with the intended objective. This means that the political proposal is decisive for the problem encountered, for which a proposal is put in place in principle. The object of *ex ante* scrutiny is also the expected value, that is the result we obtain after the policy has been implemented, which is therefore expected to be the resolution of the initial issue, compatible with the intended objective. Furthermore, it worth mentioning the importance of coherence between the policy and the means set up to achieve the expected result from it. On these premises, the evaluation translates into the evaluation of the theory of the program itself, which, like any theory, is aimed at explaining how and why a given mechanism, if set in motion, produces a given result<sup>42</sup>.

As regards the specific instruments adopted by the Commission in order to shape new efficient legislative proposals, we find first the withdrawal, and this happens when the revision of the existing legislation is still ongoing and may take more time, or because the content of the proposal, again on the basis of the *ex post* evaluation, is not considered relevant and/or necessary. Alternatively, the Commission may prudently choose to include revision or lapse clauses in the new proposal, in order to avoid formal repeal in those areas that are constantly changing, such as technological development. For other sectors, it may be helpful to include softer alternatives rather than binding instruments such as regulations, and opting more for voluntary agreements. On the contrary, if the burden of legislation is such due to a lack of harmonization, proposal in question can be adopted in the form of a regulation and not a directive, in order to maintain a given standard of homogeneity<sup>43</sup>.

---

<sup>42</sup> European Commission. (2014). Guidance document on monitoring and evaluation. *The Programming Period 2014-2020*. Available at: [https://ec.europa.eu/regional\\_policy/sources/docoffic/2014/working/wd\\_2014\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docoffic/2014/working/wd_2014_en.pdf)

<sup>43</sup> Better Regulation Insight Tool (BRIGHT). (2019). *REFIT*. Available at: [https://bright-tool.eu/theory\\_module/refit/](https://bright-tool.eu/theory_module/refit/)



### 1.3.3. Monitoring process

The monitoring phase is based on an annual compilation and publication of data which are collected on the basis of indicators measuring the performance of the scrutinised policies in the different countries of the Union, so as to monitor the progress of the said policies throughout time. As Vice-President Frans Timmerman said “*More than ever before, we must be sure that our policies are rooted in facts and evidence, developed in maximum transparency and decided with full accountability. The European Commission’s Better Regulation Agenda is about giving ourselves and our stakeholders the tools to do this*”<sup>44</sup>.

Communication 746 emphasises that efficient policy monitoring must make use of annual reporting tools so that the Commission can track the policy effectiveness even in the process of being and developing. In this respect, it is mentioned in the same document that Article 318 TFEU needs to be revised in order to improve the annual reporting tools. Similarly, the communication indicates the willingness to monitor the REFIT project itself in order to track its results over time. In light of this, a scoreboard, now known as the “REFIT Scoreboard”, is implemented. It would contain the work carried out by the Commission from the beginning of the project to the present time, taking note of the legislation examined in each policy area, the analysis and the results of the work carried out. Moreover, the Commission would have published each year the annual scoreboard summary of the “Regulatory Fitness and Performance Programme”, this has been done systematically and it actually adds great value to the work performed by this program so far, thus laying down the basis for future improvements and evaluations<sup>45</sup>.

## 1.4. The introduction of the REFIT Platform

In the years to come the REFIT was subsequently strengthened and adapted to the needs that gradually emerged, as well as adjusted where something seemed to be missing. One of the turning points of this program that is worth mentioning is the establishment of the REFIT Platform aligned with the Regulatory Scrutiny Board – in charge to provide the Commission with a non-binding evaluation of new initiatives and existing legislation, verifying whether they met the requirements established by

---

<sup>44</sup> European Commission. (2017). *Regulatory Fitness and Performance Programme - REFIT Scoreboard summary*. Available at: [https://ec.europa.eu/info/sites/info/files/regulatory-fitness-and-performance-programme-refit-scoreboard-summary\\_en\\_3.pdf](https://ec.europa.eu/info/sites/info/files/regulatory-fitness-and-performance-programme-refit-scoreboard-summary_en_3.pdf)

<sup>45</sup> European Commission. (2012). *EU Regulatory Fitness*. Available at: [https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness\\_dec2012\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness_dec2012_en_0.pdf)



the Better Evaluation Agenda <sup>46</sup> - keystones for the democratisation of European evaluation mechanisms, aimed at enhancing the role of consultations and replacing the former Impact Assessment Board. The REFIT Platform was introduced in 2015 with Commission Decision C(2015) 3261 and, led by the Commission first Vice-president Timmermans, was made up of two groups, the stakeholder group and the government group<sup>47</sup>. The stakeholder group was made up of 18 representatives of companies (small, medium and large) in the EU, civil organizations (including consumer, health, environment and non-governmental), two representatives of the European Social and Economic Committee and the Committee of the Regions and obviously it was also open to individual citizens if they show practical experience in the field of European policies. This supports a bottom-up consultative approach, from civilians to institution. As for the government group, however, we found delegates and politicians representing the Member States<sup>48</sup>.

The role of the REFIT Platform is to present suggestions, which in order to be considered by the Commission, must satisfy criteria of clarity, specificity, reasonableness, and evidence, otherwise they cannot be screened. Then, it is the Secretariat that groups all the suggestions and forwards them to the group of stakeholders, in order to notify that the suggestion has been taken over. The suggestions, in addition to the structural criteria mentioned above, are formulated on the basis of a specific process. In fact, every six months the members of the stakeholder group establish a rolling work program with priority policy areas and, in each priority area, a further priority is established on the aspects of that policy area. Given that the work carried out by the two groups must be able to be congruous and coherent, the government group is informed of the half-yearly plan agreed by the group of stakeholders.

Subsequently, on the basis of the selected political areas, the two groups expose some reflection inputs, which are collected by a person in charge called "reporter", there is one for each policy area. The opinion drafted by the reporter is presented to the two groups for approval, and then presented to the Commission as a recommendation by the REFIT Platform, which is also published on the platform itself to ensure transparency.

The Commission, in turn, is required to respond to the suggestions of the REFIT Platform, as set out in the Better Regulation Communication. In the reply, it must be indicated whether some forms of

---

<sup>46</sup> Better Regulation Insight Tool (BRIGHT). (2019). *Regulatory Scrutiny Board*. Available at: [https://bright-tool.eu/theory\\_module/regulatory-scrutiny-board/](https://bright-tool.eu/theory_module/regulatory-scrutiny-board/)

<sup>47</sup> European Commission. (2015). *Commission decision of 19.05.2015 establishing REFIT Platform*. Available at: [https://ec.europa.eu/info/sites/info/files/commission-decision-establishing-refit-platform\\_may\\_2015\\_en.pdf](https://ec.europa.eu/info/sites/info/files/commission-decision-establishing-refit-platform_may_2015_en.pdf)

<sup>48</sup> Better Regulation Insight Tool (BRIGHT). (2019). *REFIT Platform*. Available at: [https://bright-tool.eu/theory\\_module/refit-platform/](https://bright-tool.eu/theory_module/refit-platform/)

action can be considered appropriate or not and what kind of action is envisaged, as well as the time frame in which the action proposed by the Platform should take place. The responses are also published in the Commission's Annual work programme. In the first year of its mandate, the REFIT Platform received a response from the Commission for its first 22 suggestions, another 36 the following year, showing a growing trend of response, as well as consideration of the voice of those consulted. Its mandate ended in 2019, and it was up to the following European Commission to renew its role within the REFIT Programme<sup>49</sup>. The current Von der Leyen Commission has decided not only to confirm the REFIT Platform but also to recast it into the well-known “Fit-for-future Platform”, the content of which is going to be detailed in this work<sup>50</sup>.

#### **1.4.1. Von der Leyen Commission replacing the REFIT Platform with the Fit-for-future-Platform**

The Von der Leyen Commission immediately found itself having to deal with the Covid-19 pandemic, which highlighted the need to implement legislation that works and does not involve excessive burdens, aimed at benefiting the EU population already folded from the crisis. In this scenario, the Commission elaborated the "Fit for Future Platform" (F4F) on the basis of the REFIT Platform, launched on May 11, 2020 while many countries were in lockdown<sup>51</sup>. As we know, the REFIT platform was established on May 19, 2015 with Commission decision number C (2015) 3261, which established the end of Platform mandate on October 31, 2019. However, analysing the impact of REFIT on legislation and more precisely of REFIT Platform, stakeholders themselves, as it is reported in Communication on Better Regulation: taking stock and sustaining our commitment, would have liked to have been more involved, and more productive in the works of the REFIT Platform<sup>52</sup>.

Hence the need to reform the platform including a group of established experts, especially those who are the new challenges of the century and the pandemic, i.e. digital, an integral part of the Commission's work program itself. Thus, the Fit-for-Future Platform was born, which has the task of collecting inputs and information from all the members of the platform and adjusting them so that the principles of subsidiarity and proportionality and of “doing less more efficiently” in relation to the topic dealt with of which the group shows extreme competence, were respected<sup>53</sup>. This demonstrates the commitment of the Commission, thus taking the place of the Union, for a noble cause. It is evident

---

<sup>49</sup> *Ibidem*

<sup>50</sup> European Commission. (2020). *Commission decision of 11.05.2020 establishing the Fit for Future Platform*. Available at: [https://ec.europa.eu/info/sites/info/files/c2020\\_2977\\_en.pdf](https://ec.europa.eu/info/sites/info/files/c2020_2977_en.pdf)

<sup>51</sup> *Ibidem*

<sup>52</sup> *Ibidem*

<sup>53</sup> *Ibidem*

now more than ever, in a globalized world where interconnection has been radically cut, how important it is to facilitate the actions, albeit reduced, of citizens, in order not to impose additional and unnecessary costs, to maintain political objectives and support the Union.

The first challenges are on the economic sector and obviously on the digital one, given that the virus containment policies have forced millions of people in the EU to telework and distance learning. The platform is chaired by the European Commission's Vice-President for Interinstitutional Relations and Foresight Maroš Šefčovič and, like the REFIT Platform, is responsible for supporting the Commission's simplification work through suggestions and observations. The policy areas on which to comment are the same as highlighted in the Commission's Annual work programme<sup>54</sup>. The members of the new platform of experts will this time also include representatives of regional and local authorities as well as national ones, again the committee of the regions and the European Economic and Social Committee, various stakeholders from the business world and the SME Envoy network presided ad interim by Kristin Schreiber, Deputy SME Envoy and Director for SME policy, Entrepreneurship and the COSME Program, who will promote the interests of SMEs by ensuring that the 'think small principle' promoted by the Europe 2020 strategy is applied correctly<sup>55</sup>.

Despite the launch took place in May, the platform's first plenary meeting took place (via videoconference) on November 26, 2020, given that the pandemic caused delays in the Commission's work<sup>56</sup>. The themes proposed for the next year's program, 2021 were<sup>57</sup>:

1. Digitization
2. Efficient labeling, authorization, permitting procedures
3. Reporting and Obligations
4. Strengthen aspects of coherence and consistency in simplification

We can see how simplification, since the introduction of REFIT, has become a real policy area on which the Fit-For Future Platform can debate and elaborate suggestions in order to be strengthened, bearing in mind that the purpose is not to deregulate, rather to produce smart and effective legislation that works. In addition, the Vice-President underlines the importance of a parallel and coherent

---

<sup>54</sup> European Commission. (2020). "Commission launches the Fit for Future Platform and invites experts to join". *Press release*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_832](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_832)

<sup>51</sup> European Commission. (2011). "SME envoys network". Entrepreneurship and SMEs. Internal market, Industry, Entrepreneurship and SMEs. Available at: [https://ec.europa.eu/growth/smes/sme-strategy/sme-envoys\\_en](https://ec.europa.eu/growth/smes/sme-strategy/sme-envoys_en)

<sup>56</sup> Radaelli, C. (2020). "Will the EU Make its Better Regulation Strategy Truly Better?". *The Regulatory Review*. Available at: <https://www.theregreview.org/2020/06/01/radaelli-will-eu-make-better-regulation-strategy-truly-better/>

<sup>57</sup> Fit for Future Platform expert group. (2020). Minutes of the Fit for Future Platform expert group. Available at: [https://ec.europa.eu/info/sites/info/files/approved\\_minutes\\_f4f\\_platform\\_15dec2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/approved_minutes_f4f_platform_15dec2020_en.pdf)

production of suggestions to the Commission policy-making cycle, so as to set up an orderly and harmonious system. In addition, given that the platform has the role of suggesting and therefore advising the Commission, every observation, from practice must be supported by solid bases of empirical evidence. In this regard, several speakers underlined the difficulty of gathering evidence on the field at local and regional, and therefore also national level, in a time which they considered to be restricted, also due to the pandemic, given that the deadline set for gathering evidence is the subsequent meeting scheduled for the first quarter of the year 2021<sup>58</sup>.

## 1.5. REFIT champions the Annual Burden Summary

On the thread of the question previously posed about who was in charge of supervising the overseer, at this point it is legitimate to ask what impact a European policy of analysis and impact assessment has, which in turn scrutinises other European policies. In other words, how do we know if the Commission's work through the use of REFIT is actually working to accomplish the smart regulation goal? In addition to the monitoring activities published both in the online REFIT Scoreboard Platform and in the Annual Summary, the institutions (European Parliament, European Commission and the EU Council) formalised a new proposal in the interinstitutional agreement on better law-making of April 13, 2016<sup>59</sup>.

More precisely, in point 48 of the "simplification" section, where the cooperation agreement between the institutions themselves is renewed, the Commission's willingness to further contribute to the objectives set by REFIT is reported by preparing an annual document of burden survey, in which to estimate the results of the efforts made to simplify regulation. This means measuring the impact of REFIT on scrutinised and improved legislation by comparing costs and benefits between the starting point (pre-scrutiny regulation) and the finished product (post-scrutiny regulation). The aim is to quantify, where possible, the actual reduction of burdens and costs and savings that REFIT has brought<sup>60</sup>.

Faithful to what was written and agreed in the interinstitutional agreement on better-law making the previous year, in 2017 the Commission tests the field by carrying out a primary Flash Eurobarometer

---

<sup>58</sup> *Ibidem*

<sup>59</sup> European Union. (2016). Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making. *Official Journal of the European Union*, 2, 2016. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN)

<sup>60</sup> *Ibidem*

on the perception of about 10,000 companies (mostly SMEs) in all 28 Member States on the regulation in force on a sample of seven political areas, namely the regime, or rather the regimes on VAT, health and safety in the workplace, consumer protection laws, safety laws; labor market regulations; laws on the environment; laws on energy and climate. The companies were asked to express their opinion on the usefulness of the legislation, that is, if it served more as a support or an obstacle; the nature of the application of the law (national or European); to what extent the benefits brought by this regulation were perceived, such as the reduction of differences between Member States, easier access to the market and to investments; as well as costs, for example if there are recognised obstacles to innovation or if there was excessive bureaucracy behind the correct functioning of the standard; whether the costs were perceived as increasing or decreasing; whether acting in accordance with the law had gotten easier in the past year; and finally whether exposing voicing complaints followed a simplified or intricate procedure to encourage / discourage the subjects in question. What the Commission found from this research is that there are conflicting views on the part of businesses about the costs and benefits of legislation updated and simplified with REFIT at the time, plus a consistent variation in response from state to state. Therefore, this preliminary survey carried out by the European Commission on a sample of seven policy areas was functional as a pilot for the work that the institution will have to carry out in drafting the Annual Burden Survey, the first edition of which will be published the following year<sup>61</sup>.

The first Annual Burden Survey published by the Commission as a prototype for the years to come is a comprehensive document, providing valuable insights into which policy areas the Commission in question, i.e. the Juncker Commission at the time, decided to focus on giving priority, what initiatives have been taken to simplify which legislation after having scrutinised it and a quantitative estimate of the benefits accrued to citizens and businesses, where the simplification of the standard had already produced tangible results since 2015. In addition, it has been included a section which summarise the follow-up actions taken by the European Commission in order to respond to the suggestions presented by the REFIT Platform, which produced 31 recommendations in the last year. The priority areas for the Juncker Commission, in order of importance were:

1. Simplification and burden reduction for jobs, growth and investment
2. Simplification and burden reduction in the digital single market
3. Simplification and burden reduction for the energy union and for climate change policy

---

<sup>61</sup> European Commission. (2017). Commission Staff Working Document – Overview of the Union’s Efforts to Simplify and to Reduce Regulatory Burdens. Available at: [https://ec.europa.eu/info/sites/info/files/overview-union-efforts-to-simplify-and-to-reduce-regulatory-burdens\\_en.pdf](https://ec.europa.eu/info/sites/info/files/overview-union-efforts-to-simplify-and-to-reduce-regulatory-burdens_en.pdf)

4. Simplification and burden reduction for a deeper and fairer internal market
5. Simplification and burden reduction for a deeper and fairer economic and monetary union
6. Simplification and burden reduction for a balanced and progressive trade policy to harness globalisation
7. Simplification and burden reduction for justice and fundamental rights
8. Simplification and burden reduction for a new policy for migration
9. Simplification and burden reduction for a union of democratic change

As regards the first point, the first result reported is the introduction of the result-based delivery system in the Common Agricultural Policy (CAP) as a simplifying solution of the standard, whose efficiency gains are estimated to fall between 160 and 240 million euros for administrations and between 170 and 410 million euros for individual citizens<sup>62</sup>.

In the case of the reduction of the costs brought by the digital single market, the emphasis is placed on the public sector. In this regard, it is hoped that a directive will be applied to coordinate member states towards a single goal: re-use of public sector information, considered as an intelligent expedient to build a single and strong digital market. Given the economic value of government data in continuous growth, adopting an open data system could therefore save approximately 1.7 billion for the administrations of individual states.

The third priority is the reduction of emissions to reduce climate change, for this reason we report the revision of a transport directive that has produced about 7.37 billion in benefits and savings annually, and if it will continue to produce its fruits constantly by the next lapses, the estimate will be 66.3 billion euros overall.

Pierre Moscovici, the then Commissioner for Economic and Financial Affairs, Taxation and Customs, stressed in 2018 the importance of creating a single, harmonious and simplified VAT regime. Particular attention is given to SMEs, to which a specific scheme will be applied which is estimated to save small businesses around 11.9 billion euros per year in compliance costs.

In the fifth point on Monetary Union, the Commission has chosen to make use of a regulation, one of the simplification instruments mentioned above, in order to reduce fees given by cross-border transactions with Member States that have not adopted the euro, representing an obstacle for the free

---

<sup>62</sup> European Commission. (2018). *The European Union's Effort to Simplify Legislation – 2018 Annual Burden Survey*. Available at: [https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey_en_0.pdf)

circulation of money. Here the result is clear and amounts to 900 million euros annually, due to the consequent reduction in revenues of payment service providers.

In view of the achievement of a balanced and progressive trade policy, a simplification initiative is identified, once again given by the introduction of regulations aimed at reducing tax dumping and increasing transparency in trading. However, the benefits and savings accrued from this simplification have not been estimated.

On the area of justice and fundamental law, of relevance is the so-called "EU company law package" adopted by the Commission in April of the same year, 2018. In this case, the Commission considered it more appropriate to use the instrument of the directive rather than a regulation, as the margin for action acquired by the states would have offset the costs of procedural harmonisation and homogeneity. In fact, since the introduction of online registration of new companies, the impact assessment applied to the new standard has estimated savings of between 42 and 84 million euros.

Another priority that the Juncker Commission could not miss was migration policy. We know that under the Lisbon Treaty, the European Union leaves the prerogative of designing their own integration policies to individual states, but reserves the supranational competence to coordinate them in the pre-integration phase, i.e. how to manage the entry of migrants into Member States. Above all, it is important for the Commission that migration takes place legally, and therefore scrutiny of this specific aspect is not yet finished. The Commission is analysing the presence of inconsistencies, overlaps or any gaps in the legislation and will end in 2019. Meanwhile, the adoption of a simplification initiative is reported, namely the Codification of the Schengen borders code, the results of which have not been quantified.

The last point focuses on the reduction of burden for a union of democratic change. The Commission has adopted a Communication (COM / 2018/10) on "EU actions to improve environmental compliance and governance" which is structured on 9 points and aims to increase the rate of compliance with European environmental law.

In conclusion, we identify more specifically the policy areas in which this year the Commission has implemented follow-up actions in order to answer properly to the suggestions of the REFIT Platform. An entire section is dedicated to this, testifying to how important the supporting role of the Platform is for the Commission, which, as explained in the previous pages, has subsequently evolved into the Fit-for-Future Platform. The Commission remains the parent body in charge of the mechanisms of scrutiny, evaluation and simplification of the law, and therefore, greater openness towards a support

body does not mean deviating the evaluation policy in a polycentric direction, the function of the Platform both before and after the upgrade achieved within the von der Leyen Commission remains a supporting one, which is nevertheless considered relevant by the Commission itself in its calculations. In 2018, in response to the suggestions of the REFIT Platform, the Commission moved into the following policy areas:

- Agriculture
- Chemicals
- Competition
- Communication networks
- Consumer policy
- Education
- Employment
- Environment
- Financial Services
- Health and Food safety
- Horizontal issues
- Internal market
- Justice
- Maritime affairs and fisheries
- Migration and home affairs
- Mobility and transport
- Regional Policy
- Statistics
- Taxation and customs union

Interestingly, the agricultural sector is constantly under review and suggestions. In fact, as explained above, simplification initiatives have been adopted in the agricultural sector included in the broader context of "simplification and burden reduction for jobs, growth and investment". More precisely, the initiatives refer to 3 proposals on the CAP containing elements of simplification and adopted in June 2018. The levels subject to simplification in the CAP are the financial one - ease of access and coherence between CAP funds such as European Agricultural Fund for Rural Development and the Structural and Cohesion Funds -, of management and monitoring. In addition, the emphasis is placed on the green scheme, given the increasing concern towards an agriculture that is as productive but



sustainable at the same time. Moreover, clear and more specific observations were made on the standards of fruit and vegetables, which, according to the REFIT Platform, could have ensured more effectiveness and efficiency if open to more options. In this regard, the Commission has decided that a massive assessment will be carried out and concluded by 2020<sup>63</sup>.

---

<sup>63</sup> *Ibidem*

## 2. How the REFIT has closed the policy cycle

This chapter looks in more detail at the Commission's role in the REFIT evaluation framework - i.e. as the pivot around which the processes of analysis and elaboration of smart and better regulation revolve - and especially at the procedures adopted, with a view to verifying their effectiveness. As explained in the previous chapter, this configuration reflects a monocentric and hierarchical model of evaluation, which is often contrasted in the academic debate with the polycentric model, which contemplates a fragmentation of evaluation poles.

In 2006, Mickwitz wondered whether it would be permissible to entrust one and the same institution with the entire evaluation process and thus to determine the respective criteria<sup>64</sup>. As a matter of fact, the risk is to incur in a biased and non-objective evaluation not only of the existing legislation (*ex post* evaluation) but also of the proposals that the Commission itself has put forward under the projects listed in the Annual work programme<sup>65</sup>.

