Evaluating Laws and Regulations

THE CASE OF THE CHILEAN CHAMBER OF DEPUTIES

OECD

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Please cite this publication as:
OECD (2012), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing.
http://dx.doi.org/10.1787/9789264176263-en

ISBN 978-92-64-17625-6 (print)
ISBN 978-92-64-17626-3 (PDF)

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Foreword

This report is the first one undertaken by the Regulatory Policy Division of the OECD Public Governance and Territorial Development Directorate (GOV) to help the legislative branch of a member country devise a system and the institutions to conduct law evaluation, taking advantage of good international practices. This is also one of the first initiatives to support legislative bodies in a practical way, monitoring the implementation of legislation.

In undertaking an analysis of law evaluation practices in Chile, the OECD reviewed the current system and process of *ex post* law evaluation. This report builds on OECD experience in conducting comparative analysis. It draws on an extensive review of information about examples of practice and references on the subject of *ex post* law evaluation in OECD countries, particularly in the legislative branch. Furthermore, it describes good international practices in terms of design of the parliamentary institutions that carry out *ex post* law evaluation, the methodologies applied to perform evaluation, and the techniques used to incorporate citizens' perceptions in the evaluation methodologies.

The report was published in May 2012, under the auspices of the OECD Regulatory Policy Committee, as part of the work programme of GOV. It was financed by the Chilean Chamber of Deputies.

This review was conducted under the leadership of Rolf Alter, Director of GOV and Nick Malyshev, Head of the Regulatory Policy Division. It was drafted by Delia Rodrigo, consultant to the OECD, with advice by Jacobo Pastor García Villarreal, Regulatory Reform Specialist of the OECD. They were assisted by Jacob Arturo Rivera Pérez. The report also benefited from consultant contributions by Alex Brazier, from Global Partners and Associates. Editorial assistance and the layout of the report were provided by Jennifer Stein. Administrative assistance was provided by Laure Disario and Sara Kincaid.

The OECD Regulatory Policy Committee

The mandate of the Regulatory Policy Committee is to assist members and non-members in building and strengthening capacity for regulatory quality and regulatory reform. The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance and Territorial Development Directorate. For more information please visit *www.oecd.org/regreform*.

The OECD Public Governance and Territorial Development Directorate's unique emphasis on institutional design and policy implementation supports mutual learning and diffusion of best practice in different societal and market conditions. The goal is to help countries build better government systems and implement policies at both national and regional level that lead to sustainable economic and social development.

Acknowledgements

The Secretariat thanks Deputies Alejandra Sepúlveda and Patricio Melero, who presided over the Chamber of Deputies during the time in which this work was agreed and carried out, as well as Pablo Lorenzini, who presides over the Law Evaluation Committee of the Chamber. Likewise, we thank Adrián Alvarez, Secretary-General of the Chamber of Deputies, and Miguel Landeros, Deputy Secretary.

The Secretariat acknowledges the contributions of the members of the Regulatory Policy Committee, who helped identify key parliamentary officials for a seminar held in Santiago, Chile, on 8-9 March 2012. The seminar was enriched by presentations by representatives of parliamentary institutions of Canada, Chile, France, Sweden, Switzerland, and the United Kingdom.

Special thanks to the Law Evaluation Department of the Chamber of Deputies, and in particular, to Rene Arrayet and all his team, for their assistance in providing information, co-ordinating, and facilitating discussions of the main findings and conclusions of this report.

Likewise, we thank the staff of the OECD Mexico Centre, especially its Director, José Antonio Ardavin, and the staff in charge of publications, notably Alejandro Camacho and José Antonio García, who were instrumental in co-ordinating the editorial process for the Spanish publication.

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Executive Summary

Ex post evaluation is a critical field to the regulatory policy cycle. In the case of laws and regulations, *ex post* evaluation has as a goal to determine if the regulatory framework in place achieved the desired objectives, if the law or regulation was sufficiently efficient and effective in its implementation, and to what extent any (un)expected impacts of the regulatory intervention were properly addressed at the moment of conceiving the regulatory instrument. Reviewing the outcomes and results of the regulatory intervention should be therefore a central function of regulatory institutions and it is an essential element of high quality regulation.

Ex post evaluation serves various purposes. Among them, it can make important contributions to redefine new interventions and improve the quality of future decisions by pointing out unintended consequences that had not been properly assessed. It can enhance transparency by opening new possibilities for stakeholders' participation in order to better understand how they have been affected by the regulation. It can bring more accountability to the regulatory process. It can also contribute to reduce the risk of regulatory failure.

Ex post evaluation is, however, just at its infancy in many countries as little attention has been paid to this policy field. Despite efforts made to ensure that implementation of laws and regulations meets the goals they were served for, there is little evidence that *ex post* evaluation is systematically conducted in OECD countries. In most cases, the impacts of regulations are rarely assessed in a systematic way, which is weakened by the lack of *ex ante* analysis and available data.

This report presents an assessment of the *ex post* evaluation process for laws recently introduced in the Chamber of Deputies in Chile. It presents the main findings, assessment and recommendations from a collaborative work with the Law Evaluation Department of the Chilean Chamber. It sheds light on the main challenges and opportunities that *ex post* law evaluation faces to become a relevant field for increasing the quality of regulation in the country.

The construction of an *ex post* evaluation system of laws in Chile is a welcomed move to improve regulatory quality in the country. In the absence of a systematic review of the impacts of laws and regulations, *ex post* evaluation should be seen as a first step in the construction of a self-contained regulatory management system that embraces the whole law-making process, helping to better understand the effectiveness and efficiency of implemented laws.

The main focus of this report is the analysis of the recently established Law Evaluation Department in the Chamber of Deputies of Chile. The Department has a challenging function: to review the various effects of selected laws that have been in place for at least one year, and to make an assessment of the positive and negative impacts that have occurred as a result of the legal framework.

To accomplish this task, the Law Evaluation Department has developed a methodology that has been tested in a first pilot project. In an effort to bring law implementation closer to citizens, the Law Evaluation Department is also trying to include in the *ex post* evaluation process the way affected parties, and citizens in particular, perceive the effects of the law. Various dialogue channels with citizens are currently being tested to promote and facilitate their participation.

It is expected that *ex post* evaluations present recommendations to improve the regulatory framework that has been reviewed. Those recommendations will go to the Committee for Law Evaluation and other committees in the Chamber responsible for the topics in question.

The results of the current *ex post* evaluation are so far encouraging, but important institutional and methodological challenges remain to ensure that this Department consolidates as a strong promoter of regulatory quality in the country.

Chapter 1

International Practices on *ex post* Evaluation

This chapter starts by describing the definition and purpose of ex post *regulatory evaluation, establishing it as a critical step in the regulatory policy cycle. It reviews different methodologies to undertake* ex post *evaluation, concluding that there is no single template to do it, but rather there are common themes and questions that must be addressed in the process. It argues that there are important links between ex ante and* ex post *evaluation and that an integral approach for regulatory governance must consider both, as they reinforce each other. Just like in the case of methodologies, there is no uniform model of parliamentary* ex post *evaluation unit. While some parliaments have formal units dealing with evaluation, others rely on a mixture of research bodies, libraries, and committees. Finally, this chapter discusses the contributions that different stakeholders can make to* ex post *law evaluation, including strategies for effective public engagement, for which parliamentary contacts and procedures should be regularly reviewed.*

1.1. *Ex post* evaluation: Definitions and purpose

Ex post evaluation is an essential step of the policy and regulatory process. It can be the final stage when new policies or regulations have been introduced and it is intended to know the extent of which they met the goals they served for. It can also be the initial point to understand a particular situation as a result of a policy or regulation in place, providing elements to discuss the shortcomings and advantages of its existence.

> According to the Australian Department of Education, Science and Training, *ex post* evaluation is carried out for a variety of purposes. It can be directed toward improving programme design, assessing the impact of programmes or whole agencies, or producing better value for money. Many agencies have attempted to learn, through *ex post* evaluations, of the effectiveness and impact of their *ex ante* assessment mechanisms and processes. Better-practices have developed more systematic approaches for ensuring that *ex post* analyses are linked to ongoing refinements in *ex ante* processes. (Department of Education, Science and Training, 2008)

What is understood by ex post evaluation?

Once a law or regulation is enacted and implemented, its provisions bind a society, unless and until it is subsequently repealed or amended. Yet it is often only after implementation that the effects and implications of a law can be fully assessed, including its costs, regulatory burdens, direct and indirect effects, much less any unintended consequences. Furthermore, laws may become outdated as circumstances change and regular review is needed to guard against this possibility.

Some key questions are:

- *Has the law met its purpose?* This pre-supposes that the law in question has a defined, openly stated and well understood purpose and that its outcome can be measured with a degree of accuracy.
- *Is the law fit for purpose?* This method considers whether the law, as drafted and passed, is technically sound, clear and comprehensible, the subject of legal challenges and able to adequately put into practice. These two questions can be closely interlinked and the assessment of each can be complementary.
- *What is the impact of non-legislative factors?* The outcome of law itself may be affected by the way it has been implemented, by awareness of its provisions by the population, by the level of compliance and enforcement.
- *What does* ex post *evaluation entail?* It involves the collection of evidence on the outcome and effects of the law in question, analysis of and judgment about the evidence, followed by inquiry and conclusion and, if appropriate, recommendation for change. The methods used to undertake *ex post* evaluation will be often determined by the questions to be answered.

The cumulative effects of regulation

Many pieces of legislation amend or build upon existing legislation. Looking at the individual laws in isolation might therefore only provide a partial insight and so a broader picture of existing legislation and policy rather than simply the individual law in question may be necessary.

The criteria which form a framework for the evaluation include some common features: definitions of effectiveness and efficiency, judgment about meeting set purpose and practical to operate and assessment of enforcement.

The evaluation of effects is a fundamental prerequisite, ensuring the legislator's responsiveness to social reality and the social adequacy of legislative action. *Ex post* evaluation is only part of a broader approach to understand the effects of laws and regulations (Mader, 2001):

- Analysis and definition of the problem that legislative action presumes to solve;
- Determination or clarification of the goals of legislation;
- Examination of legal instruments or means that can be used to solve the problem and the choice of such instruments (based, among other things, upon a prospective evaluation of their possible effects);
- Drafting of the normative content;
- Formal enactment and implementation;
- Retrospective evaluation;
- If necessary or appropriate, the adaptation of legislation on the basis of the retrospective evaluation.

The UK Law Commission regarded the main motivation for post-legislative evaluation was that legislation should be reviewed to see whether it is working out in practice as intended and if not to discover the reasons why and then to address how any problems can be remedied quickly and cost-effectively. The Commission argued that the ultimate benefit is that it has the potential to improve the accountability of governments for legislation and lead to better and more effective law (Law Commission, 2006, pp. 30; 32). The Law Commission identified a scrutiny spectrum, including:

- Have all the provisions been brought into force?
- Has the law led to significant legal challenges or difficulties in interpretation?
- Has the legislation had unintended legal consequences?
- Have the policy objectives been achieved?
- Has the legislation had unintended economic or other consequences?
- Do any steps need to be taken to improve its effectiveness/operation?
- Has the political and legal context changed in such a way that the Act is no longer needed?

Further considerations for *ex post* evaluation include:

- Has it impacted differentially or perhaps unfairly on different groups within society?
- What has been the practical and administrative impact of legislation? Put most simply, it may be that the Act itself is sound (both in terms of the policy on which it is based and its legal expression) but is it the way that it has been put into practice which has caused issues of concern?

- Conversely, has the law actually worked very effectively and better than expected? It is crucial that *ex post* evaluation should not just be about failure or blame or undertaken when things are thought to have gone wrong. There is a tendency within parliaments which only undertake *ex post* evaluation on *ad hoc* basis, that the process will only be instigated when there is political or media pressure or controversy. In fact, it is crucial to work out why and how laws have worked well to identify and disseminate good practice so that valuable lessons may be drawn for future policy and law.
- Is there sufficient knowledge and understanding of the law? It may be that the provisions of the law are not sufficiently well known or understood. Post Legislative Scrutiny (PLS) may identify action and administrative reforms so that the law might be more widely, explained, promoted or advertised.

The focus on improving the quality of the regulation

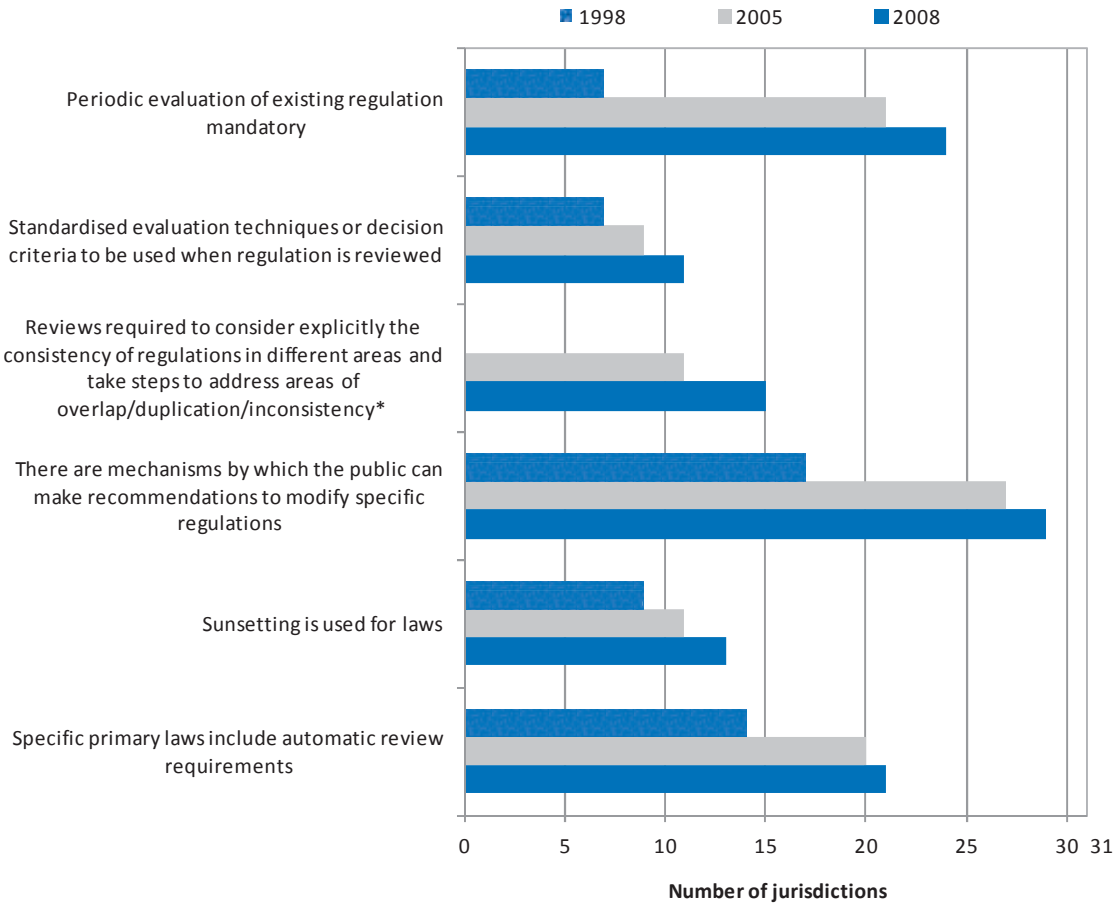
One central motivation for *ex post* evaluation concerns consideration of the impact of better regulation or high quality regulation initiatives. In attempting to assess *ex post* evaluation of laws, and indeed also to put in place *ex ante* legislation and impact assessments of predicted outcome as laws are being developed, the focus is usually on some of the following: deregulation, improving transparency and accessibility to regulation, reducing burdens, and simplification, cutting costs for business and, ultimately, boosting economic performance or, at the very least, ensuring that governmental action does not hinder or stifle it.

Many governments and parliaments have come relatively late to introducing systematic forms of *ex post* legislative evaluations. This is despite of its importance to the political, governmental, parliamentary and democratic process. There has been a tendency for government and legislature to move on to the next pressing issue and leave effects of laws to the judiciary to interpret or to future governments to introduce new laws to amend or supersede existing ones. However, the trend is towards increasing adoption and institutionalisation of *ex post* law evaluation.

The number of countries adopting mechanisms for *ex post* evaluation of regulations has increased over the last decade. The following figure shows trends in OECD countries in terms of regulatory review and evaluation, as well as various techniques used to conduct *ex post* reviews of regulations.

At least 20 OECD countries acknowledge having automatic review requirements for primary laws. However, systematic *ex post* evaluation is less common. Only 6 OECD countries reported in 2008 that periodic evaluation of existing regulation was mandatory for all policy areas and 12 countries report using sunsetting including, Australia, Austria, Canada, Finland, France, Germany, Iceland, Korea, New Zealand, Switzerland, the United Kingdom and the United States. Annex A shows in more detail the trend on *ex post* evaluation in OECD countries (OECD, 2011).

Figure 1.1. Regulatory review and evaluation



Note: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the EU in 2005-08.

*. No data available prior to 2005.

Source: *Indicators of Regulatory Management Systems, 2009 Report*, OECD, Paris, available at *www.oecd.org/regreform/indicators*.

