

# 4 *Ex post* evaluation

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The actual impacts of laws and regulations are only known after they have entered into force. Such effects may also change over time so regulations that at one time were appropriate may become outdated. It is crucial for governments to regularly review their stock of existing regulations so as to ensure that they continue to deliver for citizens. This chapter assesses the use of *ex post* evaluations across EU Member States. It discusses the types of evaluations commonly conducted, the general approaches taken by EU Member States to regulatory stock management, the role of regulatory oversight in *ex post* evaluation, and the engagement of stakeholders when undertaking evaluations. Finally, it also reviews the use of *ex post* evaluation by EU Member States in the EU legislative process.

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## Key messages

- Despite recent improvements in some EU Member States, *ex post* evaluations remain heavily underutilised as a regulatory management tool. To maximise the benefits that evaluations offer, EU Member States need to make stronger commitments to review the ever-growing stock of rules and integrate these better in the regulatory cycle.
- Evaluations that look at administrative burdens or competition issues tend to be the most frequently conducted by EU Member States. The results from such evaluations may help to improve the regulatory environment for businesses and citizens but they could go further by assessing whether the regulation is working as intended.
- Few EU Member States have thresholds in place to determine whether evaluations should be undertaken. Selecting which regulations to evaluate is important to ensure that scarce review resources are allocated to priority areas, especially for smaller Member States.
- Fundamental regulatory stock management tools do not exist in a quarter of EU Member States, suggesting that many regulations once made are not systematically checked to ensure that they continue to deliver benefits to the community.
- Given the lack of evaluations across the EU, it is perhaps unsurprising that their oversight is weak. Despite recent improvements, less than one-fifth of EU Member States have an oversight body responsible for checking the quality of evaluations. This result suggests that even where evaluations are conducted, their quality is likely to be highly variable. This is further compounded by a stark lack of training in conducting *ex post* evaluations.
- Stakeholders are usually not informed about forthcoming *ex post* evaluations. That said, two-thirds of EU Member States do consult with stakeholders on some of their evaluations. Stakeholders are more likely to be involved in identifying regulatory issues through ongoing opportunities, for example, through permanent dedicated websites.
- Despite the fact that around 85% of EU Member States undertook at least one *ex post* evaluation in the past five years, less than 15% shared their results with the European Commission. As a transparency measure reviews should generally be published and shared with relevant parties. When the European Commission undertakes *ex post* evaluations, the majority of EU Member States do not use the results to inform either their negotiation position or for the transposition of newly made EU directives.

## Introduction

The stock of laws and regulations has grown rapidly in most countries, even more so recently due to new rules being introduced to combat the COVID-19 pandemic. However not all regulations are rigorously assessed when they were originally made – and this is especially the case for those made in haste in response to emergency needs – and even where they have, not all effects can be known with certainty beforehand. Moreover, many external factors influence the attainment of regulatory objectives, demonstrating a need to periodically undertake checks to establish whether rules are working as intended.

The *2012 OECD Recommendation on Regulatory Policy and Governance* calls on governments to “[c]onduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.” (OECD, 2012<sup>[1]</sup>). In some circumstances, the formal processes of *ex post* impact analysis may be more effective than *ex ante* analysis at informing ongoing policy debate. This is likely to be the case for example, if regulations have been developed under pressure to implement a rapid response (OECD, 2018<sup>[2]</sup>). *Ex post* evaluations

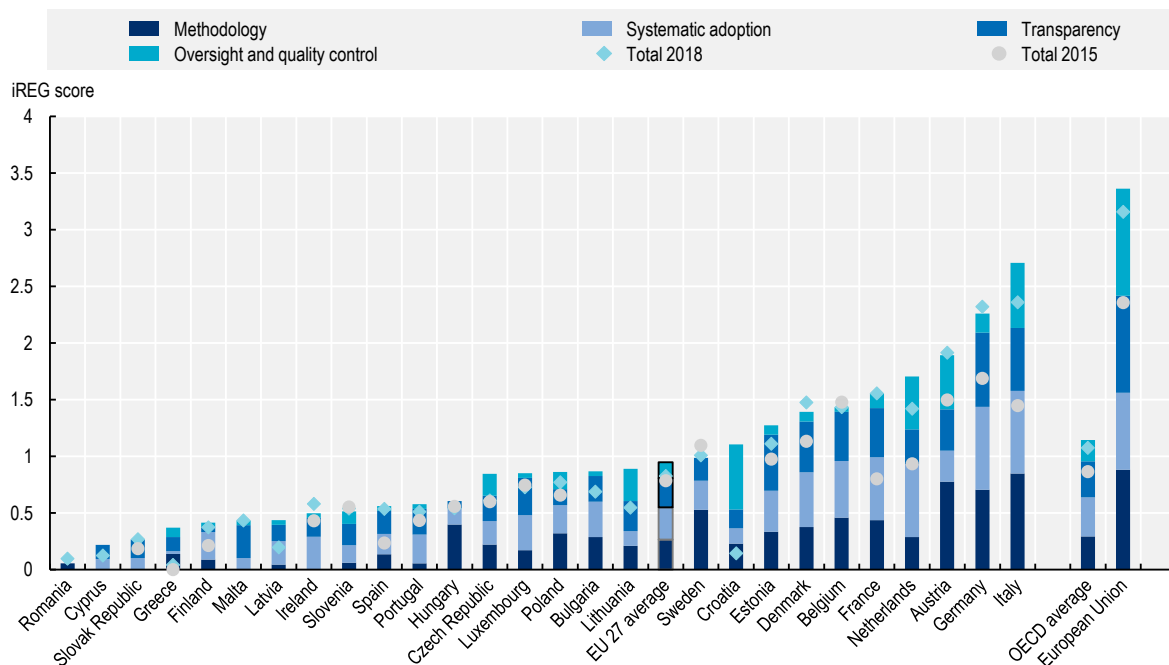
should have a level of symmetry with *ex ante* impact assessments: through verifying that stated objectives have actually been met, determining whether there have been any unforeseen or unintended consequences, and considering whether alternative approaches could have done better. Reviews that in addition also encompass proposals for change and revisit the original regulatory objective and its ongoing appropriateness or legitimacy are particularly useful to improve the stock of regulations (OECD, 2020<sup>[3]</sup>).

This chapter presents a systematic and up-to-date assessment of requirements and practices in place for conducting *ex post* evaluations for primary laws and subordinate regulation across all 27 EU Member States and the European Commission. The first section provides a snapshot of country’s systems based on the iREG composite indicator on *ex post* evaluation for primary laws and subordinate regulations. The second section discusses *ex post* evaluations across the EU Member States. It provides information on the types of evaluations commonly conducted, general approaches to regulatory stock management, regulatory oversight, and the engagement of stakeholders when undertaking evaluations. The final section presents results from new survey data on the use of *ex post* evaluations in the EU legislative process.