Nonetheless, the strategy adopted by the European Union circumvents this drawback. Although the European Commission has remained the central pole of evaluation, reconfirmed by the Regulatory Fitness and Performance Programme after the previous evaluation and better regulation projects, the evaluation procedures have gradually involved more and more actors. Consultations have gained a crucial role in REFIT, both in the *a posteriori* assessments and fitness checks of the EU legislative stock and in the *a priori* assessment of initiatives.

In turn, the evaluation procedures have been adjusted in form and timing to this enlarging network, with the Commission at the centre. The following pages delve into the evaluation chain structured by the Regulatory Fitness and Performance Programme, aimed at examining the plausibility and effectiveness of the logical mechanism guiding it. Thus, this chapter proceeds as follow. In line with the logic of “evaluate first”, the *ex post* evaluation mechanisms are first explored. Later, impact assessment on the new initiatives is studied to close the policy cycle. After having explained the evaluation processes envisaged by REFIT, and therefore also having observed the role of the various actors involved, an analysis of the functionality of the evaluation system set up by the Commission will follow, drawing on scientific literature.

---

<sup>64</sup> Schoenefeld, J., & Jordan, A. (2017). Governing policy evaluation? Towards a new typology. *Evaluation*, 23(3), 274-293

<sup>65</sup> European Commission. (2020). *Commission Working Programme 2021*. Available at: [https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en)

## 2.1. The choice of policy areas to be evaluated

The initial step foreseen by the Regulatory Fitness and Performance Programme is the choice of the policy area which will be subject to the work of evaluation and simplification, thus contributing to the genesis of new, more efficient legislative proposals.

First of all, following the principle of “evaluate first” promoted by the Commission, evaluation procedures and fitness checks are applied precisely to those areas which the Commission has prioritised in the Annual work programme, requiring therefore the implementation of new measures. This ensures a constant synergy between the *pro tempore* Commission's ongoing and longitudinal work looking ahead, while building on the body of legislation already in place. Drawing on empirical evidence, the example of SWD (2018) 478 final evaluation of the performance of the CAP is taken<sup>66</sup>, since it was precisely required and brought forward in view of the will to launch a new post-2020 strategy on that year<sup>67</sup>.

Secondly, evaluation may not be triggered by a proactive action of the Commission to address the policy areas chosen as priorities, rather expected by default to certain rules. This is the case when the rules contain a special clause called "review" clause which itself requires the evaluation of the rule containing it, thus applied to its implementation to study whether foreseen objectives have been achieved, in a timeframe that allows for tangible evidence of its outcome. In addition, regardless of the policy area, all programmes with an average budget of more than EUR 5 million, as set out in the “Financial Regulation and Rules of Application”, are subject to continuous evaluation<sup>68</sup>. Finally, according to Council Regulation (EU) 2015/323 of March 2, 2015 on the financial regulation applicable to the 11th European Development Fund, the use of resources from the 11th EDF is followed by an *ex post* (as well as *ex ante*) evaluation, in order to ensure that the financial means used to implement a given programme have been necessary and proportionate for the achievement of its objectives<sup>69</sup>.

---

<sup>66</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council*, SEP of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>67</sup> *Ibidem*

<sup>68</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>69</sup> European Union. (2015). Council. Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11<sup>th</sup> European Development Fund, *Official Journal of the European Union*, 2015. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0323&from=EN>

## **2.2. Looking backwards through ex post evaluation**

Once the object of the assessment has been identified, the Commission proceeds with evaluation mechanisms applied to existing legislation. The results collected in the procedures explored in this section will be channeled in the Commission's proposals.

### **2.2.1 Political validation**

The norm or the set of norms chosen and posed under study first needs to be introduced and validated by a set of IT tools for managing the Commission's decision-making process, grouped under the name of *Decide*. The aim is to ensure that the legislation under review is ready to proceed to substantive evaluation, which is why the Commission together with The Grading of Recommendations Assessment, Development and Evaluation carried out the project of *Decide* in 2011<sup>70</sup>. Once the validation has been received, the Director General of the policy area to which the norm (or norms) to be scrutinised belongs, has the task of drafting the so-called evaluation roadmap in agreement with the Secretariat-General. This represents the strategic plan chosen to analyse the provision *tout-court*. In point of fact, the aim is to check whether the purpose for which the norm that was shaped and applied has actually been achieved, i.e. the resolution of an initial problem. Therefore, although this is an *ex post* evaluation, it is nevertheless important to also examine the primary logic on which the initiative was structured, since an implementation plan was built around the same logic.

### **2.2.2. First round of consultations: Interservice group scrutiny**

After the roadmap of the evaluation design that the DG intends to implement has been published by the Secretariat-General on the Commission's website, it is necessary to establish the Interservice Steering Group (ISG). The ISG will be involved in the first steps of the evaluation up to the consultations on the staff working document and will include a DG's representatives of the policy area concerned and the Secretariat-General. Drawing on empirical evidence, the above-mentioned SWD (2018) 478 final evaluation foresaw that the Commission set up the Interservice Steering Group (ISG) in May 2016, in charge to provide information and monitor the work of the analysis performed by the evaluation team, and called to advice on the final report. In that case, the group was making up 12 units, that is to say DGs ENV, CLIMA, JRC, REGIO, BUDG, ENER, ECFIN, GROW and

---

<sup>70</sup> DECIDE (2011-2015). *Key DECIDE tools*. Available at: <https://www.decide-collaboration.eu/key-decide-tools>

obviously DG AGRI unit C.4 heading the project<sup>71</sup>. More units were included because, as the name of the group suggests, the legislation under study touches upon not only the specific policy area, rather it inevitably affects all the related services<sup>72</sup>.

### 2.2.3. Evaluation of existing legislation

The success or failure of the norm is impacted by both the program theory and the implementation, and both are therefore analysed by the DG as he seeks evidence of causality. The evaluation is thus based on the search for a cause-and-effect mechanism that the norm, *in nuce*, should have triggered and, depending on the result obtained, further investigation follows.

It is interesting to know that the REFIT, also building on the logic of the fitness check, as explained in the previous chapter, pioneered another dimension of evaluation, namely contextual evaluation, an evaluation of the whole. For this reason, interventions are now also evaluated in relation to other norms with which they coexist by contextual logic. The aim is to avoid carrying out an evaluation divorced from the context in which it is applied, which is in fact characterised by other norms that must therefore be enforced without creating overlaps, contradictions and be totally coherent so as to fit together. This type of joint analysis is called “fitness check”. The fitness check is absolutely complementary to an individual assessment of the intervention because, while on the one hand there is a specific focus on the intervention, isolating it from external contingencies as in the laboratory, which allows both positive and defective details of the object under study to be identified, on the other hand a joint assessment can only provide a more complete picture of the application of the intervention in the field<sup>73</sup>.

As described above, the evaluation is based on practical evidence of the expected change, proving the effectiveness of the norm that has (or has not) produced the effect, and the point of comparison against which to judge the changes. In conducting the analysis, given criteria must be observed. The analysis must therefore be comprehensive, i.e. measure the effectiveness, the expected and anticipated success; the efficiency, by calculating the ratio between the costs and benefits of the evaluated

---

<sup>71</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>15</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>72</sup> *Ibidem*

<sup>73</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

intervention; the relevance of the intervention, in parallel with measuring the magnitude of the intervention in order to understand whether the size of the intervention was right and calibrated; and finally the coherence and value added to the pre-existing body of law.

With regard to effectiveness in the first instance, the study will focus on which specific elements characterising the rule catalysed the effect (if any), whether the cause-and-effect mechanism occurred as intended when the rule was drafted at the beginning of the policy cycle, and any externalities produced by the application of the rule. For this reason, it is legitimate to ask questions such as: to what extent are the factors influencing the results obtained related to the EU intervention? In the case in which the intervention envisaged has not reached the necessary maturity to prove effectiveness on some of its aspects— despite being validated by Decide - the analysis can carry out an assessment based on an inference<sup>74</sup>. This is the case of the evaluation SWD (2018) 478 final mentioned in the previous paragraphs. As a matter of fact, with regard to the environmental and climate impact of green measures, the assessed Regulation No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, and related subsequent reforms, the issue reported was the following one: *“To what extent has the ecological focus area measure impacted on the environment and climate in terms of a) biodiversity; b) other environmental areas, such as soil quality and erosion, water, climate?”*<sup>75</sup> However, at that time there was not yet sufficient tangible data to make a judgement on the effectiveness of the intervention, which was therefore based on an estimate based on the potential of the regulation and the margin of applicability in all 28 states (pre-Brexit)<sup>76</sup>.

The criterion of efficiency is certainly the most representative of the objective that the entire REFIT project sets itself, namely the assessment of the EU legislative stock with consequent simplification in order to remove unnecessary burdens for citizens and inconsistencies in content and structure. In fact, an efficiency-based analysis quantifies the resources used to implement the policy and the benefits it brings. The benefit is not always quantifiable, also because the objective set by the intervention might be of a qualitative nature, so often the challenge is to find a dimension on which to compare the two values, in order to be able to verify whether the resources mobilised in a given quantity have been necessary to achieve the goal. To this purpose, evaluation may question whether

---

<sup>74</sup> *Ibidem*

<sup>75</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>1</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. p.35. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>76</sup> *Ibidem*

costs are justified by the progress made, whether there are discrepancies in the balance between costs and benefits emerging from the policy transposition in the different domestic laws, whether there could have been alternatives to achieve the same results without resorting to costs of the same amount<sup>77</sup>. There is nothing to prevent the goal from being the reduction of excessive costs and burdens if the intervention itself aims at simplifying an already complex environment. In this regard, we therefore cite the efficiency enquiry adopted in the evaluation SWD (2018) 478 final, which states: “*To what extent has the implementation of the greening practices led to a change in administrative burden: a) at the level of the beneficiaries; b) at the level of the Member States administration; c) at the level of the Commission services?*”<sup>78</sup>.

Ascertaining the relevance of the intervention under study is equivalent to ascertaining the importance of the application of the intervention, without which there would have been no change, leaving the initial question unsolved for which a solution was sought in the first place. Thus, relevance is closely related to the idea of EU added value that each legislative element must have within the body of EU law. In order to prove this in practice, it will be necessary to question whether the objectives originally set by the law still correspond to the identified needs. Depending on the type of intervention under assessment, it is possible that the rule allows individual states to extend the relevance of the measures with additional measures, consistent with the specific needs in that area that the Member State presents and which therefore deal with the domestic transposition of European law<sup>79</sup>. Anchoring these premises to evidence, the assessment SWD (2018) 478 final is once again reported. On this point, the question asked is: “*To what extent have the greening practices been relevant in contributing to the sustainable management of natural resources and climate action and the related specific objectives?*”<sup>80</sup> It is precisely in this case that there is a margin for action left to states to put in place the additional measures mentioned above. However, as will be discussed in more

---

<sup>77</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>78</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>SEP</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. p.43. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>79</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>80</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>SEP</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. p.51. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)



detail in the next chapter, only some of the Member States have implemented them, which makes the assessment more complex, but at the same time more interesting and important<sup>81</sup>.

The last element that an evaluation considers so as to be comprehensive is coherence. The concept of coherence, together with its importance, emerged in the previous pages when the fitness check was explained, considering that "*no policy exists in a vacuum*"<sup>82</sup>. In this respect, the analysis of the intervention will - as mentioned above - be concerned with considering it individually in order to verify that all the articles it contains coexist coherently with each other, and also collectively with other interventions of the same policy field. It is important to remember that checking the coherence of the rules is not only aimed at a harmonious cohabitation of the rules, thus avoiding overlaps and inconsistencies, but also above all at safeguarding the political objective, what we referred to in the previous chapter as fit-for-purpose<sup>83</sup>. In fact, often in the coherence enquiry, the goal of the intervention is explicitly stated, as follows in the assessment SWD (2018) 478 final : "*To what extent have the greening practices as part of the entire set of relevant CAP measures: a) delivered a coherent and complementary contribution to achieving the general objective of sustainable management of natural resources and climate action? b) impacted on the other general CAP objectives (viable food production and balanced territorial development)?*"<sup>84</sup>

In the end, the evaluation itself must be proportionate, and therefore must adhere to the study of the predefined evaluation object, adopting a scale and scope analysis proportionate to it. The methodology of analysis must reflect the criteria of objectivity and independence, which means that the judgement and scrutiny of this standard must not be conditioned by external parties, but solely focused on the evidence of collected data, which in turn is free from selection bias. At the same time, the judgement on the evidence must necessarily be transparent and anchored solely on the research

---

<sup>81</sup> *Ibidem*

<sup>82</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. p.62. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>83</sup> *Ibidem*

<sup>84</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>1</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. p.45. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct\\_payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct_payment_en.pdf)



and the instruments used to carry it out, thus compatible with the obligation to adopt an evidence-based approach<sup>85</sup>.

#### 2.2.4. Second round of consultations and follow-up actions

Once the processes foreseen by the procedures for the correct and complete evaluation of the intervention in question have been completed, the DG of the policy area concerned must agree with the Interservice Steering Group on a consultation strategy, also guaranteeing the direct participation of European citizens, thanks to the inclusion of 12 weeks of consultations<sup>86</sup> carried out on the Commission's online platform "Have your say"<sup>87</sup>, which are then published in order to make the direct opinion of citizens transparent and enhance it. As explained in the previous chapter, when looking back over all the evaluation and simplification programmes adopted by the Commission, consultations have gained a predominant role in the evaluation process, characterising all phases of the policy cycle. *De facto*, in the following pages where the *ex ante* evaluation process of initiatives will be explored in depth, the practice of consultation will be presented again. Thanks to the inclusion of figures from outside the Commission which, although not involved in the actual decision-making process, are called upon to give an opinion on the evaluation, the European Commission can keep the hierarchical evaluation system firmly in place, while breaking out of the formal rigidity that this type of evaluation provides, and thus, circumventing its relative weaknesses, as will be explained later in this research.

Subsequently, the REFIT foresees that a staff working document is drafted<sup>88</sup>. The latter, as just mentioned, will take into account the initially published roadmap, including the context, purpose and intended evaluation strategy or approach<sup>89</sup>, and then this will be integrated with the evaluation itself - in order to respond to all the issues listed in the roadmap - and the consultations carried out so far about the evaluation project designed in the roadmap and the results collected. Depending on the type of legislation being scrutinised, another body may intervene by issuing a positive or negative opinion,

---

<sup>85</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>86</sup> *Ibidem*

<sup>87</sup> European Commission. (2017). *Have your say*. Law. Available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say>

<sup>88</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>89</sup> European Commission. (2017). *Commission Staff Working Document – Better regulation Guidelines*. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>

namely the Regulatory Scrutiny Board. As mentioned in the previous pages, the Regulatory Scrutiny Board, consisting of the Chair, three High-level Commission officials and three experts from outside the Commission with a three-year mandate, has the task of verifying that the evaluation carried out is consistent with the established guidelines. The Board can play a role in both *ex post* and *ex ante* evaluations and, although its opinions are not binding, if negative, the DG in charge of the evaluation in question must reformulate the staff working document in light of the observations made by the Board. It is not a foregone conclusion that the outcome will always be positive; in fact, in 2016, 42% of the first opinions of the Regulatory Scrutiny Board were negative, thus forcing a re-drafting. Then in 2017, the Board introduced a third type of opinion, "positive with reservations", in other words, a middle-of-the-road solution that would not complicate and especially lengthen the evaluation processes, while suggesting improvements<sup>90</sup>. Nonetheless, negative opinions do not prevent the procedure from going on to the following steps<sup>91</sup>. The Board, as mentioned above, does not comment on all the standards assessed, only on those categorised as "major" from the outset, i.e. since the time they were just proposals. A proposal is therefore considered as a "major" if it has a sensitive, particularly impactful content and enjoys a certain significance<sup>92</sup>.

When the staff working document is finalised, it becomes the object of a further and final consultation between the DGs of the departments which have an interest in the functioning of the intervention itself, as well as legal implications. Therefore, the same departments involved in the monitoring and supervision of the first steps of the evaluation, united under the name of Interservice Steering Group, are subsequently consulted about the staff working document in the Interservice Consultation<sup>93</sup>. The DGs may agree or disagree on the content presented or the approach taken. If there is negative feedback from the departments consulted, the Secretariat-General is called upon to arbitrate in order to approve the document, possibly modifying it on the basis of the comments of the DGs concerned<sup>94</sup>.

Subsequently, the staff working document is published and, where foreseen, also transmitted to the European Parliament and the European Council by the Commission itself in the form of a

---

<sup>90</sup> Better Regulation Insight Tool (BRIGHT). (2019). *Regulatory Scrutiny Board*. Available at: [https://bright-tool.eu/theory\\_module/regulatory-scrutiny-board/](https://bright-tool.eu/theory_module/regulatory-scrutiny-board/)

<sup>91</sup> European Commission. (2017). *TOOL #3. Role of the Regulatory Scrutiny Board*. Chapter I. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-3\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-3_en_0.pdf)

<sup>92</sup> European Commission. (2017). *TOOL #6. Planning and validation of initiatives*. Chapter I. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-6\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-6_en_0.pdf)

<sup>93</sup> European Union. (2011). Rules of Procedure of the Commission. *Official Journal of the European Union, 2011*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000Q3614-20111116&from=EN>

<sup>94</sup> European Commission. (2009). *Notes to Directors-General and Head of Service on the Revised guide to interservice consultation and new instant statistics module in CIS-Net*. Available at: <https://ec.europa.eu/transparency/regdoc/rep/2/2009/EN/2-2009-780-EN-1-1.Pdf>

communication or report. Dissemination of the material produced on the evaluation of this intervention is essential to ensure that stakeholders have continuous access to the Commission's work to improve the legislation affecting them<sup>95</sup>. Stakeholder involvement therefore satisfies four fundamental principles laid down in the REFIT, namely: participation, by espousing the inclusion of several legitimately interested authorities; openness and accountability, given that, as just explained, the Commission works in the public interest and therefore in a transparent manner, in order to be held accountable for its actions; effectiveness, which in this case envisages the involvement of stakeholders at specific but necessary moments of the evaluation where they can make a difference; and coherence, according to which the interference of stakeholders must be able to produce observations that are as consistent and homogeneous as possible, compatible with the objectives set by the intervention under examination<sup>96</sup>.

Follow-up actions will be taken after publication. The latter are built on the final result, in light of which the Commission will decide which of the instruments described in the previous pages to use in order to simplify the existing legislation and what to introduce or withdraw from the draft-proposals drawn up to give continuity and development to the given intervention<sup>97</sup>.

### **2.3. Looking forward through ex ante evaluation**

The assessment of policy initiatives proposed by the Commission is conditioned by the result of the *ex post* evaluation carried out on existing legislation. As mentioned above, in many cases the Commission has chosen not to proceed with the proposals it has drafted, ascertaining the completeness of the body of European law assessed and, therefore, proceeding only by simplifying what had been evaluated. In other cases, however, it was decided to proceed with new proposals, having identified gaps in the content of the existing legislation. As stated in COM (2012) 746 final, which officially launched the Regulatory Fitness programme, "*the Commission will not examine proposals in areas of existing legislation until the regulatory mapping and appropriate subsequent evaluation work has been conducted*"<sup>98</sup>. It is extremely

---

<sup>95</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>96</sup> European Commission. (2017). *Guidelines on Stakeholder Consultation*. Chapter VII. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-stakeholder-consultation.pdf>

<sup>97</sup> European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

<sup>98</sup> European Commission. (2012). *EU Regulatory Fitness*. p.4. Available at: [https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness\\_dec2012\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness_dec2012_en_0.pdf)

prudent and wise to carry out an assessment before the legislation is implemented in order to understand whether the plausibility of the intervention is likely to produce the desired effects, especially if the costs involved are high. This can be based on pilot demonstration programs, when the application of the intervention is primarily limited and, if successful, expanded, or, in the case of EU evaluation, it can be based on estimates. As will become clear in the following pages, the evaluation of initiatives follows a very similar procedure to that adopted in the analysis of existing legislation<sup>99</sup>.

### **2.3.1. Political validation**

First of all, once again, it is acknowledged the need to ensure that the proposal put forward by the Commission can be properly evaluated, i.e. receive political validation in the Decide platform<sup>100</sup>. The initiatives, as described above, are divided into “major” and “other”. It is important that they are distinct since the actor responsible for providing political validation is different. In fact, "major" initiatives receive the green light from the lead Commissioner, the Vice-president and the First Vice-president. Especially for this typology of initiatives, it is important that the whole evaluation process takes place according to a precise timing, i.e. 12 months before the possible adoption of the standard. For "other" initiatives, political validation is provided by the responsible Commission or directly by the DG of that policy area. Unlike "major" initiatives, in this case, political validation is carried out at least 3 months before a possible adoption of the norm.<sup>101</sup> Recalling what has already been explained in the previous pages, the difference between the two types of initiatives lies in their very nature, content and structure, which is why a “major” or “other” initiative is recognised as such at the moment which it is formulated. This depends on the nature of the act in question, whether it is legislative or not, the policy content that may or may not involve the other institutions, the extent of the expected impact and the importance or sensitivity it brings.<sup>102</sup>

---

<sup>99</sup> Rossi, P. H., Lipsey, M. W., & Henry, G. T. (2018). *Evaluation: A systematic approach*. Sage publications.

<sup>100</sup> European Commission. (2017). *Guidelines on impact assessment*. Chapter III. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>

<sup>101</sup> European Commission. (2017). *Guidelines on planning*. Chapter II. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-planning.pdf>

<sup>102</sup> European Commission. (2017). *TOOL #6. Planning and validation of initiatives*. Chapter I. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-6\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-6_en_0.pdf)

### 2.3.2. First round of consultations: Interservice group scrutiny

When the policy validation has been achieved, consistent with the procedure adopted for *ex post* evaluation which foresees the introduction to analytical practice through the development of a roadmap, an inception impact assessment (IA) is produced which will report on the problem identified, the same one that catalysed an initiative by the Commission itself, and an exploration of the intervention per se, verifying primarily the compatibility of the program envisaged by the proposal with the need already assessed, examining possible alternatives, and proving the practicality of implementation, as well as the target of the intervention and the accessibility of the expected benefit. Thus, the inception IA must demonstrate how the norm is going to accomplish the desired effects – avoiding confirmation bias - through the exposition of a concatenation of cause-effect events starting with the enforcement of the intervention and ending with the result (expected or not)<sup>103</sup>. At this point of the evaluation, it is important to understand which policy areas the norm will touch, i.e., in which sector any legal implications or effects will be poured, so as to understand which units to involve in the formation of the Interservice Group, the same which, as already observed, will then be called upon to supervise and monitor the *ex post* evaluation and therefore the respective fitness check, when sufficient time has elapsed to collect data on the effectiveness of the intervention. In this case, the ISG is both established and chaired by the Secretariat-General. The work that the ISG will do, as we know, is to scrutinise the documents produced and make considerations, to which the more informal opinion gathered from the public consultations in the online platform "Have your say" will be integrated<sup>104</sup>. As a matter of fact, citizens are involved by the Commission through a system of true participatory and direct democracy, given that, once the inception IA is published, every European citizen has equal say on it and is effectively heard. This system restores the binary communication between the authority and the people, which, in the case of the European Commission, is inherently null and void, since as we know it is an unelected body. Therefore, this makes the Commission held accountable by the very citizens to whom the proposals which the Commission drafts are addressed. The consultations reflect a precise strategy that is prepared by the ISG, which must include mandatory 12-week online public consultations and involve all stakeholders who have an interest in the implementation of the intervention, whether they are affected directly as a target of the policy, or indirectly by side-effects. It is also necessary that each key issue is accompanied by an observation

---

<sup>103</sup> European Commission. (2017). *Guidelines on impact assessment*. Chapter III. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>

<sup>104</sup> *Ibidem*

of them, so that there are no inconsistencies or undesirable effects when the policy is implemented and produces its effects<sup>105</sup>.

