

EU Review Clauses in Need of Review? An Analysis of Review Clauses in EU Legislation in the Context of Better Lawmaking

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Evaluation of legislation forms an essential critical part of the policy cycle. It aims at providing objective and evidence-based information for policy makers to decide, among other things, whether to continue, modify or terminate the regulatory measure under examination.

Review clauses set out in the legislation itself have been recognised as an important tool to monitor the effectiveness and efficiency of legislation. The 2016 Interinstitutional Agreement on Better Law-making between the European Parliament, the Council and the Commission recommends the systematic use of such review clauses in EU legislation.

In this context, this paper examines which review clauses have been used in EU legislation since 2004 and analyses the terminology, timing, content, implementation and costs of the review clauses and conducted reviews. We also assess whether the reviews actually carried out have led to changes to existing legislation or specific initiatives in the Commission's annual work programme.

Our analysis finds a lack of consistency in review terms and timings used in clauses across all policy areas. This lack of clarity is compounded by a lack of easy access to the outcome of many reviews and an incomplete picture of the cost of reviews of EU legislation that have so far been carried out by the Commission.

I. INTRODUCTION

1. Review of legislation is a key aspect of the EU's Better Lawmaking agenda

In the EU context, evaluations are seen as an evidence-based judgment of the extent to which a public intervention has:¹

- been effective and efficient;
- been relevant given the needs and its objectives;

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¹ European Commission, "Better Regulation Guidelines", 2015, p. 49, available at: <http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf> (accessed 6 January 2017).

- been coherent both internally and with other EU policy interventions; and
- achieved EU added value.

Evaluation of legislation aims at providing objective and evidence-based information for policy makers to decide, among others, whether to continue, modify or terminate the regulatory measure under examination. Evaluations of EU legislation undertaken by (or on behalf of) the Commission are triggered by various mechanisms, notably review clauses in the legislative acts themselves.

Review mechanisms have been recognised as an important tool to monitor the effectiveness and efficiency of EU legislation already in the Mandelkern report in 2001² and the first Inter-Institutional Agreement on Better Lawmaking in 2003 (where the term “revision clause” is used).³ Since then, review clauses have enjoyed an ever-growing importance in EU legislation.

The 2015 European Commission guidelines on Better Regulation⁴ cite the need to regularly review legislation to ensure that it benefits EU citizens. The evaluation of EU legislation also forms an essential part of the policy cycle, as specifically referred to in the REFIT programme and the Fitness Check tool.⁵

The 2016 Interinstitutional Agreement on Better Lawmaking between the European Parliament, the Council and the Commission recommends systematically making use of such review clauses in EU legislation to gather evidence on results and impacts, while taking account of the time needed for implementation.⁶ All three EU institutions also agree on the “[...] importance of greatest possible consistency and coherence in organizing their work to evaluate the performance of Union legislation” and want to “[...] establish reporting, monitoring and evaluation requirements in legislation, while avoiding overregulation and administrative burdens, in particular on Member States. Where appropriate, such requirements can include measurable indicators as a basis on which to collect evidence of the effects of legislation on the ground”. Moreover, in April 2016, the European Parliament adopted a resolution recognising that review clauses help to regularly reassess the continued relevance of EU legislative measures.⁷

In the past, however, the regular review of legislation has often been given less consideration in the Better Lawmaking structures than it deserves.

2. Role and nature of a review clause

There is no unique definition of a review clause. In EU legislation, review clauses come in different forms and mechanisms, such as annual or interim reports, mid-term reviews

² Mandelkern Group on Better Regulation, Final Report, 13 November 2001, 17 *et seq*; point 2.3, available at: <http://ec.europa.eu/smart-regulation/better_regulation/documents/mandelkern_report.pdf> (accessed 6 January 2017).

³ Interinstitutional Agreement of the European Parliament, the Council and the European Commission on Better Law-Making, OJ C321; 31.12.2003, para. 21, available at: <[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003Q1231\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003Q1231(01))> (accessed 6 January 2017).

⁴ *Supra*, note 1, 49.

⁵ European Commission, “Better Regulation: REFIT – Making EU law lighter, simpler and less costly”, website last updated 17.12, available at <http://ec.europa.eu/smart-regulation/refit/index_en.htm>.

⁶ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission, 09.03.2016; paras. 20, 22 and 23, available at: <http://ec.europa.eu/smart-regulation/better_regulation/key_docs_en.htm>.

⁷ European Parliament resolution of on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, 12 April 2016, point 4.

or reports, final reports or ex-post evaluations and, indeed, reviews to prepare potential new legislative proposals. As such, they can cover very specific aspects of a piece of EU legislation or of an EU programme, the state of progress in the implementation, the provision of statistics or the presentation of a full scale ex-post evaluation. They are formulated as review, evaluation, and reporting provisions which are not necessarily linked to a redraft of the existing rules and provisions.

For the European Commission, the European Parliament and the Council, it is of paramount importance to assess how a policy intervention has actually performed in comparison to expectations. Therefore, we take a comprehensive approach to review clauses and all of the above are covered by our analysis. This is also in line with the approach taken in the 2016 Interinstitutional Agreement on Better Lawmaking.

3. Methodology

This paper examines which review clauses have been used in EU legislation since 2004 and analyses the terminology, timing, content, implementation and costs of the review clauses and conducted reviews. We also look at whether the reviews actually carried out have led to changes to existing legislation or to specific initiatives in the Commission's annual work programme.

Our analysis draws on a desk-based review with analysis and breakdown of the review clauses in acts adopted by the European Parliament in the 6th (July 2004–June 2009) and 7th (July 2009–June 2014) Parliamentary terms, as well as in the first 17 months of the 8th Parliamentary term (July 2014–November 2015).