1.2. Methodologies used to undertake *ex post* evaluation

In *ex post* evaluation a range of different criteria and methodological frameworks can be used.[1] The nature of the monitoring to be carried out will be determined, to a certain extent, by the nature of the provisions contained in the law.

Within any chosen process, there is a distinction between the factual and research element – empirical, statistical and evidence-based – and then the judgment made about the implications and consequences of that evidence. Consideration needs to be given about the data and evidence collected is to be used and should inform the initial decisions on methodology choices. Methods should be devised and adopted to be suitable so that relevant and targeted data can be collected, i.e. that its collection and availability is realistic and achievable, and that systems, powers, structure, staffing, skills and timescale are in place to undertake the work.

Although there is no "one size fits all" methodology, some common themes will include:

- *Relevance*: Is the law the best way to deal with the issues and problems of the subject it covers?
- *Effectiveness*: To what extent have the aims stated at the outset been met?
- *Efficiency*: How can the relationship between inputs (financial, administrative) and outputs be examined?
- *Impact*: What are the impacts, who are gainers and losers, including social**,** sectoral or regional analysis?
- *Sustainability*: Does the law still stand up to its original aims and is it likely to be suitable for the long term?
- *Ongoing evaluation*: when monitoring and evaluation is required over a continuous period of time rather than at one fixed point on which evidence is based.
- *Thematic evaluations*: looking at one particular element of a law and comparing or jointly evaluating with parts of other laws with similar subjects or issues.

Considering the range of different types of regulatory and legislative interventions, the UK Department of Business Innovation and Skills clarified the relationship between policy evaluation, post-legislative scrutiny and post-implementation review:[2]

- *Evaluation*: the general term referring to a systematic evaluation which may be carried out at any time, using methods of review as appropriate.
- *Post-implementation review (PIR)* refers to the review of regulatory policy that complements the *ex ante* appraisal contained in the Impact Assessment.
- *Post-legislative scrutiny (PLS)* is a review of how primary legislation is working in practice. Its primary location is parliament. Unlike PIR, it includes a review of the extent to which the legislation and the supporting secondary legislation has been brought into force.
- *PIR and post-legislative scrutiny have much in common.* Evaluating the extent to which legislation is working as expected is common to both. Ideally, post-legislative scrutiny of a statute and PIR of the underlying policies should be carried out as a single activity.

This model is put forward by the UK Department for Business Innovation and Skills. It is of course feasible that the decision may be made to split PIR and PLS so that PIR becomes a mechanism to identify and correct problems and issues that have arisen during the implementation phase. PLS could then be undertaken a later date looking at long term impacts and effects and also making use of any evidence or outstanding issues from the PIR.

Devising a structure for ex post *evaluation*

Before the evaluation process begins, some fundamental questions should first be addressed. These can be broadly grouped into: Why, What, When and How?

- *Why?* All laws are essentially experimental and their effects are uncertain and unknown. There are a number of different motivations for conducting *ex post* evaluation which may include:
  - To determine outcome, impact and effectiveness.
  - To determine costs and benefits.
  - To investigate problems identified with the law.
  - To assess implementation, compliance, awareness and enforcement.
  - To meet requirements for evaluation made within the legislation.
  - To enhance the process of law making and the future quality of legislation with a view to political and governance benefits.
  - To build relationships and strengthen networks between the stakeholders involved in law making and implementation e.g. executive and officials, agencies and regulators, legislature, civil society and NGOs, academics and evaluators themselves.
- *What?* There is the decision about what to evaluate and indeed whether to evaluate at all. These considerations may include:
  - Whether to evaluate all laws as a matter of course or to limit evaluation to a certain number of laws each year?
  - Restrict evaluation to those laws which have defined and possibly numerical outcomes? For example, increases in houses built, changes in health outcomes.
  - Focus evaluation on the legal soundness of the law and on the process of the system that produced the law.
  - Focus evaluation on a specific sector of society or the economy.
  - Evaluate the effects on particular institutions that may be affected by the law e.g. hospitals, banking and insurance sector.
  - Evaluation might be focused on the practical aspects of the law and the process of implementation. Laws exist only on paper; implementation is as much part of the process as drafting and passing the law itself.
  - Focus evaluation on aspects such as compliance, provision of Information and guidance and promotion of the existence of the law and its provisions.
  - Prioritise cost/benefit analysis in order to measure goals attained against the costs and inputs. A decision has to be made as to what counts as costs. Direct costs only? i.e. expenditure; and indirect costs? i.e. overheads, development costs, displaced costs put onto others, non financial costs, interest paid, lost or

foregone. The choice of which costs to consider and how to calculate and allocate these costs may determine the entire verdict of success or otherwise of the law.

- Choose a narrow focus on certain questions, e.g. have any specified targets been met or missed? Does subsequent evaluation indicate that these targets were in fact too easy or too hard?
- An evaluation should consider not just whether the legislation did what it was expected to do, but also what other effects may have happened as a result, including unintended consequences.
- Devise evaluation to measure intangible factors such as 'well being' or 'public order' or 'good governance'? These crucial factors may be more difficult to evaluate but in fact may be the most important outcomes; ways of allocating value should be considered.

- *When?* The timescale for evaluation will vary and may depend on the individual law.
  - Some parliamentary systems have mandatory deadlines for *ex post* evaluation.
  - Sometimes the law itself will contain a requirement for review or evaluation at a specified time.
  - Some laws may take considerably longer than others before evaluation can begin. Some may have immediate effects, others will have cumulative effects and others involve long term changes in behaviour and attitude. A period of up to five years may be needed for full impact to show if there is a slow accumulation of results.
  - Does the timescale assume that all the factors that led to the law's passage will remain the same? By the time the law is implemented and then evaluated, some external factors may have changed significantly.
  - The political and governmental process that led to the passage of the law in the first place may itself have changed society; by producing incentives, deterrents, distorting factors and greater public and media awareness of the issue.
  - There may need to be different stages of evaluation allowing for further evaluation to be undertaken depending on what is found in the first instance.
  - The political process may affect the timescale and evaluation process. A new government may bring in new laws that simply supersede the law to be evaluated.
  - It is important to note that the evaluation itself may take considerable time. Time will be needed to plan and design the evaluation, determine the availability of researchers and funding, undertake the research, analyse the findings and publish the report.
- *How?* There are many methods that can be used in evaluation. Conceptually, there are different approaches, which may include the following elements. Most evaluation are a mix of them:

- *Legal approach:* law is considered a set of norms: rights, duties, procedures, meanings and competency with defined scope and extent. This approach looks at the operation of the law and its strengths and weaknesses through its clarity, interpretations, awareness, and challenges and whether there are conflicts with other laws.
- *Social science approach:* places emphasis on law as a set of incentives or deterrents, restraints and encouragement on behaviour, focussed on outcome and impact, with less concentration on the legal or theoretical process.

Evaluation: The main stages

There are many ways to undertake an evaluation; the law in question will determine the methods to be used. However, there are some main stages to legislative evaluation:

- Planning
- Design
- Formulating evaluation questions
- Identifying data sources and forms of data
- Data collection
- The use of quantitative and qualitative data
- Analysis and validation
- Conclusions and recommendations
- Dissemination

Planning

At the outset, planning should be undertaken to devise a structure based on a number of specific tasks. Some initial factors to be considered will involve:

- *Timescale:* Evaluation should have a suitable timescale to be decided in advance so that it delivers results before the date by when they are required or are available to feed into a particular political, parliamentary or policy development process.
  - There should be an indicative timetable of the key milestones or deadlines which the evaluation should meet.
  - Adequate time is needed for designing the evaluation; drafting any technical specifications and launching any procurement procedure; carrying out the actual evaluation; and preparing the appropriate dissemination of findings.

Identifying stakeholders: It is important to establish at an early stage who are the interested parties for any consultations and as the main contributors for data collection phase. All potential stakeholders and data sources should be made aware of the evaluation at the earliest suitable opportunity.

Define and structure tasks: A plan should be agreed which defines all the tasks that will need to be undertaken at the various stages of evaluation, including the crucial questions about the availability of sufficient resources and personnel for each task e.g. drafting research questions, data collection, analysis and validation of data and findings, reaching evidence-based conclusions and recommendations and issuing the final evaluation report. This initial planning should lead into the detailed design stage.

Design

The evaluation should have a strategy which sets out, at the start of the process, the framework of why and how the evaluation is to be carried out. It should cover the structure and design of the evaluation, setting out the issues to be examined and where to find the evidence to be analysed. One option is to constitute an evaluation steering group to work together on designing and co-ordinating the evaluation strategy, including:

- Baseline assessment.
- Purpose (what the results of the evaluation will be used for).
- Objective (what kind of information it is expected it to provide).
- Scope (how broad should it be in terms of geography and timescale).
- Evaluation criteria and questions.
- Data sources.
- Deadlines and expected outputs.
- Whether the evaluation will be conducted by external consultants or experts or by an internal team or a mixture of both.

Baseline assessment: The baseline assessment can be used to establish an initial picture against which the expected and actual effects can be measured. It can make use of information such as the impact assessment, any policy papers or explanatory memorandum, objectives written in the legislation, or any other *ex ante* study. Findings from any initial implementation reports can also be used.

Evaluation questions

It is important to set questions which can be used to direct the evaluation and provide a framework for seeking the necessary data to answer these questions. These questions may include:

- *Relevance:*
  - Are the objectives of the law still relevant or do they need to be reviewed?
  - In what way has the initial problem evolved?
  - To what extent does the legislation still match the current needs or problem?
- *Effectiveness and outcomes:*
  - What have been the main effects and outcomes of the law?
  - Has the law been effective in meeting, or moving towards, the desired outcomes?

  - How can these be measured and demonstrated?
  - To what extent have the objectives of the legislation been achieved?
  - Has the law delivered its results efficiently in terms of the resources used to obtain the effects?
  - Has the law introduced disproportionate burdens or complexity in relation to the problem it is trying to address? (This has category has particular reference to better regulation, reducing administrative costs and burden and simplification).

- *Distribution effects:*
  - What are the distributional effects of the legislation across different groups? How have the benefits and costs been distributed across groups, for example: large business vs. small and medium sized enterprises; business vs. consumer vs. employee vs. environment.
  - Winners vs. losers; positive and negative effects on which different groups?
  - What measures have been introduced to combat any undesired effects?

Identifying data sources and forms of data

In this stage evaluators have to identify what kind of information is needed. The sort of data required for answering the evaluation questions is important for determining the resources that will be required for data collection and the analytical tools to be used.

The use of primary and secondary data

There is an important distinction between primary data which has to be collected for the evaluation and between secondary data which might be available from existing sources.

- A review of secondary data sources should precede any primary data collection.
- Identify the relevancy and availability of secondary data and secondary sources, from government, academics, civil society; reviewing all possibilities to ensure that no potential sources has been missed.
- Assess the appropriateness of secondary data; whether or not the existing data is relevant and appropriate. Does the secondary data cover the same geographic area? When was the data collected? Does the data sufficiently represent the period in time required?
- Check the reliability of the secondary data and its source, including the reliability of its sampling, research techniques and methodologies. What quantitative and qualitative methods were used to collect the data? How was the analysis of data conducted?
- Is the original questionnaire available to assist in reviewing the data? How large was the sample and how was it chosen? Is the raw data available?

The use of secondary data may provide enormous cost and time savings and every effort should be made to establish what secondary data exists and to assess whether or not it may be used.

Primary data collection provides the original and targeted material for evaluation. Its collection and subsequent analysis is often resource intensive and may involve a combination of tools and techniques, depending on the specific needs and requirements of the evaluation and on timescale and resources available.

The first step is to decide the location and source of the data to be collected. This will depend entirely on the subject matter of the law and will involve identifying how and where the evidence can be found. The sources within the sector that the law covered should be contacted e.g. health, education or environmental bodies as well as any independent statistical bodies and agencies, government and executive agencies, audit and regulatory bodies, the public, representative associations, NGOs, pressure and consumer groups.

Data collection

There is a wide range of available methods for data collection. More than one method can be used simultaneously or sequentially. These methods include:

- *Desk research/document analysis:* The starting point for many evaluations is a review of existing literature, documents and sources (studies, reports, academic papers, government statistics etc.) summarising any useful data and views and determining gaps or areas that need complementary data or verification.
- *Numerical and statistical evidence:* This is the central method of ascertaining data relating to number or volume, or change in number or volume, for any given effect or outcome. The data may be obtained from a single source or aggregated from numerous sources and can be independently checked and audited.
- *Comparative analysis:* A quantitative estimation of the difference between the situation prior to a policy being introduced and the current situation to establish the changes which have occurred. This is useful in assessing impacts on target groups and, analysing before and after trends.
- *Questionnaire surveys:* When addressed to the appropriate groups, this can be an effective tool for collecting facts and opinions in a structured format. Depending on the type of questions used, different types of data can be collected. For example, closed questions allow the respondent to choose from a set of pre-defined responses; open questions permit any thoughts and views to be collected.
- *Good question design:* a practical administrative approach and some knowledge of the target population (e.g. to ensure adequate sampling) are necessary for a successful survey to be conducted. Although a questionnaire may take some time to develop, it may represent a good investment of resources, given the volume of evidence that can be obtained. Also, the questionnaire may be used as a template for further surveys.[3]
- *Interviews:* Interviews are a way to obtain in-depth information from selected stakeholders and can be used to expand on data already obtained through other sources. They can provide validation of data collected and tend to be structured, i.e. based on predefined questions. They can be conducted face-to face or by telephone. However, they are obviously a labour intensive and time consuming method.

- *Focus Groups:* This technique involves gathering groups of people to discuss issues, data or findings. A variation is the workshop which can involve a much larger number of participants.[4]

Quantitative and qualitative data

Effective evaluation often aims for an adequate balance of quantitative and qualitative data. Some evaluation questions tend to require more of one type of data than another, while others rely on a mix of both data types.

In general, a combination of qualitative and quantitative data provides a substantial evidence base for evaluative analysis as data from one source complements or confirms data from the other. For example, a question relating to efficiency will probably require quantitative data relating to costs in terms of money or time spent on implementing the legislation whereas questions about the acceptability and personal experience of the law will rely more on qualitative data.

- *Quantitative Methods:* Quantitative research uses methods adopted from the physical sciences that are designed to ensure objectivity and reliability. Many quantitative research methods incorporate probability sampling methods to allow for statistical inference to be made about the larger population. Where probability sampling is used, statistical analysis will provide precise estimates for study variables, such as frequencies, averages, ranges, means, and percentages, at a known and quantifiable degree of confidence. Questions are not open-ended. Explanations are sought by comparing associations and potentially causal relationships between variables. The data should provide precision, backed by statistical theory and should be objectively verifiable if the data is collected and analysed correctly. The greatest weakness of the quantitative approach is that it can take human behaviour out of the context. Quantitative methods are often best deployed:
  - When accurate and precise data are required.
  - When sample estimates will be used to infer something about the larger population with the support of statistical theory.
  - To test whether there is a statistical relationship between variables.
  - To identify the characteristics of a population.
- *Qualitative Methods:* Qualitative research methods are designed to investigate experiences, perceptions, judgments, opinions and reasons. The strengths of using qualitative methods are that they generate detailed data which allow participants' perspectives to be central and provide a context for their views and experiences. The weaknesses of using qualitative methods are that data collection and analysis may be labour-intensive and time-consuming. As a result the number of respondents to which the method is applied is usually far fewer than for quantitative methods. Another disadvantage is that qualitative methods are often not objectively verifiable. However, qualitative methods are often useful when:
  - A broader understanding and explanation is required on a particular topic for which quantitative data alone is not sufficient.
  - Information is needed on what people think about a particular situation, and what are their priorities.

  - Seeking to understand why people behave in a certain way.
  - There is a need to confirm or explain quantitative findings or from secondary data.

- *Using both methods:* It is often appropriate to employ both quantitative and qualitative methods as they complement each other's strengths and weaknesses. Qualitative methods might be used to explore issues during the early stages of a longer study, enabling the researchers to understand better what focused questions need to be asked as part of a quantitative study. Conversely, quantitative methods might highlight particular issues, which could then be studied in more depth through the use of qualitative methods and open-ended discussions.

Analysis and validation of findings

- *Collecting data:* Whether qualitative or quantitative, data must be shown to derive from reliable and verified sources. Data should, where possible, come from more than one source or group and these sources should be sufficiently large enough to be representative of the target groups. Similarly, careful attention is needed when deciding whether it is appropriate to extrapolate data (i.e. extend findings from a smaller group) and particularly whether there is adequate reliable data to do so. When data is extrapolated, the assumptions should be clearly explained in the evaluation report. For a sound analysis based on reliable data, some key elements can help to ensure that information has been properly scrutinised:
  - Cross-analysis of the quantitative and qualitative data is necessary when identifying any significant patterns.
  - The findings might be validated through corroboration with other research and sources or through reference to expert panels.
  - Where the credibility of results is questionable, i.e. results are imprecise or tentative due to issues such as the unavailability of appropriate data, this must be very clearly set out in the evaluation report.
- *Analysis:* This is the phase where the evidence gathered is analysed in order to answer the evaluation questions and to present findings that are reliable and credible. The final phase of the evaluation involves judgments based on the data and findings to make evidence-based conclusions and, as appropriate, recommendations for future action. To focus on economic impact and resource and cost analysis, a number of methods of analysis can be used:
  - *Econometric models:* Using economic or statistical data, such models can help to quantitatively evaluate the net effects in areas such as growth and employment.
  - *Cost-benefit analysis:* To analyse positive and negative impacts of a law, attributing a financial value. Often used in *ex ante* evaluation to consider the costs of different options, it is used as a comparison and benchmark of the outcome as assessed by *ex post* evaluation.
  - *Cost-effectiveness analysis:* consists of comparing net results with its total cost, expressed by the value of financial resources involved. Results are obtained by comparison of achieved results with the budget involved in their achievement.