### 2.3.3. Evaluation of initiatives to be proposed

In order to estimate the effects that the policy can produce as accurately and precisely as possible, evidence is required to show that a given effect can be produced by acting in accordance with the policy, by implementing an intervention tailored to the issue or gap to be adjusted. On the other hand, when a new proposal is formulated, in order for it to be defined as a fully-fledged EU added value, admitting even an acceptable margin of error, it must be certain that what is applied is functional. The time taken to implement an initiative is not always the same, so, as mentioned in the previous pages, the most important initiatives start the process a year before the planned adoption. The timing is also calculated on the basis of the fitness check carried out on existing norms, the results of which will have an impact on the new proposal. Even at this point of the policy cycle, evaluation has to respect very precise criteria, in the context of the type of analysis being carried out. Consequently, the study will have to be comprehensive and proportionate once again, obviously open to consultation with stakeholders and above all free of bias<sup>106</sup>. If truth be told, one of the easiest mistakes to make when adopting a deductive approach, i.e. one that starts from the formulation of a theory - which in this case is the theory that gives rise to the policy intervention - and then materialises on the basis of empirical evidence, is precisely the one of selecting cases that support and justify the theory<sup>107</sup>. This is the so-called selection bias, as far as the choice of the case to be studied is concerned, and confirmation bias, when the collected data are interpreted in a partial and therefore non-objective way, in order to confirm the thesis presented<sup>108</sup>. It follows that, the evaluation must necessarily be of high quality and transparent. In this regard, as a matter of practice, whatever strategy is adopted to carry out the analysis of the initiative under study, the evaluation must imperatively respond to given questions, namely the identification of the problem in its nature, magnitude and impact, thus explaining why it is a problem against which the European Union should legislate; what is the ultimate objective of the intervention and what are the alternative means to the proposal presented by the Commission to achieve it; estimating the economic, social and environmental impact of the proposal and its alternatives, comparing them also according to the criteria of effectiveness, efficacy and

---

<sup>105</sup> *Ibidem*

<sup>106</sup> *Ibidem*

<sup>107</sup> Johnson, J. B., Reynolds, H. T., & Mycoff, J. D. (2015). *Political science research methods*. Cq Press.

<sup>108</sup> Rossi, P. H., Lipsey, M. W., & Henry, G. T. (2018). *Evaluation: A systematic approach*. Sage publications.

coherence; how to prepare the monitoring of the policy once it has been implemented and a future *ex post* evaluation, when it will be possible to collect sufficient data to draw conclusions.

First of all, what is important to identify is the matrix of lawmaking which, as previously explained, takes place in the social fabric in the form of a systemic flaw. The need assessment is *stricto sensu* the basis on which the work of the legislating authority is built, since only after having verified and ascertained the existence of a problem can the elaboration of a solution begin. Thus, the problem must be tangible. In order to understand how to deal with the problem, it is also necessary to study its causes - also known as driving forces - its virulence and magnitude, as well as the target population on which its repercussions are felt. Analysing the problem in depth forces the evaluator to gather details, so as to accurately outline a possible intervention and understand who is affected by the problem and therefore towards whom the policy will be directed. In addition, all the transversal effects of the problem must also be analysed such that, in the proposal to be presented to the European Parliament, the Commission is able to identify all the DG units affected by the policy, consistent with each aspect of the problem found to be solved.

Secondly, action on the side of the European Union is considered. The relationship between the government authorities and the people is binary and therefore, following David Easton's model of the political system, each input from the people triggers an output to which it corresponds<sup>109</sup>. The question, at this point of screening the problematic context, is whether this is an area where the principle of subsidiarity applies or not, in other words, whether the Commission has the competence to act or let the Member States act autonomously. This kind of conclusion is also impacted by the scale of action required, since collective action may be more effective and cost-efficient. Naturally, based on the problem identified, it is also crucial to determine not only whether EU intervention is lawful but also to assess its usefulness, otherwise it will not bring added value.

The third question that a good evaluation has to answer concerns the objectives of the policy, which are established for the purpose of transparency and accountability and expressed in specific terms. Interestingly, during the analysis, the Commission points out that the objective set must be compatible with the value horizon espoused by the European Union in first place, as well as solving the problem identified. It is possible that more than one idea about the policy to be devised emerges from the same objective, however, as mentioned in the previous pages, the subject of discussion in the evaluation process is not only the proposal itself that the Commission puts forward, but also possible alternatives. The latter are compared on the basis of pre-established criteria. At the same time as defining the

---

<sup>109</sup> Easton D. (1965). *A System Analysis of Political Life*, New York u.a., S. 32

objectives, there is also the definition of the instruments to be used in order to measure the performance of policies addressing the same objectives.

With regard to the alternatives presented to the proposal, the analysis and comparison of them is considered as one of the most crucial moments of the *ex ante* evaluation. As a matter of fact, the theories of the developed programmes are denoised and scrutinised in the most precise detail of their case because, given the agenda of Better Regulation, it is the task of the European Union to apply the rule that achieves the maximum result at the minimum cost, at which point it will be smart and optimal. The comparison between the options is carried out on the basis of the influence that each alternative can have on the drivers of the problem, the instruments that each policy option envisages and of course the content. For this reason, several policy alternatives are designed, even structured in different ways. For this reason, they may be deemed to change nothing, such that, at the moment in which they are compared to the proposal, the evaluation enjoys a counterfactual. Options may also foresee to amend, repeal or abrogate existing legislation as mentioned before in this research. This idea usually stands from the *ex post* evaluation applied to the EU legislative stock of the same subject matter of the new proposal, which casts findings in new initiatives. Alternatively, they may differ for embracing – or not – technological development, which implies dissimilar implementation procedures of the projected intervention. A number of approaches, instruments and scopes are to be scrutinised in the evaluation as well since consideration must be conceded to all the options, as long as evidence corroborates the theory which lies behind. When alternatives have been examined, the most relevant ones are retained, while the others are discarded. At this point, those remaining are subject to actual evaluation. First, the impact of the policy options is identified, using the baseline, i.e. the counterfactual, as a benchmark. Then, the magnitude will be calculated, the relevance of the alternative for the stakeholders and, of course, the compatibility with EU objectives. The impact has to be estimated in both quantitative and qualitative terms, in order to arrive at a concrete awareness of the possible initiative to be implemented. Although it is not easy to quantify costs and benefits, it is necessary that a more precise estimate of the variables considered is made. Alternatively, an estimate in qualitative terms may be sufficient, but the absence of a quantitative assessment must be justified later in the report.

Once empirical assessment has been accomplished, the analysis of alternatives balances the different degrees of coherence, efficiency in terms of costs and benefits, effectiveness in the sense of success of the intervention, i.e. achievement of the intended objective, as well as compliance with the principle of proportionality, according to which the scope of the rule is measured to the problem. The idea is therefore to select the intervention programme that reveals being objectively better responding



to the above-mentioned criteria, and that there is therefore a solid justification behind the selection of one option to be advanced as a formal proposal and the discarding of the others.

The last important point that the evaluation needs to cover is to explain how the application of the intervention identified by the Commission allows for future *ex post* monitoring and evaluation. It is clear that, here too, estimates play a key role but, however distant the issue is from the contingency of the present time, it is crucial for the Commission to know that a given regulation can be monitored in its application and evaluated in the future, as can all regulations that come under the Regulatory Fitness and Performance Programme<sup>110</sup>.

#### **2.3.4. Second round of consultations and follow-up actions**

The assessment applied, together with estimates of likely effectiveness, are set out in the IA report, which, together with the Commission's proposal, is forwarded to the Regulatory Scrutiny Board, whose positive, or positive subject to change, opinion will give the Commission the confidence to proceed. If this is the case, the same material enriched with the RSB observations is forwarded to the Interservice Group for final comments<sup>111</sup>. As explained above, the opinion of the Regulatory Scrutiny Board is not binding, but the Commission tends to observe it well except in a few rare cases, of which there was only one in 2016 and two in 2017<sup>112</sup>. The report is also presented to the College together with the proposal that the Commission intends to submit, which will be set out properly in the explanatory memorandum, a document that is drawn up to explain the choice of proposal and the driving motivations, carefully justified course by virtue of the principles to be observed and released at the moment in which the Commission will formally present the Proposal to the European Parliament. An IA report must also be produced if the Commission decides not to act at all, in which case it would be a baseline option. The important thing is that an appropriate justification is issued for making such a choice. At this point, both the proposal and the entire evaluation carried out - including the alternatives screened, the criteria observed and the evidence - are published online in order to receive public feedback over an 8-week period. These feedbacks will be collected by the

---

<sup>110</sup> European Commission. (2017). *Guidelines on impact assessment*. Chapter III. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>

<sup>111</sup> *Ibidem*

<sup>112</sup> Better Regulation Insight Tool (BRIGHT). (2019). *Regulatory Scrutiny Board*. Available at: [https://bright-tool.eu/theory\\_module/regulatory-scrutiny-board/](https://bright-tool.eu/theory_module/regulatory-scrutiny-board/)

relevant DG of the policy area in which the intervention is to be proposed and then forwarded to the Legislator.<sup>113</sup>

## 2.3. Commission Proposal

The explanatory memorandum acts as a connector between the *ex ante* evaluation process and the legislative context in which the Commission proposes a new initiative. As explained in the previous pages, the Commission sets out in the Annual work programme what it considers to be the policy priorities on which the legislative process should focus. On the basis of these priorities, an assessment of the existing body of law at EU level is first carried out, so as to build new proposals on the lessons learned from the assessment experience, simplifying where rules imply convoluted and burdensome procedures, avoiding overlaps and, above all, introducing what is missing. In this respect, it is fair to describe the explanatory memorandum as the summary of this work, since it explains why a given policy option was developed and chosen among possible alternatives to be implemented, constituting the so-called EU added value. The explanatory memorandum is thus the conclusion that the Commission comes to at the end of the procedure foreseen by REFIT, i.e. when both retrospective and prospective analyses have been completed<sup>114</sup>.

Nevertheless, it is described in the documents as "*the transparent exercise by the Commission of its right of initiative*"<sup>115</sup>. For this reason, the drafting of the memorandum is expressed in a way that is accessible to the general public, clear and concise. Specifically, the document, which will be submitted together with the formal proposal, will contain the context of the proposal; the legal basis, subsidiarity and proportionality; results of *ex post* evaluation and stakeholder consultations and impact assessments; budget implications; other elements.

In first place, the context of the proposal is set out by explaining what led the Commission to propose this initiative, including the assessment and considerations underpinning the Regulatory Fitness and Performance Programme. In addition, the institutional background must be reported, i.e. whether it is an initiative to revise or simplify an act, or a mandate from the European Council, etc. Part of the contextual considerations of the proposal is at the end to mention and explain the degree of

---

<sup>113</sup>European Commission. (2017). *TOOL #56. Stakeholder feedback mechanisms*. Chapter VII. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox.pdf>

<sup>114</sup>European Commission. (2017). *TOOL #38. Drafting the explanatory memorandum*. Chapter IV. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox-38\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox-38_en_0.pdf)

<sup>115</sup> *Ibidem* p.1

consistency that the intervention would have with other policies in the same or related areas and with the objectives and principles of the Union. In order to facilitate the understanding of the procedure mentioned therein, the concept is anchored to the *fait accompli*. It is therefore examined the Commission proposal advanced on the basis of the evaluation of Regulation No 1307/2013, as part of the CAP post-2020 reform package, cited in the previous pages, which will be further explored in the following chapter. The evaluation focused on green direct payments, i.e. financial support mechanisms to farmers whose receipt is conditional on the mandatory implementation of greening measures to reduce environmental impact. However, precisely in the section on the context of the new proposal that would repeal the old regulation, the need to update obsolete standards to meet the new challenges of climate change is highlighted<sup>116</sup>.

Explaining the legal basis on which the formulation of the proposal rests implies, as verified in the *ex ante* evaluation, ascertaining whether the Commission has the power to intervene in the policy area under study, and thus what kind of regime applies to this area, i.e. whether it is one of shared competence between the Union and individual states where the subsidiarity principle is applied, of exclusive competence where only the Union has the power to act, or whether it is an area where the Union's competence is only of support and coordination. The principle of subsidiarity together with the principle of proportionality are two of the cardinal principles of the Union, which is why in the explanatory memorandum the proposal must be justified imperatively in light of the latter - bearing in mind, however, that the principle of subsidiarity is related to the competence envisaged by the policy intervention. According to the principle of proportionality, the Commission justifies the drafting and willingness to adopt the rule as perfectly tailored to the extent of the problem it intends to solve, thus using instruments proportionate to the context, the policy targets, the objectives and the problem.

In third place, results of the evaluation applied on existing legislation together with consultations and the *ex ante* evaluation are reported and explored. It is interesting to notice that in this section the observations collected from the stakeholders during the consultations are integrated with the results obtained during the evaluations, so as to highlight the role of the consultations in the overall analysis of the intervention and, therefore, the extent to which the stakeholders or institutions were included,

---

<sup>116</sup> European Commission. (2018). *Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council*. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC_1&format=PDF)

whether they were participatory and useful in resolving any imperfections in the new proposal or the evaluation itself. In addition, every contributor to the consultations is explicitly reported, whether stakeholders, individual citizens or institutional bodies e.g. Regulatory Scrutiny Board, Interservice Group, etc. Any deviation from the guidelines provided by REFIT to proceed with the assessment must necessarily be justified by the Commission, especially if it concerns comments made by the consulted stakeholders i.e. negative opinion of Regulatory Scrutiny Board. An integral part of this third section of the explanatory memorandum is also the contribution that the initiative brings to the Better Regulation agenda. Given that the initiatives are built on a massive research and screening exercise of inconsistencies, incoherencies and identification of excessive and unnecessary burdens and costs, the initiative is *in nuce* the promise to simplify existing legislation as well as the social order characterising the lives of citizens and businesses. Where simplification is not envisaged by the legislation for the benefit of adding content to fill identified gaps, it is up to the Commission to provide an appropriate justification. A specific case is when the proposed initiative has some impact or implications on the fundamental rights of the intended target group. In this case, the compatibility of the measures envisaged by the initiative with the observance of the fundamental rights recognised by the European Union must be made explicit.

The last two sections of the document deal with the budgetary implications and “other elements”. For what concerns the budgetary implications, there is a clear reporting activity of all the resources that the policy initiative would mobilise. For example, in the case of COM (2018) 392 final, the above-mentioned proposal repealing the evaluated Regulation No 1307/2013, the Commission proposed to maintain substantial share of EU budget on CAP, being complemented by Horizon Europe funding<sup>117</sup>. Whereas, in the case of “other elements” section, particular attention is drawn on the way in which the said initiative will be transposed in the domestic legislative regime and further insights on the implementation process – including evaluation activities connected to it such as monitoring and reporting. Moreover, under the so-called “variable geometry” titulation, it is further specified whether there are particular arrangements to be applied to Member States. In the end, the Commission includes additional detailed explanation on specific provisions so as to provide fertile soil for clear-worded interpretation of the said initiative in future and avoid misunderstandings.

As mentioned above, the explanatory memorandum provides complementary content to the proposal submitted by the European Commission to the Legislator – Council and European Parliament - to be approved. Therefore, what follows up is the legislative procedure which fosters either the adoption

---

<sup>117</sup> *Ibidem*

or the rejection of the proposal presented by the Commission enforcing the legitimate right of legislative initiative<sup>118</sup>.

## 2.4. Academic debate – Centralised vs polycentric evaluation

What can be inferred from an in-depth analysis of the intrinsic procedures and mechanisms of the REFIT Programme is that the Commission has set up an innovative policy evaluation system. Based on the study carried out by Schoenefeld and Jordan, two types of evaluation are traditionally identified, using as a proxy the numerical variable of the actors in charge of carrying out the policy evaluation and the degree of *de facto* authority. As previously explained, an evaluation system can be defined as hierarchical, centralised and formal if it is managed by a single actor, whereas polycentricity and therefore decentralisation of evaluation processes inadvertently involves a plurality of actors exercising the function of evaluator and having a tangible effect on research and policymaking, achieved on the evidence-based principle<sup>119</sup>.

As has been reported, the European Union's evaluation system is characterised by a centralised configuration, given that the European Commission is responsible for verifying that the legislation produced - or to be produced - is actually smart and in line with the founding principles of the Union. However, the fact that only one institution has such a prerogative raises a number of issues that, both in the short and long term, can act as multipliers of systemic failures. First of all, the Commission, in carrying out its assessment may be unaware of many dynamics of the national context that individual states may identify better off. As a result, knowledge about the policy to be evaluated on the ground as well as data collection may not be representative. Similarly, a top-down, hierarchical approach to evaluation is likely to run into dispersed complications that are not easily controllable, such as an unsuitable evaluation method to the context, thus complicating the possibility of early intervention. Moreover, peculiar to the case of the European Commission is the overlap between the prerogative of evaluation and the right of legislative initiative. This factor is not negligible as it could lead the institution itself to take a softer approach to evaluation, which is then applied to the Commission's proposals, rendering the functionality of the assessment mechanisms useless.

---

<sup>118</sup> European Commission. (2017). *TOOL #38. Drafting the explanatory memorandum*. Chapter IV. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox-38\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox-38_en_0.pdf)

<sup>119</sup> Schoenefeld, J., & Jordan, A. (2017). Governing policy evaluation? Towards a new typology. *Evaluation*, 23(3), 274-293

On these premises, it would seem that the evaluation system in place in the European Union is almost sterile, were it not for the fact that, precisely because there is an overlap in the Commission's competences, another relevant factor which worth consideration and inevitably calls for systemic innovation is accountability.

Accountability understood as detached from political representation is inherent in the philosophy of New Public Management, which disrupted the *modus operandi* of public authorities in the 1990s by applying new procedural codes. Among the newly-introduced priorities in the public agenda, crucial significance was charging was the need to verify effectiveness of public performance, focusing on the delivery optimal results on time<sup>120</sup>. Similarly, faced with the rise of populist and Eurosceptic sentiments, the pressure for efficient legislative work generated the idea of applying evaluation policies to EU law, which would be “*the key to accountability and learning*”<sup>121</sup>.

By virtue of the principles of accountability and legitimacy, the Commission therefore had to sew up an authority-citizen relationship that was not supposed to exist directly. Applying evaluation mechanism to the EU legislative stock was necessary but insufficient to achieve the said purpose. For this reason, what this thesis aims to demonstrate is that concerning the genesis and the improvement of evaluation programs, the European Commission, while maintaining the centralization of the prerogative of political analysis, has tried over time to free itself from the formal rigidity of the hierarchical system, marrying some elements of polycentrism. As a matter of fact, in light of the aforementioned arguments that characterize the academic debate between hierarchical and polycentric systems, it has always been important for the Commission to involve other subjects at a consultative level. This therefore favours an opening towards a progressive democratization of the project, without losing the decision-making prerogative of the main body.

Conversely, an entirely polycentric evaluation system has huge drawbacks that function as multipliers once the approach is applied to an international reality. In the case of the European Union, this would result in a dispersion of proactive evaluation responsibility towards all Member States. In this case, the other direction of accountability that exists in this international reality would emerge even more i.e. the one which goes from single states to the European Union as such, especially considering the financial accountability, thus concerning the common resources from which the policies transposed domestically draw. As the evaluation is decentralized, important suspicions would

---

<sup>120</sup> Eckhard, S., & Jankauskas, V. Beyond Learning and Accountability: Comparing the Political Use of Evaluation in International Organizations

<sup>121</sup> Stephenson, P. J., Schoenefeld, J. J., & Leeuw, F. L. (2019). The politicisation of evaluation: constructing and contesting EU policy performance. *Politische Vierteljahresschrift*, 60(4), 663-679

emerge questioning the extent to which evaluation is made for learning purposes and problem-solving-dynamics or it is politically instrumentalized to advance and defend national interests<sup>122</sup>. Moreover, as has been asserted by the Commission in the evaluation 1153 final/2 of CAP reforms pre-2013, leaving states the responsibility to monitor the implementation of norms *in itinere* can yield patterned data, thus severely undermining the evaluation as a whole<sup>123</sup>.

On the grounds that the evaluation processes are supposed to be structured on objective criteria may give an incentive to the different actors to exploit the theory of “exact science” to justify given positions and arguments about political decisions. Indeed, it has been studied that polycentricity applied to evaluation in an international environment leads to the formation of a veiled internal competition for power<sup>124</sup>. The direct consequence of this awareness admits the possibility that the evaluations carried out by the single states are not representative. In this way, the advantage of a polycentric system of obtaining a more concrete and context-based vision from the various actors translates into a bias produced to feed the idea of “speaking truth to power”<sup>125</sup>.

For these reasons, REFIT is the apex of the evaluation systems adopted up to now in the European context, as it corrects the flaws from formal and hierarchical evaluation, integrating elements of polycentrism without decentralizing the evaluation and making it dysfunctional. Given that, unlike the scientific literature on policy evaluation requires, there is no relationship of independence between the evaluator and the commissioner as the two entities match<sup>126</sup>, the solution is to confer legitimacy to the Commission, strengthening its responsibility towards citizens and stakeholders on which legal implications are poured out.

It is thus straightforward that evaluation work conducted by DGs of the European Commission leading their policy area of competence, embraces multiple perspectives coming from other DG units,

---

<sup>122</sup> Eckhard, S., & Jankauskas, V. (2019). The politics of evaluation in international organizations: A comparative study of stakeholder influence potential. *Evaluation*, 25(1), 62-79

<sup>123</sup> European Commission. (2011). *IMPACT ASSESSMENT Common Agricultural Policy towards 2020 Accompanying the document Proposals for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy - establishing a common organisation of the markets in agricultural products (Single CMO Regulation) - on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) - on the financing, management and monitoring of the common agricultural policy and the Proposal for a COUNCIL REGULATION determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products*. Available at: [https://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1153\\_en.pdf](https://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1153_en.pdf)

<sup>124</sup> Eckhard, S., & Jankauskas, V. Beyond Learning and Accountability: Comparing the Political Use of Evaluation in International Organizations

<sup>125</sup> Stephenson, P. J., Schoenefeld, J. J., & Leeuw, F. L. (2019). The politicisation of evaluation: constructing and contesting EU policy performance. *Politische Vierteljahresschrift*, 60(4), 663-679

<sup>126</sup> Schoenefeld, J., & Jordan, A. (2017). Governing policy evaluation? Towards a new typology. *Evaluation*, 23(3), 274-293

legally impacted by the same policies (Interservice group), are monitored and supervised to ensure accurate compliance of the evaluation standards (RSB), and show receptive of the opinions coming from the very first direct targets of EU legislative stock, in whose interest evaluation and simplification have been brought forth in first place, that is to say individual European citizens and enterprises.