The data has been taken from the December 2015 EPRS rolling checklist of review clauses in EU legislation⁸ and the November 2015 EPRS study on the state of play of evaluation in the European Commission.⁹ These documents have been chosen as they include all EU policy areas and as such are likely to be representative of the Commission's and co-legislators' activities. The former covers two whole parliamentary terms (July 2004–December 2015), while the latter includes all evaluations published in 2014 until October 2015 on the Commission's database of completed evaluations.

Our analysis covers all 501 pieces of legislation listed in the 2015 EPRS rolling checklist, which together mandate 681 reviewing obligations on the European Commission. 153 of these pieces of legislation also impose some obligation on Member States, either to work with or report to the Commission.

The type and timings of conducted reviews were compared to the reviews required in the legislation. The number of different review terms and timings used were analysed with reference to the parliamentary committee responsible, year and type of legislation.

60 of these 501 pieces of legislation have led to 72 review documents which are publicly accessible through the Commission evaluation database.¹⁰ These have been

⁸ I Kiendl Krišto and S Huber, *Review Clauses in EU Legislation: A rolling Checklist* (3rd edn, European Parliament, EPRS 2015), available at: <[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/573286/EPRS_STU\(2015\)573286_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/573286/EPRS_STU(2015)573286_EN.pdf)>.

⁹ L Schrefler and S Huber, *Evaluation in the European Commission: Rolling Check-list and State of Play* (European Parliament, EPRS 2015), available at: <[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2015\)558789](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2015)558789)>.

¹⁰ European Commission, Database of evaluation files, 2014, available at: <<http://ec.europa.eu/smart-regulation/evaluation/search/search.do>>.

studied in depth to determine their content and nature. The lack of public availability of reviews which should have been completed by now places limitations on how representative the conclusions of the part of this study on reviews can be in practice. While this limitation should be recognised and taken into account, it is a significant finding in itself at a time when the Commission has committed itself to greater transparency in the planning and policy cycle in the name of Better Regulation.

The December 2015 EPRS study comprises a list of planned and ongoing evaluations of EU legislation. There are 273 legal acts and regulatory instruments listed in the study for which 40 include their planned cost.

II. ANALYSIS OF REVIEW CLAUSES IN EU LEGISLATION SINCE 2004

1. Terminology used in EU legislative review clauses

a. Inconsistent choice of terminology in EU legislative review clauses

Our analysis shows that the choice of terminology in review clauses does not indicate a consistent approach. The review terms used do not show any pattern across parliamentary committee, type of legislation or timing of the clauses. Due to the number of different terms used it would be impractical to attempt to define and categorise them all. Outliers and extremely rarely used terms have been excluded to focus on those wordings which appear most often, accounting for more than 99% of the legislation in the checklist (see supplementary materials, Annex 1).

This has highlighted the fact that three terms account for the overwhelming majority (around 84%) of the wording used for review clauses in the EU legislation:

- “evaluation”,¹¹
- “report”; and
- “review”.

Examples illustrating how these different terms are used in EU legislation are shown in Box 1.

Box 1 Typical review clauses

Regulation 670/2012 – Art. 1 “An independent full- scale **evaluation** shall be carried out in 2015.”

Regulation 1144/2014 – Art. 26 “By 31 December 2018, the Commission shall submit to the European Parliament and to the Council an interim **report** on the application of this Regulation. That interim report shall include the rate of uptake in different Member States, together with any appropriate proposals.”

Regulation 966/2012 – Art. 211 “This regulation shall be reviewed whenever it proves necessary to do so and in any case at the latest two years before the end of the first post-2013 multiannual financial framework. Such **review** shall cover, inter alia, the implementation of the provisions in Title VIII of Part One.”

Directive 2011/88 – Art. 1 (1d) “The Commission shall, by 31 December 2016, submit to the European Parliament and the Council a **report reviewing** paragraph 1b accompanied, if appropriate, by a legislative proposal including an end date for the application of that paragraph.”

¹¹ For the purpose of our analysis, we have considered the terms “evaluation” and “evaluation report” to be synonymous.

Table 1. Most common terms in review clauses

	Report	Report & Review	Report & Evaluate	Report & Assess	Review	Evaluation report	Evaluate
AFCO	3				2		
AFET							
AGRI	7	1			2	1	
BUDG			2		2		1
CODE			1				
CONT						2	
CULT	2	1				4	1
DEVE	1				1		
ECON	26	14	2	5	2	1	
EMPL	19	3	4		1	1	4
ENVI	25	13	2	5	7	1	
FEMM	3	1					
IMCO	21	8	5	2		1	
INTA	8	5	2				
ITRE	9	7	10	2	2	3	6
JURI	22	4	1	3	3		3
LIBE	29	2	5	5	1	4	4
PECH	5					1	
REGI	1					1	
TRAN	40	2	1	5	3	4	
TOTAL	221	61	35	27	26	24	19
[in %]*	44%	12%	7%	5%	5%	5%	4%

* As a percentage of the 501 pieces of legislation

Source: Compilation by authors, based on EPRS data

Note: AFCO: Constitutional Affairs; AFET: Foreign Affairs; AGRI: Agriculture and Rural Development; BUDG: Budgets; CODE: Conciliation; CONT: Budgetary Control; CULT: Culture and Education; DEVE: Development; ECON: Economic and Monetary Affairs; EMPL: Employment and Social Affairs; ENVI: Environment, Public Health and Food Safety; FEMM: Women's Rights and Gender Equality; IMCO: Internal Market and Consumer Protection; INTA: International Trade; ITRE: Industry, Research and Energy; JURI: Legal Affairs; LIBE: Civil Liberties, Justice and Home Affairs; PECH: Fisheries; REGI: Regional Developments; TRAN: Transport and Tourism.