Conclusions and recommendations

Conclusions should be clear, unbiased and visibly supported by the strength of the evidence previously analysed and might include:

- Any lessons to be learned emerging from the findings, such as where improvements in legislation or implementation may be necessary.
- Outcomes of analyses of trade-offs, costs and benefits and opportunities that might be built upon, e.g. areas for simplification.
- Any factors that still have implications for the impact of the legislation, e.g. outstanding issues to be resolved or anticipated future developments.
- Any recommendations for future action that arise from the conclusions should be clear, comprehensible and practical to implement.
- The final evaluation report should have a clear structure, be understandable to the general reader and should set out:
  - The purpose of the evaluation;
  - What was evaluated (objectives, context);
  - How the evaluation was conducted (key questions, data sources, methods used);
  - The evidence found, the conclusions drawn and any recommendations made.
  - Key findings and recommendations should be presented so that the results feed back into policy making and planning cycle at an appropriate time and in an appropriate manner. A follow-up action plan should be devised to make sure that there is a response to the findings and recommendations, with a timescale set out for any follow up needed.

Dissemination

It is important that evaluation findings are made available to all interested parties. The dissemination strategy should identify the different audiences (from decision makers to the general public), the best way to communicate the results and how to target summaries of findings to interest groups and key stakeholders.

Key findings of the evaluation and recommendations can be used for press releases, issued to the media (general or specialist media, depending on the law in question).

1.3. The relationship between *ex ante* and *ex post* evaluation

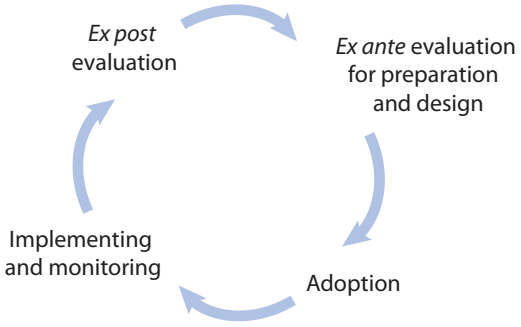
In order to be effective, *ex post* evaluation requires clarity of the intended policy objectives, impact and outcome. These objectives provide a framework by which the law can be scrutinised and judged after it is implemented. Regulatory impact assessment (RIA) is central to this process. It is during the *ex ante* assessment that the problem should properly defined and policy or regulatory objectives should be clearly established. Furthermore, the objectives stated during the detailed policy consideration and parliamentary pre-legislative scrutiny stage can define and clarify the purpose and intended outcome.

Impact assessment and the policy cycle

Regulatory Impact Analysis (RIA) is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives. As employed in OECD countries it encompasses a range of methods. At its core it is an important element of an evidence-based approach to policy making.

Ex ante and *ex post* evaluation are closely linked. In the regulatory policy cycle, both stages have to provide feedback to each other. A robust *ex post* evaluation can lead to better understand the shortcomings of certain regulation. A strong evidence-based *ex ante* analysis provides elements to assess with depth the way regulation has been implemented and the impacts it might have had.

Figure 1.2. Stages in the regulatory policy cycle



Source: OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris.

The link between ex ante *regulatory impact analysis (RIA) and* ex post *evaluation*

The subject areas and assessments set out in RIAs can be used to determine the questions around which *ex post* evaluation is conducted. Most fundamentally *ex post* evaluation can be used to assess the extent to which RIA benchmarks and assessments have proved accurate. The methods chosen for the evaluation, whether qualitative or quantitative, will seek to determine this.

The role of the executive is crucial in this work. It is the executive that has chosen the areas identified within the RIA and, critically, it is the executive which has formulated the assessments of the proposed impacts on which the legislature has scrutinised the proposed legislation and subsequently given its assent to the law. It is therefore incumbent on the executive that it places a high priority and makes resources available to ensure that RIAs and *ex ante* assessments are as comprehensive and useful as possible.

In some countries, like Australia or Canada, one central motivation of *ex post* evaluation by the legislature is to make a judgment on the effectiveness of the RIA and seek improvement from the executive when this is shown to be required. A specific aspect of evaluation is whether the process used within the executive to compile and formulate RIAs is as technically sound as possible. The legislature should scrutinise and seek information from the executive about the process and methods used to produce RIAs.

There may be a danger within government that the RIA process is haphazard and formulaic. It is up to the legislature to ensure that this is not allowed to occur. Parliamentary committees, and evaluation units and other parliamentary bodies supporting committees, are ideally placed to communicate any concerns about RIAs and formally seek from government the fullest disclosure of information. This information should then be communicated to the executive to ensure that future RIAs learn any lessons for improvement.

As part of the broader legislative process, the legislature should seek commitments from the government about how it will evaluate the outcomes of the distinct elements of the RIA, including which resources and bodies the executive will devote to this work. Most statistical agencies and governmental research bodies within executive are well resourced, certainly when compared to those of the legislature.

Executive research and evaluation should form an initial basis of the empirical and statistical evidence to be used in legislative *ex post* evaluation. This information could include:

- The formal issuing of reports by the executive on outcomes of legislation and related policies and implementation, specifically referenced against the main benchmarks in the RIA.
- The executive should commit to providing the legislature with information about how the RIAs have been produced, the subjects chosen, the assumptions on which the assessment was made, and explanation of why some subjects and outcomes were not predicted.
- The methods to be used by government in evaluating the RIA: when will this evaluation happen? By whom will any executive led evaluation be undertaken?
- Consideration of the consequences that will ensue if the RIA is found not to have accurately predicted the effects of the law in questions; will the law have to be amended, or at the very least kept under the highest form of scrutiny and monitoring?
- An assessment of whether the RIA process itself is robust and any proposed changes to the way that the executive produces RIAs.
- What will be the extent of the independence of findings? Will the executive commit to commission others in this work including the Supreme Audit Institution?
- Transparency and full disclosure of information to parliament is crucial and should be enshrined in formal agreements and concordats. Is there a formal commitment to information sharing and openness?

The parliamentary process as a whole should reflect the approach that the legislature expects to use all available means to seek explanation and justification from the executive. All possible forms of scrutiny mechanisms e.g. questions, debates, statements, should be encouraged for this purpose.

The two branches of government should seek to find common purpose in ensuring that mechanisms and commitments promote high quality regulation. The executive should commit to best practice in regulatory practice and put in place formal *ex ante* policies and procedures; the legislature should have the scrutiny and accountability mechanisms in place to monitor and evaluate what the government has done and seek explanation, information and justification for its actions.

1.4. Institutional design of parliamentary *ex post* evaluation units

It is apparent that there is no uniform model of parliamentary *ex post* evaluation unit. Although some parliaments do have formal units dealing with evaluation (see Annex B for the example of the US Congressional Budget Office), many others do not, instead using a mixture of research bodies, libraries, and committees to undertake *ex post* evaluation. Effective evaluation can be undertaken using a range of institutional and organisational structures and methods, some formal, others more *ad hoc*.

It is crucial to recognise that the staffing and resources within parliamentary units and other generic staff, however generously funded, are unlikely to be able to undertake all research and evaluation functions on their own. These units, and the committees they support, should prioritise efforts to attract and utilise the fullest range of information and material from external bodies, audit bodies, academia, research institutions and the like.

Parliamentary committees and units should place themselves at the apex of the accountability structure and make efforts to be widely known as the prime location and focus of *ex post* legislative evaluation so that information, research and analysis is submitted to them as a matter of routine.[5]

Some examples of parliamentary units and support structures used in legislative evaluation in some OECD countries (Sweden, Switzerland and the United Kingdom) are presented in the following sections, as well as some examples of evaluations prepared by these units.

Sweden

In the Swedish parliament (*Sveriges Riksdag*) the Parliamentary Evaluation and Research Unit is in charge of *ex post* evaluation and co-ordination.[6] The Unit was established in 2002 and was placed under the Riksdag Research Service. The Unit is headed by the Committee co-ordinator of the Riksdag Administration. The unit consists of eight positions, e.g. four senior evaluators, three senior research officers and one clerical officer. The Unit works closely to support parliamentary oversight committees in their evaluation functions and undertakes the following tasks:

- Helping the committees to prepare, implement and conclude follow-up and evaluation projects, research projects and technology assessments.[7]
- Locating and appointing researchers and external expertise to carry out projects.
- Preparing background materials for evaluation and research projects at the request of the committees.

- Requesting up-to-date reports from government and government agencies on the operation and effects of laws.
- Contributing to the structuring, implementation and final quality control of projects.
- Assisting the committee secretariats in their planning and implementation of seminars and other activities in connection with evaluation and research.
- Contributing to the general development of the committees' evaluation and research activities.
- Special funds have been earmarked for researchers and other experts that can carry out background materials for the committees' follow-up and evaluation activities, as well as research overviews and technology assessments.[8]

The purpose and remit of *ex post* evaluation is as follows:

- If operational policy is to work, the Riksdag must obtain information about the results achieved, e.g. whether resources have been distributed in accordance with the political priorities, if the intended results have been achieved, and if the laws adopted by the Riksdag have had the intended effects.
- A committee's work with follow-up and evaluation is a way of obtaining such information about results and creating more robust links with the Riksdag's legislative and budgetary decisions.
- *Ex post* evaluation should be used as an instrument for assessing budgetary or legislative adjustments that may be needed.
- Follow-up and evaluation should have a forward-looking orientation and be used to provide a basis for solidly based positions in committee deliberations.
- Some committees have designated follow-up and evaluation groups which comprise of members of the Riksdag from the different parties. These groups can consider project proposals, carry out follow-ups and submit a follow-up report to the committee with assessments and conclusions.
- Follow-ups are normally considered in the reports drawn up by Riksdag committees in connection with a government Bill, a written communication or private members' motions.[9]

The Riksdag has twice (2001 and 2006) incorporated guidelines for follow-up and evaluation as one main task to be undertaken by committees. The guidelines state that the Riksdag must obtain information to assess if the laws adopted by the Riksdag have had the intended effects, as well as other forms of follow up and evaluation such as whether resources have been distributed in accordance with the political priorities and if the intended results have been achieved.

Box 1.1. Areas of work and publications prepared by the Parliamentary Evaluation and Research Unit in Sweden

- Producing background materials to follow up Riksdag's decisions on legislation and the budget using reviews of statistics and document analysis. The results are documented in a report in the series Reports from the Riksdag (RFR) and are subsequently considered by the committee in a report.

- Undertaking and producing study visits, hearings, study trips and newsletters. Providing the briefings and organising public hearings. One example is the Committee on Health and Welfare which organised a public hearing on accessibility in the health and medical services in March 2008. The background to the hearing was the National Board of Health and Welfare's follow-up of the national health care guarantee, which showed great variations in accessibility in the health and medical services. The hearing was intended partly to learn about possible opportunities for improvement, and partly to highlight best practice examples of successful accessibility efforts.

- Budget analysis that highlights results and outcomes in relation to objective and invested resources. One way is for a committee to make its own analysis and assessment of the results achieved by central government measures in relation to the targets and appropriations approved by the Riksdag. This kind of analysis of targets and results can also be made in conjunction with the consideration statements of operations in written communications and special bills.

- Links with the National Audit Office: Since January 2011 the National Audit Office submits its performance evaluations directly to the Riksdag. Normally the government responds within four months by means of a written communication to the Riksdag giving its assessment of the audit's observations. The Riksdag has laid particular emphasis on the importance of the transfer and use of experience from audit work when decisions are to be made about the future orientation of committee follow-up activities.

- Thematic follow-up and evaluation: Involves evaluation around a central theme. For example the Committee on Environment and Agriculture has followed up and analysed the government's operations in thematic areas such as environmental protection and nature conservation.

To give further backing to *ex post* evaluation and to signal its importance to the governmental process, since January 2011 an obligation for committees to undertake this work has been included in one of Sweden's four fundamental laws, the Instrument of Government. The Committee on the Constitution and the Government and the Committee on the Constitution of the Riksdag came to the conclusion that a constitutional obligation regarding follow-up and evaluation by the Riksdag's committees would encourage further development.[10]

Committees regularly organise public hearings in which researchers and experts are invited to participate. These hearings are open to the public. In order to highlight current research that has bearing on the committee work, internal seminars are also organized regularly.

Parliamentary committees have various forms of contact with the research community. They can for example develop regular contacts with various research environments or participate in seminars and conferences on current research. The committees can also carry out research reviews in their respective areas of responsibility. The reviews may cover both national and international research on a specific subject. The project *Meeting Place for Researchers and Members of Parliament* was launched to stimulate dialogue between scientists and members of the Riksdag, to ensure that new knowledge reaches politicians of all parties and committees.[11]

Switzerland

The governmental system of Switzerland places a high priority on the evaluation of laws and federal government activities. Article 170 of the Swiss Federal Constitution (enacted in 2000) contains an evaluation clause: "The federal parliament shall ensure that the efficacy of measures taken by the Confederation is evaluated." This provision includes the requirement for prospective and retrospective evaluation, looking at effectiveness and efficiency and its purpose is described as:

- The legitimacy of the federal authorities' actions is measured not only by their legality and democratic quality, but also by their effectiveness and the efficient use of resources.
- Evaluations are an important tool of outcome-orientated public administration. They promote transparency and serve public accountability.
- They reveal the shortcomings of certain measures and offer ways of improving them. Evaluations take place at every stage of the political decision making process:
- When an aim is being set and a programme drawn up, an evaluation helps to identify the consequences of the various options and to devise effective strategies.
- During the implementation phase, it points out to problems in relation to the application and to ways in which they can be tackled.
- Finally, in the monitoring phase, evaluations will show whether the measures taken by the authorities are reaching the target population and whether they are having the desired effects.[12]

Evaluation is undertaken by the Parliamentary Control of the Administration (PCA), which is part of Parliamentary Services Department of the Federal Assembly.[13] Established in 1991 the PCA is an example of a specialised service which carries out evaluations on behalf of parliament. The PCA has a number of structural bases that ensure its independence and quality control.

- The PCA carries out its scientific activities independently. The PCA bases its methods on the standards set by the Swiss Evaluation Society and international associations which specialise in that area.[14]
- It co-ordinates its activities with those of other federal controlling bodies and is in regular contact with universities, private research institutes as well as Swiss and foreign public evaluation bodies.

- The PCA deals directly with all federal authorities, public agencies and other bodies entrusted with tasks by the Confederation and may request from them all relevant documentation and information.
- The principle of professional confidentiality does not restrict the authorities' obligation to provide information.
- The PCA may call on the services of experts outside the federal administration, who are therefore granted the necessary rights.
- It protects its sources of information and ensures confidentiality with regard to the results of its evaluations until the publication of the report in question is decided by the committees.

Evaluations are presented to Control Committees (CC) which are mandated by the Federal Assembly to exercise parliamentary oversight of the activities of the Federal Government and the Federal Administration, the Federal Courts and the other organs entrusted with tasks of the Confederation.[15]

The Committees work by carrying out inspections with the assistance of the PCA. The Control Committees focus on verifying:

- That the activities of the federal authorities comply with the constitution and legislation, that the tasks entrusted to them by the legislative body are properly carried out and that the aims that have been set are achieved (legality control);
- That the measures taken by the state are appropriate and that the Federal Council makes proper use of its decision making powers (control of appropriateness);
- That the measures taken by the state bear fruit (efficiency control).