We have seen how the Commission was required to give a response to the IAB's comments, and it is now required to respond to the Fit-for-future platform. The responses, as well as the observations - not only from these bodies rather also directly from the population itself - are public and visible to all without conditions, in compliance with transparency principle<sup>127</sup>. For this reason, the Commission has the effective incentive to perform its duty as evaluator correctly given the permanent exposure to the public and, precisely because it is not an elected body, the public consensus towards the prerogatives it has and the work it performs is precious<sup>128</sup>. The Commission must be accountable to those affected by the legislation it proposes and which evaluates. In this light, although transparency is important, inclusion and direct participation are *condictio sine qua non* to act, and for this reason is therefore guaranteed.

These premises prove how not only the REFIT Programme is efficient by putting in place a flawlessly detailed, timely and rational evaluation structure, connecting two moments of the policy cycle through the *ex post* and *ex ante* evaluation, thus making faith to the idea of evidence-based decision-making, but also by opening a "window of opportunity" to stakeholders, establishing a microcosm of participatory democracy, where it was not meant to be. The historical path of evaluation policies that precedes REFIT represents an important legacy on which the Commission has been able to work tirelessly to create a system that is primarily useful to the objectives set by the Union. Top priority has been given to simplification processes towards better regulation for the last two decades, and has been championed legitimately and functionally, without creating struggles or abuses of power on the prerogative of an instrument that must be able to be used only in order to bring about a common improvement.

---

<sup>127</sup> Curtin, D., & Meijer, A. J. (2006). Does transparency strengthen legitimacy?. *Information polity*, 11(2), 109-122.

<sup>128</sup> Bunea, A. (2020). Understanding the European Commission's use of politicisation in the negotiation of interinstitutional agreements: the role of consultations and issue framing. *Journal of European Public Policy*, 27(3), 439-459.



### **3. Empirical evidence for investigation purposes: the case study of the assessment of Regulation No 1307/2013 and the CAP post-2020 reform package**

This chapter is going to explore the case study of the evaluation carried out on Regulation No 1307/2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy. The said example has already been reported several times in the previous chapter in order to anchor the explanation of evaluation mechanisms to empirical evidence. The empirical application of the REFIT Programme deserves attention to investigate the practical functionality of the evaluation system itself at European level, also highlighting criticalities that may emerge during the evaluation. Drawing on empirical evidence, this dissertation aims to demonstrate that the REFIT Programme is functional to the production of an excellent assessment, free from bias or dysfunctional interests, thus producing helpful data for the elaboration of new policy proposals, while being scrutinised and subject to the public consent or dissent.

For this reason, the case study chosen to corroborate the thesis was selected on the basis of relevance to the policy area to which the evaluation belongs and the impact that external consultations with both institutions and non-institutions had on the formulation of new proposals. The CAP has always deserved special attention from the Commission, prioritizing it year after year in its annual work programs. The choice of precisely analyzing Regulation No 1307/2013 was dictated by the introduction of a new mechanism, namely that of direct payments linked to the implementation of green measures. This would have facilitated the isolation of effects. However, as will be shown in the next pages, this type of reform was implemented too late compared to the expected timeframe and evaluated prematurely. Yet, interesting is the role of external voices about stakeholder consultations that emerge as deeply heterogeneous and conflicting. They did have a considerable impact on new policy initiatives formulation, as the interested parties did not reach an agreement on the measures to be implemented before October 2020, thus forcing the CAP post-2020 reform package adoption date to 2023<sup>129</sup>, and implementing an interim lifesaving regulation in the current biennium. This highlights the challenge posed by the system of evaluation that the Commission itself has constructed, namely that of reconciling the diverse interests of civil society with the priorities of the Union, always starting from the impact assessment. As previously explained, this is a challenge that proves to be of added

---

<sup>129</sup> Council of the European Union. (2020). “Council agrees its position on the next EU common agricultural policy”. *Press release*. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/10/21/council-agrees-its-position-on-the-next-eu-common-agricultural-policy/>

value, demonstrating the Commission's ability to conduct and centralize the evaluation, without polarizing its conclusions.

### 3.1. Introductory section to CAP

The agricultural sector has always been one of the Commission's priorities since the first evaluation programmes, such as the 2002 Action plan, which already contained the first ideas to restructure the Common Agricultural Policy on the most sustainable pillars. The CAP was launched in 1962<sup>130</sup>, a very important moment in the history of agriculture, when the Green Revolution was about to sweep through Asia with the aim of fighting hunger and making Middle Eastern countries self-sufficient in agricultural production to meet the needs of the population; and in the western hemisphere of the world, the agricultural revolution was breaking out thanks to technological progress and the innovation of new motorised equipment<sup>131</sup>.

In the same Action plan, the environment was only considered in terms of waste legislation and was therefore only taking the first steps towards greater attention in this sense, which had not yet been developed in neighbouring sectors such as agriculture. However, given the inevitable intersection of farms and crops with rural ecosystems, CAP has progressively incorporated sustainability strategies related to agriculture, including the regulation under consideration in this study. Regulation No 1307/2013 was devised in a legislative context characterised by agricultural policies that were insufficiently functional to preserve the environment, as was identified through previous evaluations. For this reason, in its 2011 Annual work programme, the Commission had already expressed its willingness to prioritise a post-2013 CAP strategy in order to enhance the role of green measures in the agricultural policy area<sup>132</sup>.

One of the integral elements of the CAP has always been the income support to farmers through direct payments to contrast inequalities in the sector, to support smallholders in competing in the market with corporate farms and to counteract the price dilemma that increases consumer accessibility

---

<sup>130</sup> European Commission. (2020). *The Common Agricultural Policy at glance*. Available at:

[https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en)

<sup>131</sup> Mazoyer, M., & Roudart, L. (2006). *A history of world agriculture: from the neolithic age to the current crisis*. NYU Press.

<sup>132</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>1</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

to the products, while limiting the producer's income, driving this category to the edge. In light of this, the Commission decided to improve the environmental performance of the agricultural sector by including the implementation of green measures as a condition on direct payments. This condition would have acted as an incentive for farmers, who, in need of concrete income support, would also have the opportunity to purchase appropriate equipment to reduce the environmental impact of their production processes.

This rationale was embodied in the content of Regulation No 1307/2013. It provided for the compulsory introduction of three particular green measures subject to receipt of 30% of direct payments. The said measures were respectively: crop diversification<sup>133</sup>; maintenance of permanent grassland<sup>134</sup>; and management of ecological focus areas (EFAs)<sup>135</sup><sup>136</sup>. The first measure being conditional on income support, namely crop diversification, was designed to improve soil quality and, according to studies carried out in this field, would have favoured the increase of nutrients in the cultivated products<sup>137</sup>. The second measure mandated farmers to permanently reserve 95% of the agricultural area for grassland, introducing safeguards to protect the most sensitive part to environmental deterioration. In the end, farmers were required to manage 5% of arable land as an Ecological Focus Area (EFA) in order to provide for the support of biodiversity on farmland. This kind of intervention exempted indeed smallholders, whose 5% of arable land did not exceed 15 hectares<sup>138</sup>.

Chapter III of Regulation No 1307/2013 outlined a profile of equivalent practices that could be implemented as an alternative to the aforementioned ones, while still meeting greening obligations<sup>139</sup>. As can be seen from Figure 3, the Commission's initial idea was very ambitious and included a fourth

---

<sup>133</sup> European Union. (2013). Article 44 of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, *Official Journal of the European Union*, 2013. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>

<sup>134</sup> Article 45 of *Ibidem*

<sup>135</sup> Article 46(1) of *Ibidem*

<sup>136</sup> *The Ecological Focus Area is a selected area in which "ecologically beneficial elements", i.e. measures to enhance biodiversity, are applied* : [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

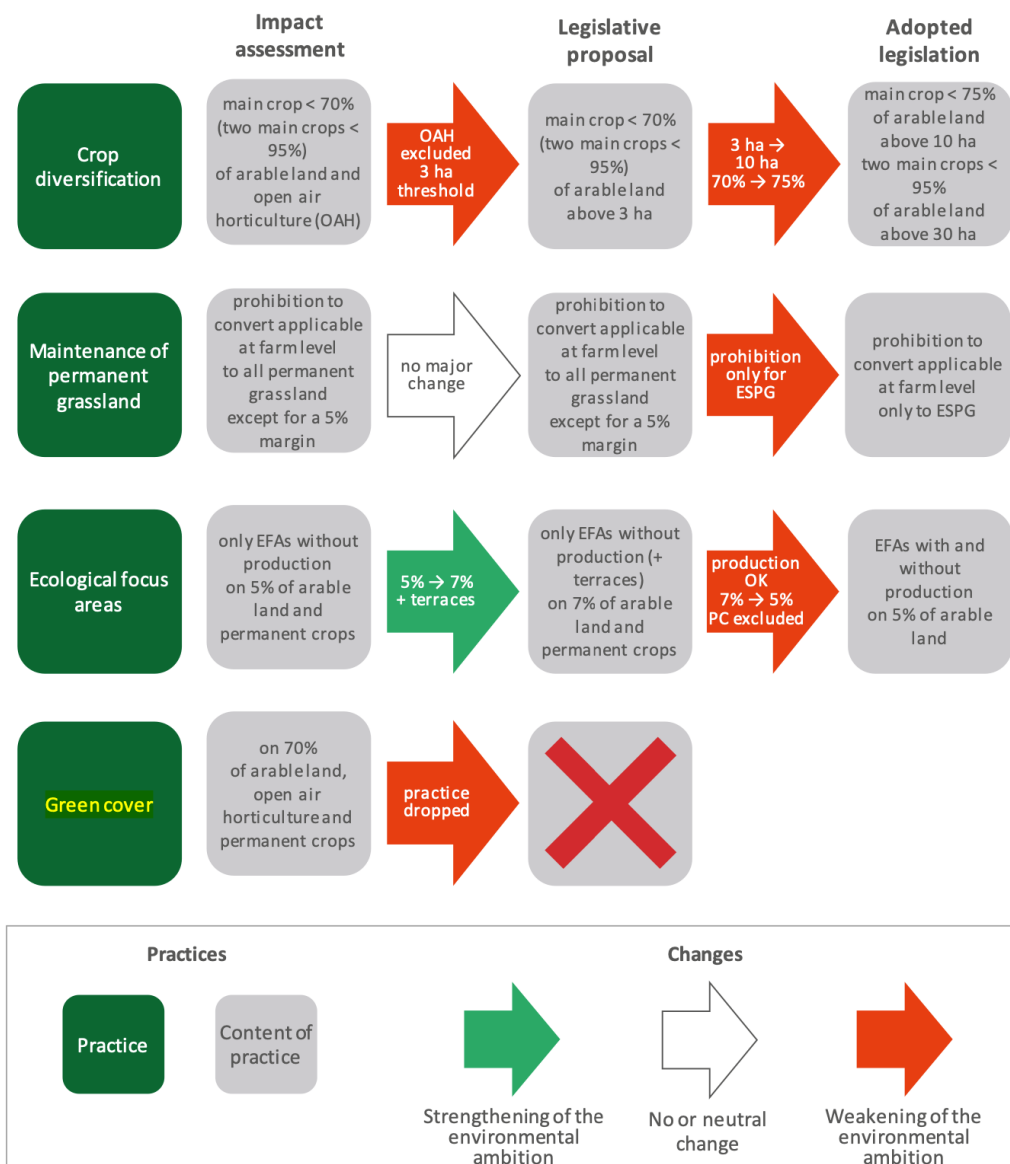
<sup>137</sup> Miller, D. D., & Welch, R. M. (2013). Food system strategies for preventing micronutrient malnutrition. *Food policy*, 42, 115-128.

<sup>138</sup> European Union. (2013). Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, *Official Journal of the European Union*, 2013. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>

<sup>139</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>133</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

measure. The latter, as can be seen from the figure below, concerned the so-called "Green Cover", i.e. a non-permanent land cover, applicable to arable land and open space and/or permanent agriculture. At the time of the screening through the impact assessment, the requirements to access 30% of direct payments were then softened to the above-mentioned measures<sup>140</sup>.

Figure 3<sup>141</sup>



<sup>140</sup> Baldock, D., Buckwell, A. & Hart, K. (2016). Learning the lessons of the Greening of the CAP. *European Environmental Policy*. Available at: [http://cap2020.iecp.eu/assets/2016/4/20/Learning\\_the\\_lessons\\_from\\_CAP\\_greening\\_-\\_April\\_2016\\_-\\_final.pdf](http://cap2020.iecp.eu/assets/2016/4/20/Learning_the_lessons_from_CAP_greening_-_April_2016_-_final.pdf)

<sup>141</sup> European Court of Auditors. (2017). Greening: a more complex income support scheme, not yet environmentally effective. Special Report. No. 21. p. 19. Available at: [https://www.eca.europa.eu/Lists/ECADocuments/SR17\\_21/SR\\_GREENING\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR17_21/SR_GREENING_EN.pdf)

Despite the said regulation was elaborated in 2013, it entered into force in 2014 and, one year after its implementation, the evaluation mechanisms for *ex post* assessment envisaged by REFIT Programme were applied. This was compatible with the idea of strengthening the measures in place, since, at the time of the said application, the context was already changing radically, with the consequence that the objectives set, together with the measures, were already outdated and weak. For this reason, in view of the CAP post-2020 package of reforms, we see the application of the REFIT Programme, which follows the principle of “evaluate first” by reviewing Regulation No 1307/2013, and uses the data collected to produce new proposals, which will constitute an EU added value in the legislative stock<sup>142</sup>.

### **3.2. *Ex post* evaluation process of Regulation No 1307/2013**

In this section, the focus is on the actual evaluation of the Direct Payments Regulation in relation to greening measures and consultations with focus groups and stakeholders – including farmers as main target of the said measure - in order to capture the close link between the two processes as part of the same system.

#### **3.2.1. Evaluation**

As we have seen in the previous chapter, evaluation aims to answer a set of fundamental questions - set out in the roadmap - to understand whether the policy under analysis is actually achieving its objectives or not. For this reason, the evaluation methodology includes a variety of analytical tools of a qualitative and quantitative nature, depending on the investigation to be carried out. The only tool applied to evaluation in all its aspects is legislative analysis, which is qualitative in nature. In fact, this applies to all 17 ESQs<sup>143</sup> by assessing the context in which the “Green Measures Regulation” was implemented - and thus the pilot logic - effectiveness, efficiency, consistency, relevance and EU added value respectively. This is because the legislative analysis is necessarily the keystone that approves the accuracy and robustness of the legislative-based analysis, without which the evaluation

---

<sup>142</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>143</sup> Evaluation Study Question

would be sterile. More in detail, this type of tool gains even more strength in ESQs 14,15,16,17 respectively in the fields of efficiency, coherence, relevance and EU added value<sup>144</sup>.

Analogously to the legislative analysis, the other qualitative analytical tools reported by SWD (2018) 478 on Regulation No 1307/2013 are respectively the coherence and relevance matrices and scoring, a part of the cost-effectiveness analysis and, expressed on specific points of the evaluation, the stakeholder analysis.

First of all, with regard to the coherence and relevance matrices and scoring, the tool is aimed at scrutinising - as the name suggests - the coherence, but also the plausibility, between the measures applied by the regulation under scrutiny and the objectives originally set out in the programme theory. This tool is applied to ESQs 14, 15, 16 with regard to coherence and relevance. Not surprisingly, this type of analysis has been useful to verify: *“To what extent have the greening practices as part of the entire set of relevant CAP measures impacted on the other general CAP objectives?”*<sup>145</sup> (ESQ 14) or *“To what extent have the greening practices been relevant in contributing to the sustainable management of natural resources and climate action and the related specific objectives?”*<sup>146</sup> (ESQ 16).

The assessment carried out showed that the green measures required in order to obtain 30% of direct payments were overall compatible with the CAP objectives. More precisely, the CAP objectives taken into account are market stability, competitiveness, enhancing incomes, consumer expectations, innovation, socio-economic development, and diversity of farm types. By using the objectives of the CAP as indicators to measure the coherence of green measures, it is possible to ascertain their plausibility. As can be seen from the table below, the measures under scrutiny were applied in a synergistic relationship with most of the objectives, the only objective that does not have a relevant association with the measures being consumer expectations. However, with regard to the permanent grassland ratio – complementary to the protection of the environmentally sensitive permanent grasslands (ESPG) to make the second measure up - numerous contradictions emerged due to an excessively strict application that excluded flexibility of manoeuvre, and therefore of adaptation to the context.

---

<sup>144</sup> *Ibidem*

<sup>145</sup> *Ibidem* p.45

<sup>146</sup> *Ibidem* p.51

Figure 4<sup>147</sup>

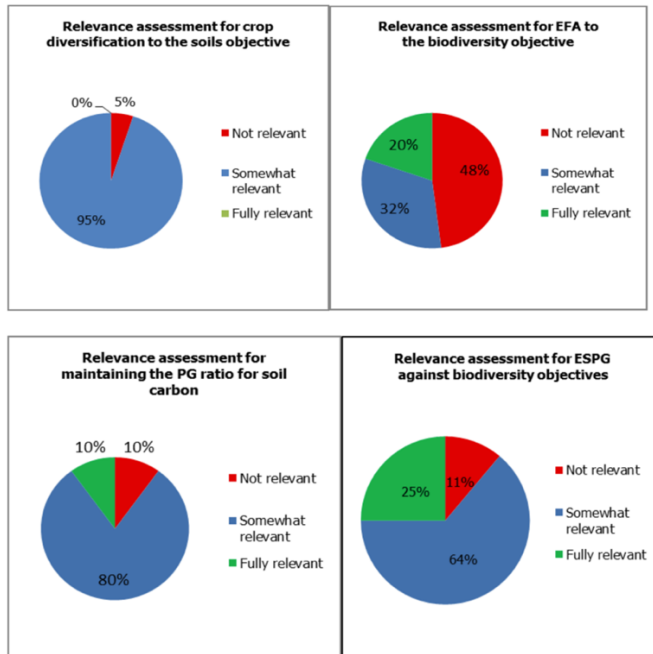
	Market stability	Competitiveness	Enhanced income	Consumer Expectations	Innovation	Socioeconomic Development	Diversity of farm types
Crop diversification	Green	Green	Green	Yellow	Green	Yellow	Green
Permanent grassland ratio	Green *	Green *	Green *	Yellow	Yellow	Green *	Green
ESPG	Green	Green	Green	Yellow	Green	Green	Green
EFA	Green	Green	Green	Yellow	Green	Yellow	Yellow

Regarding the application of the above-mentioned tool to qualitatively assess the relevance of the measures foreseen by Regulation No 1307/2013 in contributing to the sustainable management of natural resources and environmental protection, the evaluation found a mismatch between the potential of the rules and the empirical effect. In particular, with regard to the maintenance of permanent grasslands, the protection of ESPGs is of great relevance for safeguarding biodiversity and the climate in its case, as well as the protection of watersheds. The third measure articulated about Ecological Focus Areas (EFA) is also of relevance as it is sown on arable farmlands, unlike the previous most suitable to semi-habitats.

However, as the table below suggests, the evaluation identified an insufficient application of EFAs, which consequently undermined their relevance to the objectives set. Member States were also given the discretion to apply additional conditions to improve the relevance of the standards: the vast majority ignored this possibility. Rather, the strategies have been applied in domestic legislation to minimise costs - consistent with the purpose of direct payments - thus implementing the measures at the minimum required level, and neglecting the commitment to climate action. In the pie charts below, the relevance of the measures to the intended objectives is shown.

<sup>147</sup> *Ibidem*

Figure 5<sup>148</sup>



With regard to the stakeholder analysis, adopting a qualitative approach, this was carried out on the context of application of the regulation under review, thus including ESQs 1,2,3,4,5 and 6, and on effectiveness, thus including ESQs 7,8,9,10 and 11, given their more applicable competence to these indicators. Referring to the first set of issues, the first question is emblematic for the stakeholder analysis as, in order to contextualise the choice to implement Regulation No 1307/2013, the following question emerges: *"What are the drivers behind implementation choices regarding the greening practices and to what extent a) at the level of the Member States administrations; b) at the level of the beneficiaries?"*<sup>149</sup> The beneficiaries to whom the question refers are the targets of the policy, in this case farmers. It follows that the implementation of the norm had to be designed with the farmers themselves in mind. The stakeholder analysis showed that the way in which the greening measures were implemented was driven by the desire to engage in environmental protection without upsetting farmers' existing practices and exposing them to additional costs. Therefore, the implementation of the measures had to balance the requirement imposed on farmers while minimising the risk of non-compliance, which would increase as the administrative and financial burden increased. In the public consultation phase, stakeholders reported their experience one year after the implementation of Regulation No 1307/2013. What emerged was that from the farmers' point of view, it was severely complex to adopt the greening measures, precisely for technical, administrative and economic

<sup>148</sup> *Ibidem* p. 52

<sup>149</sup> *Ibidem* p. 27



reasons. This implies that direct payments - although not in all agricultural contexts, but in most - have not been sufficient and have sometimes created an excessive burden.

The last case to be reported here concerns the application of a qualitative analytical tool for cost-effectiveness analysis. The latter is useful to verify if the implementation of a policy - possibly successful - is justified by the relationship between the costs used to implement it and the benefits - possibly compatible with the intended objectives - that follow from it. The analysis can be carried out in both quantitative and qualitative terms. This is because a benefit is not always quantifiable. Despite this, research always requires maximum effort to equate the resources used and the effect obtained to the same extent. In this respect, this type of analysis has been specifically applied to the ESQ13: *“To what extent have the greening practices been efficient in achieving the general objective of sustainable management of natural resources and climate action enhancing the environmental performance of farming?”*<sup>150</sup>. Given that the evaluation that is the subject of this research is characterised by the absence of numerical data on benefits to carry out a purely quantitative evaluation in terms of efficiency, a qualitative analysis was carried out. Specifically, it was chosen to weigh the administrative costs used to implement the measure in all EU countries with the degree of environmental and climatic success that the planned measures have brought. As the management of direct payments and the monitoring of measures has been carried out digitally through the IACS<sup>151</sup> system, the cost of implementation is minimal<sup>152</sup>. However, equally minimal is the environmental performance of the standards. To add to this, the administrative and economic burden of the farmers mentioned above is not comparable in monetary terms to the benefit, but it is considerable, while the result in favour of climate action is very poor.