### General trends in *ex post* evaluation across the European Union

EU Member States have improved their *ex post* evaluation practices since 2017 for both primary laws (Figure 4.1) and subordinate regulations (Figure 4.2), with a more significant increase in the former. The largest improvements have been in oversight and quality control of *ex post* evaluations, since more oversight bodies now scrutinise *ex post* evaluations and assist officials in conducting them than in 2017. EU Member States have improved their *ex post* evaluation methodologies, especially for primary laws, as more countries are now assessing the costs, benefits and other impacts of existing regulations; are assessing whether regulations are achieving their intended goals; and have guidance available to officials on how to conduct these evaluations. There has been some improvement in the transparency of evaluations conducted.

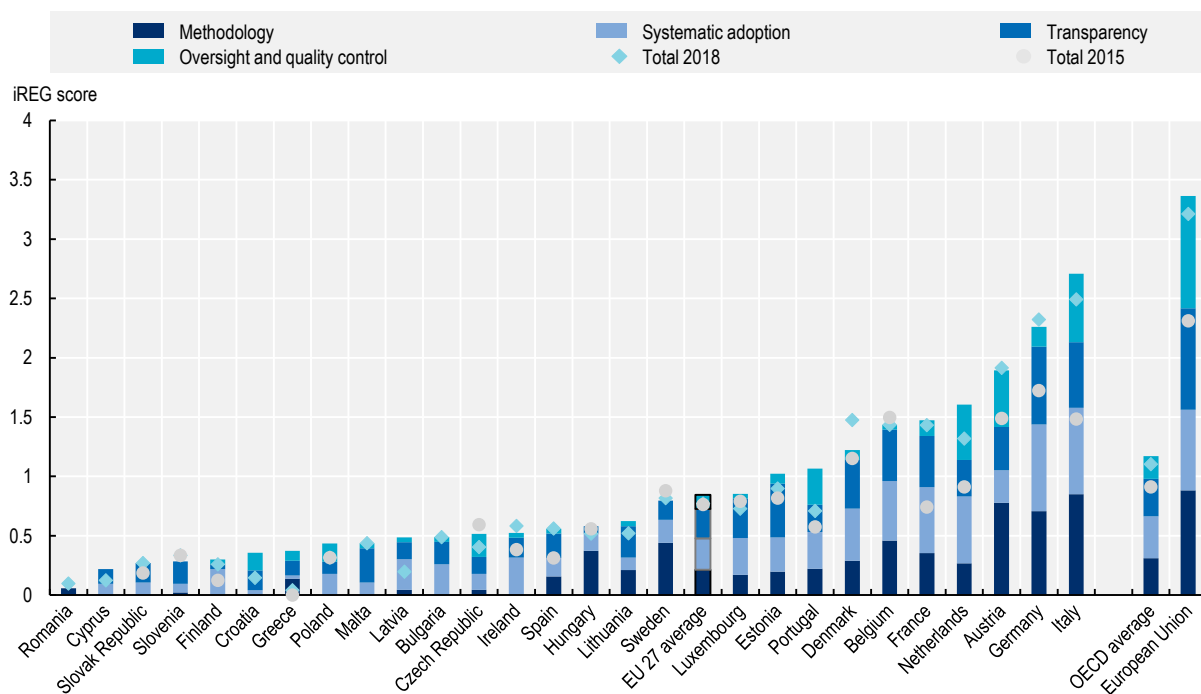
**Figure 4.1. Composite indicators: *Ex post* evaluation for primary laws, 2021**



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 20 of the current 27 EU Member States. The OECD average is based on the 38 member countries at the time of the survey. Data for 2018 and 2021 includes the remaining EU Member States of Latvia, Lithuania, Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

**Figure 4.2. Composite indicators: *Ex post* evaluation for subordinate regulations, 2021**



Note: Data for 2015 is based on the 34 countries that were OECD members in 2014 and the European Union, which included 20 of the current 27 EU Member States. The OECD average is based on the 38 member countries at the time of the survey. Data for 2018 and 2021 includes the remaining EU Member States of Latvia, Lithuania, Bulgaria, Croatia, Cyprus, Malta and Romania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021.

EU Member States that have had substantive changes to their *ex post* evaluation systems since 2017 include **Croatia**, **Greece**, **Italy**, **Latvia**, **Lithuania**, the **Netherlands**, **Portugal** and the **European Union**.

- Since 2018, **Croatia** requires *ex post* evaluations on primary laws two years after their enactment and policy makers are mandated to assess whether those laws are meeting their objectives. The Government Legislation Office is the oversight body in charge of reviewing the quality of the *ex post* evaluations and signing off on the evaluation reports. The Ministry of Economy and Sustainable Development reviews the quality of administrative burden reductions as part of the SME test processes for primary laws and subordinate regulations.
- **Greece** introduced Law 4622 in 2019. Amongst other topics, it made periodic *ex post* evaluations mandatory for all primary laws and for major subordinate regulations, and it now requires all *ex post* evaluations to contain an assessment of costs and benefits. Evaluation techniques and oversight functions related to *ex post* evaluations were also strengthened.
- In **Italy**, new non-binding guidance on *ex post* evaluation was issued in 2018. Initial steps have been taken to plan *ex post* evaluations when preparing RIAs for major legislation. Ministries publish a two-year plan of regulations to be evaluated.
- As part of broader reforms in **Latvia**, *ex post* evaluations are now required for some subordinate regulations and an evaluation of all policy documents conforming to the SDGs was recently conducted.
- **Lithuania** has introduced some general requirements to conduct monitoring and *ex post* reviews of existing primary laws and in 2020, it strengthened the regulatory oversight function and transparency of *ex post* evaluations.

- The **Netherlands** saw an improvement in oversight and quality control for periodic *ex post* evaluation of the effectiveness and efficiency of regulations. The Budget Inspectorate is now responsible for reviewing the quality of *ex post* evaluations and it has developed a toolbox with guidance for officials conducting these evaluations.
- **Portugal's** main regulatory oversight body was created in 2017 and has taken the role of co-ordinating *ex post* evaluations of subordinate regulations across the public administration and assisting officials in conducting them. Following the COVID-19 pandemic, Portugal introduced sunset clauses for some regulations.
- The **European Union's** *ex post* evaluation system now combines systematic evaluations of individual regulations with comprehensive “fitness checks” of policy sectors, inviting comment on evaluation Calls for evidence. The EU's regulatory oversight body also now provides summary ratings on evaluations that are made publicly available along with compliance statistics.

## Ex post evaluation in EU Member States

EU Member States' *ex post* evaluations should be used as a tool of continuous improvement in the regulatory environment. Some examples highlighting the range of benefits that *ex post* evaluations have provided are summarised in Box 4.1. *Ex post* evaluations conducted by EU Member States can potentially improve both their own domestic and the EU regulatory frameworks. The *Outlook* illustrated that although *ex post* evaluations are generally published, little is done in terms of forcing governments to respond to evaluation findings (OECD, 2021<sup>[4]</sup>).