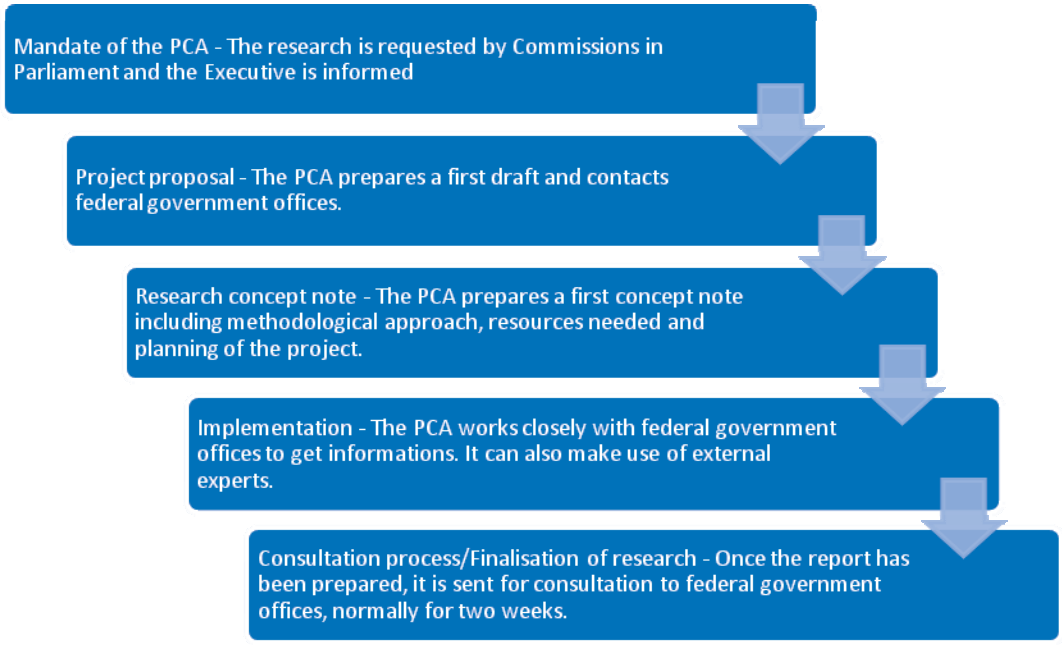
With the exception of the subjects that have to be monitored by law (e.g. the Federal Council's annual report), the Control Committees are free to decide on the areas of their inquiries. In order to do this they draw up an annual programme to define their controlling priorities in relation to each sector of the administration. The public may submit suggestions for inquiries.

The main methods used by the PCA in legislative evaluation are:

- It provides support for parliament's monitoring activities through scientific assessments and evaluates the concepts, implementation and impact of the measures taken by the federal authorities.
- Such evaluations are more comprehensive than those that are carried out as part of parliamentary oversight. They include monitoring the application of legislation by the bodies responsible and the soundness of the legislation itself.
- The PCA carries out evaluations on behalf of the Control Committees (CCs) of the National Council and the Council of States as part of the parliament's overview.
- It submits to the CC a range of issues which should be examined as part of the parliamentary overview.
- It is mandated by the CCs to monitor the quality of internal evaluations carried out by the administration and their application within the decision making processes.

- It assists all parliamentary committees in drawing up evaluation mandates and advises them as to how to process the results of such evaluations.
- It monitors, on behalf of any parliamentary committee, the effectiveness of measures taken by the federal authorities.
- The PCA reports are published and are used by parliament and government in their decision making including when serving as the basis for revising existing laws or ordinances are revised.[16]
- In addition to scientific and statistical evaluation, the PCA uses qualitative methods to build up a full profile of the law's effects. In 2011, the PCA is inquiring into the effects of social insurance. The Control Committee instructed the PCA to conduct an evaluation of the Federal Council's steering of the social insurance systems. For this purpose, the PCA is conducted case studies looking at Old Age and Survivors' Insurance, Disability Insurance, compulsory health insurance and occupational pension funds.[17]

Figure 1.3. Stages of the activities conducted by PCA



Source: Adapted from *www.parlament.ch/e/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/Pages/default.aspx*.

United Kingdom

In the UK parliament, *ex post* evaluation is undertaken by a mixture of generalist and specialist committee staff, temporary special advisers (e.g. academics, experts and practitioners in the field), specialists from the Library of the Houses of Commons and Lords. Additionally, there is a now a designated Scrutiny Unit that takes on scrutiny and evaluation functions.

The Scrutiny Unit exists to provide specialist help to select committees in the scrutiny of financial and performance reporting and legislative scrutiny. After many years of proposals that a body of specialists should be put in place to support the work of parliamentary committees, the Scrutiny Unit was established in 2002.[18] The Unit's main duties relate to financial scrutiny of government expenditure and legislative scrutiny including pre–legislative scrutiny *ex post* legislative evaluation. The Scrutiny Unit has between 18-20 staff at any one time. The staff provides a range of different expertise and background. A typical spread of staff expertise would include:

- Two legal specialists.
- A statistician.
- Four financial analysts (including secondments from the Supreme Audit Institution, the National Audit Office).
- An economist.
- Internal (Home) Affairs /Public Policy Specialist.
- Head of Unit (who will be a senior official of the House of Commons).
- Two Deputy Heads with responsibility for Finance and Legislation, the two main areas of the Units work.
- Six support staff.
- The Unit also runs an internship scheme for postgraduate students.

All staff is strictly impartial and abide by the political impartiality requirements which bind all House of Commons staff, i.e. not to engage in any party political activity, to work fully and equally with all members of parliament regardless of political affiliation, to provide independent analysis, avoiding any political input or bias.

The structure of the House of Commons makes a clear distinction between impartial staff employed by the House and other political staff. The Committees involved and in particular the Chairs of the Committees will make a decision on the work to be undertaken, and whether to undertake detailed inquiries and reports. The research and work on analysis and findings of the research will be directed and undertaken by the impartial House staff, including the Scrutiny Unit, ensuring institutional independence for the research

The Unit supports departmental select committees in scrutinising draft bills. It also provides administrative support and legal and procedural advice to Joint Committees (committees with Members from both the House of Lords and House of Commons) set up to consider draft bills. One of the core tasks for Select Committees is to "examine the implementation of legislation and major policy initiatives". It assists and co-ordinates the work of legislative scrutiny using a range of different methods:

- The provision of training for Committees and their staff on subjects such as legislative and financial scrutiny and analysis.
- Organising presentations subjects such as how to take and analyse evidence.

- Producing detailed briefings (in writing and sometimes using oral presentations) on the contents of proposed and draft legislation. In particular, the Unit concentrates on laws in draft when it considers that the subject matter would benefit from an extended period of consultation, before the Bill itself is introduced into parliament.
- The evidence and consultation findings and assessed impacts and effects of this draft legislation is crucial in subsequent *ex post* legislative evaluation by providing baseline and comparative information by which the actual outcomes can be assessed.
- Undertaking online consultations to bring in external views, most often from the general public who are able to contact parliament directly by the use of the Internet. The Unit will then compile reports for committees which are based on the views and opinions received.
- Liaising with other bodies; providing a location for external bodies to link into the scrutiny and evaluation processes of parliament. In particular, the Unit will develop close links with bodies with direct evaluation roles such as audit bodies e.g. the National Audit Office. It will liaise closely with statutory bodies, for example the Equality and Human Rights Commission which has a statutory duty to review legislation in its area.
- Supporting committees in their analysis of Impact Assessment; providing analysis of assessments for Committees. The Unit will liaise with and request further information from government if they form a conclusion that the RIA is not fully comprehensive or accurate. It may also request further information if the Bill (draft law) changes significantly as it progresses through parliament, particularly where it is subject to amendment, including substantial amendment by government.

Post-legislative scrutiny is also conducted. The Unit contributes to collection of evidence and analysis of its findings to parliamentary committees. Since 2008, all laws are considered by committees for post legislative scrutiny although only a small minority is chosen for a detailed inquiry and report. The Scrutiny Unit will, in the first instance, provide a briefing for the committee which draws together all document analysis on the effects of the law, information and statistics from government and independent sources, media reaction and NGO opinion. This briefing will enable the Committee to come to a judgment as to whether to hold a full and more detailed inquiry.

If this is the case, the Scrutiny Unit, along with the designated Committee staff will plan and undertake a programme of research and evaluation to support the committee's inquiry. The typical complement of committee staff for a departmental committee such as health, education, defence, etc, will be about six or seven people, of whom the majority will be generalist and procedural experts and/or administrative staff. One or two will be specialists in the subject matter of the Committee's remit. Together these staff will work on devising the key questions for the inquiry and identifying the data sources that will address and answer these questions.

There will then be a request to stakeholders and experts to send written evidence to the inquiry, with a particular request to show any quantitative evidence of which the stakeholder may be collected or be aware. Some experts or those affected by the law (or policy) will be invited to provide oral evidence during which they can be questioned by

members of the Committee. The Committee staff and sometimes the Scrutiny Unit will provide briefings and questions for this oral evidence session based on the written evidence that has been received or on any available independent or statistical data.

Its main focus of this form of post legislative evaluation is usually on policy implementation unless it is decided by the Committee that it wishes to specifically look into the policy basis and merits of the legislation. One example of this work is Northern Ireland Affairs Committee inquiry into Electoral Registration in Ireland, following the introduction of the 2002 Electoral Fraud (Northern Ireland) Act 2002. The report concluded that the Act had the unintended consequence of contributing to the steep and progressive decline in the numbers of voters on the register over recent years.

The Scrutiny Unit provides a wide range of financial expertise to departmental select committees. It provides briefing and statistical analysis on government financial information to enhance committee scrutiny. As with the legislative function, building links and networks and taking evidence from expert and external bodies is an important component of the work.

The Unit also aims to improve the quality of financial scrutiny through working with select committees in pressing the executive to improve the quality of the financial information it provides, preparing guidance notes, giving presentations and training to committee members and their staff, and identifying examples of best practice.

One main area of post evaluation work relates to Departmental Annual Report. Every government department publishes an annual report in May to July. Departmental reports explain to parliament and the public how each government department is organised, what it is spending its money on, what it is trying to achieve and how it is performing.

Scrutinising these reports is one of the core tasks of departmental select committees, who are assisted in that task by the Scrutiny Unit. The Scrutiny Unit analyses the reports from each department to identify good and bad practice in the way that government departments organise and present the information and examines the adequacy of departments' reporting against targets, including efficiency.

There is a strong ethos of evidence-based and factual briefing and analysis. This ethos aims to allow the Committees to make the political judgement on the facts and to encourage a collegiate approach within the Committee. The objective is that this will ultimately lead to unanimous reports from Committees, despite the many different political parties and views represented on such Committees (although given the inevitable political nature of some inquiries and reports, this unanimity is not always possible).

1.5. Various relevant stakeholders involved in *ex post* evaluation

This section considers the connections between the various parts of the governmental processes relating to *ex post* law evaluation with particular reference to the scrutiny and accountability mechanisms that formalise the relationship between government and parliament. The section also looks at the role of the legislative process in effective *ex post* legislative evaluation, as well as additional stakeholders that can contribute to *ex post* evaluation.

Using oversight mechanisms to enhance ex post *legislative evaluation*

All parts of the parliamentary process can be used or adapted to play a part in *ex post* legislative evaluation. There are a number of parliamentary working methods which can be used to seek information, explanation and policy positions from the executive on matters of both *ex ante* and *ex post* evaluation:

- Questioning the executive; using written and oral questions, and requesting statements, to obtain information on the effects of legislation.
- Holding a special question time on evaluation matters.
- Holding debates on the effects of laws to bring in parliamentarians from different parties and with different experiences and perspectives.
- Holding regular and time ring-fenced debates on *ex post* evaluation of legislation.
- Making use of the evidence gained from parliamentarians' experience of dealing with the individual problems of citizens which relate to the effects of laws.
- Ensuring that parliament has the full range of powers and the legal basis required for *ex post* evaluation.
- Reviewing and, where appropriate, amending and strengthening the relevant parliamentary powers and standing orders or rules.
- Establishing or strengthening relevant committees with a remit for evaluation.
- Establishing Joint Committees to bring together two or more different committee to lead on the evaluation of a specific piece of legislation.
- An overall co-ordinating committee may be required to take a lead in matters of *ex post* evaluation and/or *ex ante* evaluation.

Evaluation or scrutiny units should provide the support so that these parliamentary processes are made as effective as possible and that individual parliamentarians and Committees are fully supported in this work. The executive should feel as though it is under a searching spotlight and it is up to parliament and its various institutions to make this a reality.[19]

Many governments undertake forms of *ex post* evaluation on the effects of their policies and laws, sometimes for internal government use only, as part of political or policy development process. Given the massive resources of government and its official capacity, the executive should be encouraged to engage with parliament in achieving full *ex post* evaluation.

Box 1.2. Looking for input from the executive: The UK approach

The UK Department for Work and Pensions routinely undertakes research to assess the effects of changes in social security benefit entitlement, looking at how the caseload of the particular benefit may have been affected. More recently, this research has been made more openly available, particularly sharing the material with parliamentary committees.

Furthermore the UK Government has the main task for producing the first report or Memorandum on the operation of the law. This Memorandum will contain the main facts, figures and details on which the parliamentary committee will base any future inquiry. There is obviously the danger that the government's own review and report may seek to overstate the positive aspects of the law and to understate any negative aspects. Therefore, independent evidence should always provide some alternative perspective and detachment to the information provided by government. The UK Government has provided a list of the issues to be included in the Memorandum:

- Information on when and how different provisions of the Act had been brought into operation.
- Information highlighting any provisions which had not been brought into force and explaining the reasons why not.
- A brief description or list of the associated secondary delegated legislation, rules or guidance issued in connection with the Act.
- An indication of any specific legal or drafting difficulties which had been matters of public concern, including legal challenges.
- A summary of any other known PLS or assessments of the Act conducted in government, by parliament or elsewhere.
- An assessment of how the Act has worked out in practice, relative to objectives and benchmarks identified at the time of the passage of the Bill.[1]

The government has also produced a Guidance Paper and set out its approach to *ex post* evaluation of legislation, stating that

- It is essential that the government's evaluation procedures fit together, in order to: Allocate resources effectively and efficiently; Avoid duplication of time and effort; Learn from previous experience in the design of new policy; Ensure that evaluation of policy is effective.
- The purpose of evaluation is to identify lessons learned in order to improve ongoing policy design and implementation. Policies are designed in a context of uncertainty and limited information. They are implemented in complex environments and their impacts may be affected by a wide variety of factors.

By taking stock of previous experience and observed outcomes, policy makers should be able to learn and apply lessons about what worked well and what worked less well in the past. These lessons may be general (what kinds of intervention have previously work well or badly in what circumstances) or specific (how the design or implementation of a policy in a particular area could be improved). Systematic evaluation and review of implementation within government is a vital part of effective PLS.[2]

1. Office of the Leader of the House of Commons (2008), *Post-legislative scrutiny – The Government's Approach*, March, Cm 7320.
2. Department of Business, Innovations and Skills (2010), March, URN 10/928.

Techniques to strengthen the relationship between powers for ex post *evaluation*

In the same way that RIAs look at the predicted outcomes of the law, pre-legislative methods used during the law's passage can provide the benchmarks by which the law can subsequently be judged. Some techniques that can help on that are the following:

- *Pre-legislative scrutiny:* Involves a general inquiry about proposed legislation or, the issuing of a draft bill to be considered by a parliamentary committee which can hold an inquiry, take evidence and make recommendations to the government.
- *Policy documents and papers:* Government produces many reports and papers as part of the policy preparation before an Act is passed. These papers, documents and research reports contain much detailed information about what the government intended when it proposed and passed the piece of legislation in question.
- *Debate and committees:* During the law's passage, government will usually state on the record its intentions for the piece of legislation and give assurances or clarifications about how the law is intended to work in practice. These assurances and statements can then subsequently be tested against the evidence gained by monitoring the Act's impact in the years following its implementation.
- *Sunset clauses:* One way of ensuring that the law in question must be formally reconsidered is to place a Sunset Clause in the original Act. These clauses are used to ensure that a particular law ceases to have effect after a stipulated period. In such cases, if the government or parliament decides that there is a continuing need for the specific provisions, it would have to submit new proposals for a law to be passed. Although this procedure may seem attractive, regular use of "sunset clauses" would place enormous demands on executive and legislature. Also, as the Canadian Guide to Federal Law Making points out:

> Caution should be taken when considering whether to include a 'sunset' or expiration provision in a bill, or a provision for mandatory review of the Act within a particular time or by a particular committee. Alternatives to these provisions should be fully explored before proposing to include them in a bill. (Privy Office, 2001) Caution should be taken when considering whether to include a "sunset" or expiration provision in a bill, since these provisions may result in a gap of legal authority if the new legislative regime cannot be brought into force in time. (Privy Office, 2001, Chapter 2.2, Section on Technical Legislative Matters).

There may be a case for more focused used of sunset clauses, such as for business regulations. The Better Regulation Initiative in the UK has introduced sunsetting regulations. The government introduced a requirement for sunset clauses to be included in new regulations – so that policy makers have to review regulation after five years and determine if it is still relevant, rather than leaving regulation permanently on the statute book when it is no longer required.

- *Review clauses:* Some laws contain review clauses which mean that a mechanism for post-legislative scrutiny is built into the legislation itself.[20]

Box 1.3. Using review clauses: The UK Anti-Terrorism, Crime and Security Act 2001

During its passage through parliament, a number of safeguards were added to the UK Anti-Terrorism, Crime and Security Act. One safeguard involved a 'sunset clause' that provided that part of the Act would cease to operate in November 2006. Also Part 4 of the Act, relating to certain detention provisions, was separately subject to a requirement for annual renewal by affirmative resolution of each House. Another safeguard provided that the whole Act would be subject to a review by a committee, consisting of no fewer than seven Privy Councillors (Senior Politicians), who should report to parliament no later than two years after the Act was passed. The government appointed a committee to carry out this review.

The Committee reported in December 2003 and its key findings included, "we consider the shortcomings [of the Act] … to be sufficiently serious to strongly recommend that the … powers which allow foreign nationals to be detained potentially indefinitely should be replaced as a matter of urgency." The Home Secretary immediately rejected this recommendation, indicating the Committee's non-binding nature. However, the requirement for a review, and its findings, placed considerable political and media pressure on the government to act. In fact, in December 2004 the Law Lords (Supreme Court) ruled that the provisions on indefinite detention were unlawful, forcing the government to change its stance on this matter.