Table 1 gives an overview of the number of cases in which different terms (and combinations thereof) have been used in EU legislation since 2004.

b. "Evaluation": the term most clearly defined in the EU context

Of all these terms, the least ambiguous is "evaluate" which is used in around 16% of the legislation, either alone or in conjunction with other terms (e.g. Directive 2010/31 on the energy performance of buildings; Decision 1025/2013 providing macro-financial assistance to the Kyrgyz Republic).

This is because an evaluation is clearly defined by the European Commission as "[...] an evidence-based judgement of the extent to which an intervention has been effective and efficient; been relevant given the needs and its objectives; been coherent both internally and with other EU policy interventions; and achieved EU added value".¹²

¹² European Commission, "What is an evaluation and when is it required?", 2015, available at: <http://ec.europa.eu/smart-regulation/guidelines/tool_36_en.htm>.

There is also recently updated guidance given by the European Commission on the evaluation process, applicable from July 2015. This guidance acknowledges that an evaluation can only be carried out when sufficient experience of the operation of the legislation has been accumulated. In particular, it specifies that “[...] often trade-offs need to be made between when and how to conduct the evaluation (in order to feed further decision making process) and the amount of reliable data which is available”¹³.

c. “Report”: term often used across all parliamentary committees

The most common term used in review clauses across all years, parliamentary committees, and types of legislation is “report”. It accounts for around 44% of review clauses when used as the only term defining the type of review and it is found in 77% of the legislation if we include combined terms (e.g. report and review; report and evaluate). Neither “report” nor the combined terms have been defined, which generates ambiguity as to what is expected in the execution of these reviews. To this should be added the fact that the term “report” is used both to denote an actual document or documents presented to the European Parliament and Council (e.g. Directive 2013/53 on recreational craft and personal watercraft) and the act of presenting said document or documents (e.g. Decision 243/2012 establishing a multiannual radio spectrum policy programme).

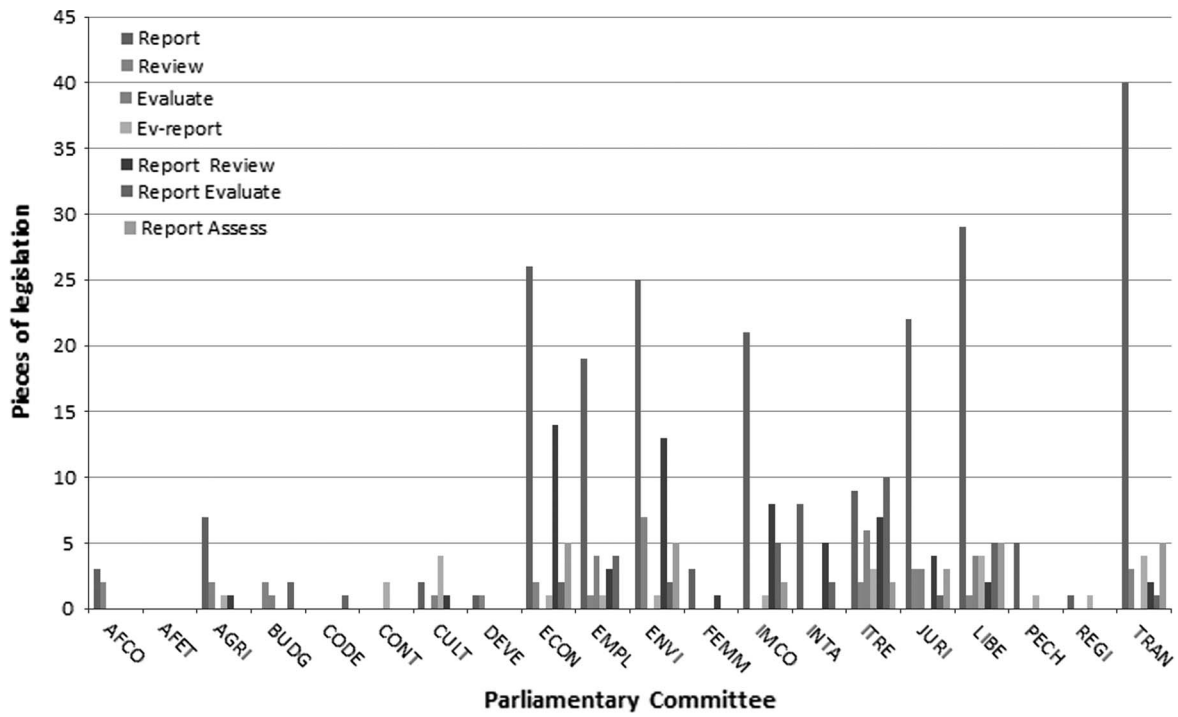
It is unclear whether the act of reporting is equivalent to submitting a written report. The requirements of the document referred to are at times specified in very general terms, for example a report on the application of a piece of legislation (e.g. Regulation 211/2011 on the citizens’ initiative) and at others a more specific report on a particular area of the work of the legislation (e.g. Regulation 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material). While allowing for the co-legislators’ freedom to review legislation in part or in whole as they see fit within the limits of their prerogatives, there is still a lack of guidance or guidelines on the proper process for, and content of, a general report.

d. “Review”: second most frequently used term, like “report” generally used in reference to expected outcome

“Review” is found in around 24% of the legislation¹⁴ across all policy areas and is, as for “report”, used both in reference to the expected outcome (a review) (e.g. Regulation 1308/2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations 922/72, 234/79, 1037/2001 and 1234/2007) and to the act of reviewing (e.g. Regulation 1337/2011 concerning European statistics on permanent crops and repealing Council Regulation 357/79 and Directive 2001/109). It is unclear what is required more specifically of a “review” in contrast to a report or evaluation.