### Box 4.1. Examples of EU Member States' *ex post* evaluations

#### **Ex post evaluations provided an opportunity to better understand actual policy impacts...**

An *ex post* evaluation of the regulation of the operation of voluntary fire-fighter organisations was carried out in **Latvia**. The regulation was not effective in achieving previously set policy goals, so the relevant ministry initiated a pilot project in which several voluntary fire-fighter organisations were invited to participate. During the project policy makers had a chance to see real-world problems that arise from the regulation and to identify the main obstacles. The assessment allowed the policy makers to better address the identified problems and to initiate respective improvements in operation model of the voluntary fire-fighter organisations.

#### **... have resulted in increased transparency...**

In **Denmark**, General Data Protection Regulation (GDPR) rulings from The Danish Protection Agency (DPA) were formerly only published if DPA deemed that the GDPR-rulings were of a “principal character”. However, encouraged by an *ex post* evaluation recommendation from the Danish Business Regulation Forum, DPA adopted a new practice of publishing all GDPR-ruling irrespective of their character as long as private or public interests did not outweigh the benefits of allowing businesses to gain more insights over GDPR-rulings in general.

#### **... and led to changes to improve the regulatory framework**

A **German** *ex post* evaluation of the Federal Government's Environmental Information Act (*Umweltinformationsgesetz*) was intended to determine whether the legislative objectives of the Act were being met. The assessment concluded that the Act was essentially fulfilling its objective. The evaluation proposed to create the post of Environmental Information Commissioner reporting to the Federal Commissioner for Data Protection, which was taken up in the bill amending the Environmental

Damage Act (Umweltschadensgesetz), the Environmental Information Act and other environment-related regulations. The ombudsperson and supervisory functions that the Federal Commissioner for Data Protection and Freedom of Information is to be extended to cover access to environmental information.

As part of an *ex post* evaluation of the Act on Counteracting Excessive Delays in Commercial Transactions in **Poland**, numerous demands appeared, largely related to the new obligation to submit reports on payment practices. The assessment and comments highlighted the need to introduce changes aimed at increasing the effectiveness of proceedings. Amendments to the Act are currently underway.

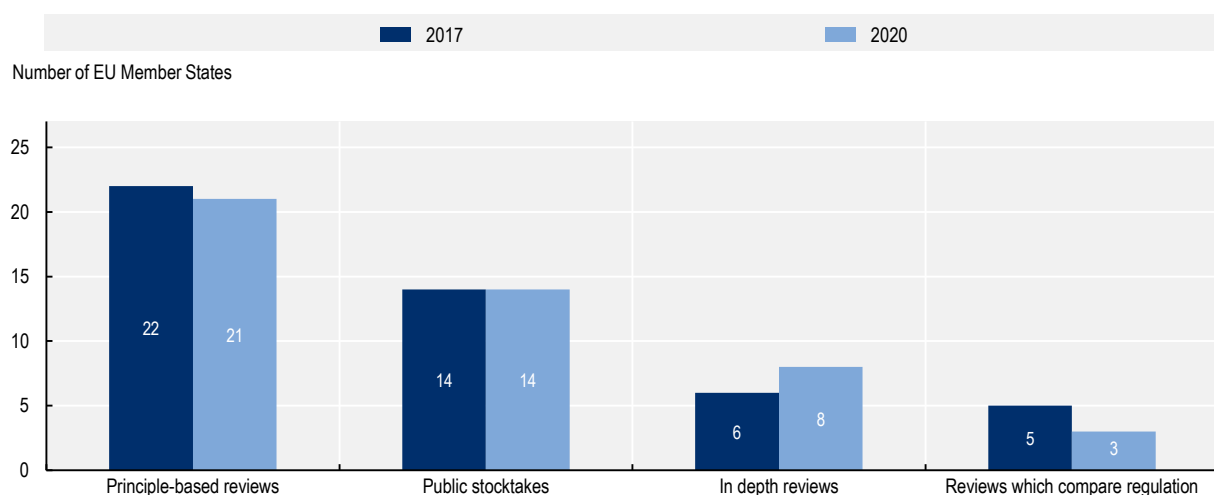
Source: Supplementary material provided to the indicators of Regulatory Policy and Governance Survey 2021.

For EU Member States with a strong administrative burden focus, *ex post* evaluations could, at a minimum, be used to improve the *ex ante* estimation of those costs in future regulatory proposals. However the extent to which Member States utilise the results of evaluations to feedback into improved *ex ante* assessments of administrative burdens remains unclear.

Where EU Member States undertake fuller reviews that not only look at reducing unnecessary burdens, but also assess whether the regulation remains in the public interest, there is increased scope for learning and improving future *ex ante* assessments. A review, for example, may demonstrate that a particular regulatory approach did not change market participants' behaviours as anticipated, and this information could be used to help guide future policy options. Similarly, a review may note that compliance levels varied widely from what was originally intended when the rule was made. Such information can help to ensure that regulators are armed with a full suite of tools – starting with educational ones – to help achieve sought after compliance levels in the future.

The main type of *ex post* evaluation undertaken by EU Member States is principle-based reviews. The most common guiding principle is on administrative burdens followed by competition. Since 2017, both **Estonia** and **Sweden** undertook in-depth reviews, into the competitiveness of the business environment and environmental assessment system, respectively (Box 4.2).

**Figure 4.3. Member States most commonly engage in principle-based reviews and least often conduct reviews that compare regulation**



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

### Box 4.2. Recent in-depth reviews conducted in Estonia and Sweden

In 2018, the **Estonian** Ministry of Justice published an in-depth review of its company law. The review was carried out by a working group of legal experts, aimed at assessing the Estonian company law as a whole and to propose possible amendments. In addition to analysing the Estonian law, the working group studied the legal framework in a number of similar countries, the existing case law and the legal literature within the terms of reference given by the Ministry of Justice. The assessment resulted in a large number of regulatory proposals and amendments, which are to be implemented as a part of fundamental changes to the legislative policy framework by 2030.

In January 2018, the Government Offices in **Sweden** authorised an in-depth review of the system for the environmental assessment of hazardous activities. The aim of the review was to assess whether the environmental assessment was designed in a way that promoted investments that drive technology and development towards lower negative environmental impacts, and to propose how the environmental assessment process could become more efficient and effective. The review also assessed whether the review of activities was in line with the Environmental Code and promoted investments contributing to a green transition.

The review highlighted positive aspects of the environmental assessment (e.g. efficiency measures regarding the introduction of change permits), but also areas for improvement (e.g. introduction of e-service for environmental permit application).

Source: Indicators of Regulatory Policy and Governance Survey 2021; Käerdi et al (2018<sup>[5]</sup>), Ühinguõiguse Revisjon Analüüs-Kontseptsioon, [https://www.just.ee/sites/www.just.ee/files/uhinguoiguse\\_revisjoni\\_analuus-kontseptsioon.pdf](https://www.just.ee/sites/www.just.ee/files/uhinguoiguse_revisjoni_analuus-kontseptsioon.pdf); Regeringskansliet (Swedish Government Office (2018<sup>[6]</sup>), Anpassad miljöprövning för en grön omställning, <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2018/10/ds-201838/>.