Involving the judicial system and the courts

Courts have a constitutional duty to interpret and apply the law according to the rule of law and the principles of interpretation. Judgments of the Courts play a role in highlighting the meaning and effect of legislation. The findings of Court judgments will highlight the extent to which there have been problems or complaints about the Act in question and involves a judgment that the government must amend the law to rectify the defect. For example, in France the Cour de Cassation reviews contentious decisions of other courts and, when necessary, draws the attention of the legislature to the need to clarify the law.

The role of the Ombudsman

In many jurisdictions the office of the Ombudsman has been established. The Ombudsman is an independent official with the power to assess complaints about government actions and services. Individual citizens who believe that they have been unfairly treated can complain to the Ombudsman. If the Ombudsman finds that the citizen has been treated unfairly he will request that the government department involved corrects its mistake, either with an apology or financial compensation. Ombudsmen become familiar with legislation which is not working well. They can issue reports about perceived defects in legislation. This detailed evidence on individual problems with individual laws provides valuable first-hand experience for *ex post* evaluation.

Independent research

A wide variety of expert bodies also have the capacity to undertake research appropriate to particular measures. Most areas of public policy have independent research institutes which carry out detailed work, e.g. on health, education, housing, welfare, etc. These institutes often undertake research on the impact of legislation as a normal part of their work and this research can be fed into the parliamentary process.

Box 1.4. The UK Law Commission

The Law Commission is an independent body set up by parliament in 1965 to keep the law under review and to recommend reform where it is needed.1 This model of Commission provides an expert and independent resource for a technical form of legislative evaluation and may provide a model for complementing the work of the Chilean parliament in its ex post evaluation, particularly as its work is impartial and technical and so is often distinct from policy and outcome-focused evaluation. Its key aims are:

- To ensure that the law is as fair, modern, simple and as cost-effective as possible.
- To conduct research and consultations in order to make systematic recommendations for consideration by parliament.
- To codify the law, repeal obsolete and unnecessary enactments and reduce the number of separate statutes.
- It covers areas of law including commercial law, contract and property law, criminal law, family law and housing law.

The Commission considers reviewing an area of law reform against certain criteria:

- Importance – why the law is unsatisfactory, and potential benefits from reform.
- Suitability – whether the independent non-political Commission is the most suitable body to conduct the review.
- Resources – including valid experience of Commissioners and staff, funding available, and whether the project meets the requirements of the programme.

Once the Law Commission has agreed to review an area of law, it proceeds as follows:

- A study of the area of law is undertaken, and its defects are identified. Other systems of law are examined to see how they deal with similar problems.
- A consultation paper is issued setting out in detail the existing law and its defects, giving the arguments for and against the possible solutions, and inviting comments. The paper is circulated widely to all interested persons and bodies, including the media. Feedback is encouraged from any interested member of the public.
- A report is submitted to the Minister of Justice, giving final recommendations and justifications. Where necessary, a draft Bill is included, giving effect to the recommendations.
- *www.lawcom.gov.uk/publications.htm*. The Law Commission work concentrates on legal and technical issues only. It does not look at the way laws work in practice nor does it consider policy issues. Its recommendations are usually accepted by government but they are advisory only.

1. Full information on the Law Commission can be found at *www.lawcom.gov.uk/*.

In a similar way, universities will have departments and units with expertise relevant to particular types of legislation. For quantitative evidence, specific research projects or opinion polling evidence from can be commissioned from universities and research institutes, or from public opinion polling organisations.

The role of Independent Reviewers

Some legislation may provide for review by an external reviewer.[21] The Independent Reviewer would be instructed to compile a report of his conclusions, which must then be presented to parliament. This model ensures that independent PLS will be undertaken by law and that the independent reviewer is more likely to be an individual with specific interest, experience or expertise in the subject area of the law**.** The Act contained a requirement that the review should be started five years after it was passed.[22]

1.6. Incorporating citizens' perceptions into *ex post* law evaluation

One primary motivation for *ex post* evaluation is to allow individuals and interested parties such as academia, business and professional organisations, to express how they have been affected by legislation. Indeed it is vital for establishing a sound evidence base for evaluation that evaluation units and parliamentary committees make use of all available external evidence including from citizens and from groups acting on their behalf.

Improving public engagement across the whole system

For public engagement on *ex post* evaluation to be effective, it must be part of a wider strategy for successful engagement with the public across the whole of parliament and government. The culture should be that public views are welcome and systems put in place to receive and utilise them and provide feedback.

If new or different public engagement systems are instigated solely in an attempt to strengthen one part of the legislative or governmental process, in this case for *ex post* evaluation, they are less likely to be successful in isolation than if they are part of a co-ordinated programme for improving public engagement as a whole. In recent years, in many countries, there has been increasing awareness of the need to improve public engagement with the political process in general and with the institutions of government and legislature in particular.

Individual members of the public may not know that they are able to present their concerns and evidence to the legislature or may be ignorant of the methods that allow them to do so. See, for example, the United Kingdom Hansard Society Audit of Political Engagement, which undertakes an annual representative survey of the public. It has been carried out each year since 2004 and shows clearly that there are low levels of political understanding about parliament, about how it functions and how the public is able to become involved in its work.[23]

While its findings may not be identical in every country, it is striking that public engagement with parliament, and the level of political understanding, even in a mature democracy like the United Kingdom, needs urgent attention. The UK parliament has put in place a range of measures such as outreach officers to explain the work of parliament to citizens and community groups, redesigned and reissued its information and improved online engagement with parliament. More broadly it is recognised that the culture of parliament has to be seen to be open, accessible, comprehensible and welcoming. Otherwise the public will not see parliament as part of their lives and their concerns will remain unheard.

The broader point about engagement is that if the public is disengaged from parliament as a whole and unused or unwilling to become involved, then it is unlikely that a single parliamentary function, in this case seeking public views about ho laws have worked, will be able to counteract that trend. The danger then is that the best resourced and organised opinion – which is able to access and influence the political process in pursuit of its interests and viewpoints – will come to dominate. To ensure that the public is able to participate needs political will and practical action across all of parliament, and indeed government.

There are a number of guides and publications which seek to address and improve the level and quality of public engagement. For example, the Inter-Parliamentary Union (IPU) publication, *Parliament and Democracy in the Twenty-First Century*, contains chapters on ways to improve the openness and accessibility of legislatures and on the involvement of the public and civil society in the work of the parliament. It includes information on effective modes of public participation in legislative scrutiny; the right of open consultation for interested parties and public right of petition.[24] The IPU Brochure for the International Day of Democracy (2010), *Your Parliament: Working for You, Accountable to You,* also provides examples of public engagement techniques.[25]

Therefore, it is the parliament as a whole that should commit to engage as effectively as possible with the public so that there is a culture of receiving external evidence and views. Seeking views on the operation of laws for evaluation purposes is an important part of developing that accessible and engaged culture. The examples of engagement methods given in this section can be used to encourage citizen and civil society engagement for *ex post* evaluation.

The quest for public involvement in *ex post* evaluation has the main purposes of finding out the ways in which the public have been affected by the law and also ways in which they may wish it to be amended.

It is often asserted that those most able to make a case tend to have the greatest influence (i.e. powerful lobby groups). Those with less access and influence should be helped to make a case by specific mechanisms that are established to consider their concerns. The main methods of taking external views include:

- Interviews, hearings and focus groups with targeted individuals or groups.
- Commissioning in-depth case studies of different regions, social or economic groups of people within society, selected for a detailed perspective.
- Commissioning of opinion poll evidence, asking certain questions to a cross-section of the public. For example, in 2009, the Better Regulation Executive commissioned a survey of both the public as a whole and the business sector specifically to ascertain their views on the effects of regulation.[26]
- The Internet, e-mail and mobile phones have transformed the ways that parliament and the public are able to communicate with each other, access information and submit views and evidence, e.g. blogs and web-forums where people can post their views. These are particularly important to engage those who have not been active in the policy process previously, and particularly younger people. For Example, the Red Tape Challenge launched since April 2001 by the UK Government which features a designated website for the public to have their

say about red tape and seek ideas from businesses and civil society to provide suggestions and examples of unnecessary and obsolete regulations which should be repealed.[27]

- Engaging with the media as most people obtain information about parliament and politics from television, radio and newspapers. Issues of concern relating to legislation are often covered in the media and this coverage can be utilised to call for evidence and response.
- Parliamentary committees are able to take evidence (both written and oral) from experts, pressure groups and citizens directly affected by the legislation.

Ensuring accessibility

In order to ensure that public engagement strategies are effective, parliamentary contact and accessibility procedures should be regularly reviewed. The public should be able to contact parliament easily. Parliament should not appear complicated, exclusive or out of touch with ordinary people. Some ways to keep that interaction open are the following:

- Constituents should have access to Units, Committees or representatives, by letter, telephone, e-mail or websites.
- Information and documents should be available in relevant languages, using plain language and clear format. Materials should be regularly reviewed to ensure that they are accessible and not confusing.
- The public should be able to visit parliament and attend its proceedings (while recognising the security needs of parliament and its members).
- Parliaments should devise procedures to allow the public to place concerns on the agenda, including legislation and committee inquiries and how to respond to consultations.
- Produce guides and glossaries of technical terms and procedures, so that non-specialist audiences are able to understand work and contribute.
- Produce user-friendly versions of reports and proposals.
- Appointment of designated liaison official for public engagement.
- Holding parliamentary inquiries or hearings away from parliament in different venues in other parts of the country.

Role of civil society

Civil society bodies can have a particularly important role in advocating legislative change and highlighting the effects of laws. A systematic approach involves a register of civil society groups and of specialist experts and academics that are interested in certain subjects, e.g. housing, health and transport, etc. who can be called upon for the views or research depending on the law in question. One good practice model involves the Hungarian National Assembly which has a Civil Bureau that liaises with civil society and collects society opinion on the operation of parliament.[28]

Box 1.5. Case on the role of civil society: The UK Social Security Acts 1989 and 1997

The UK Social Security Act 1989 is an example of law which caused unintended difficulties and which civil society took the lead in ensuring successful change of the law. The Social Security Act 1989 introduced a new legal mechanism to deduct from compensation settlements an amount equal to the level of social security benefits that the claimant had received as a result of injury or disease. After this deduction had been made, many individuals found that their settlement had almost been extinguished.

During the early 1990s, trade unions, disability advocates and groups connected with industrial accidents and disease began to lobby parliament and the media about the iniquities of the system and the hardship caused to individuals. Initially their approaches to the government were unsuccessful.

The provision of statistical analysis, as well as qualitative evidence, was a central part of work of the groups seeking change. In essence, there was an evaluation of the amount of compensation that individuals affected were able to keep. Much of this work involved trade unions, and lawyers working on their behalf, contacting individuals who had been affected and compiling evidence of their cases and financial settlements. Case studies indicating financial hardship were then presented to the Committee.

- In 1995 the House of Commons Social Security Select Committee, having received many representations on this issue, including decided to conduct an inquiry into the policy and practice of the 1989 Act. During the course of the inquiry the Committee made formal calls for evidence from those affected by the legislation and received both statistical evidence about the level of compensation payments retained by those injured in accidents or by disease. It also received important qualitative evidence in the form of case studies in which individuals described their own experiences. Representative bodies working on behalf of those affected were also active in providing evidence, in written form and orally by attending committee meetings.

- The fact that the Committee was holding an *ex post* legislative inquiry was covered in the media. The Committee issued press statements about the reasons why there appeared to be a problem with the law and what the inquiry would look at. This coverage in turn encouraged other people who had been affected by the law to contact their member of parliament or a relevant representative or legal body or contact the Committee directly. In turn this provided evidence of what was agreed to be the law's unintended consequences and failings.

- The Committee's report, *Compensation Recovery*, was passed unanimously in June 1995 (Social Security Committee, (1994-95), Compensation Recovery, HC196). It found that that the details of the legislation were seriously flawed, and that the calculations contained in the Act, had caused, according to the Committee, 'manifest unfairness'.

- The government response to the Select Committee report was published in October 1995. The government then launched a consultation exercise to determine the wider implications of the reforms suggested by the Select Committee.

- The government commissioned a Compliance Cost Assessment, (the previous name for RIA in the United Kingdom to show the likely cost to business. In reaching its decision the government's stated central objective was "to deliver a system that is fair and is seen to be fair – to the plaintiff and the defendant, to Business and to the taxpayer.

- The Compliance Cost Assessment was produced for the government by independent financial consultants PricewaterhouseCoopers. This assessment estimated the additional annual costs to insurers and the costs to customers of increased employer liability premiums. It estimated an increase in the volume of cases likely to be and the extras staff likely to be needed to do this work and the effect of local government welfare agencies.[1]

- The government accepted the Committee's recommendations and passed an amending law, the Social Security (Recovery of Benefits) Act 1997. The law was eventually agreed by both executive and legislature to have been defective. The parliamentary process, and the eventual amending legislation, was only triggered by a lengthy and well-organised campaign.

1. Reply by the government to the Fourth Report of the Select Committee on Compensation Recovery, Cm 299, DSS Press Release 2 Oct 1995; Government to consult on compensation recovery scheme, Compliance Cost Assessment: compensation recovery scheme. Prepared at the request of Dept of Social Security, PricewaterhouseCoopers, 1996.

Notes

1. The information and guidance in this section is taken from a range of sources including: A. Brazier, Post-Legislative Scrutiny, Briefing Paper Number 6, (2005), Hansard Society, London and A. Brazier (ed.), Parliament, Politics and Law Making, (2004), Hansard Society, London; European Commission (2008), Guide to Evaluating Legislation, Brussels, available at: *http://ec.europa.eu/dgs/internal_market/docs/evaluation/evaluation_guide.pdf*; United Nations World Food Programme, Office of Evaluation, Monitoring & Evaluation Guidelines, available at: *http://documents.wfp.org/stellent/groups/public/documents/ko/mekb_module_10.pdf*.

2. Department of Business, Innovation and Skills (2010a), Clarifying the Relationship between Policy Evaluation, Post-legislative scrutiny and Post-Implementation Review, London. See also Department of Business, Innovation and Skills (2010b), What happened next? A study of Post-Implementation Reviews of secondary legislation: Government Response, January, London.

3. For further information see OECD (2011), A Practitioner's Guide to Perception Surveys, Paris. *www.oecd.org/regreform/perceptions.*

4. Further information on the use of research techniques for evaluation can be found at:

   European Commission (2008), Guide to Evaluating Legislation *http://ec.europa.eu/dgs/internal_market/docs/evaluation/evaluation_guide.pdf*.

   United Nations World Food Programme, Office of Evaluation, Monitoring & Evaluation Guidelines, *http://documents.wfp.org/stellent/groups/public/documents/ko/mekb_module_10.pdf* and

European Commission, Annexes to Impact Assessment Guidelines, (2009); *http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_annex_en.pdf*.

5. A. Brazier (2003), *Parliament at the Apex,* Hansard Society, London. *www.hansardsociety.org.uk/blogs/publications/archive/2007/09/11/parliament-at-the-apex-parliamentary-scrutiny-and-regulatory-bodies.aspx.*

6. *www.riksdagen.se/templates/R_Page8391.aspx.*

7. *www.riksdagen.se/upload/Dokument/utskotteunamnd/utskott-uppfoljning-2011-en.pdf.*

8. Information on completed and ongoing follow-ups and evaluations is available on the Riksdag website: *www.riksdagen.se/templates/R_Page_8391.aspx.*

9. *www.riksdagen.se/upload/Dokument/utskotteunamnd/utskott-uppfoljning-2011-en.pdf* (Follow-up and evaluation by the Riksdag's committees – a constitutional obligation).

10. *Ibid*.

11. *www.riksdagen.se/templates/R_Page_20988.aspx and www.rifo.se*.

12. *www.parlament.ch/e/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/evaluation/Pages/default.aspx*.

13. The PCA is sometimes referred to the Parliamentary Administrative Audit Unit.

14. Swiss Federal Audit Office, Swiss Evaluation Society, Swiss Society of Administrative Sciences; European Evaluation Society

15. *www.parlament.ch/e/organe-mitglieder/kommissionen/aufsichtskommissionen/geschaeftspruefungskommissionen/Pages/sachbereiche-gpk.aspx#procedures* and the powers are sset out in Article 169 of the Federal Constitution (Cst; RS 101) and Article 26 of the Parliament Act (PA; RS 171.10).

16. *www.parlament.ch/e/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/evaluation/Pages/default.aspx*; and *www.parlament.ch/f/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/Documents/merkblatt-untersuchungen-pvk-f.pdf*; *www.parlament.ch*.

17. *www.parlament.ch/e/dokumentation/berichte/berichte-aufsichtskommissionen/geschaeftspruefungskommission-gpk/berichte-2011/Documents/jahresbericht-2010-pvk-e.pdf* of 27 January 2011.

