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# Regulatory fitness, subsidiarity and proportionality — report on Better Law Making 2017, 2018 and 2019

## European Parliament resolution of 24 June 2021 on European Union regulatory fitness and subsidiarity and proportionality — report on Better Law Making covering the years 2017, 2018 and 2019 (2020/2262(INI))

(2022/C 81/06)

*The European Parliament,*

— having regard to Article 5 of the Treaty on European Union (TEU),

— having regard to Protocol No 1 on the role of National Parliaments in the European Union,

— having regard to Protocol No 2 on the application of the principles of subsidiarity and proportionality,

— having regard to the Interinstitutional Agreement of 16 December 2003 on better law-making, and to the most recent version, the Interinstitutional Agreement of 13 April 2016 on better law-making,

— having regard to the practical arrangements agreed on 22 July 2011 between the competent services of the European Parliament and the Council for the implementation of Article 294(4) of the Treaty on the Functioning of the European Union (TFEU) in the event of agreements at first reading,

— having regard to the Commission's annual report 2017 on subsidiarity and proportionality (COM(2018)0490), to the Commission's annual report 2018 on subsidiarity and proportionality (COM(2019)0333) and to the Commission's annual report 2019 on subsidiarity and proportionality (COM(2020)0272),

— having regard to the Commission communication entitled 'The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking' (COM(2018)0703), and the annex thereto,

— having regard to the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently', which presented its findings on 10 July 2018,

— having regard to the opinions and resolutions of the European Committee of the Regions, namely the resolution of 1 February 2018 on changing the ESI funds Common Provisions Regulation to support structural reforms [1], the opinion of 9 October 2018 on 'Reflecting on Europe: the voice of local and regional authorities to rebuild trust in the European Union (CDR 1230/2018), and the resolution of 10 December 2020 on the 2021 Work Programme of the European Commission [2], and having regard to the Committee of the Regions' priorities for 2020-2025 'Europe closer to the people through its villages, cities and regions' from its plenary session of 30 June to 2 July 2020,

— having regard to the 9th Subsidiarity Conference — Active Subsidiarity: Creating EU added value together, co-organised in Rome on 22 November 2019 by the Committee of the Regions and the Conference of the Presidents of Italian Regional Parliaments,

— having regard to the Cooperation Agreement signed on 5 February 2014 between the European Parliament and the Committee of the Regions,

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[1] OJ C 176, 23.5.2018, p. 5.
[2] OJ C 37, 2.2.2021, p. 1.

— having regard to its resolution of 15 January 2020 on the European Green Deal ([3]), which welcomes the commitment by the Commission to ensure that all EU actions should help the EU achieve a sustainable future and a just transition and to update the better regulation guidelines accordingly, requiring, inter alia, that a 'sustainability first' principle be integrated into the Better Regulation Agendas of the EU and its Member States,

— having regard to its resolution of 9 June 2016 for an open, efficient and independent European Union administration ([4]),

— having regard to Rule 54 of its Rules of Procedure,

— having regard to the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Constitutional Affairs,

— having regard to the report of the Committee on Legal Affairs (A9-0191/2021),

A. whereas the principles of subsidiarity and proportionality govern the exercise of the EU's competences; whereas in areas in which the EU does not have exclusive competence, the principle of subsidiarity seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, 'by reason of the scale and effects of the proposed action'; whereas the purpose of including a reference to the principle in the EU Treaties is also to ensure that powers are exercised as close to the citizen as possible, in accordance with the proximity principle referred to in Article 10(3) TEU;

B. whereas in July 2017 the Juncker Commission adopted a revised set of better regulation guidelines and an accompanying toolbox; whereas it expanded its better regulation portal to make it easier for citizens to navigate it online; whereas it undertook to place the principles of subsidiarity and proportionality at the heart of the European democratic process and throughout the legislative process by setting up a Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently', which delivered its report on 10 July 2018;

C. whereas the Task Force issued recommendations, on the one hand, to improve the common understanding and application of the principles of subsidiarity and proportionality in the work of the EU institutions and, on the other hand, to give local and regional authorities and national parliaments a more prominent role in order to achieve 'active subsidiarity', aiming to promote greater ownership of EU policies; whereas it responded to the questions 'how to better apply subsidiarity and proportionality principles within the EU institutions' and 'how to better involve regional and local authorities and national parliaments in EU policymaking and implementation';