¹³ European Commission, “Guidelines on evaluations and fitness check”, 2015, available at: <http://ec.europa.eu/smart-regulation/guidelines/ug_chap6_en.htm> (accessed 11 January 2016).

¹⁴ Percentages in the text may add up to over 100%, since two terms are sometimes used in conjunction (e.g. review and report).



Graph 1. Most common terms used in review clauses
Source: Compilation by authors, based on EPRS data

e. No discernible pattern in the choice of terminology in EU review clauses

Overall, based on our analysis, we consider that there is no discernible pattern to understanding or explaining the choice of terminology in EU review clauses used so far. In particular, there is no correlation between parliamentary committees and terms used (see Graph 1 and supplementary materials, Annex 1).

It should be acknowledged that due to the variety of areas in which the EU has competence as well as the complexities within these areas it may be desirable to maintain some flexibility in the wording of reviews. Nevertheless, a more consistent understanding of the different terms would assist in clarifying for the EU co-legislators and the Commission what is to be delivered in each case. In the 2016 Interinstitutional Agreement on Better Lawmaking, the European Parliament, the European Commission and Council have confirmed “[...] the importance of the greatest possible consistency and coherence in organising their work to evaluate the performance of Union legislation”.¹⁵ Our analysis shows that additional efforts are needed in future to realise this ambitious objective, for example through streamlining the terminology used in legislative acts via appropriate mechanisms.

At the same time, the formulation of legislative acts is often the result of a political decision-making process and can, therefore, lead to deliberately open or ambiguous formulations. However, this should not be to the detriment of the quality, clarity and effectiveness of the legislative act as such. A more consistent use of review terminology in the review clauses of legislative acts, based on a better understanding of what each term entails, could in turn allow for better planning and resource allocation for future evaluations. This greater predictability would make it easier for the European Commission and the Member States to collect and analyse the right data, and to report back in time to the co-legislators. It would also create an incentive for legislators to identify more clearly the kinds of information which are expected to be most relevant when deciding on continuing, modifying or terminating a policy intervention.

This raises the issue of the need for the Commission’s internal guidelines for evaluations to adequately reflect the common understanding of review clauses and their expected deliverables in order to ensure a coherent approach between the European Commission and both co-legislators.

As a point of comparison, a more structured system for the reviewing of legislation is in place in the UK since 2013 (see Box 2).

2. Timing of EU legislative review clauses

Most reviews take place three years after entry into force of the legislation. The second most common review timing is after two years and the third most common after four years (see Table 2 and supplementary materials, Annex 2).

“Reports” are required usually between one and five years following the date of transposition of a piece of legislation. In contrast, the majority of “evaluations”/“evaluation reports” (around 69%) are required between three and eight years following the date of transposition.

¹⁵ Supra, note 6, para. 20.

Box 2 Review clauses in the UK since 2011

Since 2011, review clauses are required for all measures that regulate businesses, both domestic and EU law, unless they represent a low cost (gross annual costs to business less than £1million), in which case they can be dealt with under a lighter fast-track procedure.

The relevant Secretary of State reviews an act (only the term “review” is used), which then leads to the compiling of a report presented to Parliament. The wording and procedure is consistent across all review clauses.

Generally, review clauses stipulate a review of the legislation after five years. Non-statutory reviews are also undertaken. In these cases review commitments have not been stated in the legislation but in other public documents such as an Impact Assessment.

EU legislation is also reviewed, usually five years after its implementation or coinciding with the European Commission’s own reviews. Any review should consider to what extent the objectives of the legislation have been met, whether there have been any unintended consequences and what the cost and benefits have been and will be.

To assist policy makers and analysts, a comprehensive handbook on evaluations, the “Magenta Book”,¹⁶ has been developed which sets out best practice in conducting evaluations and in interpreting the results. The guidance complements the “Green Book” on appraisal and evaluation in central government¹⁷ which focuses on methods for assessing new policies, and which, along with the Impact Assessment toolkit in the *Better Regulation Framework Manual - Practical guide for UK government officials*,¹⁸ forms a comprehensive prior assessment of potential legislation. The Regulatory Policy Committee, an independent body, scrutinises IAs and post-implementation reviews (evaluations), giving measures a green, amber or red rating based on the quality of the analysis. See, for example, the cost and benefits of new regulation scoreboard.¹⁹

For those reviews which are mandated to be repeated, the most common types are the annual review and the review taking place every three years.

a. EU legislation mostly specifies a requirement for reviews of a general nature

In most cases, the EU legislation specifies whether the reviews to be conducted are of a general or specific nature. If the review is of a particular article within the legislation it is eventually more realistic for it to be assessed within a shorter period after the transposition deadline than if the working of the whole directive or regulation is to be evaluated. Around 63% of reviews of those listed in the December study are of a general nature. Specific reviews take place sooner following the date of transposition than general reviews, but this difference is very slight (Tables 2 and 3).

Almost all parliamentary committees favour a general review, with the exception of the Agriculture and the Environment committees where specific reviews form 64% and

¹⁶ *The Magenta Book: Guidance for Evaluation* (HM Treasury April 2011), available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220542/magenta_book_combined.pdf>.

¹⁷ *The Green Book: Appraisal and Evaluation in Central Government* (HM Treasury April 2011), available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf>.

¹⁸ *Better Regulation Framework Manual: Practical Guidance for UK Government Officials* (UK Department for Business, Innovation and Skills March 2015), available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468831/bis-13-1038-Better-regulation-framework-manual.pdf>.