18. Further information on the Scrutiny Unit can be found at *www.parliament.uk/scrutiny* and *www.parliament.uk/documents/commons/Scrutiny/081114SU%20leaflet.pdf.*

19. A concise description of the work of parliamentary accountability mechanisms in the main plenary chamber and also in oversight committees can be found in Inter Parliamentary Union (2007), Tools for Parliamentary Oversight; A Comparative Study of 80 National Parliaments. *www.ipu.org/PDF/publications/oversight08-e.pdf.*

20. See comparison of parliamentary review features in Canada, Australia, New Zealand and the United Kingdom in Forcese, C. (2008), Fixing the Deficiencies in Parliamentary Review of Anti-terrorism Law: Lessons from the United Kingdom and Australia, IRPP Choices, 14 (4), Table 9, p. 18.

21. For example, this was the case with the United Kingdom Charities Act 2006. A section of the Act specified that: "The Minister must, before the end of the period of five years beginning with the day on which this Act is passed, appoint a person to

review generally the operation of this Act. The review must address, in particular, the effect of the Act on charities, public confidence in charities, the level of charitable donations, and the willingness of individuals to volunteer." Charities Act 2006, Section 73.

22. A person must be appointed before 8 November 2011, to undertake an independent review of the Charities Act 2006, as required under Section 73 of that Act. The timetable for the review itself has not been finalised, but the review is likely to take between six and nine months, concluding in 2012. Once completed, the report of the review must be laid before Parliament, United Kingdom Charities Act 2006, Section 73.

23. Hansard Society (London), (2011) Audit of Political Engagement 8, *www.hansardsociety.org.uk/blogs/publications/archive/2011/04/08/audit-of-political-engagement-8.aspx*. The previous seven Audits of Political Engagement can be found at *www.hansardsociety.org.uk/blogs/publications/archive/2011/04/08/audit-of-political-engagement.*

24. Inter Parliamentary Union (2006), Parliament and democracy in the twenty-first century: A guide to good practice, *www.ipu.org/PDF/publications/democracy_en.pdf.*

25. Inter Parliamentary Union, International Day of Democracy, (2010), Your Parliament, Working for You, Accountable to You, *www.ipu.org/dem-e/idd/leaflet10.pdf.*

26. *www.bis.gov.uk/files/file53236.pdf.*

27. *www.redtapechallenge.cabinetoffice.gov.uk/home/index/.*

28. *www.parlament.hu/parl_en.htm*.

Chapter 2

Ex post Evaluation in Chile

This chapter evaluates the current system and process of ex post *evaluation of laws in Chile. It starts by describing the structure of the Chilean government, the Chamber of Deputies, and the relationships between the different branches of government for law-making purposes. It also examines the attributions of both the executive branch and the Chamber of Deputies to conduct law evaluation. Furthermore, it looks at the methodologies used by the Law Evaluation Department of the Chilean Chamber of Deputies to assess the effects and impacts of laws, the role given to citizens' perceptions and the main achievements, particularly the evaluation of Law 20.413, which establishes the principle of universal donor for organ transplants. The fact that the evaluation demonstrates that this law is not meeting its objectives should become an argument to strengthen evaluation processes and the institutional design of the Law Evaluation Department. Finally, this chapter makes recommendations to improve* ex post *law evaluation in Chile. These recommendations deal with institutional, methodological, and governance issues.*

2.1. Law-making process in Chile: Branches of government and their interactions

Chile is a unitary country composed of 13 regions, 51 provinces and 342 communes. It has a presidential system of government with a clear separation of branches of government: executive, legislative and judiciary.

The presidential system makes the Chilean executive a strong actor in the law-making process. As in many other countries, the executive is the main producer of law proposals discussed in parliament.

General structure of the Chilean Government

The 1980 constitution, unlike the previous ones, established a strong presidential system in Chile. The President is elected for a four-year term (since the 2005 amendment to the constitution)[1] and may not serve two consecutive terms. The President has broad authority to appoint cabinets without the concurrence of the legislature.

The current executive branch in Chile is composed of 22 Ministers of State within 20 ministries. Ministers serve exclusively at the President's discretion. Each ministry is required to articulate a series of firm objectives for each fiscal year, and the President uses these ministerial goals to judge the success of a particular department and minister. Cabinet officers have significant authority over their own agencies.

Although important in setting the overall priorities of the government and co-ordinating a uniform response to issues, cabinet meetings tackle primarily general issues. More specific policy questions, however, are often addressed at the ministerial level by inter-ministerial commissions dealing with substantive areas. These include infrastructure, development, economic, socioeconomic, and political issues. If no unanimous decision is reached on a particular matter, the question goes to "the second level" (the President's office) for final decision. The President is kept closely apprised of all matters under discussion at all times by the Secretary-General of the Presidency, who has primary responsibility for co-ordinating the work of ministerial commissions.

Every ministry is composed of one or more *Subsecretarías* (undersecretariats), whose leaders, called *Subsecretarios*, are immediate collaborators to the minister. The *Subsecretarios* are responsible, among other things, for the co-ordination of all actions of the ministry and related public services, as well as rule the inner administration of each ministry. Some of the ministries are territorially distributed, and are represented by Ministerial Regional Offices (*Secretario Regional Ministerial*).

Other hierarchical levels exist below the undersecretariats (*Subsecretarías*), such as Divisions, Departments, Sections or Bureaus. Ministers, *Subsecretarios* and *Secretarios Regionales Ministeriales* are appointed directly by the President.

Institutional design of the Chamber of Deputies

The legislative branch in Chile is composed of a bicameral National Congress, located in Valparaíso, comprising the Senate, with 38 Senators, and the Chamber of Deputies with 120 MPs.

The main function of the Chamber of Deputies is to participate in the preparation of laws, together with the Senate and the President of the Republic. Exclusive functions of the Chamber of Deputies are: to supervise government's acts and initiate constitutional impeachments against the President, Ministers of State, Ministers of the Superior Justice

Court, General Comptroller, Generals, Admirals, Majors and Governors. In addition, the budget law and all regulation related to taxes have to be first discussed in the Chamber of Deputies.

The main political bodies in the Chamber of Deputies are:

- *The Bureau of the Chamber of Deputies:* This is the political-administrative collegial body in charge of the Chamber. It is composed of a president, a first vice-president and a second vice-president, who are elected by absolute majority of all MPs. The main functions of the Bureau are: to guarantee the independence and parliamentary immunity, to propose to the floor the members of commissions and to elaborate a budget proposal that is closely followed up in its implementation so at the end of the fiscal year the Commission in charge of it presents a compliance report.
- *Commission on the Internal Regime, Administration and Rules:* This is a political body composed by the members of the Bureau and the thirteen Heads of the parliamentary committees, which are intermediate bodies composed by various MPs. This Commission has the prerogative to adopt all necessary measures to improve the functioning of the Chamber of Deputies, such as to inform about the internal ruling of the Chamber and its amendments, to agree to the measures tending to improve the functioning of the Chamber in relation to its personnel, to approve the draft budget proposal of the Chamber and to propose to the Floor the set up of an Accountability Commission. It is also responsible for approving institutional participation in international bodies, according to a technical report prepared by the Commission on External Affairs.

The main administrative bodies in the Chamber of Deputies are:

- *The Secretary-General:* The office of the Secretary-General is divided in two Sub-secretaries, one is administrative and the other legislative. The Secretary-General is the secretary of the Floor of the Chamber of Deputies and the head of all administrative services.
- *The Legislative Sub-secretary:* This body is responsible for the guidance, organisation and co-ordination of the various activities and functions to support the legislative and supervisory tasks of the Chamber of Deputies. It is composed by various bodies, such as a Secretary, Commissions, Office for Session Drafting and Information Office.
- *The Information Office:* This body is in charge of compiling information and data for the Chamber of Deputies with the aim of preparing juridical, economic and statistical reports, as well as minutes on particular issues. The Office is divided into three sections: legal, studies and statistics. It is also responsible for the functioning of the Office of Information to Citizens and the External Advisory System.
- *The Administrative Sub-secretary:* This body is mainly responsible for the administrative well-functioning of the Chamber of Deputies. It is composed by various bodies, such as the Directorate for Administration, the Directorate of Finance, the Department of Information Technology, Public Relations, etc.

Relationships between different branches of government in Chile for law-making purposes

The relationship between the Chilean executive and the legislative in terms of law making does not differ greatly from other countries. Both the executive and the legislative have the prerogative to initiate a law proposal. Despite a bigger number of proposals from the legislative, most of those approved have their origin in the executive.[2]

According to the Constitution, the President of the Republic can use the law initiative through a message (*mensaje*) and the Deputies and Senators can table a motion (*moción*).[3] Both messages and motions have to be presented in writing with an explanation of the reasons and clarify the various articles contained in the law. Messages, in addition, should also include the source and the amount of financial resources needed, in case expenses linked to the law are implied in the national budget.[4]

Motions can be rejected for several reasons. For instance, the president of the Chamber of Deputies has the faculty to identify if the subject of the law proposal falls into the exclusive attributions of the President of the Republic;[5] if the motion implies both a law and constitutional reform; if the motion is not properly substantiated; if another Chamber should be responsible for presenting the motion, according to the attributions given by the Constitution; or if the President is insisting, but this does not respond to the attributions provided in Art. 68 of the Constitution. The Floor can revise the rejection, and a Revising Chamber can look into this for a second time. If it considers the rejection valid, a Mixed Commission can be set up to revise the decisions. If the motion is once again rejected, the proposal will be shelved.

A law proposal can be tabled in any of the two Chambers that constitutes the National Congress. The Chamber designated to receive law proposals is the Chamber of Origin (*Cámara de Origen*). The other is the Revising Chamber (*Cámara Revisora*). In spite of this traditional approach, some proposals can only have their origin in the Chamber of Deputies, while others pertain to the Chamber of Senators. For instance, laws about taxes, the budget of national administrations, or hiring can only originate from the Chamber of Deputies. Laws about amnesty can only originate from the Chamber of Senators. In those cases, the President of the Republic has to send his initiative to the corresponding Chambers. Motions also have to be presented by parliamentarians of the corresponding Chamber.

Discussions about the law proposal in the legislative

When a law proposal reaches any of the chambers, the legislative body studies, analyses and deliberates the law proposal according to the following phases:

First constitutional procedure

The "first constitutional procedure" represents all procedures that had received a law proposal from the Chamber of Origin. The president of the Chamber informs the Floor about the admission of a law proposal, sending it to the pertinent Commission for analysis, according to the subject it deals with.

Once the proposal enters the Commission, it will prepare a first report, known as a "first statutory procedure" (*primer trámite reglamentario*), in which it analyses and votes a first general proposal or the various particular details of the proposal. At this stage, the Commission reveals its decision to approve the legislative text and this is sent to the Floor for approval, rejection or amendment. It is also possible that the Commission rejects the proposal, but in any case the decision made by the Commission is binding for the Floor.

Once the proposal is in the Floor, it will be subject to discussion. Discussions can be general, when the goal is to accept or reject the totality of the law proposal, its main ideas. A particular discussion is also envisaged, when members of the Chamber discuss every article of the law proposal.

Once the discussion is over, the law proposal is subject to vote. If there are no modifications suggested by the parliamentarians, known as indications (*indicaciones*), it is assumed that the law proposal has been approved in general and in particular. In case a parliamentarian requires a particular vote, then the law proposal has to be voted in particular. If the law proposal was amended, then the Commission will be in charge of preparing a second report to be discussed in the second statutory procedure (*segundo trámite reglamentario*).

The second statutory procedure requires a particular discussion of the project, since some indications were suggested by parliamentarians and a deeper analysis has been required. This discussion means a revision, article by article, of the law proposal, which has been revised by the Commission and has included all suggestions made by the Floor.

After the discussion, the law proposal will be voted, according to the quorum required by the Constitution. The simple quorum corresponds to the simple majority of the members presented at the moment of the voting in the Chamber. For instance, if there are 60 deputies in the Chamber of Deputies, the quorum will be composed of an affirmative vote of 31 Deputies.[6] Other types of quorums are needed if the law proposal refers to specific subjects, such as a change of organisation and attributions of the Courts of Justice, or if the law proposal requires a qualified quorum, which would imply an absolute majority of deputies and senators. The Constitution also envisages the possibility of a special quorum in particular cases, mentioned in Art. 77 of the Constitution.

Any of the possible results of the first constitutional procedure are:

- Total approval of the law proposal. In this case, the law proposal goes to the Revising Chamber.
- A general approval of the law proposal, e.g. the idea of legislating the issue, but there are some indications, modifications and suggestions made by parliamentarians, in which case the law proposal goes back to the technical Commission for a second statutory procedure.
- The law proposal is totally rejected in the discussion in the Chamber of Origin. In this case, the project is aborted and it can only be discussed the following year. If the law proposal comes from a presidential initiative, the message will be sent to the other Chamber, which has to approve it by two-thirds of its present members. If that quorum is reached, the law proposal can return to the Chamber of Origin where only two-third of its members can reject it again.[7]

Second constitutional procedure in the Revising Chamber

Once the law proposal has been approved by the Chamber of Origin, it goes to the Revising Chamber, which follows the same procedure as the Chamber of Origin. The Revising Chamber can approve the project in the same terms, as well as amend or reject it.

Any of the possible results of the second constitutional procedure is:

- The law proposal is totally approved by both Chambers. In this case, it will be sent to the President of the Republic. If he/she approves it, it will be promulgated.
- The law proposal can be subject to amendments or additional comments in the Revising Chamber. If that is the case, it will be sent back to the Chamber of Origin for consideration and lead to a third constitutional procedure.[8]
- If the law proposal is totally rejected by the Revising Chamber, it will be considered by a mixed Commission consisting of both Chambers to look for possible solutions to solve the misunderstanding.

Third constitutional procedure

If the Revising Chamber makes amendments to the project, the law proposal will be sent to the Chamber of Origin for further revision and approval. If those amendments are approved, the whole procedure will be finalised and the project will be sent to the President of the Republic for further promulgation. In case some of the amendments are not approved by the Chamber of Origin, a mixed Commission composed of five members from both Chambers will try to find a solution.

In most cases, once disagreements are handled, the proposal made by the mixed Commission is approved. The prepared report is sent to the Chamber of Origin and once it is approved, it is sent to the Revising Chamber, which ends the engagement of the legislative. As in other procedures, the law proposal is sent to the President for promulgation. If the mixed Commission reaches no agreement, its report is once again rejected by the Chamber of Origin, the latter can ask to reconsider the proposal if the President insists. To be adopted, this procedure requires the presence of two-thirds of the members. If it is supported, the law proposal is again sent back to the Revising Chamber and can only be defeated by two-thirds of the present members. If this quorum is not reached, the law proposal continues its way to promulgation.

Finalisation of the legislative process

Once the law proposal has been approved by both Chambers, it is sent to the President for approval or rejection. The President has thirty days to react. If it is not rejected during that period, the proposal is promulgated as law of the Republic.[9] If the President rejects the proposal by making observations or vetoes it,[10] it can be sent back to the Chamber of Origin within a period of thirty days. The observations need to be linked to the main ideas of the project. If both Chambers approve the observations made by the President, then the law proposal goes back to the executive to be promulgated as law. If both Chambers reject all or any of the observations made by the President and persist by two thirds of their members in their proposal, the executive has to promulgate it as law. If the quorum of two thirds is not met, the proposal cannot go back to the President.

Once the law proposal has been approved by the President, a decree (*decreto promulgatorio*) has to be published within ten days, announcing the issuing of the law and ordering its enforcement. After five days of having processed the decree, the text of the law has to be published in the Official Gazette and becomes enforced.[11]

2.2. Formal and informal arrangements for *ex post* law evaluation in Chile

Systematic *ex post* evaluation is a new public policy field in Chile. There are current efforts to develop *ex post* evaluation frameworks for laws and regulations both in the executive and the legislative, but the country is far from having a systematic assessment of the compliance degree and impacts of laws or regulations. There is no systematic evaluation of the effectiveness or efficiency of the goals established in laws or regulations.

In Chile, the executive power has traditionally focused on fiscal management as a tool for control and evaluation. This approach does not include a particular evaluation of the law and its impacts. Since the country does not have a formal mechanism for *ex ante* Regulatory Impact Analysis (RIA), there are no precedents in assessing possible impacts of draft laws and regulations, which reduces the scope of having a clear baseline for *ex post* evaluation.

The Chilean legislative is seeking a more systematic approach to *ex post* evaluations of laws. With the creation of the Law Evaluation Department, there is a firm intention to develop this policy field and create a methodological framework to systematically evaluate the impacts of laws *ex post*.

Attributions for law evaluation assigned to the executive

The executive in Chile does not systematically review laws and regulations *ex post*. The main body at the highest political level advising the government on how to co-ordinate and develop a legislative agenda is the Ministry General Secretary of the Presidency. This ministry has a legal division (*División Jurídica Legislativa*) in charge, among other things, of analysing any constitutional aspect of all law proposals from the executive, preparing a political and legal revision of all law proposals, co-ordinating law proposals prepared by ministries and carrying out legal work when presenting law proposals to the legislative. These activities are basically done *ex ante*, but not at the proper stage to assess possible options and impacts. *Ex post* activities are rarely conducted in a systematic way.