D. whereas in its communication of 23 October 2018 entitled 'The principles of subsidiarity and proportionality: Strengthening their role in the EU's policy making' (COM(2018)0703), the Commission reiterated the fundamental role of subsidiarity and proportionality in improving legislation and set out the measures to be taken in response to the Task Force's report, which included focusing on the views of local and regional authorities, promoting shared understanding within the EU of subsidiarity and proportionality, looking more closely at existing legislation from the point of view of subsidiarity and proportionality, and helping national parliaments to execute their role more efficiently;

E. whereas the Commission continued to apply its reinforced better regulation agenda and to integrate the principles of subsidiarity and proportionality at all stages of policy-making;

F. whereas on 3 July 2020 the Commission launched a revamped version of the 'Have Your Say' web portal to make it easier to contribute to EU law and policymaking online; whereas the new version of the portal should further improve the Commission's consultation and communication with the public and increase transparency; whereas as part of its 'Better Regulation' agenda, the aim of the portal is to enhance the quality of EU policymaking;

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([3]) Texts adopted, P9_TA(2020)0005.
([4]) OJ C 86, 6.3.2018, p. 126.

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G. whereas the 'Have Your Say' web portal has proven to be a useful point of access for citizens and stakeholders to participate in preparing Commission policy; whereas the European Court of Auditors, however, published a special report in 2019 with a set of recommendations to improve this portal, especially as regards the use of translation;

H. whereas in 2018 the Commission began the practice of merging reports on the application of the principles of subsidiarity and proportionality in the drafting of EU legislation with reports on its relations with national parliaments, thus giving more prominence to the views of national parliaments and avoiding overlaps between the two annual reports;

I. whereas the Commission received 52 reasoned opinions from national parliaments on the principle of subsidiarity in 2017, 37 in 2018 and none in 2019;

J. whereas the absence of reasoned opinions from national parliaments in 2019 was not due to better implementation of the principles of subsidiarity and proportionality, but rather to the fact that 2019 was a transitional year between two Commissions and with the dissolution of the European Parliament and the holding of European elections, and therefore one with fewer legislative initiatives and proposals than in previous years;

K. whereas Parliament appreciates the need for stronger involvement of national parliaments alongside the European Parliament in the democratic scrutiny of enhanced cooperation in the case of policy areas of joint competence;

L. whereas the Committee of the Regions recently introduced in March 2021 Regional Hubs 2.0; whereas this project was launched on the Committee's own initiative to monitor how EU policies work on the ground;

M. whereas the mandate of the Regulatory Scrutiny Board includes checking the quality of impact assessments;

N. whereas the Commission has committed to applying the 'one in, one out' principle, which states that every legislative proposal creating new burdens should relieve people and businesses of an equivalent existing burden at EU level in the same policy area, but has so far failed to apply this principle successfully;

O. whereas the current crisis has revealed the need to identify and alleviate unnecessary regulatory burdens to make sure that EU laws deliver their intended benefits while reducing unnecessary costs and within reasonable time frames, in particular speeding up support measures for consumers, small and medium-sized enterprises (SMEs) and micro enterprises; whereas for the benefit of consumers, workers, SMEs and citizens as a whole, legislation should be balanced, clear, comprehensive, inclusive and, where appropriate, based on the necessary scientific evidence; underlines that micro enterprises and SMEs should only face obligations commensurate with their specificities and the characteristics of their sector, and encourages the Commission to use strong enforcement action to limit market fragmentation, remove unjustified market barriers and ensure a level playing field; whereas, however, 'Better Regulation' should deliver for all and serve the interests of European society;

P. whereas Parliament, the Commission and the Council, as legislative bodies, must respect the principles of conferral, subsidiarity and proportionality;

1. Recalls the importance of the Commission's annual reports on subsidiarity and proportionality;

2. Welcomes the constant consideration of the principles of subsidiarity and proportionality, which are fundamental guiding principles for the European Union; recalls the importance of promoting a common understanding at EU level of subsidiarity and proportionality, and notes the concerns raised in previous reports about the somewhat perfunctory character of the Commission's annual reports on subsidiarity and proportionality, which often fail to pay detailed consideration to how these principles are observed in EU policy-making; acknowledges the growing comprehensiveness of the Commission's annual reports on subsidiarity and proportionality;

