

The Role of the EU Regulatory Scrutiny Board in the EU Legislative Process

by Tom Ferris, Economist¹



The EU's Regulatory Scrutiny Board (RSB) maintains a low profile in the European Union. It is an independent body within the European Commission. Its role is to advise the College of Commissioners. Specifically, it provides central quality control and support for Commission impact assessments and evaluations at early stages of the legislative process. The Board does excellent work in discharging its mandate. However, it is not without its critics; something that is addressed towards the end of this article.

Origin of the RSB

The RSB was established in May 2015. It replaced the earlier Impact Assessment Board (IAB) that had operated between 2006 and 2015. The decision to replace the IAB with the RSB stems from the then European Commission's focus on further strengthening better regulation. The objective was to enhance the EU's capacity to deliver better legislation. The RSB reports directly to the President of the Commission. All members work for the Board full-time, with no other policy responsibilities, for a non-renewable term of three years, which can be extended by up to one year under exceptional circumstances. The board consists of nine members:

- A Commission Director-General who chairs the Board,
- Four high-level Commission officials and
- Four experts recruited from outside the Commission.

The Board acts independently from the policy-making departments and from any European institution, body, office or agency.

The previous IAB had reported to the Secretariat-General, whereas the RSB reports directly to the President of the Commission. Compared to the body that it replaced, the RSB offers greater safeguards of independence, is better resourced, and has a broader mandate. In the RSB's predecessor, senior managers from within the Commission only served on a part-time basis to review impact

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assessments from other Directorates-Generals. By contrast, the RSB members serve full time. In addition to impact assessments, the RSB also reviews selected evaluations of existing policies and legislation. **Box 1** provides an overview of the RSB's role and activities.²

Box 1: The Board at a glance

- The Board is an internal Commission quality control body set up to ensure the quality of all impact assessments and fitness checks and selected evaluations.
- The Board consists of nine members who serve three years - four are externally recruited and five drawn from within the Commission.
- The Board acts independently in carrying out its duties and neither seeks nor takes instructions from any internal or external stakeholders.
- The Board issues opinions on the quality of draft impact assessments, evaluations and fitness checks based on standards set out in the Better Regulation guidelines and toolbox.
- The Board does not take a view on the political objectives or advisability of initiatives: that role rests solely with the College of Commissioners.
- The Board's opinions are published when an initiative has been adopted by the College of Commissioners, to protect the candour of the internal Commission preparatory processes and in line with the working procedures of the Commission.

Work of RSB

The Regulatory Scrutiny Board reviews and issues opinions and recommendations on the Commission's draft impact assessments, fitness checks, and on major evaluations of existing legislation. The Board also provides cross-cutting advice on better regulation policy to the Commission's Secretariat-General. Opinions issued by the Board on impact assessments can be 'positive,' 'positive with reservations,' or 'negative'. Opinions which are either 'positive' or 'positive with reservations,' allow Commission draft reports to go forward to be tabled for adoption by the Commission. In the case of a 'negative opinion,' the draft report must be reviewed and resubmitted to the Board before it can proceed. When the Board has given a negative opinion twice, it is only the Vice-President for Inter-institutional Relations and Foresight that may submit the initiative for the College of Commissioners to decide whether to go ahead.

2. Regulatory Scrutiny Board, Annual Report 2022, Page 10, https://commission.europa.eu/publications/regulatory-scrutiny-board-annual-report-2022_en



The assessment process is an open one. Specifically, the Commission’s proposals, the final impact assessments and the Board’s opinions are made public and pave the way for decision by the EU legislators. The RSB plays a significant role from the initial stage of legislative work, through the subsequent stages, up to the point where the EU legislators complete their work. To play its role effectively, it is essential not only that the RSB operates independently but that it is seen to be operating independently.

