



Evaluation of the Norwegian Better Regulation Council

**Prepared by KPMG for the Ministry of Trade, Industry
and Fisheries**

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Summary report in English

The evaluation finds that the Norwegian Better Regulation Council fills an important role in Norwegian public administration. It is a function that is recommended by OECD and that is also in place in comparable countries. It is difficult to estimate the value added contributed by the Better Regulation Council in form of avoiding increased costs for business, but the evaluation concludes the BRC has contributed to, and continues to contribute to a necessary process of improving the quality of impact assessments in the Norwegian administration. We recommend that the Better Regulation Council continues its work with the present mandate and scope. The evaluation delivers recommendations aimed to strengthen the advisory work, monitoring of effects of its work, strengthening mechanisms to ensure compliance, and for lifting the BRC's profile.

KPMG was commissioned by the Ministry of Trade, Industries and Fisheries to evaluate the Norwegian Better Regulation Council. This is a summary report of the full evaluation report presented to the Ministry in the Norwegian language.

The Better Regulation Council was established as a part of the Government's work to simplify the regulatory framework for business and started its work in June 2016. At this stage, several European countries had already established comparable bodies, in line with recommendations of OECD's Council on Regulatory Policy and Government to establish mechanisms and institutions to actively provide oversight of regulatory policy procedures. The Better Regulation Council was established after several national assessments and a review by OECD had shown that authorities had not conducted quality impact assessments before enacting new laws and regulations. This could have had negative consequences for business in form of negative administrative and economic consequences.

The establishment of the BRC was connected to some political controversy. The red/green coalition in government when the establishment was first discussed around 2010, was opposed to its regulation. They did not see the need for a government body to support the right of private sector companies and argued that there were already adequate processes in place to support the simplification of the regulatory framework. After the new conservative government took power in 2013, they moved to establish the BRC. Since its establishment, there have been critical comments in Parliament on a yearly basis, following the same political divide. The criticism, which question the justification of the BRC, continuous to instil a degree of uncertainty in the longevity of the BRC. This uncertainty is now exacerbated after the 2021 elections resulted in a return of a red/green government. It needs to be mentioned that the existential criticism of the BRC is no longer rooted in official party politics but is associated more with personal political views of a relatively limited number of parliamentarians.

The purpose of the Better Regulation Council is *to contribute to reducing the burden on business from new or altered regulations.*¹ In order to fulfil its purpose, the BRC is mandated to:

1. Issue written advisory statements on proposals for new or amended laws and regulations at the stage of public consultation
2. Issues general guidance to promote impact assessments, including for EU/EEA relevant proposals, and
3. Follow developments and practice in the area of regulatory policy and better regulation nationally and internationally

The Better Regulation Council consists of a Council with six senior members with background from government, business and academia. The Council is assisted by a secretariat, that conducts the day to day affairs of the Better Regulation Council.

¹ [The Norwegian Better Regulation Council](#), publication by the Council, not dated.

The assignment

The evaluation has as its purpose to answer the following evaluation questions:

1. To what extent has the Better Regulation Council contributed value by ensuring that business is not unnecessarily burdened by new or altered laws or regulations?
2. How well does the organisation of the BRC and its work arrangement function in meeting its objectives?
3. How should the BRC organise its work in the future to provide maximum value added?

The evaluation was conducted in the period June to November 2021. It is based on a broad set of data:

- ✓ A document review of strategy documents, impact assessments, international reports and academic literature.
- ✓ Case-studies of 8 opinions on Regulatory Impact Assessments (RIAs) submitted by BRC to regulators.
- ✓ A questionnaire to representatives of departments and directorates who had experience from developing regulation and to representatives from business associations, who also had experience from public hearings associated with the impact assessments and the work of the Better Regulation Council. The total number of respondents was 100, with approximately 50% from each respondent group.
- ✓ 18 semi-structured interviews with members of the Council and secretariat, representatives of government authorities, representatives of business associations, members of better regulation councils and members of RegWatchEurope from Sweden (Swedish Better Regulation Council), Denmark (Danish Business Regulation Council) and UK (UK Regulatory Policy Committee), as well as a representative of OECD's Regulatory Policy Committee.
- ✓ Two focus group discussions were conducted with regulators and business representatives, respectively.
- ✓ A digital workshop with the Council and secretariat of the Better Regulation Council.

Findings

It is difficult to quantify the value added of the Better Regulation Council. The BRC's systematic tracking of the influence of its opinions stops at the regulator's final decision. There is incomplete data on whether the opinion had an impact, as this is not always clear from the information provided by the regulator. On the issue of measuring impact, UK's Regulatory Policy Committee has come further, as they calculate estimated the savings each year by business that have been realised as a result of avoiding regulation that lead to increased costs.