Nevertheless, a purely quantitative analytical tool was also used in the evaluation to study the context, effectiveness, efficiency and relevance of the standard. This is descriptive statistics, which, by integrating the data collected on the variables of interest and their frequency distribution with an insightful interpretation, is able to draw a scenario in which to act. Considering ESQ7: *“To what extent has the ecological focus area measure impacted on the environment and climate in terms of a) biodiversity; b) other environmental areas, such as soil quality and erosion, water, climate?”*<sup>153</sup> with

---

<sup>150</sup> *Ibidem* p.44

<sup>151</sup> *The Integrated Administration and Control System (IACS) is a system of interconnected databases that allows Member States to pursue the so-called “shared management” through the control of payments to farmers and monitoring the administrations*

<sup>152</sup> European Commission. (2013). Integrated Administration and Control System (IACS). *Managing payments*. Available at: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/financial-assurance/managing-payments\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/financial-assurance/managing-payments_en)

<sup>153</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct*

regard to the impact of the Ecological Focus Area, the third measure set out in the above-mentioned regulation, the identified beneficial potential impact on biodiversity, climate, land and water is far-reaching. However, as with any policy instrument, the expected effect depends closely on how it is managed and implemented. As it has been reported in Figure 6 beneath, drawing on descriptive statistics, it appears that in all 28 EU Member States (pre-Brexit), the most promising EFA in terms of the intended objectives is land lying fallow but that, unfortunately, it has not been protected as it should have been, and therefore the expected effects are small. This can occur when the farmer has to compromise with the implementation of measures of other policies that conflict with those under consideration, which is why the REFIT is committed to assessing the regulatory stock constantly, trying to avoid inconsistencies. Alternatively, a lack of requirements or poor implementation of the measure may occur. With regard to the EFA, a great deal of flexibility of action has been left to the States, which, once again, has not been properly used, with the exception of Spain, Germany and Austria, which have strengthened the environmental action potential of the measures put in place by Regulation No 1307/2013 by integrating them more into the body of domestic law. It is no coincidence that the Court of Auditors commented on this in a special report in 2017, which showed that the degree of discretion given to Member States did not maximise climate action<sup>154</sup>.

Figure 6<sup>155</sup>

Effects of EFA measure	Biodiversity		Soils	Water		Climate mitigation	Climate adaptation			
EFA - N-fixing crops <b>Overall additionality low</b>	Where more forage crops are cultivated without pesticides (e.g. ES)	Little effect, even harmful where grain legumes cultivated with pesticides (N/W)	Some benefit to SOM particularly from fodder crops, but additionality from EFA measure is low	Positive where post harvest mgt in place and where limits N fertiliser use on subsequent crops	Pollution risks where post harvest mgt not put in place	Positive but little additionality	Positive but with little additionality			
EFA - catch crops <b>Overall additionality low</b>	Little effect, but can be beneficial for soil fauna	Damaging where crop stubbles are replaced	Positive effects anticipated. However the scale of additional benefit from the EFA measure is limited, but variable depending on what is required under MS Nitrate Action Plans.							
EFA – Land lying fallow <b>Overall additionality: high</b>	Positive in intensive arable farmland where fallow was not present before	Some rules are not compatible: ploughing dates, application of broad spectrum herbicides, topping of vegetation	Positive if vegetation cover and mgt are appropriate	Risks where bare soil permitted	Positive if vegetation cover and mgt are appropriate	Risks where bare soil permitted and herbicide use	Positive where soil cover in place and reduces use of fertiliser for a period	Risks where bare soil permitted	Positive if soil cover in place and carbon sequestered / soil quality improved	Uncertain in other situations
EFA - landscape features, buffer strips, margins & forest edges <b>Overall additionality low</b>	Very little impact due to low uptake to date. Where there is uptake there is limited additionality from the EFA measure (e.g. cross-compliance GAEC standards, requirements under Nitrate Action Plans). Positive effects on all environmental and climate issues possible locally, but these depend on management.									
EFA - Agroforestry, SRC and afforested land <b>Overall additionality low</b>	Very little impact due to low uptake to date. Where there is uptake there is little additionality from the EFA measure Positive effects on all environmental and climate issues possible locally, but these depend on management and are highly context specific.									

payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments. p.35. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>154</sup> *Ibidem*

<sup>155</sup> *Ibidem* p.36

Similarly, as explained above, we see the implementation of descriptive statistics to the efficiency dimension of the above-mentioned regulation, which focuses in this case on the capacity of the policy to reduce administrative burdens, i.e. *"that portion of the administrative costs associated with complying with legislation which cannot be regarded as business as usual"*<sup>156</sup>. It should be recalled that Regulation No 1307/2013 was itself designed to simplify the existing legislation, so simplification had to be an integral part of its content. Consequently, the quantitative analysis tool investigated the ESQ12 issue, which was also mentioned in the previous chapter for theoretical purposes: *"To what extent has the implementation of the greening practices led to a change in administrative burden: a) at the level of the beneficiaries; b) at the level of the Member States administration; c) at the level of the Commission services?"*<sup>157</sup>. The understanding and implementation of new measures, according to the assessment made, requires on average between 3 and 9 hours per year from farmers, a private transaction cost that translates into between 36 and 217 million euros, regardless of the size of the farm. This may discourage the farmer, rather incentivising him to deviate from the expected norm. In this regard, the Court of Auditors' Special Report 21/2017, mentioned above, states that the complexity of applying the measures provided for in Regulation No 1307/2013 exceeds the expected results, and is therefore inefficient. On the other hand, as far as administrations are concerned, 90% of the additional costs resulting from greening measures are attributed to management, and in total amount to between 27 and 76 million euros per year, thus less than those paid by farmers for their farms. However, it is important to stress that this monetary value is only 0.2 - 0.65 % of the budget allocated to greening measures. Therefore, at least for administrative costs, according to these estimates, there should be no overrun in expenditure compared to the budget value. The table below summarises this section by providing precise insight into the administration's transaction costs related to the implementation of greening measures.

---

<sup>156</sup> *Ibidem* p. 43

<sup>157</sup> *Ibidem* p.43

Figure 7<sup>158</sup>

Aspects of administrative costs	In million €	% of green payment
<b>Public administration costs (EU-services)</b>	0.6	0 %
<b>Public administration costs (MS-services)</b>	27-76	0.2-0.65 %
<b>Private administrative cost</b>	36-217	0.3-1.8 %
<b>Sum</b>	63.6-293.6	0.5-2.5 %

### 3.2.2. The counterfactual

As with any evaluation to measure the existence and magnitude of the expected effect, the use of the counterfactual was employed. The counterfactual is a condition contrary to what actually happened to programme recipients. The evaluation SWD (2018) 478 reported the use of two types of counterfactual, a static one representing the baseline alternative referring to 2014 as a benchmark, and a dynamic one anticipating the scenario of 2020, according to which it is assumed that the budget allocated so far for CAP is stable for the following five years, but without establishing 30% of direct payments tied to the implementation of greening measures<sup>159</sup>.

The static counterfactual took the year 2014 as a reference point, in which, however, we already found some green measures been implemented by other regulations, thus making the exercise of isolating the effects specifically produced by Regulation No 1307/2013 complex. The static counterfactual encompasses the farming and environmental status of all 28 Member States with their management practices, the then existing and relevant legislation in this field both domestic and European, specifically referring to the cross-compliance of Agri-Environment-Climate Measure (AECM) and Good Agricultural and Environmental Condition (GAEC) standards. The analysis revealed important monitoring gaps. It was impractical to make a clear-cut distinction of the effect, not only because the presence of similar measures in the reference year - prior to the implementation of the regulation - obscured the impact of the regulation, but also because it was not possible to clearly delineate the situation of the sample of land areas that were then subject to the measures of Regulation No 1307/2013, thus preventing the definition of a true baseline for comparison.

<sup>158</sup> *Ibidem* p.44

<sup>159</sup> *Ibidem*

In contrast, the dynamic counterfactual was applied to determine whether, in the long term (2020), farming practices and the state of the environment would still converge towards a change similar to that expected from the policy implementation, but in the absence of the aforementioned green measures, while keeping the CAP budget allocation constant. The dynamic contract allowed for the interference of macroeconomic factors exogenous to the CAP, the impact of new technologies and enlarged markets on livestock and arable crop production, and any changes in land use and climate brought about by existing policies, but always in the absence of the aforementioned green measures. In this case, without the greening measures, the likely standards of the Member States taken individually were estimated to be less ambitious, in all three areas covered by the measures of soil quality, protection of permanent grassland and the provision of ecological focus areas. Moreover, referring specifically to the second measure envisaged by Regulation No 1307/2013, if a limitation to less than 5% of the reduction of the permanent grassland ratio on the total agricultural area had not been implemented, a similar contractual scenario would have admitted a progressively deleterious impact on biodiversity and carbon sequestration. Nonetheless, the Common Agricultural Policy Regional Impact (CAPRI) model<sup>160</sup>, has inferred that, as far as the permanent grassland obligation is concerned, an increase of 3.22% of permanent grassland is foreseen due to greening, as well as an increase of fallow land of 8.9% mainly due to the EFA obligation, but enhanced by all the three measures envisaged by Regulation No 1307/2013.<sup>161</sup>

### **3.2.3. Stakeholder consultations**

This section is devoted to consultations, since, as previously stated, they are an integral part of the evaluation procedures under REFIT. The focus will be precisely on what has been defined in the second chapter as the second round of consultations, based on the strategy outlined by the Interservice group, thus involving citizens, businesses, relevant stakeholders, institutions, but above all giving the opportunity to the policy targets to express a judgement on the actual functionality of the policy on the ground.

The online consultations were opened by the Commission from 15 December 2015 to March 2016, while the consultations with institutions and experts covered the whole year 2015 and lasted until April 2016, the deadline for finalising them. Expert Groups were consulted first and foremost on

---

<sup>160</sup> *The CAPRI model is a global, spatial, partial equilibrium model specifically designed to analyse CAP measures and trade policies for agricultural products.*

<sup>161</sup> European Commission. (2016). *Commission Staff Working Document - Review of greening after one year. PART 5/6*. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-218-F1-EN-MAIN-PART-5.PDF>

Direct payments in the second half of 2015, as well as the Civil Dialogue Group<sup>162</sup> in November 2015, which nonetheless started the discussion on greening too. In February the Expert Group expressed considerations on Simplification and in April 2016 the Civil Dialogue Group was summoned again<sup>163</sup>.

In addition to the groups mentioned above, those who actually participated in the consultations along the lines of the defined strategy were The Council of the EU, the Latvian Presidency and Member State national and regional authorities, Members of the European Parliament and national parliaments and through the online public consultation platform the Farmers and farmers' organisations together with Environmental and nature protection organisations. Given the heterogeneity of interests and competences of the consulted groups, it was possible to gather a view that was as inclusive as possible of multiple angles from which to observe the application of the policy and make a judgement. The questions launched in the consultations were threefold, respectively investigating the administrative burden related to the implementation of the norm; possible inconsistencies with other norms implemented in the same context; and proposals by the consulted stakeholders to further simplify the policy without harming downstream objectives.

Starting with the online consultations, which have a standard duration of 12 weeks, the Commission received 3304 comments from various social groups. The overwhelming part, i.e. about 80%, consisted of farmers, both smallholders and owners of estates over 100 ha, and specialist producers. Nevertheless, authorities from all levels of government, national, regional and local, as well as academics, entrepreneurs from the agricultural industry and environmental organisations, also participated in the digital consultations. Interestingly, the group of environmental representatives took a stance completely at odds with that of the farmers, highlighting the critical nature of the historical compromise on which CAP has been playing since 2001 with Agenda 2000<sup>164</sup>. First of all, the main trend of thought that emerges from the farmers' responses relates to economic issues - production and competitiveness - and sanctions. In fact, the implementation of the greening measures forced farmers to an inevitable trade-off, giving up the cultivation of crops on the most productive areas in order to implement the green measures foreseen by Regulation No 1307/2013. In particular, niche farmers or

---

<sup>162</sup> *The Civil Dialogue Groups led by DG AGRI have been established in 2014 to “bring in the debate the diverse expectations of the EU society regarding the important economic role that agriculture has in rural areas”, thus formed by non-governmental organizations at the European level :*

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_846](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_846)

<sup>163</sup> European Commission. (2016). *Commission Staff Working Document - Review of greening after one year*. PART 6/6. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-218-F1-EN-MAIN-PART-6.PDF>

<sup>164</sup> European Commission. (1997). *Agenda 2000 – For a stronger and wider Union*. VOL. I. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:80958a30-795a-4152-99a5-cf86f455a211.0008.01/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:80958a30-795a-4152-99a5-cf86f455a211.0008.01/DOC_1&format=PDF)

those specialised in a particular variety have been more in favour of a crop rotation measure rather than diversification, which is extremely rigid. Not surprisingly, one of the most frequent comments about the impact of the regulation on production potential was "negative" and "very negative". The European Economic and Social Committee also commented on the need to take into account external economic factors that may weigh on decontamination shoulders, such as fluctuations in market prices<sup>165</sup>.

On the sanctions level, farmers reported that difficulties in understanding the measures required as well as in implementing them in accordance with the specific requirements often penalised them, forcing them to implement them late or incorrectly. This led several times to unintentional non-compliance, with the direct consequence being a reduction in payments. The Committee of Regions also commented on this, while taking the opposite side. As a matter of fact, it does not justify breaching the rules because of complexity, and likewise argues that any simplification should not be used to weaken environmental and climate action objectives.

The same position was held by the environmental and nature protection organisations. For them, the standards set were even too low and have little potential for change. In addition, it is curious to note that, while on the one hand, in the opinion of farmers and, as will be shown shortly, of the said institutions and Member States, the requirements resulted being rigid enough to hinder the success of the policy, on the other hand, in the opinion of the environmental and nature protection organisations, the discretion and flexibility given to individual states was excessive and undermined the objective of achieving the little progress that such an unambitious standard, in their view, could make. In fact, while Member States claimed, for example, discretion over the extent of EFA, this group of stakeholders proposed to increase EFA requirements in absolute terms, extending the standard to all states equally. This opened up an important gap in the nature of the standards to be implemented that would also characterise future proposals, namely that between decentralised intervention and centralised, equally joint and choral action<sup>166</sup>.

As regards the point of view of the institutions, the Council of the EU, the Latvian Presidency and Member State national and regional authorities together with Members of the European Parliament and national parliaments have expressed their views. They adopted a common outline on the first

---

<sup>165</sup> European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>1</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

<sup>166</sup> *Ibidem*

issue expressed regarding the administrative burden and inconsistencies found in the legal framework. In fact, institutions acknowledged that, as can be seen from the evaluation, the costs far exceeded not only the effects produced, but also the expected ones. In addition, on the side of the administrations we find the difficulty of recording data and effectively monitoring the implementation of the measures on all eligible areas, on the other hand an excessive complexity in complying with overly detailed requirements on the part of the farmers – as they had already observed. However, on the third point of the issues raised by the Commission and set out during the consultations, a polarisation of proposals from the Member States emerged. Respectively, while one group proposed to acknowledge more discretion to Member States by allowing them to set measures' criteria at national level through a bottom-up approach, the remainder simply suggested making the current legal framework better fit to the needs of farmers and administrations<sup>167</sup>.

As explained above, although they are not binding, the Commission took, and still takes into account the policy assessment and consultations carried out, having the responsibility as an EU institution to produce a legislative asset that links EU policy priorities with the needs of the policy targets, as well as the contextual configuration on the ground.

### **3.3. *Ex ante* evaluation of follow-up proposals for CAP post-2020**

Following the application of the "evaluate first" principle, the implementation of a CAP post-2020 strategy has unfolded into a variety of new proposals which build on the analysis of agricultural policies previously implemented, including Regulation No 1307/2013, the subject of this study. In particular, the content of this regulation regulating direct payments to farmers on the basis of a sustainable condition has been incorporated into several initiatives, mainly of a simplifying nature.

#### **3.3.1. Policy options**

In drawing up new policy proposals, the Commission took into account both the need to aspire to more ambitious targets for climate action in the agricultural sector and the inadequacy of existing policies. However, at the same time, it was equally necessary not to burden farmers excessively, thus identifying the flaw in the direct payment system through the *ex post* evaluation and to devising a less

---

<sup>167</sup> *Ibidem*



intricate and more effective type of strategy. For this reason, the policy options presented by the Commission for *ex ante* evaluation outlined several scenarios, all of which were useful for achieving the objectives set, such as:

*“1. Varying levels of environmental and climate ambition, focusing on the potential effects of obligatory and voluntary systems of delivery;*

*2. Different ways to support farm income and in particular its distribution between different farmers, focusing on the potential effects on small and medium-sized farms.*

*3. Broader socio-economic interventions, in particular under the rural development policy, as well as cross-cutting approaches for modernisation.<sup>168</sup>”*

There were precisely four policy options to achieve these goals, one of which served as a baseline. Based on the consultations carried out on the assessment of Regulation No 1307/2013, they explored different degrees of flexibility, showing an openness towards the context-based and bottom-up approach. Nevertheless, as will be explored in this session, some common elements served as a common denominator to all alternatives i.e. in the area of competition with minimum conditionality standards, market measures, budgetary configuration and a New Delivery Model<sup>169</sup>, which placed the emphasis on the performance of states against a benchmark - rather than assessing compliance with the standard, given the previous difficulties with implementation and an overly heavy sanctions policy - and rebalancing the responsibility and shared competence for agricultural policies between Member States and the Union in favour of individual states<sup>170</sup>.

---

<sup>168</sup> European Commission. (2018). *Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.* p.7. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC_1&format=PDF)

<sup>169</sup> European Commission. (2018). Commission Staff Working Document – Impact Assessment accompanying the document : *Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.* PART 3/3. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-301-F1-EN-MAIN-PART-3.PDF>

<sup>170</sup> European Commission. (2018). *Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.* p.7. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC_1&format=PDF)

In first place, Commission supported the maintenance of the conditionality system in all the options proposed. Nonetheless, further requirements have been formulated in addition to the standard envisaged by the Regulation No 1307/2013. However, the increase in requirements was designed as a solution to the systemic flaws that occurred under the previous CAP regime. These requirements aimed primarily at strengthening carbon sequestration by maintaining the share of permanent grassland share in agricultural areas at regional and state level without ploughing them specifically referred to Natura 2000 areas<sup>171</sup>. Second, biodiversity has been converted from an objective to a conditioning measure itself, imposing 3% of the Utilised Agricultural Area (UAA) dedicated to non-productive areas, considered more effective than the district of 5% of the protected agricultural area as an ecological focus. area. In addition, thanks to the valuable observations of the peasants, the measures about the safeguard of soil have been adjusted by rotation diversification, so as not to harm the farmers' choice of production rights. Finally, the idea of extending a nutrient management plan using improved water quality was expected to be applied to all agricultural areas. As regards the exemptions from the programme, the previous policy system identified cases where the application of the rule could be defined as exempted, while the options outlined by the Commission no longer had this possibility. This is because Member States have been granted the discretion to elaborate intervention logics to incentivize farmers to go beyond the measures envisaged by the new proposals on a voluntary basis, studying the right incentives to re-enter eco-schemes.

In the case of market-related measures, the proposed options envisage a stronger contractual position of the farmers, who have been granted the right to ask for a written contract, except in the case of a small and medium-sized enterprise. What slightly differentiates the various options scrutinised is the extent at which the establishment of producer organizations is encourage to the scope of a fairer competition.

Equally common and indispensable to include in policy options is the budgetary framework. In fact, the options have all the MS envelopes at the end of the current financial year, impacted by Brexit, which would have resulted in an 8.9% reduction in the budget allocated to the CAP. Furthermore, a part of the budget would have been transferred - as required by all policy alternatives - from the regulatory mechanisms of direct payments to those aimed at risk management<sup>172</sup>.

---

<sup>171</sup> “Natura 2000 is a network of core breeding and resting sites for rare and threatened species, and some rare natural habitat types which are protected in their own right.”:

[https://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](https://ec.europa.eu/environment/nature/natura2000/index_en.htm)

<sup>172</sup> European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and*

Regarding the New Delivery Model, as previously explained, the states would acquire more subsidiarity power. The previous delivery regime centralized the prescriptive requirements at European level and then applied strict controls and penalties to farmers, without dealing with the difficulties in applying them. The new proposals did provide for an active participation of the Union by establishing minimum requirements, while nonetheless charging the Member States with greater responsibility towards the objectives set, regarding the development of powerful voluntary eco-schemes. The aim was to adopt a tailored approach so that the policy could better suit the multitude of contexts in which it will be adopted<sup>173</sup>.

Exploring the policy options more specifically with the purpose of differentiating them in terms of content, it is advisable to start with the first one named after Option 1, defined as "updated baseline" as it represents the idea of not implementing new measures, thus adjusting the baseline used previously at the time of policy proposal in 2013. What is obtained is a current market environment in which the previous provisions are implemented and continue to be so for the following decade, thus dictating a long-term policy option where no action is expected, studying the critical issues.

The second option named after Option 3 revolved around the balance between environmental ambition and environmental sustainability. As we know, all the options, with the exception of the first baseline, included the implementation of minimum requirements and voluntary eco-schemes, all supported by a visibly reduced budget due to Brexit. In this regard, the second option was divided into two sub-options aimed at deepening both the dimensions involved in the trade-off, namely the climate action on the one hand, and the business on the other.

According to the first sub-option 3a which prioritised climate action to economic support, while the range of farm practices was widened through Agro Environment, Climate and Health measures (AECH), the support to farmers would have been reduced and guaranteed as a MS flat rate capped at 100 000 EUR per farm, balanced indeed by incentives to attract new farmers which could be hampered by this reduction, potentially translated into market entry barriers. The 10% of the flat-rate

---

*financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council. PART 3/3. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-301-F1-EN-MAIN-PART-3.PDF>*

<sup>173</sup> European Commission. (2018). *Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75cd71a1.0003.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75cd71a1.0003.02/DOC_1&format=PDF)*

would have been available for the adoption of risk management tools. According to the Commission, this could have given farmers a greater incentive to choose to implement the envisaged measures, also conferring more safety safeguards through the shift of a part of the budget towards risk management purposes.

In the second sub-option 3b, the priority was income support, to the detriment of a more contained climate action, it is no coincidence that a higher support was available than the previous option - therefore without further reductions since the previous normative regime - which however was expected to occur in decoupled form. Therefore, part of it translated into a redistributive payment sub-phrase for small and medium-sized farms that extends between 2 and 30 hectares, for a value of 80 euros per hectare. However, both through income support and direct payment redistribution, there was a maximum ceiling of 100,000 euros - with salary correction - in absolute value. The support in the form of a risk management tool was higher than the previous measures, but lower than the sub-option profiled earlier. In addition, to foster employment and growth in rural areas where most of the farms are located, this sub-alternative provided support for farmers through the installation of grants to enhance basic services and infrastructure provisions.