It is perhaps somewhat surprising that countries with similar values and laws have not taken a more active approach in conducting reviews that compare regulations or regulatory outcomes across jurisdictions. It remains likely that there are opportunities to improve the regulatory environment in various EU Member States based on others' experiences. One explanation could be that training to conduct *ex post* evaluations for officials is limited. Only **Austria**, **France**, **Greece**, and **Italy** report having formal training programs (Box 4.3).

### Box 4.3. *Ex post* evaluation training offered by various EU Member States

The training offered by **Austria** is specific to *ex post* evaluation and to the monitoring tools used for this purpose by the Austrian government. It also covers the evaluation principles as well as information and reporting requirements.

Officials in **France** have access to a training on *ex post* evaluation that enables them to get familiarised with the relevant theories and methodologies. In addition, the French government has organised ad hoc training seminars on *ex post* evaluation of public policies, in partnership with French research institutions.

The training programme in **Greece** covers the better regulation framework as a whole, including *ex post* evaluation. The programme runs over several days and *ex post* evaluation is an integral component of the training, along with other core regulatory management tools such as stakeholder engagement and RIA.

In **Italy**, the National School of the Administration organises the training course “How to build RIA and *ex post* evaluation”. The course aims to update managers and officials involved in the development of RIA and *ex post* evaluation. It is an operational and practical training course for policy officials, aiming at practicing techniques of consultation, policy option analysis, assessment of impacts. Lessons are rich in interaction on case studies.

Source: Indicators of Regulatory Policy and Governance Survey 2021.

Results from the iREG survey indicate that 16 EU Member States and the European Union require policy makers to identify a process to achieve a regulation’s goals at the time when the regulation is first created (Table 4.1). However, when it comes to reviewing regulations via *ex post* evaluations, only 13 EU Member States assess whether the underlying policy goals were in fact achieved or not. Only **Austria**, the **Czech Republic**, **Germany**, **Italy**, and the EU reported doing so systematically. *Ex ante* requirements exist in **Finland**, **Ireland**, **Latvia**, **Lithuania**, **Malta**, **Slovak Republic**, **Slovenia**, and **Spain** without any *ex post* practices, and conversely **Bulgaria**, **Croatia**, **Denmark**, and **Sweden** conduct *ex post* evaluations but have no requirement to identify a process *ex ante*. These results further highlight the current disconnect between regulation making and review.

**Table 4.1. Many EU Member States are required to identify how a regulation’s goals will be achieved at the development stage, but very few of them conduct *ex post* evaluations that actually assess whether the underlying policy goals were achieved**

	When designing laws, policy makers have processes in place to identify the achievement of a regulation’s goals.		Do <i>ex post</i> evaluations contain by default an assessment of whether the underlying policy goals of regulation have been achieved?	
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations
Austria	Yes	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes
Bulgaria	No	No	Yes	No
Croatia	No	No	Yes	No
Cyprus	No	No	No	No
Czech Republic	Yes	Yes	Yes	Yes
Denmark	No	No	Yes	No
Estonia	Yes	No	Yes	No
Finland	Yes	No	No	No
France	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes
Greece	No	No	No	No
Hungary	No	No	No	No
Ireland	Yes	Yes	No	No
Italy	Yes	Yes	Yes	Yes
Latvia	Yes	Yes	No	No
Lithuania	Yes	No	No	No
Luxembourg	No	No	No	No
Malta	No	Yes	No	No
Netherlands	Yes	Yes	Yes	Yes
Poland	Yes	Yes	Yes	No
Portugal	No	No	No	No
Romania	No	No	No	No
Slovak Republic	Yes	Yes	No	No
Slovenia	Yes	No	No	No



	When designing laws, policy makers have processes in place to identify the achievement of a regulation's goals.		Do <i>ex post</i> evaluations contain by default an assessment of whether the underlying policy goals of regulation have been achieved?	
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations
Spain	■	■	■	■
Sweden	■	■	■	■
European Union	■	■	■	■

- For all primary regulations/ All *ex post* evaluations
- For major regulations/ *Ex post* evaluations regarding major regulations
- For some regulations/ Some *ex post* evaluations
- Never

Note: Data is based on 27 EU Member States and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

### ***The use of threshold tests in ex post evaluations across the European Union***

Similar to *ex ante* impact assessments, a threshold with objective criteria to identify when and how to conduct *ex post* evaluation can help to channel resources effectively to the most significant regulations and improve transparency of decision making about which rules get reviewed and why.

Less than a quarter of EU Member States have a threshold in place to determine whether an *ex post* evaluation of primary laws should take place – namely, **Austria, Estonia, Germany, Italy, Slovenia and Spain**. More information on the **Estonian** threshold test is in Box 4.4. Only Austria, Germany and Spain reported having comprehensive tests that cover both costs and benefits relating to social, economic and environmental impacts (Figure 4.4).

#### **Box 4.4. Requirements and application of the Estonian *ex post* evaluation threshold**

In general, *ex post* evaluation of existing regulations is mandatory for some primary laws and subordinate regulations in **Estonia**. A threshold test is used to determine whether *ex post* evaluations of primary laws should be undertaken, but this is not the case for subordinate regulations.

If *ex ante* impact assessment shows the occurrence of significant impacts (as understood in the Estonian legislative system), *ex post* assessment is required by rule and the plan for conducting it must be presented in the explanatory letter of the draft law. *Ex post* evaluations are required to provide qualitative assessment of costs and benefits, but it is not required that they compare the predicted and actual regulatory impacts, although evaluations sometimes reference the initial RIA.

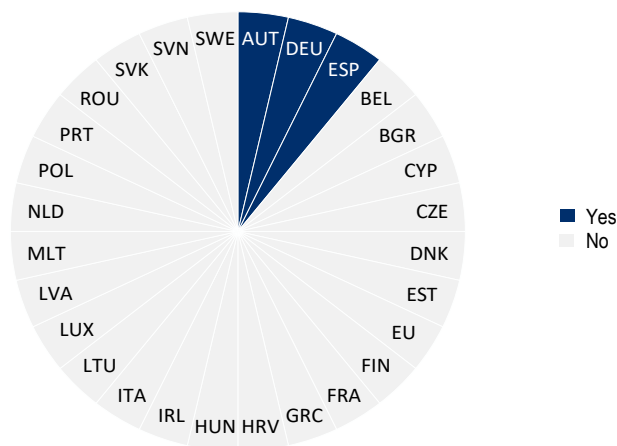
If the line ministry is of the view that *ex post* evaluation is unnecessary, the reasons for such decision have to be shown in the explanatory letter of the draft law. However, the Legislative Quality Division can make suggestions regarding which laws and regulations should be subject to *ex post* assessment.