In the executive, however, there are a number of control and evaluation mechanisms mainly linked to fiscal management, in particular related to the administrative work of public institutions. The focus of such evaluations is not the legal framework, since the goal is to evaluate government programmes, public services and broad projects.

Recent initiatives in the executive exist to introduce some forms of *ex ante* analysis of laws and regulations. In particular, the efforts carried out by the Ministry of Economy are worth mentioning, in particular the recently established Department for SMEs (*División de Empresas de Menor Tamaño*), which is currently considering the introduction of a RIA system in Chile that would include an *ex post* evaluation of regulations affecting SMEs.

Box 2.1. Performance management system at the Chilean Ministry of Finance

The Budget Directorate at the Ministry of Finance has developed a performance management system that includes a number of evaluation tools and performance indicators, to contribute to the efficiency of resource allocation to various programmes, projects and institutions. This system focuses on programmes and public services that are not necessarily legally set up at the outset, and which are very different from an *ex post* law evaluation process, particularly the one currently developed by the Chamber of Deputies. In addition, the performance management of the data system derives mainly from the annual decisions made by the executive to allocate resources.

The performance management system at the Ministry of Finance includes the following tools:

- *Performance indicators*: These are used for processes, products, medium-term results and final results (impact), as well as for measuring efficiency, effectiveness, quality of the various social and economic government programmes.
- *Programme and Institutional Evaluation:* This is a form of *ex post* evaluation that considers:
  - *Evaluation of government programmes*: Based on the methodology of the logic framework used by international organisations, the evaluation is executed by independent expert panels over a year. The final reports are sent to the National Congress.
  - *Impact Evaluation:* This evaluation requires more fieldwork, using additional tools to gather primary data, concentrating on the precedents of the programmes and designing more elaborated analytical models. This evaluation tends to last over one year and is seldom used in the Chilean context.
  - *Comprehensive evaluation of the budget:* This evaluation includes an institutional analysis of the organisational design, the management of key processes, results, use of resources for the provision of strategic products, statistics about users, and performance indicators.
- *Programme of Management Improvement:* This programme includes the set up of various performance goals for the whole public service, whose compliance is linked to the payment of temporary bonus to public servants of the organisation under scrutiny.
- *Integral Management Balance:* This is a report about the objectives, management goals and results of a public service.

Law 20.416, published in February 2010 introduced a regulatory framework for SMEs. This law, known in Chile as SMEs Statute (*Estatuto PyME*), introduced officially a form of RIA system in the country that is currently under way. Article 5 of SMEs Statute establishes a system according to which some estimates about possible social and economic impacts of new or existing regulations affecting SMEs can be identified prior to implementation. These estimates are designed to consider the costs and benefits of proposed regulations, in terms of compliance.

The Ministry of Economy has already observed challenges in the introduction of this RIA system. The forms that ministries have to fill in present difficulties to regulators who are not used to think in terms of costs and in quantifying those. As a result some documents are incomplete. The suggestions made by the Ministry of Economy are not public yet. In 2011, 50 draft proposals were received by the Ministry of Economy and it is estimated that another 50 draft proposals were incomplete. A relevant aspect of the system is that it has strengthened transparency through the role of the Council of Transparency that can request ministries to provide additional information.

In order to ensure proper management of the RIA system, *ex post* mechanisms should be introduced to evaluate *ex ante* estimates of regulators. This would ensure data improvement over time and higher quality of the analysis and estimations in further evaluations. *Ex post* evaluations should be published to ensure transparency in the process, and there should be clear criteria and methodological issues, such as indicators, impact identification, validation of information, etc.

Box 2.2. Linking *ex post* evaluation to the RIA system: International experiences

In the United Kingdom, the final version of the impact assessments includes a requirement to set a date (usually three years after the enactment of the new regulation) for review of what actually happened relative to predictions. The Better Regulation Executive has carried out compliance tests to check that regulatory proposals are accompanied by an impact assessment between 2002 and 2005. This was done by analysing the consultations undertaken by departments and the legislation that was then added to the statute book. Compliance levels varied between from 92% and 100% between 2002 and 2005. Since that time, compliance has been consistently at 100%.

In Italy, the Simplification Act of 2005 included an *ex post* evaluation clause (*Verifica dell'impatto della regolamentazione*, VIR) that should be carried out two years after the entering into force of the legal document under consideration. Subsequently, regulatory reviews should take place every two years. Unlike RIAs, there is no general obligation to carry out VIRs, and guidelines supporting *ex post* analysis will have to be drawn up. In the meantime, there is an annex attached to the enabling regulations that provides some basic indications on how to perform the analysis.

Source: OECD (2010), *Better Regulation in Europe: United Kingdom*, OECD Publishing, Paris. OECD (2010), *Italy: Better Regulation to Strengthen Market Dynamics*, OECD Publishing, Paris.

Another example in the executive branch that might deal in the future with some form of *ex post* evaluation in the environment field is the Service of Environmental Evaluation (*Servicio de Evaluación Ambiental*), a decentralised public institution that is in charge of the administration of the System of Environmental Impact Evaluation (*Sistema de Evaluación de Impacto Ambiental*), as well as the work at the Ministry of Environment, in charge of a future system of environment impact assessment. This system intends to harmonise the criteria, requirements, certification, formalities, technical obligations and all procedures requested by ministries and other public institutions to evaluate environmental projects. Even if it is an *ex ante* form of evaluation of projects, those that present changes have to be revised and then an *ex post* analysis is conducted. In the environmental assessment, participation of civil society is fundamental. People are invited to participate by sharing information on how to improve the proposals and to

identify ways of mitigating, compensating or reviewing possible impacts. Public consultation is open for sixty days. The responsible institution of the project has to publish an abstract of the Environmental Impact Analysis in the Official Gazette and a national or local newspaper. Since the introduction of the system in April 1997, over ten thousand projects were approved by the system.

Box 2.3. Evaluation in Spain: The Agency for Evaluation of Public Policies

Unusually compared with other European countries which do not have such an institution, ex post evaluation is potentially already institutionalised in Spain, via AEVAL (the agency for evaluation of public policies). AEVAL picks up broad public policy issues as well as Better Regulation specific processes (impact assessment and burden reduction). Recent institutional changes have changed the role of AEVAL, integrated it more firmly into the presidency ministry, and moved it away from a potential role to evaluate Better Regulation from a distance.

So far, no structured and integrated ex post evaluation of regulatory policies has been carried out. There are, however, plans for an annual monitoring of impact assessment policy.

Source: OECD (2010), *Better Regulation in Europe: Spain*, OECD Publishing Paris and *www.aeval.es/es/index.html.*

Attributions for law evaluation assigned to the Chamber of Deputies

The Chamber of Deputies in Chile does not systematically review laws *ex post*. An initial activity in this field has been tested through the evaluation actions of thematic workshops, which are developed by various commissions and where some topics of interest for parliamentarians and society are discussed. In those workshops, the methodological approach used is based on presentations made by specialists, government authorities, civil organisations and parliamentarians. Those discussions might lead to focus on the way a law has been implemented, but the primary intention is not to evaluate the law *per se*.

The establishment of some commissions to investigate, also a prerogative of the Chamber of Deputies, might lead to discuss the effectiveness and implementation of a certain law and its regulations. However, these commissions do not focus on the *ex post* evaluation of laws and there is no systematic approach to it.

New developments with the establishment of the Law Evaluation Department

The Chamber of Deputies has recently engaged in law evaluation in Chile. As part of the Office of Information in charge of data and information collection for the Chamber of Deputies, a recently established unit called the "Law Evaluation Department" is now in charge of evaluating laws *ex post* in the country.

The Law Evaluation Department (*Departamento de Evaluación de la Ley*) was created by an agreement of the Commission on Internal Regime, Administration and Regulations, issued on 21 December 2010. This was formalised by Official Note 381 of the Presidency of the Chamber of Deputies. The agreement was ratified by Resolution 857 of 27 January 2011 signed by the Secretary-General of the Chamber of Deputies.

The main responsibilities of this department are:

1. To evaluate the legal norms approved by the National Congress in co-ordination with the Secretary of the Commission in charge. The evaluation is made based on the effectiveness and influence on society. The Department might propose corrective measures to improve the implementation of the law evaluated.
2. To create and maintain a network of social organisations interested in participating in the evaluation process.
3. To inform the Secretary-General, through the Commission of Internal Regime, Administration and Regulations, about the results of the evaluation.
4. To suggest amendments to the current legislation, if needed.

The Resolution acknowledges the functional autonomy of the Department and its direct link to the Sub-chief of the Office of Information. The current institutional set-up however does not ensure financial autonomy. At the same time, the Resolution does not provide detailed information about the way the Department should be structured, how the Head of the Department should be selected or the various links to other areas of the Chamber of Deputies to provide technical autonomy of the work, e.g. the way laws to be evaluated are to be selected or how to present reports to the Floor or Commissions. Many of the procedures envisaged for the functioning of the Law Evaluation Department are based on the tradition of how existing bodies work and how they interact with superior instances inside the Chamber of Deputies.

The Law Evaluation Department has currently four permanent staff and one Head. All of them have extensive experience in the various years they have served in the Chamber of Deputies. At the current stage, the Department does not envisage to hire additional staff, despite the need to have other specialists, like a sociologist and an economist, to complement the analytical part of the evaluation.

Initiatives like this one are not common in OECD countries. Despite the existence of law commissions in most parliaments around the world, there are very few institutions inside parliaments that specifically deal with systematic *ex post* evaluation of primary laws.

The role of Commissions within the Chamber of Deputies

Commissions are responsible for discussing specific topics. In terms of law proposals, they play an important role in ensuring the quality of the drafts. The Chamber of Deputies in Chile has various types of commissions: permanent, united, special, mixed and for investigations.[12] For the law making process, only the first four are of relevance, in the following way:

- *Permanent Commissions:* There are currently 24 permanent commissions in the Chamber of Deputies.[13] They deal with the following issues:
  - Interior and regionalisation
  - Foreign affairs, inter-parliamentarian affairs and Latin American integration
  - Constitution, legislation and justice
  - Education, sports and recreation
  - Finance

- National defence
- Public works, transports and telecommunications
- Agriculture, forestry and rural development
- Natural resources, national goods and environment
- Health
- Employment and social security
- Economy, promotion and development
- Housing and urban development
- Human rights, nationality and citizenship
- Family
- Science and technology
- Fisheries and maritime affairs
- SMEs
- Extreme zones
- Citizen's security and drugs
- Culture and arts
- Poverty reduction, planning and social development
- Parliamentary behaviour

- *Special Commissions:* Special Commissions are established for six months, with a single possible extension for another six months. They do not fully concentrate on reviewing law proposals. They can have an informative role for the Chamber.[14] The current special Commissions are the following:
  - Special Commission to Study the Political Regime of Chile
  - Special Commission for Benefits for Disabled People
  - Special Commission for Sports
  - Special Commission for Youth
  - Special Commission for Tourism
  - Special Commission for Freedom of Thought and Expression
  - Special Commission for Chilean Policy concerning the Antarctic
  - Special Commission for Firefighters
  - Special Commission for Historic Debts
  - Special Commission for Stock Exchanges and its Operators

Box 2.4. *Ex post* evaluation of laws in Commissions in selected OECD countries

In France, several organisations monitor the correct implementation of regulations and supply information for evaluating regulations once they have been implemented. One of these bodies is in the French Assembly. The Commission of Constitutional Law, Legislation and General Administration of the Republic deals with issues about constitutional law, organic laws, internal rules, electoral law, public freedom, security issues, administrative law, civil service, judicial organisation, civil law, commercial law, general administration of the State and territorial collectivities. The Commission prepares a number of reports for information on topics of interest to the French society. It also prepares control reports on the application of certain laws (Rapports sur la mise en application de la loi). In most cases these reports contain an analysis of proposed amendments that are discussed in the parliament as well as points of views of various stakeholders interested in the issues. The Commission also publishes a yearly report on the implementation of approved laws and an overall assessment for each legislature. It examines the ability of the government to implement the law using enabling decrees.

In New Zealand, the Regulations Review Committee, a specialist committee within the House of Representatives, examines all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in bills. Although it carries out technical scrutiny of regulations, the committee seems to rather watch over the constitutionally proper use of regulation-making powers than dealing explicitly with regulatory quality or conducting ex post evaluation. The committee scrutinises existing regulations. It can only analyse draft regulations if referred to it by a minister. A complaint should be made in writing and needs to set out how the person or the organisation making the complaint has been aggrieved. It should address one of the following:

- the relationship between the Act and the regulations;
- the practical operation of the regulations;
- the implementation of the policy in the regulations;
- the regulation-making process itself.

The committee currently has 7 voting members. It is, by convention, chaired by a member of the opposition.

In Belgium, the Comité parlementaire chargé du suivi legislatif is composed of eleven members each from both houses. Members are selected according to the parties' proportional representation within the parliament. The committee will work as follows: parliamentarians, civil servants, or any member of the public can ask the committee to look into laws that have been in place for at least three years if they feel that the law in question is a) inadequate or b) difficult to implement due to the complexity of the text, gaps, inconsistencies, lack of precision or multiple interpretations. If the committee chooses to examine the law (for which it can also make use of external experts), it produces a report that is presented to both houses as well as the ministry in question. The committee can unanimously add recommendations to the report.

Source: *www.assemblee-nationale.fr/commissions/59051_tab.asp*; *www.pco.parliament.govt.nz/law-drafting*.

- *United Commissions:* United Commissions can be constituted by two or more commissions, according to the indications made by the Chamber of Deputies.[15] They are composed normally of two commissions.
- *Mixed Commissions:* Mixed Commissions are constituted when a law proposal has been amended by the Revising Chamber, sent back to the Chamber of Origin and the latter rejects the amendments or modifications. They are constituted at late stages of the law making process.

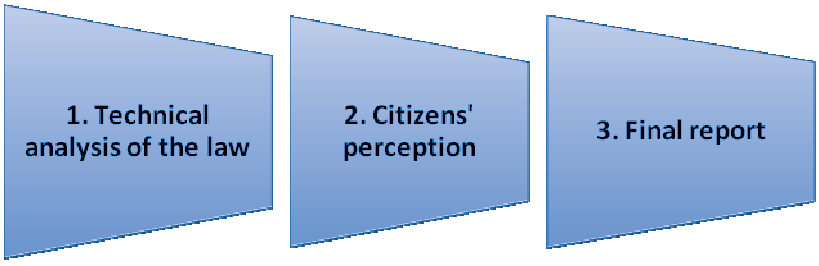
2.3. Current experiences with law evaluation in Chile

Law evaluation in Chile is a recent activity both in the executive and the legislative branches of government. This section will mainly concentrate on the current efforts made at the Chamber of Deputies, after the establishment of a Law Evaluation Department that is building a methodological approach to use *ex post* evaluation for relevant laws in Chile.

Methodologies

Because of the novelty of these activities, the methodological approach to law evaluation is under construction at the Department. The current process for law evaluation mainly envisages the preparation of a final report that would include an analysis of the implementation of the law and the perception that citizens have about it. It is expected that the Law Evaluation Department should concentrate mainly on laws that deal with social issues affecting the Chilean society.

The Law Evaluation Department is in charge of developing a three-stage project to evaluate the effectiveness of the law. The three stages cover the following issues:



The analysis of the law has the following objectives:

- Determine the compliance degree of the expected objectives when the law was passed.
- Identify the externalities, impacts and non-desired effects when the Congress was legislating.
- Know citizen's perception about the law and its implementation.
- Propose corrective measures to the law and its implementation.

Other OECD countries also envisage *ex post* evaluation for similar purposes, but over the years they have been able to establish clear criteria that any analysis should contain.

At the same time, the diversity of fields in which the evaluation can be done has led to distinguish between types of possible *ex post* reviews, for example, the case of Australia (Box 2.5).

Box 2.5. Criteria for *ex post* evaluation in New Zealand and Australia

In New Zealand, the "Code of Good Regulatory Practice" (CGRP) requires regulators to review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively. The Code of Good Regulatory Practice discusses efficiency, effectiveness, transparency, clarity and equality in regards to regulation (see Annex C).

In Australia, ex post evaluation has made use of various methodological approaches and tools. After various years of conducting some types of systematic ex post reviews of regulations, for instance on regulatory burdens on businesses, an array of approaches has been used to identify progress reforms to existing regulation. These include:

- *Regulation stocktakes:* Stocktake reviews generally take the objectives of the regulation as given, focusing mainly on their cost-effectiveness. They can have a very broad ambit across all industries or be more focused on specific sectors or activities. In Australia, stocktake reviews have mainly been used to identify unnecessary regulatory burdens — the costs and distortions that are excess to meeting the objectives of a regulation.
- *Ad hoc* reviews*: Ad hoc* reviews, in contrast to stocktake reviews, are usually sector or industry-focused, and usually have the scope to examine the objectives of the regulation to assess whether it is appropriate as well as looking at cost-effectiveness. They may have various triggers: election commitments; departmental, industry or consumer calls for reforms; a crisis; or emerge from other review processes.
- *Principle-based reviews:* Principle-based reviews establish a set of principles which work as filters for reviewing regulation within a program of regulation review. Regulations are initially screened with more detailed analysis applied for those regulations that fail against the principle. Like ad hoc reviews, the triggers for establishing such a regulation review program can vary, but a case needs to be made to justify the selection of the filter.
- *"Built-in" reviews:* Built-in reviews are mandatory requirements for a review of the regulation to be undertaken at a specified point. A built-in review is usually embedded in the legislation, either by explicit design, such as where the outcomes of regulation are highly uncertain, or by convention such as with sunset clauses. But in other cases, a more general rule about when an *ex post* review is automatically required can be applied, such as where good process has not been followed in the introduction of the regulation. Such automatic or built-in evaluation of reforms requires governments to assess, at some defined point, the performance of a regulation. Ideally this will be an assessment of whether the regulations are achieving their purpose at least cost, and possibly whether the objectives of the regulation remain appropriate.

