

Executive summary

Main findings and recommendations

EU Member States could better pursue regulatory co-operation beyond the borders of the European Union. The second edition of the *Better Regulation Practices across the European Union* report highlights that the European Union is the world's most integrated form of international regulatory co-operation (IRC). Outside of EU integration, however, nearly 90% of Member States have only partial IRC policies in place. The European institutions – the European Commission, the European Parliament and the Council of the European Union –all need to work together and with Member States to tackle current and future challenges. Co-operative rule making and policy coherence are becoming an increasingly important part of the global regulatory system.

Member States have a critical role to play in ensuring that EU policies deliver for their citizens; they are uniquely placed to hear the voices of those affected by EU policies. Around 70% of Member States alert domestic stakeholders to consultations organised by the European Commission. However, only around one-third systematically use the Commission's analysis as input to their negotiating position. Furthermore, few Member States currently complement the Commission's analysis by using their own regulatory management tools on proposed EU regulations. The negotiation phase represents the final opportunity to modify these proposals; Member States would therefore benefit from additional evidence at this stage.

Member States can build on their current use of regulatory management tools when transposing EU directives to ensure all impacts are assessed. All Member States have formal requirements to use some regulatory management tools when transposing EU directives; these requirements, when followed, can help to determine the best implementation path. However, only one-fifth of Member States require the systematic assessment of additional impacts of domestic provisions beyond those in the directive. If EU rules are to improve community well-being, the complete set of their potential impacts should be understood before they are implemented.

The appraisal of costs and benefits should be balanced and could better account for community impacts. Although systematic requirements to identify the benefits of proposed rules exist in 70% of Member States, policy makers remain focussed on costs – more than 90 percent of Member States have systematic requirements to assess costs, especially costs for government and business. While these costs are important to consider, costs to individuals and NGOs are not assessed to the same extent. The fact that some costs are less systematically considered means decision makers are presented with an inaccurate picture that may result in regulation that is not in the best interests of the community. Furthermore, the unequal consideration of costs and benefits may lead to a focus on cost minimisation rather than the maximisation of community net benefits. The clear identification of benefits is crucial for subsequent monitoring and evaluation of whether rules have delivered the anticipated gains to citizens.

The application of the proportionality principle is often unclear and varies widely across Member States. A focus on proportionality is crucial for making sure that policy makers consider alternatives before regulating and fully understand the expected impacts of rules, including those that may be felt across borders. Two-thirds of Member States both formally recognise proportionality as a guiding principle and are required to consider a range of potential impacts when making rules. However, in practice, analysis differs substantially in both scale and scope. In some Member States, policy makers determine the depth of analysis and their decision is not subject to scrutiny from regulatory oversight. While the discretion afforded provides flexibility to policy makers, it is important to ensure that all relevant impacts are adequately assessed.

Governments have yet to fully explore non-regulatory options for meeting citizen and business needs. Regulation is just one lever of government. Only around half of Member States require alternatives to regulation, especially non-regulatory ones, to be considered. There is a need to move from “regulate first” to “first, reflect” and consider all feasible options before making a decision about the solution that will best deliver for citizens and business.

Policy makers can and should use all available information before rules are made to ensure they work as intended. This starts with discussions involving those affected by proposed rules – citizens, businesses, NGOs, and others. These stakeholders have direct experience regarding the actual impacts of rules. They can also help policy makers avoid repeating past mistakes. In EU Member States, stakeholders are engaged to varying degrees on draft rules – although around 85% of Member States provide some opportunity, less than half do so systematically, and scope remains to improve consultation at the problem identification stage to discuss different policy options. Moreover, fostering trust among stakeholders helps to achieve regulatory goals – compliance is improved where stakeholders feel heard and have had opportunities to suggest solutions. Providing feedback to stakeholders about how their input has or has not helped shape rules is critical, yet only 40% of Member States do so systematically.

Making better use of evaluations could help Member States understand if rules work in practice for citizens. One-quarter of Member States do not have systems to manage regulatory stocks to ensure that existing rules deliver benefits to the community. Incentives for improvement are also weak: less than one-fifth of Member States have a body in charge of checking the quality of reviews of existing regulation, suggesting that the quality of evaluations is likely to be highly variable. Technological advancements have made monitoring outcomes easier and less costly in many more areas of economic activity than was previously possible. Yet, governments are not making the most of the information age. Governments can better deliver on their promises when they are informed by all available evidence. Better informed decision makers make better policies and, ultimately, improve lives for citizens.



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