3. Recalls the importance that the principle of subsidiarity as enshrined in Article 5 TEU, according to which decisions must be taken at the most appropriate policy level and as closely as possible to citizens and businesses, is constantly respected and that action at EU level is justified in the light of the possibilities available at national, regional or local level, while respecting the following three fundamental processes: retrospective assessment, impact assessment and consultation

of stakeholders; further encourages the Commission to bring the EU closer to its citizens; points out that local and regional authorities implement and use approximately 70 % of EU legislation; considers that closely consulting citizens' elected representatives in EU matters is a very effective way of bringing the EU closer to its citizens; calls on the Member States' authorities at national level, and on relevant stakeholders, to become more closely involved at an early stage of the decision-making process, with subsidiarity and proportionality checks and administrative burden assessments of EU legislation to guarantee that the EU does not take action, except in the areas that fall within its exclusive competence, unless it is more effective than action taken at national, regional or local level; recalls, too, that the principle of proportionality requires that any action taken by the EU shall not exceed what is necessary to achieve the objectives of the Treaties; encourages the Commission to evaluate the effectiveness and efficacy of the subsidiarity procedure in order to identify its weaknesses and address them;

4. Stresses that the current structure of the procedure for the subsidiarity control mechanism results in national parliaments' committees for the EU dedicating excessive amounts of time to technical and legal assessments with short deadlines, which complicates the goal of holding a deeper political discussion on European politics;

5. Calls for a revision of the TFEU and the introduction of a direct right of legislative initiative of the European Parliament since the European Parliament directly represents European citizens;

6. Underlines the importance of adequately explaining the need for legislative initiatives and their impact on all important sectors (economic, environmental and social) with the aim of respecting the principles of subsidiarity and proportionality;

7. Believes that advancing the European Union through better regulation is important for providing stability and legal certainty for EU citizens and businesses and thereby generating growth, jobs and prosperity;

8. Believes that the application of the principle of subsidiarity and proportionality represents the starting point for any policy formulation and is an essential part of the policy life-cycle;

9. Takes note of the conclusions of the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'; draws attention to the fact that Parliament considered that participation in the task force set up by the Commission would disregard Parliament's institutional role and standing as the only directly elected institution of the European Union, representing citizens and businesses at Union level and exercising functions of political scrutiny over the Commission, and that, consequently, it decided to decline the invitation to participate by appointing members to the task force; welcomes the results and recommendations of the Report of the Task Force, according to which there is EU value added in all existing areas of activity, and the fact that the task force did not, therefore, identify any Treaty competences or policy areas that should be re-delegated definitively, in whole or in part, to the Member States; calls on the Commission to implement these conclusions, and in particular to better involve local and regional authorities fully in its consultation processes, and to integrate the 'model grid', in order to assess the application of both principles throughout the decision-making process; notes that this will require a strong commitment, including from the EU co-legislators; proposes also to evaluate and further develop the existing frameworks of interparliamentary cooperation;

10. Is of the opinion that every Commission proposal should have a positive impact on citizens' lives, with proportionate and bearable costs attached to it;

11. Stresses that national parliaments should be involved as early as possible in the legislative process, preferably immediately after publication of the roadmap and during the consultation phase; considers that there should also be greater focus on subsidiarity before a new legal act is tabled and that, in particular, the consultation phase should be used to proactively gather the views of national parliaments and to register their concerns, since that might avoid use of the 'yellow card' and avoid problems during the negotiation phase;

12. Welcomes the measure to help national parliaments execute their role more effectively by excluding the period from 20 December to 10 January from the eight-week period during which national parliaments can submit reasoned opinions;

13. Emphasises the importance of the participation of national parliaments in the process of law-making at EU level; notes that while the number of reasoned opinions received from national parliaments continued to fall between 2017 and 2019, with no reasoned opinions submitted in 2019, the number of opinions submitted to the Commission and contributions to the European Parliament, including on non-legislative initiatives, remains consistently high, which is testament to the positive and forward-looking engagement of national parliaments with the EU policy cycle; notes that several of these submissions focused on important institutional issues such as the completion of the Economic and