The second option named after Option 4, on the other hand, sought a compromise between economic sustainability and environmental objectives, without tipping the scales towards one of the two weights in particular. This option provided a large margin of discretion to Member States which had to be used to determine in which areas of the territory a more ambitious conditionality could have been applied by adding other mandatory requirements to the basic ones established by the Union, and in which areas the territory required a more voluntary approach. In this way, the principle of conditionality profiled in Regulation No 1307/2013 was maintained but adapted to the specificities of the local contexts of Member States, thus making use of a wider margin of action and decision. For those farmers willing to implement measures beyond the required standard, it would have been possible to request - and obtain - support, in the form of Agro Environment, Climate schemes, investments, training, advice etc. This option integrated the need to aspire to considerable climate objectives with that of supporting farmers in their business, without compromising the role they have in the market. As regards direct payments, diversification was adopted using the category of land with respect to the size i.e. arable land, permanent grass land, permanent crops, unlike the first sub-option. Nonetheless, the minimum standard of payment to all farmers is established at 100.000 euros with salaries correction. Sub-options have been introduced in this case too by slightly diversifying on degree of flexibility left to Member States to act. Therefore, sub-option 4a re-proposed the conditional

system, progressively disqualifying voluntary schemes, whereas sub-option 4b left aside ambitious conditionality and increase Member States potential scope to act.

The third policy option, named after Option 5, was more specific than the others about the chosen target. Please note that policy options are not mutually exclusive, rather they are designed to test different strategies and tools. Therefore, the aforementioned option could, being first evaluated, in any case be adopted jointly with another one. In this case, the focus was on small farmers and those in need in areas with natural constraints, who presented the preponderant reality in many regions. On this premise, a shift of direct support from large to small was envisaged with a maximum of 60,000 euros guaranteed per farm. As for the support to the rest of the farms, it would have aimed only at voluntary eco-schemes. Therefore, the principle of conditionality would have lapsed for large farmers, therefore obliged to implement the basic rules aimed at climate action, but without any support, except for the efforts that overstep the required standard. By concentrating the support towards small farmers it would have been possible to foster fair competition and provide for the existing imbalance in the value chain, giving the possibility to those agricultural authors who normally lack skills and resources, to be able to build strong environmental knowledge (and awareness) that allows to pragmatize climatic action<sup>174</sup>.

### **3.3.2. Evaluation**

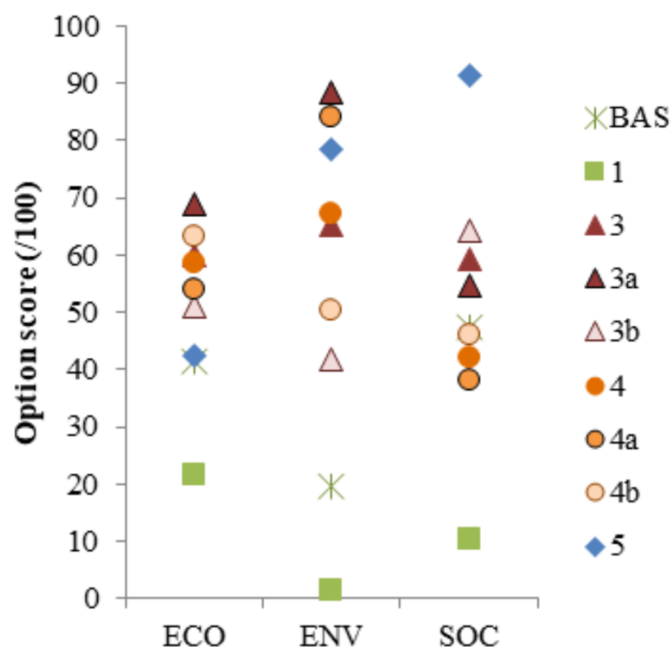
In this phase, the various options are assessed by applying quantitative, where possible, and qualitative analysis tools. Policy alternatives are therefore judged on the basis of the value associated with them in terms of effectiveness, efficiency, modernization, coherence and sustainability.

Starting from the effectiveness, Figure 8 presents a comparison between the type of approach and tools envisaged by the options and sub-options with the expected economic, environmental and social objectives. On the abscissa axis, the subdivision of the goals is envisaged, while on the ordinate axis the scale of the option score in ascending order is provided. The option score finalizes the impact assessment by translating and condensing the results obtained into a single value, thus allowing the comparison.

---

<sup>174</sup> *Ibidem*

Figure 8<sup>175</sup>



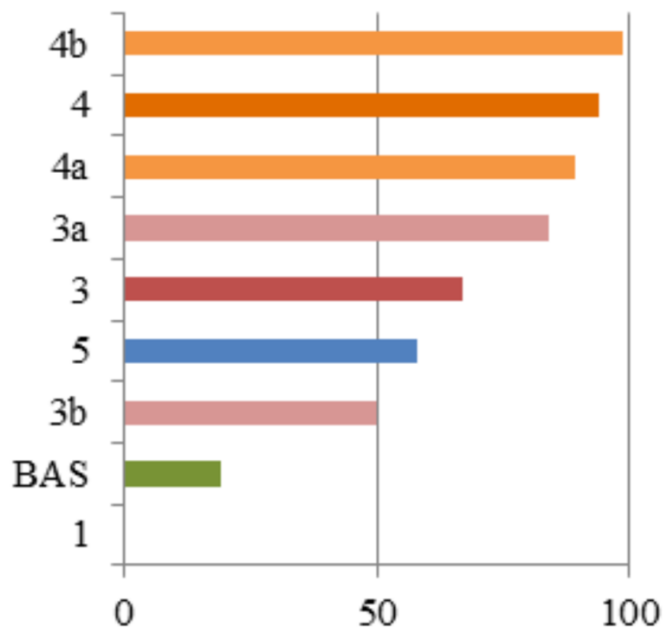
By looking at the graph, it is possible to note that as regards the environmental impact, sub-option 3a had a more effective performance than the others. This is due, as previously reported, to a preponderant focus on environmental practices combined with voluntary eco-schemes, as well as greater potential for manoeuvring around risk management tools, for which farmers obtain incentives. Equally relevant with regard to the environmental dimension is Option 4a which carried forward the idea of conditionality, improving its logic and potential effects. Both sub-options have therefore outperformed counterparties b, which performed better in the economic dimension, albeit less and less than the first sub-option in the case of Option 3a and 3b - as Option 3a was also associated with a fast structural change and productivity catalyst. The choice to elaborate sub-options for Options 3 and 4 was dictated by the idea of wanting to give greater subsidiarity to the states, and therefore the distance between *a* and *b* in the different policy objectives effectively depends on the ambition of the member states regarding the objectives themselves. Option 5, on the other hand, displayed a good average performance on all policy objectives, excellent for the environment and social issues and

<sup>175</sup> European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.* PART 3/3. p.41. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-301-F1-EN-MAIN-PART-3.PDF>

average for the economic impact. The social impact of this option was outstanding compared to the other options, precisely because it aimed at correcting a social gap by re-inserting disadvantaged agricultural actors in the value chain and supporting them in this.

In second place, the evaluation of efficiency was provided, thus contributing to policy simplification projects. Within the greater discretion given to Member States, the effectiveness of the policy was conveyed by the New Delivery Model. Therefore, the options are analysed and compared on the basis of their potential to incentivise performance in local and regional contexts. As can be seen from Figure 9, Option 4b and 4a performed better than the others, given the conditionality factor. On the abscissa axis, the inverted histogram shows the Option score relating to the efficiency, while on the ordinate axis the measures are ordered according to the performance in this section, showing the highest on the top. On the other hand, Options 3b and 5, one too focused on economic sustainability and the other excessively prescriptive.

Figure 9<sup>176</sup>



<sup>176</sup> *Ibidem* p.63

In addition, in the section dedicated to the evaluation of the options in terms of efficiency, the administrative burdens are considered. According to the assessment, much of the complexity of the regulations stems from the delivery factor and ambitious environmental standards. Once again, Options 3b and 5 were located last, since being more complex, as illustrated in the graph above, they also had higher administrative burdens than the other options. For example, although it included conditionality, Option 4b balances this policy element with a variety of tools such as basic payments and Voluntary Coupled Support<sup>177</sup>, ensuring that the policy does not involve an excessive burden. Similarly, Option 3a, which admitted flat rates and eco-schemes, ranked high in terms of efficiency. Nonetheless, in the case of Option 5, this was balanced out by the high Option Score in effectiveness, which means that despite costs and burden were relevant, the associated high degree of performance could have justified its implementation. Analogously it works for Option 3a, to which low administrative burden was indeed associated with low performative score. While comparing policy options, the Commission was aimed at finding the best strategy which combines the maximum attainable result with the least cost. Figure 10 and Figure 11 below respectively show the potential for administrative burden reduction for national administrations per option and for single beneficiary per option. On the x-axis the reduction percentage can be found, while on the y-axis the options are represented.

Figure 10<sup>178</sup>

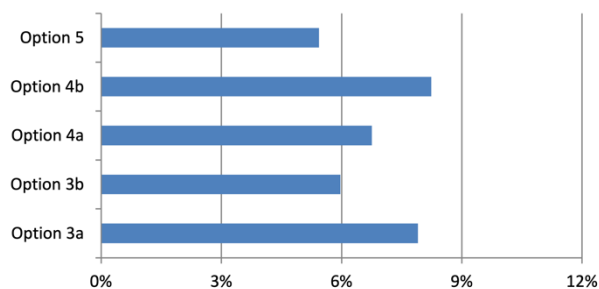
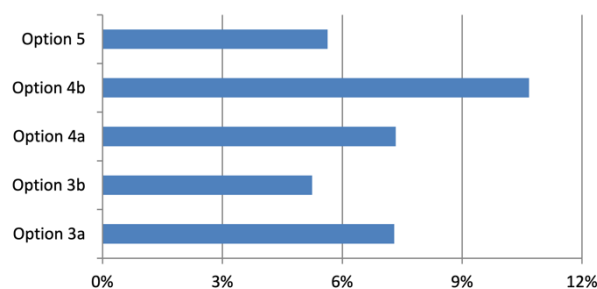


Figure 11<sup>179</sup>



<sup>177</sup> It is an EU scheme of support designed to avoid distortion in competition: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/additional-optional-schemes/voluntary-coupled-support\\_en#vcsexplained](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/additional-optional-schemes/voluntary-coupled-support_en#vcsexplained)

<sup>178</sup> European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council. PART 3/3.*

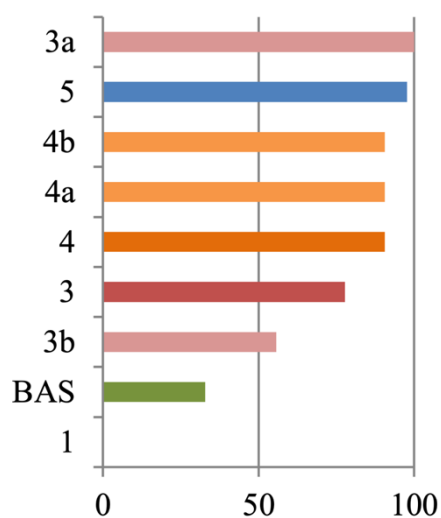
p. 139 <https://ec.europa.eu/transparency/regdoc/rep/1/2018/IT/COM-2018-392-F1-IT-MAIN-PART-1.PDF>

<sup>179</sup> *Ibidem* p.139



The third dimension of evaluation applied to policies is their contribution regarding the promotion of knowledge and innovation in agriculture and rural areas, recognized under the umbrella-term of modernization. Among the different points covered in this section, the ability to strengthen the advisory services that Agricultural Knowledge and Innovation Systems<sup>180</sup> could provide to farmers are outstanding. It is recalled that one of the main problems that emerged in the application of the measures under Regulation No 1307/2013 was precisely the inability to understand the rules, and therefore also to apply them. For this reason, it is good that such a service is guaranteed solidly and continuously. Although the Member States must have a Farm Advisory System, it is not ready to help farmers, they show insufficient knowledge. Options 3a, 4 and 5 allocated the same budget level for this, which logically corresponded to a more ambitious level of environmental standards. In fact, their performance regarding modernization dominated the others, as can be seen from Figure 12. On the abscissa axis, the inverted histogram shows the Option score related to the modernization, while on the ordinate axis the measures are ordered according to the performance in this section, showing the highest on the top.

Figure 12<sup>181</sup>



<sup>180</sup> “The term Agricultural Knowledge and Innovation Systems (AKIS) is used to describe the whole knowledge exchange system: the ways people and organisations interact within a country or a region” :

<https://ec.europa.eu/eip/agriculture/en/publications/eip-agri-brochure-agricultural-knowledge-and>

<sup>181</sup> European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.* PART 3/3. P.65 .Available at:

<https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-301-F1-EN-MAIN-PART-3.PDF>

The last point of comparison of the policies is the consistency with the priorities of the Union, with the legislation, and the existing obligations of the Union on the international front i.e. fair trade and inclusion of Least developed Countries, Development cooperation, and minimization of market distortions. The policies proposed as options by the Commission did not in any way undermine the fair and balanced code of competitiveness towards which the EU is committed still today. In fact, the direct income support formula took place in the form of public investment made in favour of farmers, so as to alienate the trade distorting approach. In addition, the support, as pointed out above in the explanation of the political options, was decoupled, and therefore, not directly linked to the production phase, making it the producer to be supported, not the production. Particularly valid for Option 4 is the principle of conditionality, borrowed from the previous regime, which would further amortize the effects, if not the very idea of distortion. Curiously, the Commission questioned the introduction of eco-schemes as possibly hampering by the WTO's Green Box criteria, which would have limited support only to extra costs. However, the Commission pointed out that the effect of eco-schemes was to achieve ambitious environmental objectives that can affect the production of farmers, especially those of small businesses, as shown in Option 5<sup>182</sup>.

### 3.3.3. Stakeholder consultations

The consultation phase that characterised the finalisation of the proposals by the Commission resulted in the COM(2017) 713 final on "The future of Food and farming". This communication brings together online consultations, the Civil Dialogue Groups, the European Economic and Social Committee, the Committee of the Regions, national parliaments and Expert Groups<sup>183</sup>. Thus, the same bodies already consulted in the *ex post* evaluation phase of Regulation No 1307/2013 were called to express their observations in the *ex ante* phase. The time frame in which they were carried out almost matches the consultations held in the analysis of the existing legislation. No staggered procedure was followed, rather an overlap of public and institutional consultations was held. This allows the Commission to always have a complete picture of the multiplicity of stakeholder perspectives. In July 2017, when time for consultations expired, the Commission integrated information gathered in this phase with the impact assessment of policy options. On these grounds, the Communication on "The Future of Food and Farming" was built and presented to the European Parliament, the Council and the European Court of Auditors. A year after the consultations on the existing legislation, the pivotal

---

<sup>182</sup> *Ibidem*

<sup>183</sup> European Commission. (2017). *The Future of Food and farming*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0713&from=EN>

question launched for both online audiences and institutions was again about the performance of the rule and possible proposals and views about the design of future CAP policies<sup>184</sup>. The purpose of tracing the questions already brought to the test bench was to verify their persistence and topicality, thus trying to identify the policy option that best fit in the real-life scenario reported by the consulted subjects. It is interesting to note how the contrasting themes already emerged in the *ex post* evaluation phase literally managed to dominate the *ex ante* consultations, creating a real debate. In a particular way, even more salience was given to the issue of renationalization.

Regarding the online consultations held from February 2, to May 2, 2017, the Commission received 58520 responses, of which 36.5% farmers, 15.8% organizations, public or private authorities and academics. The remaining 47% circumscribed other citizens. About the performance of current legislation, people expressed the need to create a common access platform where they can exchange information about their experience implementing green standards, so they can learn from each other about best practices<sup>185</sup>. This could alleviate the difficulties of implementation. In terms of the environmental potential of the current action, 85% of people said that taking climate action at the European level is more effective. Nonetheless, while non-farmers respondents supported the idea to deliver more policy benefits for environment and climate change, only 64% of farmers did<sup>186</sup>. The legal basis to which these standards refer, for both the agricultural and environmental policy arena, is a shared competence between the EU and member states. However, as it has been already underlined, the Union has had a preponderant weight in the management of this policy, thus encroaching on the margin of flexibility that belongs to the Member States. People remained divided on the renationalization front because, although most of them recognize the resonance that a policy at the EU level can give, on the other hand there is the awareness that the heterogeneity of agricultural contexts requires a more tailored approach. More precisely, the sides identify the economic

---

<sup>184</sup> European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposals for a - Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council - Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 - Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands. PART 2/3. Available at: <http://www.euroconsulting.be/wp-content/uploads/2018/06/IMPACT-ASSESSMENT-2-3-proposte-regolamenti.pdf>*

<sup>185</sup> *Ibidem*

<sup>186</sup> European Commission. (2017). *The Future of Food and farming*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0713&from=EN>

stakeholders, who oppose renationalization fearing for the safety of the single market, and the non-economic stakeholders according to whom the programs should look to the true interest of the public, thus siding with pro-renationalization. Environmental organizations on this front emphasize the need for climate action at the European level. They agreed on shifting the focus from compliance to performance, while being sceptical about the potential for effectiveness in environmental impact that more flexibility can have<sup>187</sup>.

The institutions consulted, the European Economic and Social Committee, the Committee of the Regions and the Civil Dialogue Group, respectively placed the emphasis on the trade-off between sustainability and economic development. The first authority reconfirmed its previously expressed position that farmers must be supported directly, be it in case of implementing a basic standard of measures or a voluntary eco-scheme. In this regard, it stressed the need to revise the green measures by making them more accessible. Rather, the Committee of the Regions preferred a more environmentalist perspective, nevertheless acknowledging the importance of framing standards against a market background. It therefore renewed its encouragement to do more on this front. In particular, it marked the need to redevelop rural areas in order to attract more workforce to the primary sector and pursue social economic sustainability in these areas. The Civil Dialogue Groupe found itself in between these two positions, for being concerned with both economic, social and environmental aspects of CAP. Therefore, it recognised the rationale of perceiving CAP more as a compromise advancing win-win results rather than weighing more one aspect than the other. The main remark was indeed the level-playing field. According to the observations presented by the Civil Dialogue Group, to accomplish sustainable goals while support agriculture economy, CAP management needs to take place at the EU level.

In the end, the Expert Group was perplexed about a horizontal standard for implementing green measures. The latter in force in the current regime was unable to take into account the weaknesses

---

<sup>187</sup> European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document* : Proposals for a - Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council - Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 - Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands. PART 2/3. Available at: <http://www.euroconsulting.be/wp-content/uploads/2018/06/IMPACT-ASSESSMENT-2-3-proposte-regolamenti.pdf>

peculiar to the multiplicity of European farming systems. Therefore, the experts reject the hypothesis of leaving the one-size-fits-all approach unscathed.

These same observations just described were summarized and added to the analysis conducted on policy alternatives in COM(2017) 713 final<sup>188</sup>. The position of the European Parliament and The European Court of Auditors on this issue matches. Although having recognised the excessive rigidity of norms in the consultation phase held in the *ex post* evaluation of Regulation No 1307/2013, the Parliament stated that the way in which action is implemented under the CAP to combat climate change must not lose uniformity. Therefore, among policy options developed with a view to a new delivery model by recognizing different degrees of flexibility of action to member states, preference will be given to proposals less prone to decentralization of intervention. As far as the Council is concerned, on the other hand, the position shared by the ministers to draw up a New Delivery Model that matches the local needs of farming systems in the EU, avoiding the imposition of an excessive burden for farmers to implement green measures. Thus, Ministers agreed on increasing the level of subsidiarity envisaged for Member States in the current regime<sup>189</sup>.

### 3.3.4. Commission Proposal

As can be evinced in the preceding pages in this same chapter, the application of an evaluation mechanism such as REFIT has greatly lengthened the preparation of new bills. In fact, the *ex post* evaluation of existing legislation began in 2015 and ended in 2016. In the same year the Commission elaborated, on the basis of the results obtained, a range of policy options to be proposed, capable of simplifying the intervention provided by Regulation No 1307/2013 that is the subject of this study, and others in related areas. The latter would undergo an impact assessment ending with the Commission Communication number 713 of 2017 on "The future of Food and farming". In 2018, the policy cycle was closed. *Ex post* evaluation was officially published with Staff Working Document number 478 and the legislative proposal by the Commission to define the CAP for the period 2021-2027 was made. The proposal revolved around a package of three reforms, which focused respectively on: direct payments, targeted interventions and rural development included in a pivotal Regulation on Capacity Strategic Plans; the management of the CAP including the activity of financing and monitoring of the progress made in what would be called Horizontal Regulation; more

---

<sup>188</sup> European Commission. (2017). *The Future of Food and farming*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0713&from=EN>

<sup>189</sup> Council of the European Union. (2018). Outcome of the Council meeting – 3593<sup>rd</sup> Council meeting. Agriculture and Fisheries. *Press*. Available at: <https://www.consilium.europa.eu/media/32564/st05710-en18.pdf>

technical and direct changes regarding the quality criteria of agricultural products included in a final regulation renamed as Regulation on Common Market Organization (CMO) of agricultural products.<sup>190</sup> Net of the debate on renationalisation, which softly began in the consultation phase during the *a posteriori* evaluation and was exacerbated in the *a priori* evaluation, the Commission's official proposals promote more flexibility of action for the Member States. As follows, a bottom-up approach is foreseen, according to which the states are called upon to develop the best plan of action considering the specific characteristics of the territory, in order to realise the objectives. This means not only enforcing the basic environment and climate requirements at European level, but also elaborating successful national mandatory eco-schemes, whose application rests on the configuration of the local context. Therefore, Member States will enforce them where they see fit, for which farmers will receive financial support. Thus, differently for what was envisaged by all of the policy options, eco-schemes will not follow voluntary application by farmers, rather established by national governments. Member States will also have the discretion to allocate the budget to the green practices they deem most productive in their territory. However, in order to empirically verify the added value of eco-schemes, they will be introduced as pilots for the first two years. These are the arrangements that fall under the name New Delivery Model.

For the time being, that is, in the year 2021, these proposals communicated by the Commission in 2018 have not yet been approved. The Council and the European Parliament are still negotiating, while the Council ministers only reached a common agreement last October, in the year 2020. For this reason, the adoption of the CAP post-2020 reform package has been rescheduled for 2023<sup>191</sup>. Until the new measures mentioned above come into force, the CAP regime is governed by Regulation (EU) 2020/2220, which establishes a transitional regulatory framework that can gradually introduce farmers to the *modus operandi* outlined in the reform package. To begin with, Member States will be

---

<sup>190</sup> Council of the European Union. (2018). *Post-2020 CAP reform package a) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council b) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 c) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands - Presidency progress report*. Available at: <https://data.consilium.europa.eu/doc/document/ST-15027-2018-INIT/en/pdf>

<sup>191</sup> Council of the European Union. (2020). "Council agrees its position on the next EU common agricultural policy". Press release. Available at: <https://europa.eu/!JW48wQ>



required to commit to rural development programs and deliver on agri-environment-climate, organic farming and animal welfare in a shorter time frame than under the previous regime. Secondly, new operational programs and aid-schemes have been elaborated for this two-year period, prior to the adoption of the new measures. Finally, if on the side of climate action the first tightening can be glimpsed, from the economic point of view the threshold on the basis of which Member States can support farmers affected by a drop in their average annual production or income has become more inclusive. The budget foreseen for these transitional measures will be drawn from the 2021-2027 CAP plan and the European Union Recovery Instrument (EURI) introduced by Council Regulation (EU) 2020/2094. The latter was elaborated and produced in the context of the multidimensional crisis generated by the COVID-19 pandemic. The EURI is aimed at supporting the economic recovery of the European Union by financing measures to counter the economic crisis left by the coronavirus. For this reason, it was decided that, by combining the period of transition between the previous CAP regime and the new one with a period of amortization of the effects of the pandemic, part of the EURI should be dedicated to healing the agricultural sector, which was also affected by the crisis<sup>192</sup>.

