



Innovation Stress Test for EU Legislation: ERIF submission to the Innovation Act consultation

Innovation has long been recognised as a critical driver of Europe’s competitiveness, sustainability, and strategic autonomy. In the European Union (EU), public policies and regulations (“framework conditions”) can significantly influence innovation – either by fostering a conducive environment or by unintentionally stifling investment in new ideas. With the twin green and digital transitions well underway, and the European Commission proposing a European Innovation Act, it is a strategic priority to ensure that regulations support rather than hinder innovation.

In view of this priority, the European Regulation and Innovation Forum (ERIF) urges the Commission to consider the concept of an Innovation Stress Test (IST), to systematically check that new EU legislation does not negatively impact innovation. In early 2024, the European Economic and Social Committee (EESC) – at the request of the incoming Belgian EU Council Presidency – adopted an exploratory opinion advocating the introduction of a European Innovation Stress Test for all new policies and laws¹. The stress test takes the form of a 10-step checklist of innovation-related criteria against which proposed initiatives should be evaluated. The Competitiveness Council in May 2024 mentioned the EESC idea and invited the European Commission to explore implementing such a test through its existing Better Regulation tools².

IST Framework

IST is a proposed checklist-based assessment to “stress-test” all new policies and proposed regulations for their impact on innovation. The EESC’s framework consists of ten key requirements (questions) against which each new EU policy or legislative initiative should be evaluated. These criteria collectively aim to ensure that proposed regulations support an innovation-friendly regulatory environment, while still upholding consumer safety and other public interest goals. For each question, the “preferred” answer is indicated (Yes or No); if a proposal does not meet a given criterion, policymakers would need to adapt the proposal or justify how

¹ https://www.eriforum.eu/uploads/2/5/7/1/25710097/erif_insights_no_46_-_innovation_stress_test_002__2_.pdf

² <https://www.eesc.europa.eu/en/news-media/news/employers-group-greets-competitiveness-councils-inclusion-innovation-stress-test-conclusions>

negative impacts on innovation will be avoided. The ten Innovation Stress Test questions are as follows:

1. *Protects public interests and enables innovation? – Does the initiative protect consumers and the environment, while recognising the need for innovation to achieve the EU's green and digital transitions, create quality jobs, and stimulate the economy?* The desired answer is Yes, meaning regulation should safeguard health/safety and the environment, and acknowledge that innovation is a key enabler for sustainability and growth.
2. *Avoids deterring investment in innovation? – Does it ensure “joined-up” policymaking such that policies build investor confidence and do not create barriers to continued or new innovation investment in the EU?* Desired answer: Yes. In other words, the proposal should be coherent with other policies and send predictable signals to investors, avoiding contradictory rules or uncertainty that could discourage innovation investment.
3. *Provides clarity for innovators? – Does it ensure a clear understanding by innovators and investors?* Desired answer: Yes. Regulations should be intelligible and predictable, so that businesses – from start-ups to large firms – can understand the rules and innovate accordingly, rather than facing ambiguity or undue complexity.
4. *Aligns with Better Regulation processes? – Does it comply with the use of the European Commission’s Better Regulation Toolbox?* Desired answer: Yes. This means the proposal should be developed in line with the Commission’s existing impact assessment guidelines and best practices, ensuring evidence-based policy design and consideration of alternatives (consistent with the EU’s Better Regulation agenda).
5. *Involves innovators in policy design? – Does it actively include consultation and involvement of innovators and investors across the full spectrum – from start-ups to multinationals – to ensure policies do not unintentionally undermine investor confidence in EU innovation?* Desired answer: Yes. Policymakers should engage a wide range of innovation stakeholders during the legislative process, so that potential concerns or barriers are identified early. This aims to prevent well-intended rules from having “unintended...impact on innovation” due to lack of industry insight.
6. *Ensures transparency and manages conflicts of interest? – Does it recognise legitimate concerns about potential conflicts of interest and provide transparency on these issues for all involved (policymakers, public and private sectors, civil society)?* Desired answer: Yes. This criterion acknowledges the need for a trustworthy process – innovation policy should be shaped in a transparent manner, revealing any vested interests. Noting past critiques that innovation-friendly initiatives might be driven by industry lobbying, the stress test calls for openly addressing conflicts to maintain integrity.
7. *Bases decisions on sound evidence? – Does it take account of the best available, up-to-date weight of scientific evidence?* Desired answer: Yes. Regulatory decisions affecting innovation should be rooted in solid scientific and technical evidence. This aligns with an evidence-informed approach, ensuring that rules do not unduly constrain innovation due to outdated or unsubstantiated concerns.
8. *Does not worsen skill shortages? – Would it negatively impact the availability of skills, human capital or education needed for innovation, research and development?* Desired answer: No. This highlights that regulation should not inadvertently aggravate talent shortages or impede the development of skills. For example, policies should ideally