A new *ex post* evaluation strategy is currently under development in Estonia, under which legislative proposals introduced in response to an emergency must always be subject to *ex post* evaluations, since they may undergo a less detailed RIA.

For example, an *ex post* evaluation of a regulation that aimed to reduce the visibility of alcoholic beverages in retail stores has been carried out recently. The requirement to carry out the evaluation was pre-defined in the draft law. The *ex post* assessment showed that the regulatory amendment changed consumer behaviour and led to fewer impulse purchases of alcohol.

Source: Indicators of Regulatory Policy and Governance Surveys 2021, Kandla et al (2019<sup>[77]</sup>), Study on partial alcohol point-of-sale display ban, [https://www.sm.ee/sites/default/files/summary\\_study\\_on\\_partial\\_alcohol\\_point-of-sale\\_display\\_ban\\_estonia\\_2019.pdf](https://www.sm.ee/sites/default/files/summary_study_on_partial_alcohol_point-of-sale_display_ban_estonia_2019.pdf).

**Figure 4.4. Few Member States report having a comprehensive threshold test in place to decide whether an *ex post* evaluation should be undertaken**



Note: Data is based on 27 EU Member States and the European Union.  
Source: Indicators of Regulatory Policy and Governance (IREG) Survey 2021.

*Ex post* evaluation requirements in **Germany** are determined by threshold tests that include whether the annual compliance costs generated by the regulation are in excess of EUR 1 million for citizens and businesses, as well as political relevance and the level of risk of the regulation. All *ex post* evaluations in Germany are required to contain an assessment of costs (but not benefits) and are required to be quantified. *Ex post* evaluations regarding major primary and subordinate laws also include a comparison of the actual vs predicted impacts of the regulation being reviewed. In November 2019, the German government introduced additional requirements for independent quality control of *ex post* evaluations which the National Regulatory Control Council (NKR) is performing.

In **Denmark** there are no formalised threshold or other factors used to identify regulations that require an *ex post* evaluation. Instead, it is at the discretion of Danish Business Regulation Forum (DBRF) to decide which regulations will be assessed *ex post*. However, the DBRF's decision is based on the regulatory burdens perceived by Danish businesses. Ministerial officials also have the discretion to choose whether to undertake an *ex post* evaluation and this decision is reportedly based on the political significance of a legislation. In practice when conducting evaluations, some contain an assessment of the costs and benefits and some compare the actual vs predicted impacts of the original rule against observed outcomes. The DBRF has an ongoing monitoring role to ensure that regulations are and remain proportionate after their implementation. Where that is no longer the case it is corrected, but it has to be ensured that relief for businesses is not made at the expense of consumers.

### **Regulatory stock management across the European Union**

Left unchecked, the stock of regulations builds up over time creating cumulative burdens on business and citizens. Common forms of regulatory stock management are embedding review clauses and regulatory offset arrangements such as one-in-one-out. The OECD has recently published research on both forms of stock management (OECD, 2020<sup>[3]</sup>) (Trnka, D. Thuerer, Y, 2019<sup>[8]</sup>) **Finland, France, Germany, Italy, Lithuania** the **Netherlands**, and **Spain** currently have formalised stock management arrangements in place and more recently both the **Slovak Republic** and the European Union introduced one-in-one-out rules.

Embedded review clauses can be ad hoc or systematic. The former are usually reserved for policies with substantive economy-wide impacts that are highly uncertain at the time of implementation and therefore warrant *ex post* evaluation to better understand whether the assumptions at the time the rule was made

remain valid. The latter usually take the form of either sunset or automatic evaluation clauses. Sunset clauses provide that a regulation will cease to have effect at a specified future date, unless it is either amended or remade. Automatic evaluation clauses provide a specified date by which either a review of the regulation needs to have commenced or concluded by.

Sunset arrangements are more commonplace than automatic evaluation clauses across the European Union (Table 4.2). That said, no EU Member State uses them systematically. **Austria, Germany, Hungary,** and the European Union itself have systematic automatic review provisions in place. **Bulgaria, Croatia, Cyprus, Latvia, Malta, Romania, the Slovak Republic,** and **Slovenia** do not utilise either sunset or automatic evaluation clauses.

**Table 4.2. Around half the EU Member States include sunset clauses while automatic evaluation requirements are less common**

	Do regulations include 'sunset' clauses?		Do regulations include automatic evaluation requirements?	
	Primary laws	Subordinate regulations	Primary laws	Subordinate regulations
Austria	For all primary laws/ subordinate regulations	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations
Belgium	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Bulgaria	Never	Never	Never	Never
Croatia	Never	Never	Never	Never
Cyprus	Never	Never	Never	Never
Czech Republic	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Denmark	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Estonia	Never	Never	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Finland	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
France	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Germany	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations
Greece	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Hungary	Never	Never	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations
Ireland	Never	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Italy	Never	Never	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Latvia	Never	Never	Never	Never
Lithuania	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Luxembourg	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Malta	Never	Never	Never	Never
Netherlands	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Poland	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Portugal	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Romania	Never	Never	Never	Never
Slovak Republic	Never	Never	Never	Never
Slovenia	Never	Never	Never	Never
Spain	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
Sweden	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations	For some primary Laws/ subordinate regulations
European Union	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations	For all primary Laws/ subordinate regulations

- For all primary laws/ subordinate regulations
- For major primary laws/ subordinate regulations
- For some primary laws/ subordinate regulations
- Never

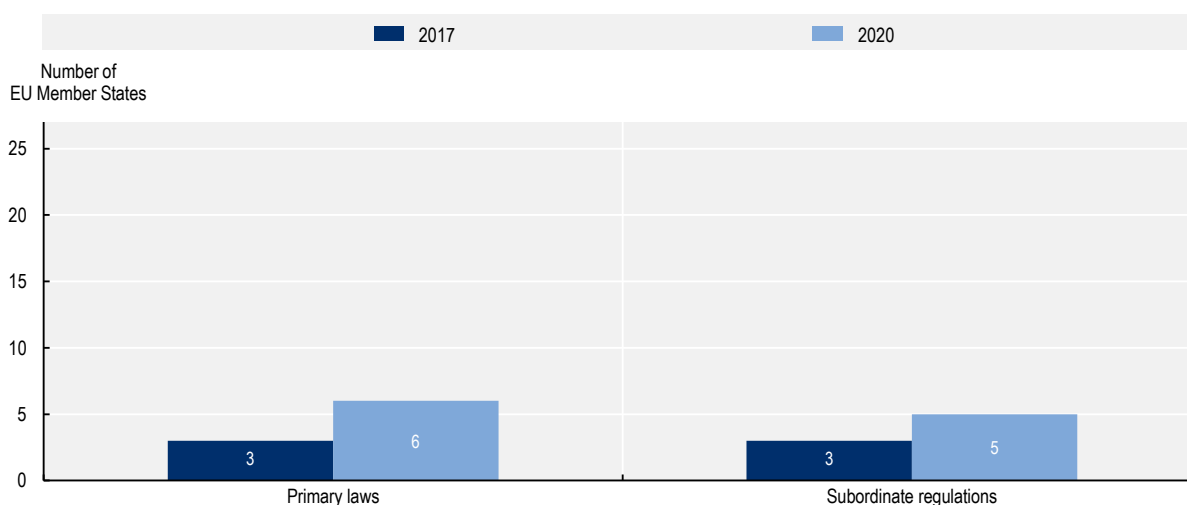
Note: Data is based on 27 EU Member States and the European Union.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