---

<sup>192</sup> European Union. (2020). Council. *Regulation (EU) 2020/2220 of the European Parliament and of the Council of 23 December 2020 laying down certain transitional provisions for support from the European Agricultural Fund for Rural Development (EAFRD) and from the European Agricultural Guarantee Fund (EAGF) in the years 2021 and 2022 and amending Regulations (EU) No 1305/2013, (EU) No 1306/2013 and (EU) No 1307/2013 as regards resources and application in the years 2021 and 2022 and Regulation (EU) No 1308/2013 as regards resources and the distribution of such support in respect of the years 2021 and 2022. Official Journal of the European Union, 1 ,2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2220&from=EN>*

## Conclusion

The integration process of the European Union has gone hand in hand with a progressive expansion of its legislative competence, which, to the detriment of the production of *ex novo* national policies, makes the European Commission the "first instance" public decision-maker on a very wide spectrum of policy areas. This has inevitably led to the responsibility attached to the decision-making process of producing European legislation that passes the "stress test" of public policy analysis and evaluation mechanisms, as EU legislation delivers the expected benefits to citizens, businesses and societies, while cutting red tape and reducing costs. This was a necessary step for the Union, since the European Commission has gradually developed what Professors Antonio La Spina and Efisio Gonario Espa have called a regulatory "bulimia"<sup>193</sup>.

The evaluation model proposed in the very first Action plan of 2002 was the prerogative of a single central actor, the European Commission, piloting and coordinating the multiplicity of actors involved. As a matter of fact, the Action plan did not foresee any kind of "self-organisation" by the Member States, rather enforcing the linear model of expertise according to which "science compels action"<sup>194</sup>. Consultations were included to safeguard the legitimacy of the authority in charge of conducting the evaluation by virtue of transparency, and at the same time a coordinating function, to harmonise the diversity of the individual states, by virtue of the quality of the legislation. The question of the legitimacy of the Commission mandate, both as policy initiator and evaluator, being an unelected body, found fertile ground in various circumstances, feeding the thinking of the so-called "Eurosceptics", who did not accept the idea of a supranational authority under any conditions. Eurosceptic sentiment grew together with the perception that the Union had monopolised decision-making, imposing an excessive burden of obligations on the population of the Member States. What people were looking for was a consultative space to align the Commission's policy analysis with the direct experience of stakeholders, whose input could enrich the evaluation process and thus the elaboration of new policies as well. Integrating a consultation phase implies a considered choice of stakeholders to be involved and a clear structure of guidelines for presenting their views, while respecting the principles of accountability, pluralism and integrity. Among the parties consulted, the Commission has always recognised the importance of legislature's commitment in this project, thus the European Parliament, together with the European Council, were involved in an interinstitutional agreement on the eve of the implementation of the Action Plan. In 2005, following the request of the

---

<sup>193</sup> Espa, E. & La Spina A. (2011). *Analisi e Valutazione delle politiche pubbliche*. Il Mulino. Bologna.

<sup>194</sup> Beck, S. (2011). Moving beyond the linear model of expertise? IPCC and the test of adaptation. *Regional Environmental Change*, 11(2), 297-306.



European Parliament and the European Council to further improve the policy evaluation mechanism, Communication 97 officially introduced the Better Regulation for Growth and Jobs agenda, building on the previous initiative. However, the Action plan was imprecise in its formulation and application, thus providing uncertain guidelines and consequently increasing transaction and administrative costs. The Commission valued the judgement of the consulted bodies, identifying gaps in the system and making improvements where they had been identified by the European Parliament and the Council. The 2005 programme aimed at improving and extending the use of impact assessment for new proposals, focusing in particular on methodologies for measuring administrative costs. In addition, pending legislative proposals were scheduled to be screened and possibly withdrawn (in September 2005 the Commission withdrew 68). The Commission's focus was to adopt a “positive regulation” approach, i.e. to think in terms of the public interest, to regulate and coordinate effectively with Member States so that they can benefit from EU policies, rather than be harmed by them. This has charged the evaluation process with the virtue of mutual accommodation, due to consultation procedures, and precision, due to the commitment to empirical and conceptual demonstration of the functionality of the policy choices proposed by the Commission. In 2012, with Communication 543 launching the REFIT, the Commission reconfirmed the commitment made and recognised in the Lisbon Treaty to create participatory democracy. Consequently, it promotes the consultation process with stakeholders, giving citizens the opportunity to be directly involved and heard, and extending the duration of the consultations themselves. Moreover, the Parliament adopted the Directorate for impact assessment and European added value. This body was not thought to undermine the central authority of the Commission in the evaluation process, rather to complement and balance the Commission's technical capabilities, where the Parliament itself considered it appropriate to make changes to the Commission's proposals<sup>195</sup>.

As regards the methodological aspect, the evaluation, especially retrospective evaluation, has made it possible to monitor the implementation of EU legislation by the Member States. For instance, the first ABRplus report demonstrated that Member States do not always homogeneously implement the measures first issued at the European level - either due to a lack of legislative basis by the Member State itself or due to inadequate implementation of administrative burden reduction measures - and are sometimes quite reluctant to provide data for monitoring to be made i.e. the then Member State UK, while implementing the micro-accounting exemptions, suffered from an exorbitant loss of information. This is no longer surprising given the assessment analysed in Chapter III of the case study on evaluation of Regulation No 1307/2013, where insufficient implementation of the EFAs was

---

<sup>195</sup> *Ibidem*

identified, which consequently undermined their relevance to the objectives set and leaving the Commission with no data to be gathered at all. Member States were also given the possibility to apply additional conditions to improve the relevance of the standards: the vast majority ignored this possibility, thus implementing the measures at the minimum required level and neglecting their commitment to climate action. A great deal of flexibility of action has been left to the states, which has not been adequately used, with the exception of Spain, Germany and Austria. From the outset, it became clear that states have a shared responsibility to ensure the success of policies. More attention was to be paid to the implementation and transposition phase of evaluation measures, without neglecting the development of technique and methodology. As mentioned above, the impact assessment of European policies is carried out in a formal and hierarchical configuration by a single body that transmits the finished product of the analysis in a pyramidal fashion to lower levels of government. This is due to the fact that the European Commission centralises information and methodology, standardising evaluation practice for all Member States, thus making possible the comparison of results on the basis of universally valid indicators and schemes. This should also avoid data dispersion, as it happened in the instances previously mentioned. In addition, this is done much more quickly than in the case of decentralised evaluation, and therefore also speeds up the decision-making process itself, which is based on this postulate.

In this regard, it is interesting Alemanno's question which has been investigated in Chapter II: "Quis Custodiet Custodes?" i.e. while the European Commission supervises the work of the Union in drafting legislation, who supervises the supervisor? The answer was given in 2006 with the establishment of the Impact Assessment Board. The IAB does not call into question the formal, centralised structure of the assessment itself, as it delivers opinions, but these enrich the assessment made by the Commission and give the system a democratic element, since if the Commission decides to proceed without the IAB's green light, it has to deliver explanations publicly. IAB was then replaced by the Regulatory Scrutiny Board - in charge of providing the Commission with a non-binding assessment of new initiatives and existing legislation, checking whether they have met the requirements set out in the Better Evaluation Agenda, aligned with the REFIT Platform. It is not a given that the RSB pronounces positive sentences; in fact, in 2016, 42% of the Board's first opinions were negative, thus forcing a reformulation. In addition, the Commission is required to respond to the suggestions of the REFIT Platform, as set out in the Better Regulation Communication. The response should indicate whether certain forms of action can be considered appropriate or not and what kind of action is envisaged, as well as the timeframe in which the action proposed by the Platform should take place.

Public dissemination of the material produced on the evaluation of the interventions is essential to ensure that stakeholders have continuous access to the Commission's work to improve legislation that affects them. Stakeholder involvement thus fulfils four fundamental principles established by the REFIT, namely: participation, by espousing the inclusion of more authorities with a legitimate interest; openness and accountability, since, as just explained, the Commission works in the public interest and therefore in a transparent manner, to be held accountable for its actions; effectiveness, which in this case envisages the involvement of stakeholders at specific but necessary moments of the assessment where they can make a difference; and coherence, according to which the interference of stakeholders must be able to produce as coherent and homogeneous observations as possible, compatible with the objectives set by the intervention under consideration. Citizens are involved by the Commission through a system of true participatory and direct democracy, since, once the initial impact assessment is published, every European citizen has an equal say and is actually heard – since REFIT Programme. This system restores the binary communication between the authority and the people, which, in the case of the European Commission, is inherently null and void, since it is an unelected body. It therefore makes the Commission accountable by the very people to whom the proposals the Commission makes are addressed. Precisely because there is an overlapping of competences by this body, it is necessary to analyse the functionality of the evaluation system in place, and to include the variable of accountability in the computation. Accountability in the sense of detachment from political representation is inherent in the philosophy of New Public Management, which in the 1990s overturned the *modus operandi* of public authorities by applying new procedural codes. Among the new priorities introduced into the public agenda, of crucial importance was the need to verify the effectiveness of public performance, focusing on delivering optimal results on time. Similarly, facing the raise of populist and Eurosceptic sentiments in 2008, the pressure for efficient legislative work generated the idea of applying evaluation policies to EU law, which would be “the key to accountability and learning”. The European Commission, while maintaining the centralisation of the prerogative of policy analysis, has over time sought to free itself from the formal rigidity of the hierarchical system, integrating some elements of polycentrism. Indeed, it has always been important for the Commission to involve other actors at an advisory level. This favours an opening towards a progressive democratisation of the project, without losing the decision-making prerogative of the main body. The alternative proposed by the Academia would be to implement a polycentric type system, subject to fragmentation of governance and management of the process of evaluation.

In the case of the European Union, this would result in a dispersal of proactive evaluation responsibility to all Member States. Given that evaluation is decentralised, important suspicions would arise as to the extent to which evaluation is done for learning and problem-solving-dynamic

purposes or is politically instrumentalised to advance and defend national interests. Moreover, as was stated by the Commission in Evaluation 1153 Final/2 of the pre-2013 CAP reforms, leaving the responsibility for monitoring the implementation of the rules *in itinere* to states may produce modelled data, thus seriously undermining evaluation as a whole, as it has been already mentioned. For these reasons, REFIT represents the pinnacle of evaluation systems adopted so far in the European context, as it corrects the shortcomings of formal and hierarchical evaluation, integrating elements of polycentrism without decentralising evaluation and making it dysfunctional. Given that, contrary to the scientific literature on policy evaluation, there is no independent relationship between the evaluator and the commissioner as the two entities coincide, the solution is to give legitimacy to the Commission, reinforcing its accountability to the citizens and stakeholders on whom the legal implications spill over. The Commission has the effective incentive to carry out its task as evaluator properly given the permanent public exposure and, precisely because it is not an elected body, public acceptance of the prerogatives it has and the work it does is valuable. The Commission is accountable to those affected by the legislation it proposes and evaluates. With this in mind, while transparency is important, inclusiveness and direct participation are *condictio sine qua non* for action.

Thanks to this direct involvement, Member States were able to shape the Commission's proposals for the new post-2020 CAP programme around a new paradigm, namely the New Delivery Model. The latter placed the emphasis on the performance of states against a benchmark - rather than assessing compliance, given previous implementation difficulties and an overly heavy sanctions policy - and rebalanced the responsibility and shared competence for agricultural policies between Member States and the Union in favour of individual states. This proves that the Commission is at the apex of the policy evaluation process, and that it is necessary to go through the consultation phase in order to have direct feedback on the reality in which the rule is applied. In this case, the EU has recognised the functionality of giving more room for manoeuvre to states on a shared area of competence. Meanwhile, the evaluation remains centralised because it harmonises the efforts of individual states by channeling them towards shared goals and objectives, creating a massive and integrated output, while taking into account the differences that local contexts present and adjusting policies accordingly. Thus, this also proves that the system has not been structured to provide the Commission with monopoly of action in the policy evaluation field, since it tries to align each stakeholder's request with EU priorities and principles. This is mainly deduced from the case study, which shows that the evaluation structure is balanced and each actor has a fair weight.

## Bibliography

- Alemanno, A. (2015). “How much better is Better Regulation?” Assessing the Impact of the Better Regulation Package on the European Union – A Research Agenda. *European Journal of Risk Regulation – Issue 3, 2015. p.3*
- Baldock, D., Buckwell, A. & Hart, K. (2016). Learning the lessons of the Greening of the CAP. *European Environmental Policy*. Available at: [http://cap2020.ieep.eu/assets/2016/4/20/Learning\\_the\\_lessons\\_from\\_CAP\\_greening\\_-\\_April\\_2016\\_-\\_final.pdf](http://cap2020.ieep.eu/assets/2016/4/20/Learning_the_lessons_from_CAP_greening_-_April_2016_-_final.pdf)
- Beck, S. (2011). Moving beyond the linear model of expertise? IPCC and the test of adaptation. *Regional Environmental Change, 11(2)*, 297-306.
- Better Regulation Insight Tool (BRIGHT). (2019). *REFIT*. Available at: [https://bright-tool.eu/theory\\_module/refit/](https://bright-tool.eu/theory_module/refit/)
- Better Regulation Insight Tool (BRIGHT). (2019). *REFIT Platform*. Available at: [https://bright-tool.eu/theory\\_module/refit-platform/](https://bright-tool.eu/theory_module/refit-platform/)
- Better Regulation Insight Tool (BRIGHT). (2019). *Regulatory Scrutiny Board*. Available at: [https://bright-tool.eu/theory\\_module/regulatory-scrutiny-board/](https://bright-tool.eu/theory_module/regulatory-scrutiny-board/)
- Bunea, A. (2020). Understanding the European Commission’s use of politicisation in the negotiation of interinstitutional agreements: the role of consultations and issue framing. *Journal of European Public Policy, 27(3)*, 439-459.
- Cammelli, M. (2000). Il Testo Unico, il commento e... ciò che resta da fare. *Aedon, (2)*, 0-0. Available at: <http://www.aedon.mulino.it/archivio/2000/2/cammelli.htm>
- Council of the European Communities, Commission of the European Communities. (1992). *Treaty on European Union*. Maastricht. Available at: [https://europa.eu/european-union/sites/europa.eu/files/docs/body/treaty\\_on\\_european\\_union\\_en.pdf](https://europa.eu/european-union/sites/europa.eu/files/docs/body/treaty_on_european_union_en.pdf)
- Council of the European Union. (2018). Outcome of the Council meeting – 3593<sup>rd</sup> Council meeting. *Agriculture and Fisheries*. Press. Available at: <https://www.consilium.europa.eu/media/32564/st05710-en18.pdf>
- Council of the European Union. (2018). *Post-2020 CAP reform package* : a) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council b) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 c) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation,

labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands - *Presidency progress report*. Available at: <https://data.consilium.europa.eu/doc/document/ST-15027-2018-INIT/en/pdf>

Council of the European Union. (2020). “Council agrees its position on the next EU common agricultural policy”. *Press release*. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/10/21/council-agrees-its-position-on-the-next-eu-common-agricultural-policy/>

Curtin, D., & Meijer, A. J. (2006). Does transparency strengthen legitimacy?. *Information polity*, 11(2), 109-122

DECIDE (2011-2015). *Key DECIDE tools*. Available at: <https://www.decide-collaboration.eu/key-decide-tools>

di Donato, L. (2014). *Impact Assessment Board (IAB)*. Bankpedia Review, Vol. 4, n. 2,. 4. 27-45. Available at: [https://www.researchgate.net/publication/284074179\\_Impact\\_Assessment\\_Board\\_IAB](https://www.researchgate.net/publication/284074179_Impact_Assessment_Board_IAB)

Dunlop, C. And Radaelli, C.M. (2015). “Impact assessment in the European Union: Lessons from a research project”. *European Journal of Risk Regulation*.

Easton D. (1965). *A System Analysis of Political Life*, New York u.a., S. 32

Eckhard, S., & Jankauskas, V. (2019). *Beyond Learning and Accountability: Comparing the Political Use of Evaluation in International Organizations*.

Eckhard, S., & Jankauskas, V. (2019). The politics of evaluation in international organizations: A comparative study of stakeholder influence potential. *Evaluation*, 25(1), 62-79<sup>[SEP]</sup>

EIP-AGRI. (2018). *EIP-AGRI Brochure Agricultural Knowledge and Innovation Systems*. Available at: <https://ec.europa.eu/eip/agriculture/en/publications/eip-agri-brochure-agricultural-knowledge-and>

Espa, E. & La Spina A. (2011). *Analisi e Valutazione delle politiche pubbliche*. Il Mulino. Bologna.

Eurobusiness. (2014). *Regulatory Fitness and Performance Programme (REFIT)*. Available at: <https://www.eubusiness.com/topics/eulaw/refit>

European Commission. (1997). *Agenda 2000 – For a stronger and wider Union*. VOL. I. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:80958a30-795a-4152-99a5-cf86f455a211.0008.01/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:80958a30-795a-4152-99a5-cf86f455a211.0008.01/DOC_1&format=PDF)

European Commission. (2002). *Action Plan “Simplifying and improving the regulatory environment”*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0278:FIN:EN:PDF>

European Commission. (2005). *Better Regulation for Growth and Jobs in the European Union*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0097:FIN:EN:PDF>

European Commission. (2005). *Implementing the Community Lisbon programme: A strategy for the simplification<sup>[SEP]</sup> of the regulatory environment*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.douri=COM:2005:0535:FIN:EN:PDF>

European Commission. (2007). *Action Programme for Reducing Administrative Burdens in the European Union*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0023:FIN:en:PDF>

European Commission. (2007). *Natura 2000*. Environment. Available at: [https://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](https://ec.europa.eu/environment/nature/natura2000/index_en.htm)

European Commission. (2008). "Cutting red tape at maximum speed: Citizens and enterprises save billions". *Press release*. Available at: [https://ec.europa.eu/commission/presscorner/detail/et/IP\\_08\\_115](https://ec.europa.eu/commission/presscorner/detail/et/IP_08_115)

European Commission. (2009). *Notes to Directors-General and Head of Service on the Revised guide to interservice consultation and new instant statistics module in CIS-Net*. Available at: <https://ec.europa.eu/transparency/regdoc/rep/2/2009/EN/2-2009-780-EN-1-1.Pdf>

European Commission. (2010). *Smart Regulation in the European Union*. Available at: [https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/com/com\\_com\(2010\)0543\\_/com\\_com\(2010\)0543\\_fr.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/com/com_com(2010)0543_/com_com(2010)0543_fr.pdf)

European Commission. (2011). *IMPACT ASSESSMENT Common Agricultural Policy towards 2020 Accompanying the document Proposals for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy - establishing a common organisation of the markets in agricultural products (Single CMO Regulation)<sup>[SEP]</sup> - on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) - on the financing, management and monitoring of the common agricultural policy and the<sup>[SEP]</sup> Proposal for a COUNCIL REGULATION<sup>[SEP]</sup> determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products*. Available at: [https://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2011/sec\\_2011\\_1153\\_en.pdf](https://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2011/sec_2011_1153_en.pdf)

European Commission. (2011). "SME envoys network". *Entrepreneurship and SMEs. Internal market, Industry, Entrepreneurship and SMEs*. Available at: [https://ec.europa.eu/growth/smes/sme-strategy/sme-envoys\\_en](https://ec.europa.eu/growth/smes/sme-strategy/sme-envoys_en)

European Commission. (2012). *EU Regulatory Fitness*. Available at: [https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness\\_dec2012\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/eu-regulatory-fitness_dec2012_en_0.pdf)

European Commission. (2014). *Guidance document on monitoring and evaluation. The Programming Period 2014-2020*. Available at: [https://ec.europa.eu/regional\\_policy/sources/docoffic/2014/working/wd\\_2014\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docoffic/2014/working/wd_2014_en.pdf)

European Commission. (2014). *Integrated Administration and Control System (IACS). Managing payments*. Available at: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/financial-assurance/managing-payments\\_en<sup>\[SEP\]</sup>](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/financing-cap/financial-assurance/managing-payments_en<sup>[SEP]</sup)

European Commission. (2014). *Strengthened and better balanced civil dialogue groups to advice the European Commission on agricultural issues*. *Press release*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_846](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_846)

European Commission. (2014). *Voluntary coupled support*. Additional optional schemes. Available at: : [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/additional-optional-schemes/voluntary-coupled-support\\_en#vcsexplained](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/additional-optional-schemes/voluntary-coupled-support_en#vcsexplained)

European Commission. (2015). *ABRplus study – Final Report*. Available at: [https://ec.europa.eu/info/files/abrplus-study-final-report\\_en](https://ec.europa.eu/info/files/abrplus-study-final-report_en)

European Commission. (2015). *Commission decision of 19.05.2015 establishing REFIT Platform*. Available at: [https://ec.europa.eu/info/sites/info/files/commission-decision-establishing-refit-platform\\_may\\_2015\\_en.pdf](https://ec.europa.eu/info/sites/info/files/commission-decision-establishing-refit-platform_may_2015_en.pdf)

European Commission. (2016). *Commission Staff Working Document - Review of greening after one year*. PART 5/6. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-218-F1-EN-MAIN-PART-5.PDF>

European Commission. (2016). *Commission Staff Working Document - Review of greening after one year*. PART 6/6. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2016/EN/SWD-2016-218-F1-EN-MAIN-PART-6.PDF>

European Commission. (2017). *Commission Staff Working Document – Overview of the Union’s Efforts to Simplify and to Reduce Regulatory Burdens*. Available at: [https://ec.europa.eu/info/sites/info/files/overview-union-efforts-tosimplify-and-to-reduce-regulatory-burdens\\_en.pdf](https://ec.europa.eu/info/sites/info/files/overview-union-efforts-tosimplify-and-to-reduce-regulatory-burdens_en.pdf)

European Commission. (2017). *Guidelines on evaluation (including Fitness Checks)*. Chapter IV. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-evaluation-fitness-checks.pdf>

European Commission. (2017). *Guidelines on impact assessment*. Chapter III. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-impact-assessment.pdf>

European Commission. (2017). *Guidelines on planning*. Chapter II. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-planning.pdf>

European Commission. (2017). *Guidelines on Stakeholder Consultation*. Chapter VII. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-stakeholder-consultation.pdf>

European Commission. (2017) *Have your say*. Law. Available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say>