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Monetary Union (EMU) and the activation of *passerelle* clauses; observes that no proposals received more than four reasoned opinions; recalls that the Treaties provide a role for interparliamentary cooperation, giving national parliaments responsibility for examining legislative and non-legislative initiatives; welcomes the active participation of national parliaments in legislative dialogue with the EU institutions through other means than Subsidiarity Control Mechanism; recalls that the 'orange card' procedure has never been activated, and that the 'yellow card' procedure has been activated only three times, out of a total of 439 reasoned opinions and 5 513 opinions in the period 2007-2019; notes that the implementation of the right for national parliaments to scrutinise compliance with the principle of subsidiarity, on the basis of the so-called early warning system (EWS), has partially improved relations between the EU institutions and national parliaments; highlights the Commission's commitment to providing, in future, for aggregated answers where at least four parliaments have issued reasoned opinions and to demonstrating flexibility over the Treaty-based eight-week deadline by which national parliaments must submit their reasoned opinions, by taking into account common holiday and recess periods; believes that the Conference on the Future of Europe will provide an excellent opportunity for citizens to communicate on the real impacts of legislation at national level and to make suggestions on how to achieve the better law-making goals, including on reassessing the subsidiarity process; recalls that transparency and public access are essential to the legislative process and also justify the involvement of national and regional parliaments, while conferring greater legitimacy and confidence in the democratic legislative process of the European Union; in this regard, welcomes the progress made by Parliament in disclosing the multi-column documents as a consequence of the De Capitani judgment;

14. Notes that in 2016, of a total of 41 houses of national parliaments, 26 issued reasoned opinions, which fell to 19 in 2017 and 14 in 2018; stresses that this decrease goes hand in hand with a decrease in reasoned opinions overall;

15. Underlines that the trend in the number of opinions and reasoned opinions in the period 2007-2019 demonstrates that national parliaments are increasingly asking for more political dialogue and a greater involvement in the debate on EU policies, and are therefore dedicating less time to the normative analysis of EU legislative proposals;

16. Acknowledges the fact that 2019 was the first year since the introduction of the Subsidiarity Control Mechanism in which national parliaments did not submit any reasoned opinions, as a result of a sharp drop in the Commission's legislative activities during the transitional year between two Commissions;

17. Recalls that the Commission is obliged to consult as widely as possible with stakeholders prior to any legislative proposal, taking into account the regional and local dimension of the action envisaged;

18. Recalls that the application of the 'Think Small First' principle enshrined in the Small Business Act is an essential element for the proportionality test, prior to any legislative proposal and should aim at ensuring that SMEs' voices are heard and that their interests are taken on board as early as possible, in order to create a favourable business environment for the development of SMEs, which are the backbone of our European economy;

19. Regrets the practice whereby 'efficiency of the institution's decision-making process' is routinely invoked to refuse access to legislative preparatory documents, which risks that exceptions to public access to documents become the de facto rule;

20. Welcomes the conclusion of the Interinstitutional Agreement on a mandatory Transparency Register for the EU institutions, including the Council;

21. Emphasises that ex ante impact assessments together with stakeholder consultations are important tools in order to reach well-informed decisions and are a key instrument to ensure that subsidiarity and proportionality are respected and to promote accountability and efficiency; underlines the need to promote and encourage regular dialogue and proper and transparent consultation with all relevant stakeholders; welcomes the use of better law-making tools and cooperation with different relevant experts at EU level when drafting impact assessments; underlines the need to simplify these tools and make them easier to understand and use for stakeholders; underlines that there is an urgent need to improve impact assessments in general when it comes to subsidiarity and proportionality; stresses that all impact assessments, evaluations and fitness checks should involve an analysis of subsidiarity and proportionality; welcomes the use of instruments such as the regulatory fitness and performance programme (REFIT) and the Regulatory Scrutiny Board, which since 2017 have