## Regulatory oversight of ex post evaluations in the European Union

Regulatory oversight remains underdeveloped across both the European Union and the OECD more generally (see chapter 1 and (OECD, 2021<sup>[4]</sup>)). Despite the fact that 85% of EU Member States reported having conducted *ex post* evaluations in the past five years, oversight remains scarce (Figure 4.5). **Croatia, Lithuania, and Poland** all reported having instituted an oversight body responsible for quality controlling *ex post* evaluations since 2017. These join **Austria, Italy, and the Netherlands** as the only EU Member States with an entity responsible for oversight of *ex post* evaluations. *Ex post* evaluations conducted by the European Commission are subject to quality control mechanisms of the Regulatory Scrutiny Board, which publishes its opinions on evaluation quality.

**Figure 4.5. It is rare that EU Member States have a body outside the unit conducting the evaluation responsible for reviewing the quality of *ex post* evaluations**



Note: Data is based on 27 EU Member States.

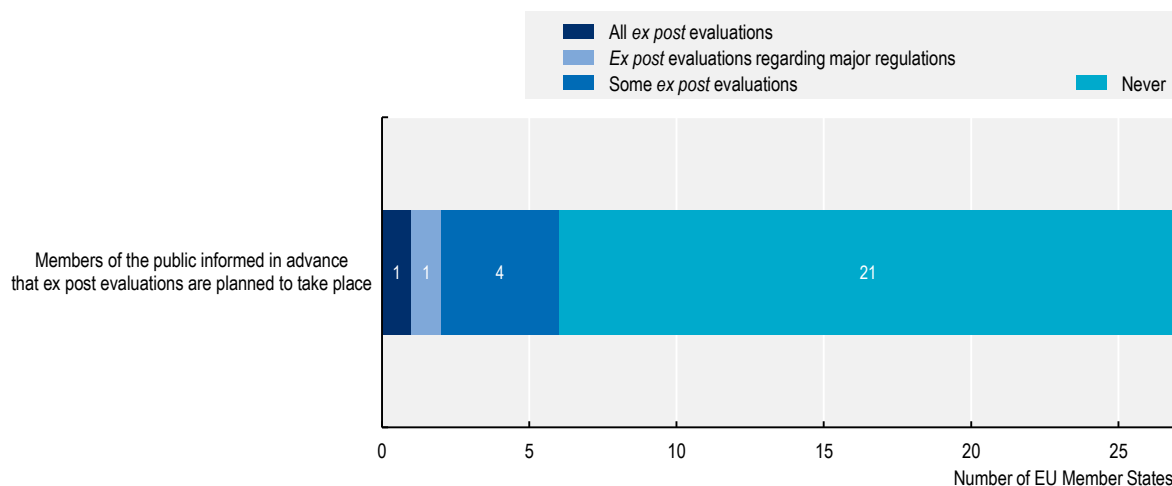
Source: Indicators of Regulatory Policy and Governance (iREG) Surveys 2017 and 2021.

## Engaging stakeholders in ex post evaluations

EU Member States involve stakeholders through a variety of mechanisms when reviewing existing rules. Stakeholder engagement can be particularly useful in *ex post* evaluation to provide input into how regulations are actually working and can be a channel for regulators to prompt feedback from those parties affected by a regulation. Stakeholders can be involved both in the actual reviews and in more ongoing processes of identifying areas that may require reform.

Informing stakeholders in advance about forthcoming *ex post* evaluations is rare across EU Member States (Figure 4.6). Providing advanced notice to stakeholders enables them to gather data on actual impacts and experiences to assist policy makers to determine whether rules have worked as originally intended. Only **Lithuania** always informs stakeholders in advance, although it should be noted that this requirement is newly introduced and, in practice, has not been extensively used. **Italy** requires stakeholders to be systematically informed, and **Denmark, Latvia, the Netherlands and Spain** do so for some *ex post* evaluations.

**Figure 4.6. It is rare that members of the public are informed in advance about *ex post* evaluations across the EU**



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

**Estonia** and **Sweden** and the European Union report to systematically engage stakeholders in *ex post* evaluations. Two-thirds of EU Member States engage stakeholders in some *ex post* evaluations. Since 2017, **Croatia** and **Latvia** now involve stakeholders in evaluations of some regulations.

Most commonly, stakeholders are provided ongoing opportunities to submit comments, participate in interviews and meetings. Their input helps to identify areas for improvement and is often included in the scope of any evaluation. Stakeholder involvement is used in this manner in the following countries, including **Croatia**, **Lithuania**, the **Netherlands**, **Poland**, **Portugal**, and the **Slovak Republic**. For example, in **Italy**, stakeholders are consulted twice: first, early in the planning stage and then during the evaluation process. As for reviews of a large number of regulations, stakeholders are also involved in defining the priorities to simplify administrative and regulatory burdens and monitoring the implementation of the simplification measures. In **Sweden**, experts from business organisations and other interest groups can be appointed as experts in a committee of inquiry established by the responsible ministry to carry out *ex post* evaluation of a regulation. Referral bodies and stakeholders are also invited to provide comments on the final report, which are then dealt with by the responsible ministry in the continuous work within the Government Offices.

Four EU Member States report to systematically reference parts of the initial RIA in the *ex post* evaluations: **Austria**, **Germany**, **Greece** and **Poland**. In addition, seven EU Member States reference the *ex ante* RIA in some evaluations. Compared to 2017, **Estonia** and **Greece** have this requirement in place now. In **Estonia**, objectives and problems identified in the initial RIA are reflected most commonly in *ex post* evaluations. In **Greece**, all parts of the initial RIA should be referenced in *ex post* evaluations. When conducting evaluations, the European Union notes the *ex ante* RIA in all *ex post* evaluations, in particular it refers to the problem definition, policy objectives, regulatory impacts, data collection, enforcement, compliance and monitoring mechanisms in its evaluations.