The work of the Board supports the implementation of the European Commission’s Better Regulation commitments, including on the ‘one in, one out’ approach and the integration of foresight into policy making. In its work, the Board also takes account of key principles such as ‘do no significant harm,’ ‘digital by default’ and the UN Sustainable Development Goals (SDGs). As regards to the ‘one in, one out’ approach, the Board’s Annual Report does admit that – “...A sufficient quantification of costs for the ‘one in, one out’ approach was the most difficult aspect out of the new Better Regulation requirements...”

RSB’s Report for 2022

The Board’s Report for 2022³ was published in May 2023. Like all other organisations, the Board had to adapt to changing circumstances in 2022 e.g. the new post Covid-19 pandemic environment and having to respond to the impact of the Russian war against Ukraine. With the return to the office, in-person meetings resumed at the Board. The Annual Report points out, however, that – “all Board meetings, continued to be held online. For Board meetings, Commission departments were invited – if they wished – to submit written responses to the quality checklists issued by the Board. This facilitated discussions and Board deliberations.”

Last year continued to be a busy year for the Board, with the third highest workload since 2016. The Board scrutinised seventy impact assessments in 2022. **Box 2** sets out the data on impact assessments for the seven years, from 2016 through to 2022.⁴ It shows that in 2022 the Board had the second lowest rate of ‘negative opinions’ for draft impact assessments.

Box 2: RSB’s Impact Assessments, 2016/2022

Year	Meetings	Cases	Negative first opinions	Negative second opinions		
Impact Assessments						
2016	22	60	25	42%	2	8%
2017	23	53	23	43%	1	4%
2018	27	76	21	28%	1	5%
2019	9	1	1	100%	0	0%
2020	23	41	19	46%	1	5%
2021	27	83	31	37%	4	13%
2022	22	70	24	34%	0	0%

3. RSB Annual Report 2022, Brussels, https://commission.europa.eu/system/files/2023-05/RSB_2022_1.pdf

4. Regulatory Scrutiny Board, Annual Report 2022, Page 13, https://commission.europa.eu/publications/regulatory-scrutiny-board-annual-report-2022_en



Complaints about RSB

The EU Ombudsman has received complaints about the Regulatory Scrutiny Board. Two cases give a flavour of the complaints. They are documented in a speech of 5 June 2023 by Emily O'Reilly, European Ombudsman⁵. She points out in her speech that – *“As European Ombudsman, I have recently opened two inquiries related to the Regulatory Scrutiny Board. They are both ongoing, so I cannot share any conclusions yet, but I can nevertheless provide some information about the scope of the issues I am looking into.”*

- The **first inquiry** concerns the composition of the Board, as well as how the Board interacts with special interest representatives. The complainant argues that interactions between Board members and interest representatives may have affected the Board's work, for instance on the draft EU directive on corporate sustainability due diligence. They are also concerned about the composition of the Board, which they allege favours economic expertise over expertise in environmental and social policy.
- The **second inquiry** concerns the Commission's refusal to give full public access to the declarations of interest of Regulatory Scrutiny Board members following a request from a journalist. These declarations provide important information on potential conflicts of interest. The Commission argues that the information in them is personal data that should remain confidential.

Conclusion

The instigation of inquiries into the work of the Regulatory Scrutiny Board is no bad thing. It shows an openness in the system. If complaints are raised, they need to be addressed. The EU Ombudsman is in an ideal position to investigate complaints. Moreover, the Ombudsman's suggestions and recommendations help maintain high accountability and transparency standards in the EU institutions.

In completing this article, it is important to highlight the excellent work of the Regulatory Scrutiny Board. It has a proven history of providing central quality control and support for Commission impact assessments and evaluations at early stages of the legislative process. Moreover, the Board's work on impact assessments has strengthened, and will no doubt continue to strengthen, subsequent evaluations.

5. 'Presentation of a study on the Regulatory Scrutiny Board', Emily O'Reilly, European Ombudsman, Brussels, 7 June 2023, <https://www.ombudsman.europa.eu/en/speech/en/171115>

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