sought to identify opportunities for simplification and reducing unnecessary costs prior to the Commission proposing the revision of any existing law; further welcomes the inclusion of initiatives that result from this work in the annual Commission work programmes, and to be monitored in the REFIT Scoreboard; notes in this context that the 2020 Commission work programme includes 44 initiatives under the REFIT exercise; highlights that such processes should take into consideration economic, environmental and social impacts in an integrated and balanced way and use both qualitative and quantitative analyses, as well as addressing the costs of non-harmonisation at EU level; points out that the scrutiny instruments can be further supported and enhanced by other tools such as the Fit for Future (F4F) platform or other similar dedicated platforms; believes that the REFIT platform should be expanded to widen its focus from regulatory burdens to matters of subsidiarity and proportionality; recalls that making regulation which is 'fit for the future' entails, among other things, ensuring its economic, social and environmental sustainability; welcomes the fact that the two principles are part of the quality review performed by the Regulatory Scrutiny Board; emphasises, however, that the independence of the board could be further improved;

22. Underlines that systematic review of legislation plays an increasingly important role for achieving better regulation; stresses in this regard the importance of the European Parliament, the Council and the Commission engaging in a more structured cooperation in order to assess the application and effectiveness of Union law with a view to its improvement; points out the need for the swift, timely and correct application of Union legislation by the Member States in order to properly assess the need for further legislation;

23. Underlines that 'strategic foresight' could play a key role in helping to future-proof EU policy-making by ensuring that short-term initiatives are grounded in a longer-term perspective; acknowledges that 'foresight elements' will be fully integrated into the Commission's better regulation agenda, in impact assessments and evaluations; notes, too, that 'strategic foresight' will support the REFIT programme, which identifies opportunities to reduce regulatory burdens and ensure that existing EU laws remain 'fit for the future';

24. Notes that in 2017 the Regulatory Scrutiny Board examined a total of 53 impact assessments, and 17 separate evaluations; observes that 43 % of these impact assessments and 41 % of the evaluations examined by the Regulatory Scrutiny Board initially received negative opinions and that for almost all impact assessments, services had to improve the reports to meet Board quality standards; concludes that the quality of the original impact assessments and evaluations has to be significantly improved; regrets the fact that in 2019 the board only examined one impact assessment;

25. Supports the Commission's commitment to ex ante evaluation before considering legislative acts; believes that the Commission and the national authorities should continue to cooperate closely in order to evaluate the real impact of EU legislation on citizens, businesses and the environment; welcomes also national parliaments' input to ex ante evaluation via informal political dialogue, including joint own-initiative opinions; calls further on the Member States to ensure the swift and consistent transposition, implementation and enforcement of legislation, and to avoid practices resulting in excessive and unjustified administrative requirements that can undermine the smooth functioning of the internal market;

26. Welcomes the Commission's endeavours to evaluate a wide and comprehensive range of potential single market legislation with impact assessments; stresses that independent and impartial impact assessments are an essential and valuable tool to help arrive at well-informed political decisions through the legislative decision-making process (while upholding the Community method), which is necessary to respond swiftly to pressing challenges such as the digital and sustainable transition; believes that the content of impact assessments needs to be improved and their use extended, by taking additional elements into account to make their contribution more timely and valuable and to be better considered for decision-making at a political level; recalls, furthermore, the limited number of impact assessments carried out by Parliament and the Council on their substantive amendments;

27. Emphasises that Parliament should, when necessary, carry out in house impact assessments in relation to substantial amendments and their potential consequences for the Commission's proposal, before it adopts them, if they have not already been analysed by the Commission and its services;

28. Highlights the role of the European Parliamentary Research Service, which provides for ex ante impact assessments and European added value analysis of proposals as well as implementation appraisals; considers that the cooperation between the Commission and the European Parliamentary Research Service could be improved, in order to achieve a streamlined, swift and thorough analysis of legislative action and its substantial amendments, the alternative solutions, their potential costs and benefits, the expected administrative burden, red tape for SMEs and the 'cost of non-Europe';

29. Welcomes the establishment of the 'Have Your Say' web portal and improvements thereto and calls on the Commission to further develop such tools, giving citizens and stakeholders direct access to, and involvement in, EU policy-making;

30. Suggests that the Commission give due consideration to the recommendations of the European Court of Auditors on the 'Have Your Say' portal, in particular by increasing the linguistic accessibility of consultations, in order to allow citizens and stakeholders to decide what they consider to be of 'broad public interest';