¹⁹ UK Regulatory Policy Committee, “Research and Analysis: costs and benefits of new regulation”, updated 10 March 2016, available at: <<https://www.gov.uk/government/publications/costs-and-benefits-of-new-regulation-regulatory-policy-committee-opinions-since-may-2015/costs-and-benefits-of-new-regulation>>.

Table 2. Timing of reviews by Parliamentary Committee

	1 year	2 year	3 year	4 year	5 year	6 year	7 year	8 year
AFCO		2						
AFET				1				
AGRI	2	2	1	3	4	1	1	2
BUDG		1	3	1	1			1
CODE								
CONT				2				1
CULT			1	3	1			
DEVE				2		1		1
ECON	6	10	17	7	4	1		1
EMPL	1	7	2	2	5			3
ENVI	4	12	7	11	13	2	4	2
FEMM	1		1	2				
IMCO	3	8	12	1	2	2	1	1
INTA			2		3	1	1	
ITRE	2	5	10	10	3	1	1	
JURI	5	1	3		10		1	1
LIBE	4	13	10	6	4	1	1	4
PECH	1	1	2					
REGI		1		2		1		
TRAN	8	6	13	5	6		1	1
TOTAL	37	69	84	58	56	11	11	18
[in %]	7%	13%	15%	11%	10%	2%	2%	3%

*As a percentage of 553 non-rolling review clauses out of the total 681 review clauses included in the 501 acts covered by the Rolling checklist

Source: Compilation by authors, based on EPRS data

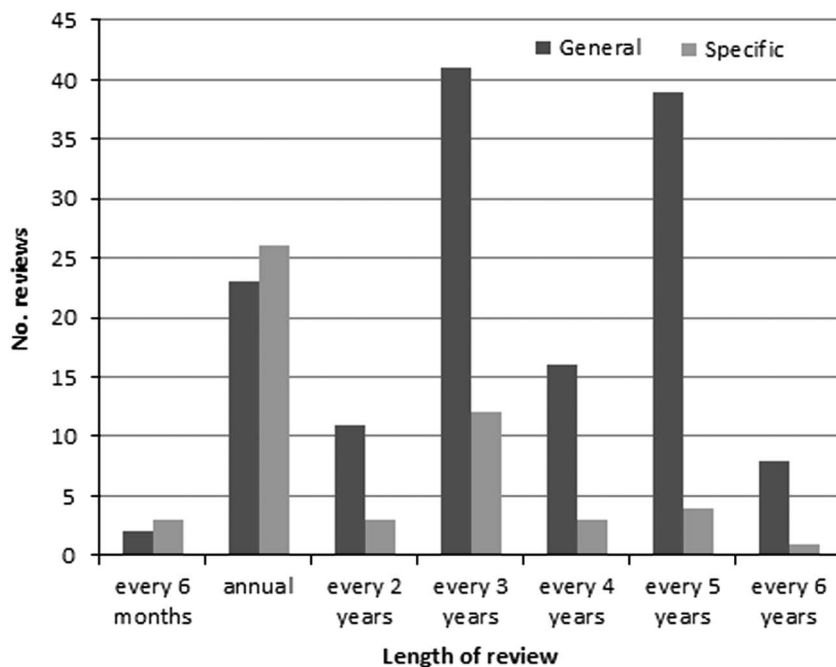
Note: AFCO: Constitutional Affairs; AFET: Foreign Affairs; AGRI: Agriculture and Rural Development; BUDG: Budgets; CODE: Conciliation; CONT: Budgetary Control; CULT: Culture and Education; DEVE: Development; ECON: Economic and Monetary Affairs; EMPL: Employment and Social Affairs; ENVI: Environment, Public Health and Food Safety; FEMM: Women's Rights and Gender Equality; IMCO: Internal Market and Consumer Protection; INTA: International Trade; ITRE: Industry, Research and Energy; JURI: Legal Affairs; LIBE: Civil Liberties, Justice and Home Affairs; PECH: Fisheries; REGI: Regional Developments; TRAN: Transport and Tourism.

61% respectively of the total number of legislative acts analysed and for which those committees are responsible, as demonstrated in Table 3.

b. Different parliamentary committees seem to favour different timings of review

Different parliamentary committees seem to favour different timings of review. This could be due to differences between policy areas and the speed at which the legislation can be expected to have an impact as well as to the nature of the work involved in the reviews.

For example, five-year reviews are more frequent in legislation for which the Committee on Environment, Public Health and Food Safety is responsible and three-year reviews for those in the field of responsibility of the Economic and Monetary Affairs Committee. The preference for a three-year review is also shown by the Committee for the Internal Market and Consumer Protection, where the number of three-year reviews is



Graph 2. General and Specific repeated reviews

Source: Compilation by authors, based on EPRS data

Table 3. General and specific reviews by Parliamentary Committee

	General	Specific
AFCO	4	1
AFET	2	
AGRI	8	14
BUDG	10	3
CODE	2	
CONT	3	
CULT	13	
DEVE	6	
ECON	45	37
EMPL	42	4
ENVI	48	74
FEMM	5	2
IMCO	34	21
INTA	19	9
ITRE	51	19
JURI	33	22
LIBE	52	18
PECH	5	6
REGI	4	2
TRAN	44	19
TOTAL	430	251
TOTAL*	63.1%	36.9%

*As a percentage of the 681 review clauses
Source: Compilation by authors, based on EPRS data

almost double that of the next most common timing of review. In the Legal Affairs Committee there is a wider spread of review timings but the five-year review is again seen twice as many times as the next most common.

While differences may in some cases be due to the nature of the policy areas covered or the specificities of the legislation concerned, the influence of custom should not be discounted. This may explain the noticeable correlation of the timing of reviews with parliamentary committees and points to the important role that Committees have in shaping review clauses which are often inserted or modified during the legislation's passage through Parliament.