Only a handful of EU Member States have standing committees to whom the public can provide feedback or make recommendations to modify specific regulations. The four countries with standing committees are: **Denmark**, **Germany**, **Ireland**, and **Malta**. The European Union has its own standing committee. **Germany** has a Committee for petitions which serves as a central point of contact at the Bundestag for citizens, through which they can express concerns and propose regulatory suggestions to the Parliament. The

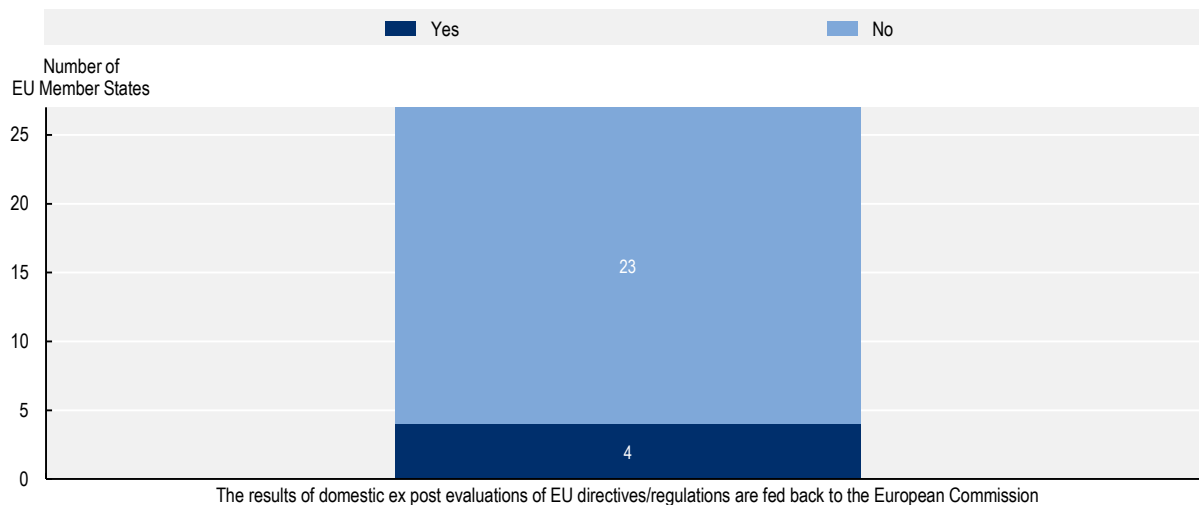
Parliamentary Committee on Public Petitions in **Ireland** has an online portal through which the public can provide comments on existing regulations.

## Use of *ex post* evaluation in the EU legislative process

EU legislative processes can be improved by utilising the results from *ex post* evaluations to improve policy making. Given that the vast majority of EU Member States have undertaken some evaluations, coupled with the evaluations of the European Commission, there is an available evidence base that can be help to improve the rules of both Member States and the European Union more generally.

The opportunity to learn from evaluations is not limited to the policy ministry conducting the review. Results can be widely applicable. Part of the learning process is to integrate results into future policy making and more precisely in any subsequent RIAs. Yet, currently sharing results beyond an individual jurisdiction is rare (Figure 4.7). Despite the fact that around 85% of EU Member States undertook at least one *ex post* evaluation in the past five years, less than 15% shared their results with the European Commission where the evaluation involved areas of EU legislative competencies. As a transparency measure reviews should generally be published and shared with relevant parties.

**Figure 4.7. It is rare that EU Member States share the results of their *ex post* evaluations of EU directives/regulations with the European Commission**



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

EU Member States that do not feed the results of their *ex post* evaluations of EU directives/regulations with the European Commission, in most cases, do not do so because they do not have EU directive review mechanisms, or because evaluations are rare. However, in **Poland**, despite not having a requirement in place to share the results of domestic *ex post* evaluations with the European Commission, the minister responsible for the field concerned might share the findings of EU-law revisions with the European Commission.

Only **Denmark, Finland, Germany, and Italy** provide the European Commission with the results of their own domestic *ex post* evaluations of EU directives/regulations. **Finland** noted that it is not very common to conduct *ex post* evaluations of EU directives/regulations. However, if an *ex post* evaluation on EU directives is carried out (e.g., for a politically important EU directive for Finland), the results can be delivered

to the Commission as part of the efforts to influence any future EU legislation. The Finnish approach is more generally linked to the appropriate insertion of review clauses into national legal acts. Sometimes they reflect the existence of a review clause in the relevant EU act, but do not necessarily have to do so. A more frequent use of national review clauses is often debated as a part of possible measures to improve *ex post* evaluation in Finland. In **Germany**, the analysis and processing of evaluation reports by the European Commission regarding certain dossiers is done by the relevant ministry's desk officers. The desk officers receive the information from their co-ordination units in the ministries and process and distribute the information to all persons and entities concerned. However, there is no special instrument or regime where this is written down. This is naturally part of the ongoing processing of EU dossiers in the federal government.

### ***Use of the results of the European Commission's ex post evaluation by the Member States***

The European Commission has an institutionalised approach to conducting *ex post* evaluations (Box 4.5). Under the “evaluate first principle”, the European Commission utilises evaluations to improve the existing regulatory environment and inform impact assessments. The European Commission also in some cases utilises evaluations ‘back-to-back’ with its impact assessment as part of the same process when it proposes legislative changes. Such an approach provides information and evidence about the existing regulatory environment, the extent to which what has occurred was originally expected, and if not (or if the originally envisaged are not currently being attained), allows the Commission to put forward new regulatory directions in the form of a new impact assessment. The feedback loop from evaluation to new proposals should, over time, help to improve the regulatory environment, including aspects of burden reduction and simplification, which the European Commission addresses through its regulatory fitness and performance programme (REFIT). Considering that there are many external factors and developments that may impact on the attainment of regulatory objectives, periodic reviews remain necessary, even if not connected with a policy revision.

#### **Box 4.5. The European Commission's REFIT programme**

The regulatory fitness and performance programme (REFIT) is part of the European Commission's better regulation agenda. The REFIT programme aims to ensure that implemented EU laws achieve their intended benefits for European citizens and businesses by cutting red tape and making EU laws more targeted and easier to follow.

The European Commission's proposals for *ex post* evaluation of EU laws should aim to simplify and reduce avoidable regulatory costs while still fulfilling the regulatory objectives. However, where it is not possible to simplify regulations and reduce burdens, it has to be justified in the explanatory memoranda and the evaluation staff working documents. Where simplification and burden reduction is feasible, they should be quantified to the greatest extent possible.

Recently, the new “one in, one out” policy was introduced. It intends to minimise burdens for stakeholders affected by the policy, with emphasis on the regulatory cost burdens for citizens and businesses. The approach involves offsetting new burdens resulting from the European Commission's legislative proposals by equivalently reducing existing burdens in the same policy area. This implies that all compliance costs (i.e. adjustment and administrative costs) are analysed and quantified in impact assessments, where this is feasible and proportionate. Administrative costs are offset and adjustment costs are transparently and systematically presented in impact assessments to the extent this is feasible and proportionate. Other measures are undertaken with a view to compensate those

costs to the greatest extent possible. This approach complements the European Commission's efforts through its REFIT programme to reduce burdens and simplify existing EU laws.