support (or at least not hinder) the training, mobility and retention of a skilled workforce essential for innovation.

9. *Avoids creating gender imbalances? – Could it result in actions that generate a gender imbalance?* Desired answer: No. Any innovation-related policy should not undermine gender equality. This suggests regulations ought to be inclusive, ensuring that opportunities in innovation are accessible regardless of gender. (For instance, innovation programmes or incentives embedded in legislation should avoid bias and strive for diversity.)
10. *Does not conflict with innovation incentives in taxation? – Does it conflict with existing or future tax incentives for innovation or R\&D in Europe?* Desired answer: No. The proposal should be checked against fiscal measures that encourage R\&D (such as tax credits or deductions) to ensure that new rules do not unintentionally nullify or counteract those incentives. Consistency across regulatory and tax policy is needed to send a unified pro-innovation signal.

If a new legislative proposal fails to meet one or more of these criteria (i.e. a “No” where a Yes is expected, or vice versa), the stress test framework calls for an explanation or mitigation plan before proceeding. In practice, this could mean revising the draft policy or regulation to better accommodate innovation, or providing a clear justification for why other considerations must override that particular innovation criterion and how any negative impact on innovation will be minimised.

In essence, IST acts as a pro-active filter, or safeguard, applied during the policy development phase, to catch potential innovation-unfriendly aspects of regulation. It is presented as a practical checklist that is easy for policymakers to use routinely. Crucially, it is intended to complement, not replace, existing regulatory assessment tools. The EESC stresses that this top-10 checklist should “take a holistic view” – bringing in considerations such as talent and gender that might be outside traditional impact assessments – and should work in accordance with the principles already embedded in the regulatory process, for example, by explicitly requiring alignment with the Better Regulation Toolbox (criterion 4). The overall approach reinforces the EU’s already strong existing commitment to evidence-based, innovation-friendly lawmaking.

The key strengths of the IST are:

1. Comprehensive innovation lens – The IST requires policymakers to consider a broad spectrum of innovation factors: scientific evidence, investor confidence, skills, diversity and so forth, in one checklist. This holistic approach helps to ensure that no key enabler of innovation is overlooked.
2. Early warning of innovation barriers – By evaluating proposals against innovation criteria upfront, the test can flag provisions that might unintentionally hinder investment or R&D. This provides an opportunity to revise or justify such provisions before they cause real-world harm to innovation.
3. Practical and easy to implement – The checklist format is straightforward and user-friendly for regulators. It is a practical solution that can be applied on a routine basis without major procedural overhauls.

4. Complementary to existing rules – The IST builds upon and re-enforces existing instruments such as the Innovation Principle³ and Better Regulation guidelines. Rather than re-inventing the wheel, it consolidates best practices (e.g. stakeholder consultation, evidence-based and impact assessment) into a simple reference process, thereby bolstering consistency across different legislative initiatives.

Fitting the IST within EU Regulatory Processes

Integrating IST into the EU's law-making process is straightforward and could occur through the existing Better Regulation framework. The Competitiveness Council explicitly “asked the European Commission to explore the IST's possible implementation through the current Better Regulation tools”. This indicates an expectation that the stress test should become part of the Commission's Impact Assessment (IA) process or related evaluation procedures, rather than a standalone new mechanism.