Moreover, our analysis also indicates that the type of review and its timing is linked, which suggests some implicit distinction in the co-legislators' understanding of the different terms' significance. The preference for three- and two-year reviews can, however, only be explained by custom due to its prevalence across all policy areas.

Another element to be taken into account in this context is the delay elapsing between the proposal of a legislative act and its final adoption and publication in the Official Journal. Should, for example, the initial proposal by the European Commission fix a review five years after the foreseen transposition deadline for a directive, but the legislative process takes two years with the transposition deadline being postponed by two years as well, the term after which the review intervenes will be only three years if not adapted accordingly during the legislative process. Such a shorter period might then not be suitable for the respective legislative act to produce its intended effects.

III. REVIEWS OF EU LEGISLATION IN PRACTICE

Our research identified 72 reviews mandated by 60 pieces of EU legislation contained in the December 2015 EPRS checklist and in the Commission database of evaluation files.²⁰ These reviews were studied to determine their content, nature and the extent to which the review term used translates into substantive differences when carrying out the review or evaluation. The term used for the reviews and the date of their publication were also compared to the term and timings designated in the relevant legislation to ascertain whether obligations in the legislation are consistently fulfilled.

The 2015 EPRS study²¹ has documented all evaluations completed or ongoing at the time of its compilation, against which the completeness of the information contained in the Commission's database could be checked. Similar information is, however, not available for other types of review.

1. "Reports" are often used to provide quantitative or statistical data or other specific information

The evidence shows that reports are more concise and contain less descriptive findings than evaluations. They are most often used for reporting the quality and availability of statistics (see examples in Box 3). These reports generally contain quantitative data which can be easily summarised in tables or graphs, reducing the need for long descriptive texts.

²⁰ *Supra*, note 10.

²¹ *Supra*, note 9.

Box 3 Examples of reports prepared by the Commission in response to a review clause

Report from the Commission to the European Parliament and the Council on implementation of the Regulation (EC) No 453/2008 of the European Parliament and of the Council on quarterly statistics on Community job vacancies.

Report from the Commission to the European Parliament and the Council on Regulation (EU) No 691/2011 of the European Parliament and of the Council of 6 July 2011 on European environmental economic accounts.

Report from the Commission to the European Parliament and the Council on the operation of the provisions on stamping of the travel documents of third-country nationals in accordance with Articles 10 and 11 of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Report from the Commission to the European Parliament and the Council on statistics compiled pursuant to the Regulation (EC) 2150/2002 on waste statistics and their quality.

Reports on statistics, on the other hand, assess the availability of the statistics and their quality, often requiring the Member States to transmit specific data to the Commission. Other reports assess the monitoring and transposition of the legislation and sometimes focus on specific provisions with regard to these factors.

Although many of the completed reports (20 out of 30) contained in the Commission's database are based on/around statistics, only 4.4% of the pieces of legislation under consideration (of the total sample of 501) actually require the review of statistics. This could suggest that those reports which require less qualitative investigation at EU level are more likely to be completed. Non-statistical reports only report on the current situation and they can or cannot attempt to explain the reason behind the results or how the results may be changed.

2. "Evaluations" also provide qualitative information and recommendations in line with the 2015 Commission Guidelines

In contrast, "evaluations" are more descriptive, and the data used is largely qualitative as the research methods applied involve more literature reviews, desk research, case studies, and semi-structured interviews, surveys or questionnaires. The evaluations are focused on assessing the reliability, effectiveness, efficiency, EU added value, coherence, complementarity, relevance, sustainability and utility of the legislation. Interim evaluation reports contain recommendations for the next part of the legislative programme, while ex-post evaluation reports are usually the only ones with a focus on utility and sustainability. Evaluations always include specific questions, answers to which will illustrate the reliability, proper functioning etc. of the legislation. It is occasionally mentioned in evaluations that there has been insufficient time to gather suitable data.

In general, evaluations and evaluation reports are structured in a similar way and contain the information required by the 2015 European Commission guidelines on evaluation²² (see Box 4). Hence, the 2015 guidelines seem to have formalised already-existing practices. It remains to be determined whether other review tools, notably reports, are also subject to unofficial existing practices which could be formalised in the same way.

²² *Supra*, note 12.

Box 4 Key Requirements for Commission evaluations since 2015

Evaluations must be followed by an Inter-service Steering Group (ISG) composed of a minimum of three members, including a representative from the lead DG's evaluation function. For Fitness Checks a representative from the Secretariat General must be included in the ISG.

An evaluation roadmap summarising the design, purpose and scope of the upcoming evaluation must be published for all evaluations and Fitness Checks and stakeholders must be able to provide feedback on it.

All evaluations must follow a clearly defined, robust methodology intended to produce objective findings. As a minimum, evaluations must assess effectiveness, efficiency, relevance, coherence and EU added value or explain why this is not done in the evaluation roadmap.

Evaluations and Fitness Checks must assess all significant economic, social and environmental impacts of EU interventions (with particular emphasis on those identified in a previous IA).

As part of a broader consultation strategy to target relevant stakeholders and collect evidence, a 12-week internet-based public consultation should generally be conducted, covering all of the main elements of the evaluation.

A European Commission Staff Working Document (SWD) must be prepared for all evaluations. This SWD must contain information and annexes as indicated in the toolbox and be complemented by a two-page executive summary available in French, German and English.

The following files related to the evaluation must be published centrally: the evaluation roadmap; terms of reference, final contractors' report and associated Quality Assessment (if applicable); the Staff Working Document and its executive summary (in French, German and English); the Regulatory Scrutiny Board opinion (if applicable).