On the basis of available data, the evaluation concludes that the Better Regulation Council has contributed to and continues to contribute to a process for improvement of the RIAs in enactment of new or altered regulation. This conclusion is founded in the following factors:

- ✓ We have observed individual cases where it is likely that the BRC's contributions have led to a better quality of result impact assessments. We have also observed cases where the BRC's advice has not been followed and were this has led to longer and more demanding processes as regulations were found to be too cumbersome as they were put in practice.
- ✓ Advise and follow up from the BRC's to the regulators has contributed to improved competencies for results impact assessments considering effects on business.
- ✓ The "National Audit effect", wherein regulators, realising that someone is checking on them, give more attention to the quality of their impact assessments.

There is a general agreement among all groups of respondents that the last factor is the most important. Moreover, the longer-term impact of the BRC's work is probably not evident yet.

The questionnaire administered by the evaluation provide interesting information on the differences in opinions and experiences between the givers of regulations - the regulators and the receivers of regulations - the business community. The questionnaire asked respondents to indicate whether they

agreed with several statements. To the statement “Impact on business is sufficiently assessed in most cases when adopted new or altered regulations”, two-thirds of regulators answer in the affirmative. The same proportion of business representatives, on the other hand, disagreed.

Figure 2 “Impact on business is sufficiently assessed in the adoption of new or altered regulations in most cases”

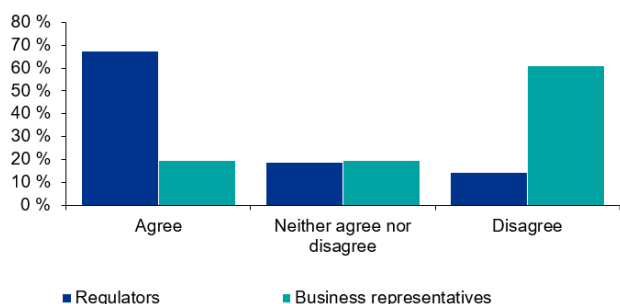
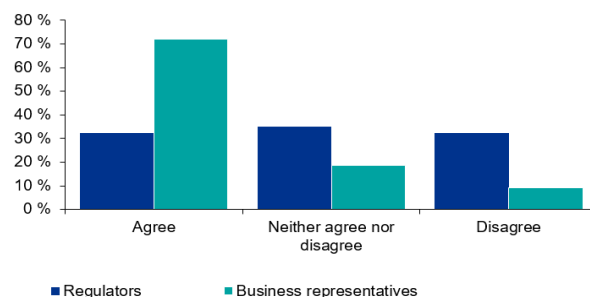


Figure 1 "The work of the Better Regulation Council contributes to better quality impact assessments for new or altered regulations affecting business"



We see a similar pattern when asked if they agreed with the assertion that the BRC’s work resulted in better quality assessments on impact on business. Whereas 70% of respondents from business associations agree, less than a third of regulators do.

Figure 3 "It is important that Norway has a Better Regulation Council"

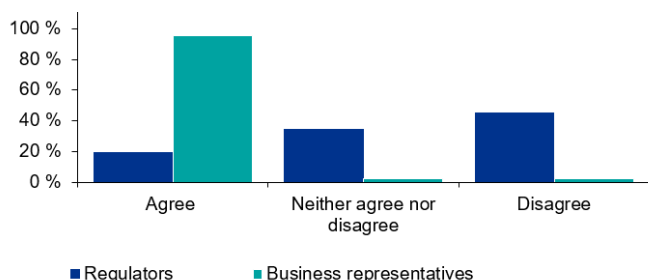


Figure 3 shows a starker contrast still. Less than 20% of regulators agree with the statement that is important that Norway has a Better Regulation Council, with more than 40% disagreeing. Almost all business representatives agree.

These responses show a clear picture wherein regulators question the usefulness the BRC and its mandate, while business representatives see the BRC as having an important role.

The view of regulators that they do provide a satisfactory quality of impact assessments is not supported by reviews conducted by the Norwegian Government Agency for Economic Management (DFØ), which find that regulatory authorities do not comply to a satisfactory degree with requirements to assess alternative solutions and conduct impact assessments and cost-benefit analysis of proposed regulations.²

As we have seen, regulators often don't agree that the quality of their impact assessments is not sufficient. Many of the departments and directories that have received critical assessments from the BRC, have the opinion that the BRC lacks the necessary subject matter competence to provide relevant comment. Nevertheless, in interview, most regulators agree that the BRC have contributed to them paying more attention to the need for good quality impact assessments.

The mixed feed-back from regulators on the importance of impact assessments, and their views on the role played by the Better Regulation Council indicates show that there is not a consensus around what is the required standard of impact assessments. This may indicate that there is a need for awareness-raising among regulators on what is expected in form of impact assessment, and to continue the work to improve the quality of impact assessments for regulations affecting business.