In practical terms, the IST could be applied as follows:

- *Incorporation into Impact Assessments:* IST could be formally incorporated into IAs by requiring that the ten checklist questions be addressed for each option analysed. For example, the IA report could include a subsection where each stress test criterion is answered with evidence or reasoning. The Regulatory Scrutiny Board (RSB), which reviews IAs for quality control, could be tasked with checking that the innovation questions have been satisfactorily answered, similar to how it checks for SME impacts or environmental impacts. This embedding ensures the test is applied at the right stage – when policy options are being formulated, and its findings can influence the drafting of the proposal. A benefit of using the IA process is that it already ensures inter-service consultation (so multiple DGs weigh in) and stakeholder input, aligning well with the IST's principles. However, it is important to guard against overburdening IAs, as they can already become quite extensive documents. The Commission would likely need to update its Better Regulation Guidelines to formally include IST (for instance, adding it to the Toolbox or as an annex template).
- *Checklist as part of Commission proposal justification:* Another practical approach is to integrate the IST into the standard Explanatory Memorandum or Recitals of each Commission proposal. The Commission could, for instance, include a paragraph summarising how the proposal fares against IST criteria. This would make the assessment visible to the Council and European Parliament when they consider the proposal, while show that the Commission has done due diligence to safeguard innovation. However, the groundwork would still need to be done during the proposal's preparation (probably via the IA). If placed in the Explanatory Memorandum, the IST also opens the door for Council or Parliament to debate those points explicitly, which could for instance assist in highlighting any concerns arising about the innovation impacts of Council or Parliamentary amendments.
- *Monitoring and enforcement:* The Commission should put in place a mechanism to track compliance. The Secretariat-General could maintain a registry or dashboard of all new

³ https://research-and-innovation.ec.europa.eu/system/files/2022-07/ec_rtd_factsheet-innovation-principle.pdf

proposals and whether they passed IST (and if not, what justifications were given). An annual report could be made (perhaps as part of the Competitiveness Report or the Better Regulation Report) summarising how legislation fared on the innovation checklist. This would create transparency and allow for oversight by Member States and stakeholders. The onus would be on the Commission to demonstrate it is using the tool on a consistent basis.

- *Application at Member State and sub-EU levels:* The tool could have an equally positive impact if used by policymakers in EU Member States, and even at regional and local levels. For example, it could encourage Member States to apply a similar innovation check when implementing EU directives or making national regulations. Some Member States already have innovation test practices (the Netherlands, for example, has a process for assessing the innovation effects of regulation). Promoting a unified checklist at EU and national level could harmonise approaches.
- *The Commission introduced a “competitiveness check” in 2023 – a requirement that initiatives be reviewed for their impact on competitiveness, including cumulative costs on industry. Innovation is one aspect of competitiveness. It will be important that these processes are harmonised:* ideally, IST could be part of the competitiveness check or side-by-side with it. There is potential overlap (both instruments aim to ensure that growth and investment are not impeded by regulation). To avoid duplication, the Commission could integrate the innovation questions as a distinct subsection of a broader competitiveness proofing. This would streamline the workflow and make it clear that innovation is a pillar of competitiveness analysis.
- *Addressing existing legislation and implementation:* While the main focus is new policy and regulatory proposals, the Commission could also deploy the IST in evaluating existing regulations during “fitness checks” or evaluations. For example, when revising an older directive or regulation for update, the Commission could retroactively (ex-post) apply IST to see if any of the 10 criteria are not met under the status quo. This diagnostic could then further inform whether and where the law needs amendment.
- *Legal or procedural formalisation:* The Commission could incorporate the IST requirement in an updated Interinstitutional Agreement on Better Law-Making or in its own Communications. Since the May 2024 Competitiveness Council conclusions (on industrial policy) included the IST concept, the Council could also consider it appropriate to reference the IST in its future conclusions, in order to signal its continuing interest in an appropriate Commission response (which could, for example, take the form of an instruction from the Commission President to all Directorates General to systematically implement the IST)..

ERIF believes that IST is an efficient and effective instrument that will be best implemented by integrating in the fabric of the EU's existing Better Regulation processes. Success will depend on seamless integration including embedding in impact assessments, diligent enforcement by the RSB, and ensuring complementarity with the competitiveness check and other regulatory tools.

ERIF is confident that effective implementation of the IST will strengthen innovation in the EU and make a valuable contribution to improved competitiveness.