At the end of an evaluation, appropriate follow-up actions must be identified and fed into the decision-making cycle.

Evaluation findings must pinpoint areas where there is potential to reduce inefficiencies, including regulatory burden and simplify the intervention.

The 2015 Commission guidelines also state that evaluations should use the available evidence to judge how well the intervention has performed (or is working), taking account of earlier predictions made in the context of an impact assessment (presented together with the Commission's legislative proposal).²³ However, in many cases this may be problematic since the Commission proposal is almost always amended by one or both of the co-legislators and, as a consequence, the Commission's analysis presented in the impact assessment may no longer apply.

3. Only a limited number of the reviews supposed to have been conducted by the end of 2015 are easily publicly accessible

We also examined all 72 reviews of EU legislation that were publicly accessible, all of which have also been collated in the EPRS December 2015 rolling checklist: this sample was composed of 30 "reports", 30 "evaluations", four "reviews" and eight others (e.g. working document; rolling checklist, etc.). This corresponds to around 17% of the reviews collated in the EPRS December 2015 rolling checklist. In other words, only very few of the substantial number of reviews supposed to have been conducted by the end of 2015 are publicly accessible. There is, however, also the possibility that some reviews have not been carried out at all.

²³ Supra, note 1, Chapter V, para. 2.

Better regulation also highlights the need for transparency;²⁴ currently this element is partly absent as regards the reviews of EU legislation since the European Commission does not document the results of all its evaluations of EU legislation centrally. Moreover, they are not published in a form which would allow them to be easily linked with specific review clauses in EU legislation.

While “report” is clearly the most common term used in the legislation, the number of reports carried out in practice and made public does not exceed the number of “evaluations” conducted. This means that, based on publicly-available evidence, a significantly smaller proportion of reports have actually been conducted in comparison to evaluations.

The terms “review” and “evaluation” report are used equally often in the legislation: this does not, however, appear to translate to the carrying out of the review. Only four “reviews” have actually been carried out (and are publicly available) as compared to 22 evaluations.

Most reviews contain the information they were obliged to include by the legislation. In a significant number of cases there are, however, inconsistencies between the term used to describe the review conducted compared to that mandated (nearly one third of the type of conducted reviews differ from those mandated), but the actual content usually complies with the review clause. What remains unknown is whether the decision to conduct one type of review instead of the other, especially for those designated as “reviews”, is a considered one. Again, this may point to a lack of clarity and of a common understanding as to the main purpose of the review provision in the legislative act.

As mentioned above, reviews of UK legislation follow a more structured approach (see Box 2), therefore better complying with the principle of legal certainty – that which is required is clearly set out. This may have various reasons. Not least, it should be recalled that legislating for the whole of the EU is different (and arguably more complex) from drafting laws that are applicable in a single country. This does not, however, imply that planned reviews of EU legislation cannot be undertaken in a more structured manner.

IV. IMPACT OF REVIEWS OF EU LEGISLATION ON THE WORK OF THE EUROPEAN PARLIAMENT AND THE EUROPEAN COMMISSION

1. Presentation of reviews to the relevant EP Committee

Around one third of the 501 pieces of legislation covered by our analysis allow for the European Commission to make proposals or recommendations. The Better Regulation guidelines imply that the EU institutions cooperate to ensure the Union works most efficiently.²⁵ Therefore, reviews undertaken by the Commission should be presented to the European Parliament. On the other hand, as set out earlier in this document, the need for a review and its nature might vary from one case to another. Also, parliamentary committees might wish to focus on certain files instead of others, depending on their political priorities and the often rather limited meeting time they dispose of. This can lead to a situation in which not all reviews are presented in committee.

²⁴ European Commission, “Better regulation in the Commission”, 2015, available at: <http://ec.europa.eu/smart-regulation/guidelines/ug_chap1_en.htm> (accessed 6 January 2017).

²⁵ *Supra*, note 24.

Against this background, our analysis showed that only a very small number of the reviews of EU legislation conducted (17 out of 72) appear to be presented to the relevant parliamentary committee (see Box 5).

Box 5 Legislation where reviews have been presented to Parliament

Regulation 294/2008 establishing the European Institute of Innovation and Technology
 Regulation 562/2006 establishing a Community Code on the rules governing the movement of persons across borders
 Regulation 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks
 Regulation 691/2011 on European environmental economic accounts
 Regulation 762/2008 on the submission by Member States of statistics on aquaculture
 Decision 1297/2008 on a Programme for the Modernisation of European Enterprise and Trade Statistics (MEETS)
 Regulation 1365/2006 on statistics of goods transport by inland waterways
 Regulation 1921/2006 on the submission of statistical data on landings of fishery products in Member States
 Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
 Regulation 2150/2002 on waste statistics
 Directive 2011/24 on the application of patients' rights in cross-border healthcare
 Regulation amending regulation 1927/2006 establishing the European Globalisation Adjustment Fund
 Recommendation on the establishment of the European Qualifications Framework for lifelong learning
 Recommendation on the establishment of a European credit system for vocational education and training
 Regulation 70/2012 on statistical returns in respect of the carriage of goods by road

For fewer still (10 out of 72) did we find evidence that they led to any amendment of the legislation (see Box 6).