31. Supports the Commission's commitment to policy reviews and encourages greater use of ex post assessment to ensure lessons are learnt on effectiveness and benefits of legislation, which in turn can help inform future policy development and improve regulation approaches;

32. Stresses that ex post evaluations are also an important tool to assess the impact of legislation on citizens and businesses, whereby special attention should be given as to the impact on SMEs;

33. Urges the Commission to make even greater use of recasting and codification procedures in order to streamline secondary legislation;

34. Supports the consolidation of responses if seven or more national parliaments issue reasoned opinions on one of the Commission's legislative proposals, despite the threshold for initiating the 'yellow card' procedure not having been reached; considers that this gives the views of national parliaments greater visibility;

35. Takes note of the 'one in, one out' principle based on stakeholder involvement, through which the Commission aims to offset newly introduced burdens, especially for micro-enterprises and SMEs by relieving people and businesses of equivalent burdens at EU level in the same policy area; underlines that the implementation of this approach should not run counter to the objectives of better regulation, and emphasises that it should not lead to mechanical decisions to repeal legislation or lower standards, and that its aim should be to modernise and reform EU legislation to face new societal challenges; stresses that, while additional unnecessary administrative burdens should be avoided when designing, transposing and implementing EU acts, this should neither be translated into deregulation or 'no regulation', nor should it prevent Member States' parliaments from maintaining or taking more ambitious measures and adopting higher social, environmental and consumer protection standards in cases where only minimum standards are defined by Union law;

36. Stresses that an open, efficient, transparent and independent administrative and legislative decision-making process is a precondition for high-quality policies and regulation; emphasises that the introduction of harmonised administrative procedures would contribute positively to good governance and regulatory practices in the EU and reinforce the connection between expert decision-making and democratic legitimacy;

37. Welcomes, in this regard, the establishment by the Commission of the Fit for Future platform in 2020, building on the experience with the REFIT platform, a high-level expert group with the participation of various stakeholders, Member State experts, and representatives of the Committee of the Regions and the European Economic and Social Committee, which advises the Commission on how to make EU legislation more efficient, by identifying existing potentially unnecessarily burdensome measures and how to simplify and modernise them, including through digitalisation, in order to ensure EU laws help, not hinder, EU citizens and businesses;

38. Encourages national parliaments to involve regional parliaments with legislative powers in EU legislative initiatives and supports their systematic consultation on major initiatives, in particular where there is a link with regional competences; recalls that such parliaments are represented in the Committee of the Regions and that under Article 6 of Protocol No 2 to the TFEU, they can be consulted by national parliaments;

39. Recalls that digital innovation is developing rapidly and that entrepreneurs are driving the digital agenda; deems that it is of vital importance, therefore, without prejudice to the principles of subsidiarity and proportionality, to establish futureproof rules that keep pace with digital innovation; notes that a large number of the EU's key legislative priorities for 2017-2019 were initiatives within the remit of the Committee on the Internal Market and Consumer Protection (IMCO), devoted mainly to the implementation of the Single Market Strategy and the Digital Single Market Strategy, while focusing on regulations seeking to eliminate unjustified and disproportionate barriers and seizing new opportunities for the benefit of consumers and businesses;

40. Recalls that EU legislation generally replaces 27 diverging rules, which helps to reduce the fragmentation of the internal market; calls on the Commission, when assessing subsidiarity and proportionality, to ensure that initiatives aimed at achieving a deeper and fairer internal market remain a key pillar of future annual programming, while maintaining a high level of consumer protection;

41. Stresses that better law-making objectives need to be regularly reviewed and evaluated against the criteria of the better law-making agenda, including monitoring and reporting; underlines that the objectives need to be well balanced and evaluated in terms of their effectiveness, taking account of the resources deployed for activities on better regulation and for external contributions; recalls the importance of comparable EU-wide data for the purpose of this evaluation and calls on the Commission to examine whether the use of the better regulation tools have served to achieve objectives such as improved policy outcomes;

42. Calls on the Commission to take this resolution into account in the drafting of its announced communication on better regulation;

43. Instructs its President to forward this resolution to the Council, the Commission, the Committee of the Regions, the European Economic and Social Committee and the governments and parliaments of the Member States.