Business representatives state that the Better Regulation Council play a useful role in involving business associations in their work. Their main criticism of the BRC’s role is that they experience that the BRC does not have sufficiently sharp teeth. Several respondents wish for an arrangement wherein a red light from the BRC would be a stop-signal requiring the regulator to address indicated issues before going ahead.

² DFØ (2017) *Tilfredsstiller statlige utredninger utredningsinstruksens krav? En nullpunktsmåling ved iverksettelse av ny instruks i 2016*; and DFØ (2020) *Tilfredsstiller statlige utredninger utredningsinstruksens krav? Statusmåling 2019*.

The Better Regulation Council provides an important guidance function. There is, however, still room for improvement in building good and constructive relations with regulators in departments and directorates. This is an area where the UK Regulatory Policy Committee (RPC) have come far. They have regular consultations with government departments, not only in connection with specific Regulatory Impact Assessments. They also conduct an annual survey among government counterparts on how satisfied they are with the guidance received from the RPC.

EU / EEA related regulations is an area where there is particular disagreement between regulators and the Council on the requirements for impact assessments. Several regulators have the opinion that the BRC should narrow the requirements, seeing that EU / EEA regulations have a limited room for manoeuvre, as there is no null alternative: There is no option not to adopt the regulation. The Ministry of Trade, Industries and Fisheries has accorded the BRC a specific responsibility for advising on impact assessments for EU and EEA related regulations. Guidance issued by the BRC in this area makes little specific reference to the issue of the limited options available relating to EU / EEA regulations. The evaluation finds that there is room for improvement in this area.

The BRC is an active member of RegWatchEurope. They are visible and are recognised for their contributions to the professional development of regulatory oversight in Europe. The BRC also work actively within OECD. The international work contributes to the Council's professionalism and methodological development in the Norwegian administration.

Since the start of its work in 2016, the Better Regulation Council has put in place a good organisation and methodological framework to perform its mission. The mandate is relevant and the work is organised in an effective manner. The number of opinions delivered by the BRC is comparable with similar organisations in Europe. The Council and the secretariat have competent members/workers with relevant backgrounds and experience. They have a good website, with relevant and easily accessible statistics to document their work. Despite their central role, however, they have a low level of visibility in the public arena and are not well known.

Recommendations

The evaluation recommends that the Better Regulation Council continue its work within the existing mandate and conditions. We make the following recommendations to further strengthen the work of the BRC:

- 1. The Better Regulation Council can strengthen the effect of its work by further developing its methods for guidance and collaboration with regulators.** The BRC has an important role as a guide and standard-setter for complying with national standards of official studies and cost-benefit analysis. It is recommended that they give this part of their work more priority, as this can give them more weight and credibility in their oversight function. We recommend the following:
 - ✓ The BRC should adapt and narrow its approach for impact assessments relating to EU / EEA related regulations, to consider the limited room for options.
 - ✓ Consider a similar arrangement to the UK model of regular dialogue-meetings with key departments and directorates.
 - ✓ Consider adopting and administering an annual survey with regulators, asking them to indicate how satisfied they are with the collaboration with RBC, building on the UK model.
- 2. The Better Regulation Council can improve on its approach to monitor the impact of its work.** The BRC documents its work well, but there is still room for improvement. One argument against attempting to document in more detail what the impact of its work, has been the challenge in distinguishing between the influence of the BRC's opinions and the comments from other stakeholders, such as the business associations. We recommend using the principle of contribution rather than attribution. In other words, if it is likely that the BRC's opinion contributed to the end result, then the whole effect should be counted. We recommend:
 - ✓ Do a more complete analysis of the effects of public hearings where the BRC has given an opinion by tracking and documenting what, if any, effect the hearing had on the enacted regulations.
 - ✓ Consider the possibility of quantifying the value added for business, by the reduction of costs as a result of adjustments in the proposed regulations.

3. **Providing the opinions of the Better Regulation Council with more weight can improve its effectiveness.** There is today no binding requirement for regulators to consider the BRC's opinion. Several respondents have stated that this significantly constrains the impact of the BCR's work. The need for a stop-function has been suggested by many, wherein regulators are required to address identified weaknesses in their impact assessments before going ahead the proposed regulation. We believe such a solution entails too high a risk and commitment. Instead we recommend:
 - ✓ Consider adapting the Danish model of Comply or Explain (*Følg eller Forklar*), wherein regulators are required to comply with the BRC's opinions and adjust their assessments, or explain why they believe this is not necessary.
4. **The Better Regulation Council can strengthen the impact of its work by lifting its profile and visibility.** The RBC's role in the Norwegian administration is not widely recognised. This continues to be a limiting factor in its work. We recommend:
 - ✓ Explore the possibility of recruiting members of the Council who are publicly recognised as authorities in their areas
 - ✓ Council members to participate in more of the meetings with the authorities
 - ✓ More active participating in public debates, as for example in opinion pieces in newspapers and professional journals

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