Presentation of a study on the Regulatory Scrutiny Board

Good afternoon and thank you to Mr Repasi and Ms Cavazzini for inviting me here today and to Miss Pircher for presenting her research on the activities of the Regulatory Scrutiny Board and their impact on EU law making.

The European Union is currently creating and implementing legislation that will shape the future of our continent, even our planet, for decades. Many of these laws and regulations seek to confront unprecedented environmental challenges and to adapt to and regulate for the enormous social changes brought about by digitalisation and new technologies.

It is therefore vital that these new rules reflect the democratic wishes and expectations of EU citizens. Climate change is already impacting the lives not just of those in far away places but right here and right now in Europe itself and citizens expect strong action both from their national governments and from the European Union.

Meeting their expectations requires a thoroughly transparent legislative process and assurances that special interest groups do not unduly influence lawmakers. There is an ongoing tension between those who want radical action now to avert potential climate catastrophe and those who seek to slow the pace of reform in order to protect certain industrial and other interests. How these tensions are managed has - quite literally - life and death consequences.

Against this backdrop, the Regulatory Scrutiny Board is both a significant influencer and an outlier vis a vis the normal standards of public awareness and public scrutiny.

It is relatively unknown, not only to the majority of the European public but even to many people working in EU affairs, yet it has an enormous amount of responsibility at an early stage in the legislative process. Its role in reviewing draft impact assessments and other evaluations can shape EU rules long before they reach the desks of MEPs and national ministers.

For this reason, it is crucial that the Board's work is transparent enough to be subject to democratic scrutiny and that its members represent the interests of European society as a whole. Otherwise we risk legislation that is inadequate for the challenges I have mentioned, but also heightens concerns about the outsize influence of big business and special interest groups.
I am aware that many civil society organisations and journalists have already raised concerns around how the Board operates and how its composition may privilege certain interests above others.

As European Ombudsman, I have recently opened two inquiries related to the Regulatory Scrutiny Board. They are both ongoing, so I cannot share any conclusions yet, but I can nevertheless provide some information about the scope of the issues I am looking into.

The first inquiry concerns the composition of the Board, as well as how the Board interacts with special interest representatives. The complainant in this case argues that interactions between Board members and interest representatives may have affected the Board’s work, for instance on the draft EU directive on corporate sustainability due diligence. They are also concerned about the composition of the Board, which they allege favours economic expertise over expertise in environmental and social policy.

I will note here that the Regulatory Scrutiny Board mission statement requires that the expertise of members should cover ‘macroeconomics, microeconomics, social policy and environment policy’.

I have sent a series of questions to the European Commission to ask how it makes sure that the Board's composition covers all these areas of expertise and to provide information on what safeguards are in place when it comes to the Board’s interactions with stakeholders. I expect to receive the Commission's answers by the end of June.

The other inquiry concerns the Commission's refusal to give full public access to the declarations of interest of Regulatory Scrutiny Board members following a request from a journalist. These declarations provide important information on potential conflicts of interest. The Commission argues that the information in them is personal data that should remain confidential. This is an example of an occasional conflict we see between data protection requirements and accountability.

I have issued a solution proposal in this case, asking the Commission to consider providing wider disclosure.

I will conclude by noting that the Commission’s Better Regulation Agenda is intended to ensure evidence-based and transparent law making based on the views of those affected.

The Commission has given the Regulatory Scrutiny Board significant influence in determining the information and analyses that comprise the early stages of the legislative process. As such, the Commission has an obligation to make sure the Board is transparent and accountable, and that it operates in accordance with all the principles of good administration. Through my investigations and likely proposals for improvement, I will work to help to ensure that is the case.

Thank you.