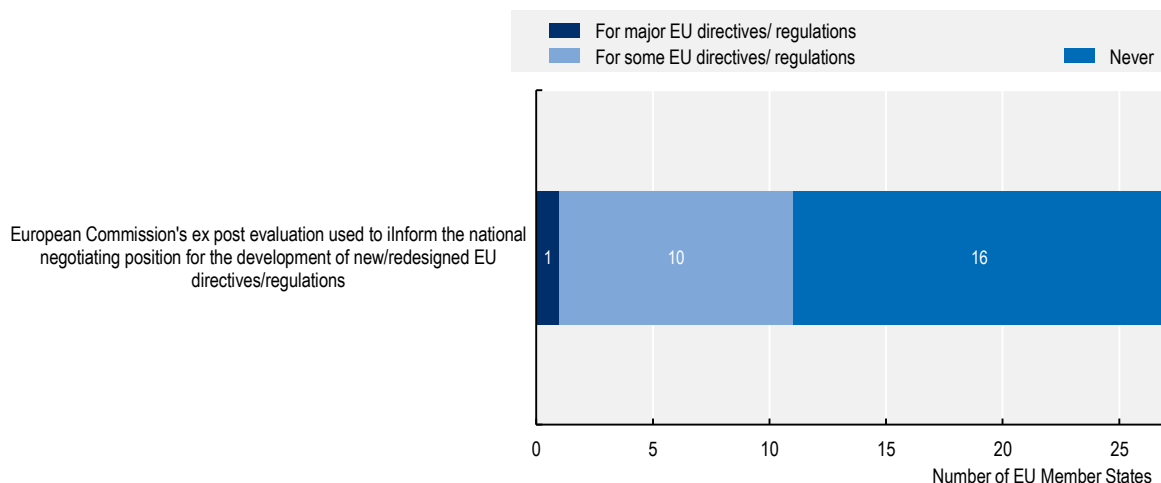
The REFIT programme relies on evaluations, impacts assessments as well as citizens' and other stakeholders' input.

Stakeholders can also provide focused input on how to make EU laws more efficient through the Have your say: Simplify! Portal. The relevant input is considered by the Fit for Future Platform, a high level expert group established by the European Commission to provide opinions on how to simplify existing laws, reduce regulatory burdens, and ensure that they are fit for the future. The high-level expert group is composed of representatives from Member States' national, regional and local authorities, the Committee of the Regions, the European Economic and Social Committee and stakeholders representing business, civil society, and non-governmental organisations.

Source: European Commission (2021<sup>[9]</sup>), Better Regulation Guidelines, [https://ec.europa.eu/info/sites/default/files/swd2021\\_305\\_en.pdf](https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf); European Commission (2021<sup>[10]</sup>), Better Regulation Toolbox, [https://ec.europa.eu/info/sites/default/files/br\\_toolbox-nov\\_2021\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf).

There are 11 Member States that report using the results of European Commission's *ex post* evaluations to inform their national negotiating position for the development of new or redesigned EU directives/regulations (Figure 4.8). **Slovenia** is the only country that engages in this practice systematically. For example, the **Netherlands** incorporates the results of the Commission's *ex post* evaluations in the BNC-fiches that are sent to the parliament to inform the Dutch starting point for negotiations. **Latvia** uses the information gained from the European Commission's *ex post* evaluations in adopting the national positions to explain the aims and shortcomings of the new/redesigned EU legal acts.

**Figure 4.8. EU Member States do not systematically use *ex post* evaluation of the European Commission to inform their national negotiation position**



Note: Data is based on 27 EU Member States.

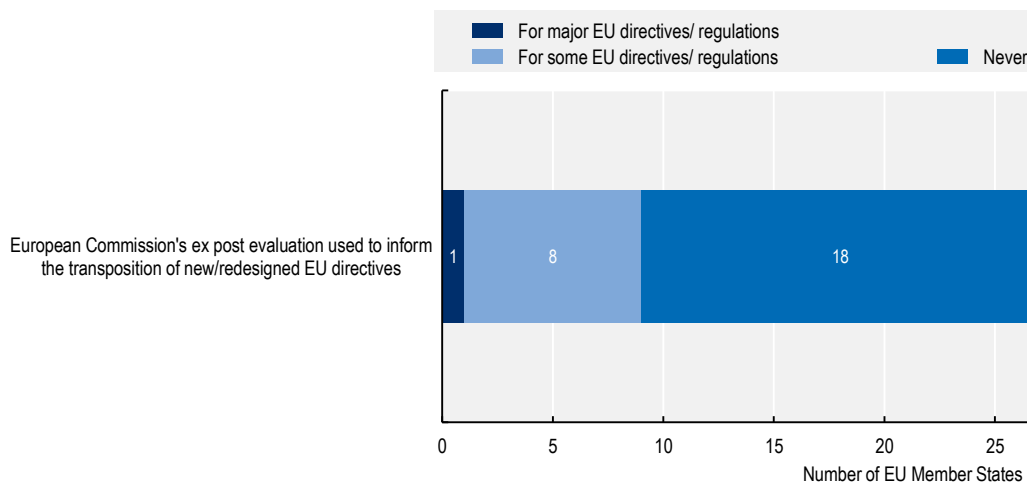
Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

Nine EU Member States reported using the results of the European Commission's evaluations to inform the transposition of new or redesigned EU directives (Figure 4.9). The relatively low uptake may be partially explained in situations where the European Commission undertook a "back-to-back" review and any resultant new European Commission proposals and supporting material were made directly available to



EU Member States through such avenues. **Slovenia** is the only country that systematically utilises the findings of the European Commission's *ex post* evaluations to inform its transposition of major EU directives/regulations. During the transposition of EU directives into national law, **Italy** uses the same requirements and processes described as for other types of regulations originating domestically. Each Administration with prevailing competence is responsible for drafting the legislative text and has continuous contact with the European Commission. The Department for European Policies co-ordinates with the Administrations and verifies the compatibility of the proposed regulations with European law.

**Figure 4.9. EU Member States do not systematically use *ex post* evaluation of the European Commission to inform the transposition of new/redesigned EU directives**



Note: Data is based on 27 EU Member States.

Source: Indicators of Regulatory Policy and Governance (iREG) Survey 2021.

In addition to using the Commission's *ex post* evaluation results to inform the negotiating position and transposition of EU directives/regulations into national law, **Denmark** uses the findings of the Commission's *ex post* evaluations for its own domestic evaluations. For instance, the results of the "Study on the accounting regime of limited liability micro companies" were used for the revision of the Danish Financial Statements Act (*Årsregnskabsloven*).

It stands to reason that EU Member States utilise the European Commission's evaluations more at the negotiation stage than at the transposition stage. During negotiation, with the Commission having identified problems or difficulties with the operation of the law, have then suggested modifications in the form of either an amendment or a new proposed rule. EU Member States may then rely on the European Commission's identified issues and stated future direction to inform their own negotiating position. Since the focus of the transposition stage is more centered on implementation, the original rationale as identified in the evaluation may be of less direct relevance to individual EU Member States. Moreover, Member States are likely to focus on any national additional provisions included as part of the transposition process. The focus on such provisions (to the extent that they are included) helps to ensure that all relevant impacts are included in any ensuing analysis by Member States.

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