Box 6 Legislation where reviews have led to amendments

Regulation 294/2008 establishing the European Institute of Innovation and Technology
 Regulation 562/2006 establishing a Community Code on the rules governing the movement of persons across borders
 Regulation 680/2007 laying down general rules for the granting of Community financial aid in the field of the trans-European transport and energy networks
 Regulation 762/2008 on the submission by Member States of statistics on aquaculture
 Regulation 1365/2006 on statistics of goods transport by inland waterways
 Regulation 1921/2006 on the submission of statistical data on landings of fishery products in Member States
 Regulation 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws
 Regulation amending regulation 1927/2006 establishing the European Globalisation Adjustment Fund
 Regulation 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development
 Directive 2003/87 establishing a scheme for greenhouse gas emission allowance trading

Table 4. showing the % of reviews linked to Commission's AWP of the years n + 1 and n + 2

Year of review to be conducted	% linked to Commission's AWP of the following year (n + 1)	% linked to Commission's AWP two years later (n + 2)	Total
2012	5.4%	5.4%	10.8%
2013	3.4%	19.0%	22.4%
2014	13.5%	13.7%	27.2%
2015	12.0%	n.a.	

Source: Compilation by authors, based on Commission and EPRS data

2. Increasing share of legislative reviews followed up by initiatives in the Commission's annual working programmes

We also assessed whether and to what extent the initiatives in the Commission's annual work programme refer to the legislative reviews stipulated to be conducted in previous years.

Of the 74 reviews to be conducted in 2012, four were related to initiatives contained in the Commission's annual work programme (CWP) of 2013 and four others were related to the work programme of 2014. This corresponds to around 11% of the reviews.

The link is, however, increasing considerably in 2013 and 2014, when more than a quarter of all Commission initiatives in the annual work programmes of the two years following the reviews are linked to the legislation for which the review had been carried out (see Table 4). This suggests that the review process set out in the EU legislation has gained more influence on the Commission's work programmes in recent years.

Our analysis did not aim to assess to what extent the politically-driven policy process of setting the Commission's annual work programme is actually determined by the reviews rather than simply making use of them when appropriate. Nevertheless, the impact these reviews actually had on EU policy-making is not always very clear and obvious. To ensure the completeness of the legislative cycle, the component of review or evaluation needs to have an impact on the other parts of the cycle, in particular the agenda-setting phase and the preparation of potentially new or amending legislation. However, it needs to be noted in this context, as well, that an evaluation could also lead to the decision by the relevant political authorities to either abolish entirely an existing legislative act or to leave it untouched.

V. COST OF IMPLEMENTING THE REVIEW CLAUSES IN EU LEGISLATION

The Commission's reviews of EU legislation obviously come at a cost. The November 2015 EPRS study on Evaluation in the European Commission²⁶ contains the planned cost for 40 evaluations of the 273 legal acts and financial and regulatory instruments listed (see Box 7).

The costs vary widely from €10,000 to €1,687,900, with an average cost of around €248,000, largely dependent on the scope of the evaluation to be conducted. The median cost (which is more representative) is around €211,000.

²⁶ *Supra*, note 9.

Box 7 Examples of evaluation costs in the 2015 EPRS study

Evaluation of beef labelling rules – €300,000

Implementation, monitoring and evaluation of measures under Directive 61/2014 to reduce the cost of high-speed broadband infrastructure deployment and facilitate cross sector cooperation on ICT infrastructure deployment – €150,000

Mid-term evaluation of the “Europe for Citizens” programme – €200,000

Evaluation of the European Credit system for Vocational Education and Training (ECVET) – €160,000

Evaluation of the EIT – €300,000

There is, however, no publicly available centralised information on the cost of reviews of EU legislation within the European Commission as such.

VI. CONCLUSION

Our analysis suggests that the approach to the review of EU legislation has been less systematic and seamless than the Better Regulation approach might suggest.

Fewer than one in five of the reviews of EU legislation supposed to have been conducted by the end of 2015 according to the EPRS December 2015 rolling checklist are easily publicly accessible. The European Commission does not document the results of all its evaluations of EU legislation centrally. Moreover, they are not published in a form which would allow them to be easily linked with specific review clauses in EU legislation. There is also the possibility that some reviews have not been carried out at all. This could be an issue of concern.

Based on the publicly available reviews’ content, there appears to be an implicit hierarchy of review practices, with evaluations at the top benefiting from a much clearer definition and process than other types of reviews. Furthermore, there is little or no evidence to suggest that the terms used in legislation are consciously chosen because of the type of review they will entail. This lack of clarity would have an impact on the Commission as well, with the result of conducting a different type of review than the one mandated in the respective legislative act.

Our analysis also indicates that so far the impact of reviews of EU legislation on the work of the European Parliament and the European Commission is limited. Few reviews were actually presented to the relevant EP committee and fewer still have led to legislative amendments. There is, however, an increasing share of legislative reviews followed up by initiatives in the Commission’s annual working programmes, accounting for a little more than a quarter of all initiatives in the 2016 work programme.²⁷ It is to be expected that the review of legislation in its different forms will benefit from an increasingly prominent role in the legislative cycle as such and also for the EP committees. Not only has the European Commission clearly emphasised the importance of such work, but also the European Parliament has built up a dedicated specialist structure with the Directorate for Impact Assessment and European Added Value in the

²⁷ See in this context also the positive trend shown in Table 4.

European Parliamentary Research Service, providing information support and analysis to the parliamentary committees in this context.

More efforts appear to be necessary to make best use of the review clauses in EU legislation in order to make Better Regulation principles an integral part of EU law-making practice. The 2016 Interinstitutional Agreement on Better Lawmaking seems to implicitly recognise this, as the European Commission, the European Parliament and the Council have agreed on the need to systematically consider the use of review clauses in EU legislation and have called for more consistency and coherence in reviewing EU legislation.

This commitment will hopefully act as a catalyst for improvements in this area. It can build on recent advances such as the European Commission's 2015 Better Regulation Guidelines and an increasing focus by the European Parliament on how EU law is implemented throughout the Union.

SUPPLEMENTARY MATERIALS

For supplementary material/s referred to in this article, please visit <https://doi.org/10.1017/err.2016.21>