European Commission. (2017). *Regulatory Fitness and Performance Programme - REFIT Scoreboard summary*. Available at: [https://ec.europa.eu/info/sites/info/files/regulatory-fitness-and-performance-programme-refit-scoreboard-summary\\_en\\_3.pdf](https://ec.europa.eu/info/sites/info/files/regulatory-fitness-and-performance-programme-refit-scoreboard-summary_en_3.pdf)

European Commission. (2017). *The Future of Food and farming*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0713&from=EN>



European Commission. (2017). *TOOL #3. Role of the Regulatory Scrutiny Board*. Chapter I. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-3\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-3_en_0.pdf)

European Commission. (2017). *TOOL #6. Planning and validation of initiatives*. Chapter I. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/file\\_import/better-regulation-toolbox-6\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-6_en_0.pdf)

European Commission. (2017). *TOOL #38. Drafting the explanatory memorandum*. Chapter IV. Better Regulation Toolbox. Available at: [https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox-38\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox-38_en_0.pdf)

European Commission. (2017). *TOOL #56. Stakeholder feedback mechanisms*. Chapter VII. Better Regulation Toolbox. Available at: <https://ec.europa.eu/info/sites/info/files/better-regulation-toolbox.pdf>

European Commission. (2018). *Commission Staff Working Document - Evaluation of the Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>1</sup> of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 concerning the greening in direct payments*. Available at: [https://ec.europa.eu/info/sites/info/files/swd\\_evaluation\\_greening\\_in\\_direct-payment\\_en.pdf](https://ec.europa.eu/info/sites/info/files/swd_evaluation_greening_in_direct-payment_en.pdf)

European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposals for a - Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council - Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands. PART 2/3*. Available at: <http://www.euroconsulting.be/wp-content/uploads/2018/06/IMPACT-ASSESSMENT-2-3-proposte-regolamenti.pdf>

European Commission. (2018). *Commission Staff Working Document – Impact Assessment accompanying the document : Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council. PART 3/3*. Available at: <https://ec.europa.eu/transparency/regdoc/rep/10102/2018/EN/SWD-2018-301-F1-EN-MAIN-PART-3.PDF>

European Commission. (2018). *Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council*. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC_1&format=PDF)

European Commission. (2018). *The European Union's Effort to Simplify Legislation – 2018 Annual Burden Survey*. Available at: [https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey_en_0.pdf)

European Commission. (2020). *Commission decision of 11.05.2020 establishing the Fit for Future Platform*. Available at: [https://ec.europa.eu/info/sites/info/files/c2020\\_2977\\_en.pdf](https://ec.europa.eu/info/sites/info/files/c2020_2977_en.pdf)

European Commission. (2020). "Commission launches the Fit for Future Platform and invites experts to join". *Press release*. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_832](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_832)

European Commission. (2020). *Commission Working Programme 2021*. Available at: [https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en)

European Commission. (2020). *The Common Agricultural Policy at glance*. Available at: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-glance_en)

European Court of Auditors. (2017). Greening: a more complex income support scheme, not yet environmentally effective. Special Report. No. 21. p. 19. Available at: [https://www.eca.europa.eu/Lists/ECADocuments/SR17\\_21/SR\\_GREENING\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR17_21/SR_GREENING_EN.pdf)

European Union. (2011). Rules of Procedure of the Commission. *Official Journal of the European Union, 2011*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02000Q3614-20111116&from=EN>

European Union. (2013). Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, *Official Journal of the European Union, 2013*. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0608:0670:EN:PDF>

European Union. (2015). Council. Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11<sup>th</sup> European Development Fund, *Official Journal of the European Union, 2015*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0323&from=EN>

European Union. (2016). Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making. *Official Journal of the European Union, 2, 2016*. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN)

European Union. (2020). Council. *Regulation (EU) 2020/2220 of the European Parliament and of the Council of 23 December 2020 laying down certain transitional provisions for support from the European Agricultural Fund for Rural Development (EAFRD) and from the European Agricultural Guarantee Fund (EAGF) in the years 2021 and 2022 and amending Regulations (EU) No 1305/2013, (EU) No 1306/2013 and (EU) No 1307/2013 as regards resources and application in the years 2021 and 2022 and Regulation (EU) No 1308/2013 as regards resources and the distribution of such support in respect of the years 2021 and 2022*. Official Journal of the European Union, L, 2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2220&from=EN>

Fit for Future Platform expert group. (2020). Minutes of the Fit for Future Platform expert group. Available at: [https://ec.europa.eu/info/sites/info/files/approved\\_minutes\\_f4f\\_platform\\_15dec2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/approved_minutes_f4f_platform_15dec2020_en.pdf)

Johnson, J. B., Reynolds, H. T., & Mycoff, J. D. (2015). *Political science research methods*. Cq Press.

Mazoyer, M., & Roudart, L. (2006). *A history of world agriculture: from the neolithic age to the current crisis*. NYU Press.

Miller, D. D., & Welch, R. M. (2013). Food system strategies for preventing micronutrient malnutrition. *Food policy*, 42, 115-128.

OECD (2016). *Reference guide on ex-post evaluation of competition agencies' enforcement decisions*. p.3. Available at: <http://www.oecd.org/daf/competition/Ref-guide-expost-evaluation-2016web.pdf>

Radaelli, C. (2020). "Will the EU Make its Better Regulation Strategy Truly Better?". *The Regulatory Review*. Available at: <https://www.theregreview.org/2020/06/01/radaelli-will-eu-make-better-regulation-strategy-truly-better/>

Renda, A. (2006). *Impact Assessment in the EU: The State of the Art and the Art of the State*. Centre for European Policy Studies.

Rossi, P. H., Lipsey, M. W., & Henry, G. T. (2018). *Evaluation: A systematic approach*. Sage publications.

Samset, K., & Christensen, T. (2017). Ex ante project evaluation and the complexity of early decision-making. *Public Organization Review*, 17(1). p.2. Available at: [https://www.researchgate.net/publication/282478785\\_Ex\\_Ante\\_Project\\_Evaluation\\_and\\_the\\_Complexity\\_of\\_Early\\_Decision-Making](https://www.researchgate.net/publication/282478785_Ex_Ante_Project_Evaluation_and_the_Complexity_of_Early_Decision-Making)

Sapru, R.K. (2010). *Public Policy: Art and Craft of Policy Analysis*, New Delhi: PHI Learning Private Limited. p.267

Schoenefeld, J., & Jordan, A. (2017). Governing policy evaluation? Towards a new typology. *Evaluation*, 23(3), 274-293

Stephenson, P. J., Schoenefeld, J. J., & Leeuw, F. L. (2019). The politicisation of evaluation: constructing and contesting EU policy performance. *Politische Vierteljahresschrift*, 60(4), 663-679

Sunstein, C.R. (1996). *Congress, Constitutional Moments, and the Cost-Benefit State Legislative Foreword*. 48 *Stanford Law Review* 247. Available at: [https://chicagounbound.uchicago.edu/journal\\_articles/8330/](https://chicagounbound.uchicago.edu/journal_articles/8330/)

van Noije, L. (2010). The European paradox: A communication deficit as long as European integration steals the headlines. *European Journal of Communication*, 25(3), 259–272. Available at: <https://doi.org/10.1177/0267323110373460>

## SUMMARY

The integration of policy evaluation mechanisms into legislative processes at European level has undoubtedly been influenced by the New Public Management (NPM) line of thought. The latter took its origins in the United Kingdom and consists of the application of business methodologies to the ordinary process of public administration. The aim was to 'partition' the work of public authorities, making it cost-efficient and result-oriented, thus supporting optimisation. It is no coincidence that the evaluation culture first entered the European dimension under the UK Commission in 1986, and then the first real project in 2002 with the Action plan. The system of evaluation and analysis was from the beginning based on a centralised and hierarchical configuration, with the European Commission at the head of the structure. This final paper aims to support the thesis that the centralised type of evaluation adopted by the European Union prevails over the polycentric one in terms of functionality and effectiveness. This is because the evaluation procedure is not bound by the existence of a monopoly of action by the European Commission, but is distinguished by the inclusion of third parties who review the work of the Commission - such as the Regulatory Scrutiny Board - and perform an advisory function - the stakeholders - to which it is nevertheless accountable.

In the first chapter, a historical analysis of the evaluation programmes implemented by the European Union from 2002 to the current Regulatory Fitness and Performance Programme is proposed. Initially, the Commission focused on one type of evaluation, commonly referred to as *a priori* evaluation. Similarly, the first supervisory board, the then Impact Assessment Board, was only established in 2006. With regard to stakeholder involvement, consultations were already part of the very first projects such as the Action plan and the Action Programme, which were carried out in 2002 and 2005 respectively. However, they only included experts and institutions such as the Impact Assessment Board responsible for evaluating the work of the evaluator, thus excluding the general public. The construction of today's structure took time before it was settled and consolidated. Each evaluation programme implemented has contributed to the formation of the current system.

At the turn of 2011 and 2012, the Commission espoused the principle of “evaluate first”, and understood the need to include citizens and their direct views on the primary objectives of policies. The urgency of promoting the improvement of the evaluation system was taken to the extreme during the 2008 crisis, when eurosceptic sentiment was eroding the legitimacy of the Union. Since then, numerous actors have been involved in the evaluation system, which has been renamed REFIT. The Regulatory Scrutiny Board was introduced to replace the old Impact Assessment Board, and the REFIT platform was integrated to allow citizens to express their views on policies to be applied or

implemented, which became under the Von der Leyen Commission the Fit-for-Future platform. This shows how REFIT is the result of methodologically consulted growth.

In the second chapter, the methodology of analysis and evaluation of the REFIT Programme is introduced and explained, followed by an exploration of the academic debate surrounding the nature of the EU evaluation system. Its structure is highly articulated, but this complexity avoids any drawbacks. Notwithstanding the centrality of the Commission as evaluator of the regulatory estate, stakeholders, institutional and non-institutional, are involved in different phases of the analytical cycle and in sub-evaluation phases such as *ex post* and *ex ante* evaluation. Moreover, as mentioned, the Commission is supervised by a "watchdog" recognised by the REFIT as the Regulatory Scrutiny Board, successor of the Impact Assessment Board and precursor of the Fit-for-Future Platform. The role of the Regulatory Scrutiny Board is crucial, as it aims to scrutinise both the Commission's evaluation performance and the principle of accountability. This chapter is emblematic for the understanding of the functionality of the programme as it first presents an overview of evaluation practice and then analyses the academic debate between centralists and polycentrists, two strands of thought that anchor the functionality of evaluation to the nature and/or quantity of evaluators, omitting considerations on the methodology itself. In this part it is possible to denote more clearly the issue raised by this paper, although empirical evidence to these theoretical constructs is introduced more specifically in chapter three.

In the last chapter, a case study will be explored to support the proposed thesis. More precisely, this is the evaluation carried out on Regulation No 1307/2013, part of the post-2013 CAP reform package, which establishes the obligation to implement green measures in direct payments to farmers. The regulation is then analysed through the various stages of the evaluation process envisaged by the REFIT Programme. In a first step, an a posteriori analysis of the regulation will be proposed, flanked by a section focusing on the second round of consultations, mainly addressed to key EU institutions such as the European Parliament, the European Council, the Committee of the Regions, but above all to citizens and relevant stakeholders. It will then be highlighted how the results produced by the evaluation of the above-mentioned legislation have supported the Commission's reasoning in the elaboration of the new policies for the CAP post-2020. To be fair, the Commission structured the policy options considering not only the poor implementation by states, as suggested by the *ex post* evaluation, but also the two macro-themes of debate that emerged in the consultations, namely the trade-off between economic development and climate action, and decentralisation versus centralisation of green policy management. The agreement on the regulation was reached after about

two years of dialogue between the parties involved, and will therefore be implemented from 1 January 2023.

In the meantime, an interim regulation will be in place for this biennium to facilitate the transition to a stronger commitment to climate action in the agricultural sector, while also providing states with greater flexibility with the New Delivery Model (NDM).

The analysis that this thesis points to study is aimed at showing how a *sui generis* international organisation such as the European Union, whose nature has characterised the debate between intergovernmentalism and supranationalism since the early years of the integration process, must necessarily base its mechanism on a centralised evaluation process. The peculiarity of local contexts, which requires tailored interventions at national level, concerns more the question of the competences to be legislated on, and therefore the management of the policy-making process, than the management of its evaluation. The latter is considered effective if it is carried out by a single actor, in this case the European Commission, which centralises information and responsibilities, establishing comparable deadlines and enabling performance comparisons between States.

The European Union's integration process has developed in parallel with its legislative competence, which, to the detriment of producing national policies from scratch, makes the European Commission the public decision-maker of “first instance” on a very wide spectrum of policy areas. This has inevitably led to the decision-making responsibility of producing European legislation that passes the “stress test” of public policy analysis and evaluation mechanisms, as EU legislation delivers the expected benefits to citizens, businesses and societies, while reducing bureaucracy and costs. This was a necessary step for the Union as the European Commission gradually developed what Professors Antonio La Spina and Efsio Gonario Espa called a regulatory “bulimia”.

The evaluation model proposed in the very first Action plan of 2002 was the prerogative of a single central actor, the European Commission, which piloted and coordinated the multiplicity of actors involved. In fact, the Action Plan did not foresee any kind of “self-organisation” by Member States, rather set up the linear model of competence according to which science dictates action. Consultations were included to safeguard the legitimacy of the authority in charge of conducting the evaluation by virtue of transparency, and at the same time a coordinating function, to harmonise the diversity of individual states, by virtue of the quality of legislation. The question of the legitimacy of the Commission's mandate, both as a policy initiator and as an evaluator, being an unelected body, found fertile ground in various circumstances, feeding the thinking of the eurosceptics, who did not accept the idea of a supranational authority under any conditions. Eurosceptic sentiment grew along with the

perception that the Union had monopolised decision-making, imposing an excessive burden of obligations on the people of the Member States. What people were looking for was a consultative space to align the Commission's policy analysis with the direct experience of stakeholders, whose input could enrich the evaluation process and thus also the development of new policies. The integration of a consultation phase implies a considered choice of stakeholders to be involved and a clear structure of guidelines for the presentation of their views, while respecting the principles of accountability, pluralism and integrity. Among the parties consulted, the Commission has always recognised the importance of the legislator's commitment, so the European Parliament, together with the European Council, were involved in an interinstitutional agreement on the eve of the implementation of the Action plan. In 2005, following the request of the European Parliament and the European Council to further improve the policy evaluation mechanism, Communication 97 officially introduced the Better Regulation for Growth and Jobs agenda, building on the previous initiative. However, the Action Plan was imprecise in its formulation and application, thus providing uncertain guidelines and consequently increasing administrative and transaction costs. The Commission appreciated the judgement of the consulted bodies, identifying weaknesses in the system and making improvements suggested by the European Parliament and the Council. The 2005 programme aimed to improve and extend the use of impact assessment for new proposals, focusing in particular on methodologies for measuring administrative costs. In addition, pending legislative proposals were to be scrutinised and possibly withdrawn (in September 2005, the Commission withdrew 68). The Commission's aim was to adopt a “positive regulation” approach, i.e. to think in terms of the public interest, to regulate and coordinate effectively with Member States so that they could benefit from EU policies, rather than be harmed by them. This has charged the evaluation process with the virtue of mutual accommodation, due to consultation procedures, and precision, due to the commitment to empirical and conceptual demonstration of the functionality of the Commission's proposed policy choices. In 2012, with Communication 543 launching the REFIT, the Commission reconfirmed the commitment made and recognised in the Lisbon Treaty to create participatory democracy. Accordingly, it is promoting the consultation process with stakeholders, giving citizens the opportunity to be directly involved and heard, and extending the duration of the consultations themselves. In addition, the Parliament adopted the Directorate for Impact Assessment and European Added Value. This body was not designed to undermine the Commission's central authority in the assessment process, rather to complement and balance the Commission's technical capacities where the Parliament itself saw fit to make changes to Commission proposals.

As regards the methodological aspect, the evaluation, especially the retrospective one, made it possible to monitor the implementation of European legislation by the Member States. For instance,



the first ABRplus report showed that Member States do not always implement measures enacted at European level in a homogeneous way - either due to a lack of legislative basis by the Member State itself or due to inadequate implementation of administrative burden reduction measures - and are sometimes rather reluctant to provide data for monitoring purposes: for instance, the then Member State UK suffered from an exorbitant loss of information during the implementation of micro-accounting exemptions, in 2012. Similarly, when considering the evaluation analysed in Chapter III about the case study on the evaluation of Regulation No 1307/2013, insufficient implementation of EFAs was identified, which consequently undermined the relevance of the measures to the objectives set and left the Commission with no data to collect. Member States were also given the possibility to apply additional conditions to improve the relevance of the rules: the vast majority ignored this possibility, thus implementing the measures at the minimum required level and neglecting their commitment to climate action. States were given a great deal of flexibility to act, which was not adequately used, with the exception of Spain, Germany and Austria. From the outset, states have shared responsibility for ensuring the success of policies.

As mentioned above, the impact assessment of European policies is carried out in a formal, hierarchical configuration by a single body that transmits the finished product of the analysis in a pyramidal fashion to lower levels of government. This is due to the fact that the European Commission centralises information and methodology, standardising evaluation practice for all member states, thus making it possible to compare results on the basis of universally valid indicators and schemes. This should also avoid dispersion of data, as happened in the cases mentioned above. In addition, this is done much faster than if the action were part of a decentralised system, and thus also speeds up the decision-making process itself, which is based on this postulate.

In this regard, Alemanno's question in Chapter II is curious: "Quis Custodiet Custodes?" i.e. while the European Commission supervises the work of the Union in drafting legislation, who supervises the supervisor? The answer was given in 2006 with the establishment of the Impact Assessment Board. The latter does not challenge the formal, centralised structure of the assessment itself, as it issues opinions. Nevertheless, they enrich the assessment made by the Commission and give the system a democratic element, since if the Commission decides to proceed without the Board's green light, it has to explain itself publicly. This body has since been replaced by the Regulatory Scrutiny Board - whose task is to provide the Commission with a non-binding assessment of new initiatives and existing legislation, checking compatibility with the requirements set out in the Better Evaluation Agenda, aligned with the REFIT Platform. It is not a foregone conclusion that the Regulatory Oversight Committee will deliver positive rulings; in fact, in 2016, 42% of the first opinions were

negative, thus forcing a redrafting. The Commission is also required to respond to the suggestions of the REFIT Platform, as set out in the Better Regulation Communication. The response should indicate whether certain forms of action can be considered appropriate or not, and what kind of action is envisaged, as well as the timeframe in which the action proposed by the platform should take place.

Public dissemination of the material produced on the evaluation of interventions is essential to ensure that stakeholders have continuous access to the Commission's work to improve legislation that affects them. Stakeholder involvement thus fulfils four fundamental principles established by the REFIT, namely participation, by espousing the inclusion of multiple authorities with a legitimate interest; openness and accountability, since, as just explained, the Commission works in the public interest and therefore in a transparent manner, to be held accountable for its actions effectiveness, which in this case involves the involvement of stakeholders at specific but necessary moments in the evaluation where they can make a difference; and coherence, according to which stakeholder interference must be able to produce observations that are as coherent and homogeneous as possible, compatible with the objectives set by the intervention under consideration. Citizens are involved by the Commission through a system of true participatory and direct democracy, since once the initial impact assessment is published, every European citizen has a say and is effectively heard - starting with the REFIT Programme. This system restores the binary communication between the authority and the people, which, in the case of the European Commission, is inherently null and void, as it is an unelected body. It therefore makes the Commission accountable to the people themselves, the targets of the policies it proposes. Precisely because there is an overlapping of competences by this body, it is necessary to analyse the functionality of the evaluation system in place, and to include the variable of accountability in the calculation. Accountability in the sense of detachment from political representation is inherent in the philosophy of New Public Management, which in the 1990s overturned the *modus operandi* of public authorities by applying new procedural codes. Among the new priorities introduced into the public agenda, of fundamental importance was the need to verify the effectiveness of public performance, focusing on the delivery of optimal results over time. Similarly, faced with the rise of populist and eurosceptic sentiments in 2008, the pressure for efficient legislative work generated the idea of applying evaluation policies to EU law, which would be “*the key to accountability and learning*”. While maintaining the centralisation of the prerogative of policy analysis, the European Commission has over time sought to break free from the formal rigidity of the hierarchical system by incorporating some elements of polycentrism. Indeed, it has always been important for the Commission to involve other actors at an advisory level. This favours an opening towards a progressive democratisation of the project, without losing the prerogative of the main body.

The alternative proposed by the Academia would be to implement a polycentric type of system, subject to fragmentation of governance and management of the evaluation process.

In the case of the European Union, this would result in a dispersal of the responsibility for proactive evaluation to all Member States. Given that evaluation is decentralised, important suspicions would arise about the extent to which evaluation is done for learning and problem-solving purposes or is politically instrumentalised to promote and defend national interests. Moreover, as was stated by the Commission in the 1153 Final/2 evaluation of the pre-2013 CAP reforms, leaving the responsibility for one of the phases of evaluation such as monitoring the implementation of the rules *in itinere* to the states may produce modelled data, thus seriously undermining evaluation as a whole, as has already been mentioned. For these reasons, REFIT represents the pinnacle of evaluation systems adopted so far in the European context, as it corrects the shortcomings of formal and hierarchical evaluation, integrating elements of polycentrism without decentralising evaluation and making it dysfunctional. Given that, contrary to the scientific literature on policy evaluation, there is no independent relationship between the evaluator and the commissioner, as the two entities coincide, the solution is to give legitimacy to the Commission, reinforcing its accountability to the citizens and stakeholders on whom the legal implications flow. The Commission has a real incentive to perform its task properly as an evaluator given its permanent public exposure and, precisely because it is not an elected body, public acceptance of the prerogatives it has and the work it does is valuable. The Commission is accountable to those affected by the legislation it proposes and evaluates. In this sense, while transparency is important, inclusiveness and direct participation are *condictio sine qua non* for action.

Through this direct involvement, Member States were able to shape the Commission's proposals for the new post-2020 CAP programme around a new paradigm, namely the New Delivery Model. The latter placed the emphasis on the performance of states against a benchmark - rather than assessing compliance, given previous implementation difficulties and an overly heavy sanctions policy - and rebalanced the responsibility and shared competence for agricultural policies between member states and the EU in favour of individual states. This shows that the Commission is at the forefront of the policy evaluation process, and that it is necessary to go through the consultation phase to get direct feedback on the reality where the rule is applied. In this case, the EU has recognised the functionality of giving more room for manoeuvre to states on a shared area of competence. Meanwhile, evaluation remains centralised because it harmonises the efforts of individual states by channeling them towards shared goals and objectives, creating a massive and integrated output, while taking into account the differences that local contexts present and adjusting policies accordingly. Thus, this also shows that

the system was not structured to provide the Commission with a monopoly of action in the field of policy evaluation, as it seeks to align the demands of each stakeholder with EU priorities and principles. This is mainly deduced from the case study, which shows that the evaluation structure is balanced and each actor has a fair weight.