In addition there are a number of tools that can be used to help manage the stock of regulation, including red tape reduction targets, rules such as "one-in one-out" and regulatory budgets, and other initiatives such as established complaint mechanisms and regulator feedback. These approaches are not mutually exclusive and a regulation review may utilise more than one approach. The categorisation is simply a useful way to identify different types of triggers for review, governance arrangements, data collection and analysis, and reporting processes.

Source: *www.med.govt.nz* and Productivity Commission (2011).

The Law Evaluation Department has elaborated a proposal by which the decision of the laws to be evaluated should be made at the highest level of the Chamber of Deputies, e.g. proposing that the Table of the Chamber of Deputies selects the laws to be evaluated for the next year, from a list that the Department would put forward. This list should be prepared applying the following criteria proposed by the Department and the Table of the Chamber of Deputies:

1. *Criterion of political neutrality.* Laws selected must regulate topics which are not ideologically debatable, nor generate political-partisan alignment, but rather refer to topics of social interest, with independence of political sensitivities.
2. *Criterion of general applicability of the law (massive character).* This means that the effects of the law to be evaluated expand or affect a great percentage of the population.
3. *Contingency criterion.* It must deal with laws that regulate problems of high incidence in the public opinion, and clear media presence.
4. *Criterion of methodological feasibility.* It must deal with regulations that allow simple quantification and comprehension index design, so that it be possible to measure the degree of fulfilment of the citizenship or the efficiency degree of the State in the implementation of the same.
5. *Criterion of temporal feasibility.* Legal regulations must allow that their process of evaluation do not exceed six months, so as to generate products in a period adequate to the parliamentary institutional dynamic. Laws to be selected must have been in force for at least one year minimum.
6. *Criterion of technical feasibility.* Selected norms must be susceptible of evaluation with the technical, human and financial means available.

According to the current approach in the Law Evaluation Department, the law evaluation in Chile could carefully look into the following kind of impacts, depending on the scope of the law:

Table 2.1. Type of impacts to be evaluated

Economic	Implementation costs (expected vs. effective); non-expected costs; projected or expected benefit vs. obtained benefits; benefits on productive activities and/or commercial
Financial	Sources and resources expected to implement the law
Social	Outcomes related to the expected beneficiary; non-expected effects; degree of satisfaction with the expectations of beneficiaries and citizens
Cultural	Outcomes produced by the law and its implementation in relation to the way the society perceives and conceptualises the subject of the law
Environmental	Impacts on the physical environment (pollution, employment) or biological (biodiversity, reduction in the number of individuals, habitat, etc.) or on the human environment (pollution, traffic congestion, quality of life, etc.)
Institutional	Creation of new bodies or services; attribution of new responsibilities to existing or new bodies; reassignment of functions or services to bodies; need to co-ordinate and co-operate among services and bodies; need of new positions in the public service or new personnel for specific assignments
Legal	Expected impact on other laws (modifications, etc.); non-expected impacts on other laws and regulations; regulations passed by the executive to implement the law

Source: Adapted from Office of Information (2011), Working Paper on the Implementation of the Law Evaluation Department, Chilean Chamber of Deputies, March.

There is so far no particular quantitative methodological approach to measure the impacts, in terms for instance of cost-benefit or cost-effectiveness, of laws to be reviewed. The absence of *ex ante* analysis in Chile makes difficult the comparison over time of the effects of any law. The Law Evaluation Department is confronted with the need to construct the baseline for analysis as part of the *ex post* work.

In the current Chilean process, the various stages for law evaluation are the following:

1. Establishment of the reason why the issue was regulated, why the problem was intended to be solved or why the law reflected on this topic. This would include an analysis of the story of the law, since the first ideas about it during the pre-legislative stage until its promulgation.
2. Identification of the main goals of the law (general and specific). This would be done through the historical review of the law and other legal instruments used by the legislators to achieve the goals intended with the law.
3. Identification of the tools used by the legislator to achieve the goals. This would benefit from the creation of compliance indicators.
4. Identification of the public services or institutions that participate in the implementation and enforcement of the law under scrutiny, as well as their various responsibilities
5. Identification of the various stakeholders and affected groups by the law. This would help seeing how groups were affected before and after the existence of the law.
6. Identification and measurement of the effects of the law. This would imply identifying the way the law has had impacts or effects in various groups.
7. Identification of the civil society organisations affected by the law. This would facilitate broader participation of these groups in the analysis.
8. Determination of the citizen's perception about the law. This would be use through the development of various tools to ensure that citizens have an opportunity to express their views on the effectiveness of the laws.
9. Analysis of the date collected and preparation of a final report. This would result in the preparation of a final document to be sent first to the Committee on the Law Evaluation which will evaluate the report and send it to the Floor and other interested parties or committees in the Chamber of Deputies for further discussions.

The Law Evaluation Department is developing a methodology and building indicators for each one of the stages. In addition, it is also identifying what the sources for data collection in each one of the stages are and how information should be processed at each one of the various stages of the analysis.

Box 2.6. *Ex post* evaluation of laws in Victoria, Australia

Victoria in Australia has made important steps in reviewing the stock of laws and regulations. A distinctive tool used to ensure that laws are reviewed after a certain period of time they have been in force is sunsetting clauses. In Victoria, for instance, all regulations covered by the Subordinate Legislation Act 1994 are revoked or "sunset" after 10 years. This process of regular review has been in place in Victoria since 1985 and has contributed to the removal of unnecessary regulation. The Victorian Guide to Regulation notes the importance of the 10-yearly review:

In order to replace sunsetting regulations, it is important to provide a strong and clear demonstration that each restriction imposed by regulation is still required. When replacing sunsetting regulation, whether in similar or modified form, particular attention should be given to the following requirements during the preparation of the RIS:

- demonstrating that the nature and extent of the problem still require a regulatory response;
- evaluating the effectiveness of the regulatory regime to be re-introduced;
- substantiating that the particular regulatory responses remain the best solution;
- conducting the cost-benefit analysis in terms of comparison with the base case of an unregulated solution (where possible, while also highlighting any difference between the proposed regulations and those sunsetting and their likely effects).

Sunset clauses force parliament to consider whether a rule is still doing its job well, needs to be revamped or is no longer relevant. Sunset clauses should set specified timeframes and a methodology for the sunset review.

Source: *www.vcec.vic.gov.au.*

Citizens' perceptions

Citizens' perception is a fundamental stage in the suggested approach for *ex post* evaluation of laws in Chile. As part of the various stages for law evaluation, citizens' perception is an important component of the methodological approach. The Law Evaluation Department is currently designing tools to collect information about that perception, such as on-line questionnaires, on-line chats, questionnaires for particular groups, development of focus groups, workshops, etc.

The Law Evaluation Department is also building a data base containing registries of civil organisations and people that are linked to the Chamber of Deputies, in terms of their participation in legislating, supervising or representing particular stakeholders.

The Law Evaluation Department has also created a Citizen Forum, an open space for personal or virtual participation, where civil organisations or citizens will be able to express their opinions. The objective is to keep close contact with the Chamber of Deputies and to offer citizens with an opportunity to express their views about the laws under analysis. People that want to participate at any stage of the law evaluation and through the Citizen Forum have to register (on-line or personally) and send an e-mail or telephone number for further contact.

The participation in the Citizen Forum will depend on the subject of the law that is being evaluated. Participation might be virtual or in person (through focus groups, round tables, seminars, etc.), depending on the technical approach used to conduct the law evaluation. All information about participation and timetable for participation will be available on the website which will also be used for opinions, suggestions to improve the law that is being evaluated, share documents, and to participate in activities such as questionnaires, consultations, etc.

The Law Evaluation Department is in charge of moderating the Forum and co-ordinating all activities to ensure and encourage proper participation.

The current pilot project has shown that the Forum is a tool to connect citizens with the work carried out on law evaluation, but it requires technical support to make it user-friendly for participation and be accessible. Technical resources and constant updates are essential to ensure that the relationship with stakeholders is strengthened over time and provides open and transparent channels for participation.

Achievements

The work on *ex post* law evaluation in Chile is very recent; therefore no clear achievements can be used for an assessment of the whole process at this stage. Some initial remarks on areas of possible further improvements are considered in Chapter 3.

The Law Evaluation Department has finalised a pilot project to test the methodological approach prepared for its tasks. The pilot project is reviewing Law 20.413 that establishes the principle of universal organ donors. The analysis of various stages of the process has been finalised, and basically covers the following activities according to the proposed methodology:

1. The study focussed on the analysis of the main following issues: the motion and parliamentary debate of the project, the law itself and the legal environment, and comparative legislation at international level.
2. The information published in the media when discussed at parliament was revised, as it was part of the social context in which the law was prepared. This was supplemented with an analysis of scientific literature about the medical, social, ethical, budget and economic issues involved on the topic.
3. The Law Evaluation Department conducted different statistical studies to evaluate the evolution of a number of variables since 1996, such as the number of donors and transplants, the evolution on the willingness to donate, etc.
4. Several interviews were conducted with representatives from public institutions, such as the National Co-ordination for Transplants, the Service of Public Registry and Identification, the various officials in charge of facilitating transplants in health institutions; various experts; and universities that have followed up this issue and carried out studies.
5. The Law Evaluation Department has also requested information to various institutions in order to evaluate and assess the impact of the law.

This pilot project has produced results that reveal various issues: first, there is a negative tendency to donate and the purpose of the law, e.g. to increase the number of organ transplants in Chile, has not been achieved. Second, the main concept introduced by the law, about universal donors, is not easily applicable in the Chilean context, since a number of social, ethical and cultural elements play an important role in the way people relate to the idea of being donors by law. Third, the creation of a Registry of Non-Donors is not reliable and it was found that the lack of transparency in the system affects the citizens' perception about the trust in the system. Fourth, the creation of a special co-ordinator for organ transplantations and donations is a positive step to enforce a certain level of co-ordination in this field.

The analysis conducted has also shown that a number of issues were not taken into consideration when the law was first discussed, such as the lack of a national policy on donor transplantations that could include issues dealing with education, finance and the transparency of the system. The law has experienced implementation failures also due to the lack of infrastructure and human resources devoted to ensure that a donor policy is in place.

The Law Evaluation Department published its evaluation on its website with some recommendations for improvement, based on the analysis made to the current legal framework. The Department sent its evaluation report to the Committee on Law Evaluation, the Floor and the Commission on Health in the Chamber of Deputies. In addition, the report was sent to the Commission on Health in the Senate and other institutions that actively participated in the review process.

Notes

1. In August 2005 a bill embodying 58 constitutional reforms was approved by Congress and endorsed by the former President Lagos. Key features of the reforms included: Presidential term reduced from six to four years; the end of designated senators and "senators for life", leaving just 38 senators elected by popular vote; and responsibility removed from the armed forces as "institutional guarantors", changing functions of the National Security Council and the restoration of power to the President to remove commanders-in-chief of the armed forces and the forces of order.
2. From 1990 to 2011, Chilean parliamentarians introduced 5 591 proposals versus 2 247 proposals from the executive. However, only 1 662 proposals from the executive were published versus 478 from the legislative. Data provided by the Law Evaluation Department.
3. According to Article 65 of the Constitution, the motion cannot be proposed by more than ten Deputies or five Senators.
4. Article 14 of Law 18.918.
5. According to Article 65 of the Constitution, among those exclusive attributions to the President of the Republic are: to impose or suppress taxes, to create new public services or positions in the public administration, and in general all projects that impose a new expenditure for the State. In case a motion is presented on any of those topics, it would be considered inadmissible.

6. Article 66 of the Constitution.
7. Article 68 of the Constitution.
8. Article 70 of the Constitution.
9. Article 72 of the Constitution.
10. Articles 32-36 of Law 18.918.
11. Article 75 of the Constitution.
12. Title II of the Internal Regulation, article 212 and following, as well as article 17 of Law 18.918.
13. All information about them can be found at www.camara.cl.
14. Article 229 of the Internal Regulation.
15. Article 228 of the Internal Regulation.

Chapter 3

Conclusion: Assessment and recommendations

Ex post *evaluation should be seen as a first step in the construction of a self-contained regulatory management system that embraces the whole law-making process. Indeed, very few OECD countries have embarked on a systematic approach to* ex post *evaluation and there is an opportunity in Chile to develop a model that can be innovative and successful. However, it is essential to establish clear criteria for analysis, prioritise the laws or areas to be tackled, and to guarantee financial and technical resources to conduct the review process, as well as institutional aspects relevant to the well functioning of the unit in charge of these tasks. In addition, strong co-ordination mechanisms between regulatory institutions and, in this particular Chilean case, branches of government, as well as high political support are essential for a successful review. Consultation with stakeholders needs to be properly structured to get the most out of that exercise and to ensure that the content of the regulation is reviewed with care and reflects perceptions of how regulation affected interested parties.*

The construction of an *ex post* evaluation system of laws in Chile is a welcome move to improve regulatory quality in the country. Indeed, very few OECD countries have embarked in a systematic approach to *ex post* evaluation and there is an opportunity to develop a model that can be innovative and successful. But to reach that stage, various conditions are at stake and this effort lies in the broader context of the regulatory policy development and regulatory quality management.

In countries where no previous experience related to any kind of impact assessments exist, *ex post* evaluation of laws can be a good starting point to consider on the impacts and unintended consequences of regulatory action. Supported with adequate techniques to combine quantitative and qualitative analysis, *ex post* evaluation could become a powerful tool to review existing regulations. However, it is essential to establish clear criteria for analysis, prioritise laws or areas to be tackled and guarantee financial and technical resources to conduct the review process, as well as institutional aspects relevant for the well functioning of the unit in charge of these tasks.

In addition, strong co-ordination mechanisms between regulatory institutions and, in this particular Chilean case, branches of government, as well as high political support are essential for a successful review. Consultation with stakeholders needs to be properly structured to get the most out of that exercise and ensure that content of the regulation is reviewed with care and reflects perceptions of how regulation affected interested parties.

In the Chilean case, *ex post* evaluation should be seen as a first step in the construction of a self-contained regulatory management system that embraces the whole law making process. Ensuring that laws and regulations are systematically reviewed to introduce amendments and changes that can reduce risks and failures is a responsibility of regulators. Implementation of those analyses is important to guarantee the effectiveness of the approach.

Assessment: Main challenges to establish an ex post *evaluation system in Chile*

The introduction of a systematic approach for *ex post* review of laws faces various challenges in the Chilean context. Some of the issues that have been identified as challenges are discussed in the following sections. As it can be seen, various OECD countries are also dealing with similar challenges and the idea to present some international experiences, in particular for those cases where information is available, is to encourage the Chilean authorities to reflect on some of these issues so the Chilean system can be enhanced.

Institutional challenges

Chile has a relevant tradition of monitoring and evaluating public policies and public spending in all branches of government. This can facilitate, to a certain extent, the introduction of reviewing laws *ex post*. But experiences are mainly concentrated in the executive branch, which calls for co-ordination and communication with those that could share experiences with the Law Evaluation Department.

Issues of concern however should not be overlooked, since *ex post* evaluation requires a not only a high political commitment, but rethinking the way regulations are conceived, designed, implemented and reviewed.

Among the institutional aspects that should be taken into account are:

- The consolidation of the Law Evaluation Department represents an institutional challenge, as this unit needs to be adequately staffed and to have the appropriate financial resources to conduct its activities. It is essential to constitute a team of professionals with various backgrounds that develop methodologies and learn the use of tools to conduct *ex post* review processes. At the same time, the unit needs to have financial resources available to engage in the review and put in place the use of tools and methodologies, in particular quantitative that can provide better evidence based for decision-making. A proactive attitude is essential to guarantee that evaluations are consistent, well developed and based on evidence. Resources and adequate staff will be insufficient if there is no clear prioritisation on what has to be reviewed. An appropriate focus on certain priority areas is fundamental to scale up the work over time and ensure sustainability in the medium and long term.
- The Department needs to ensure high political support and visibility in order to carry out its functions and responsibilities. The attributions to conduct reviews of laws are clearly established in a policy and legal document that gives the authority to conduct such a work: the Chilean Law Evaluation Department was established by an Agreement of the Commission for the Internal Rules, Administration and Regulation that was ratified by a Resolution of the Secretary-General of the Chamber of Deputies, which provides a good initial legal basis for its work. This should ensure the political commitment to the work the Department would carry on. But sometimes a higher legal instrument, like a law, might be of help. In Victoria, Australia, for instance, the Subordinate Legislation Act 1994 provides the basis for the Victorian Competition and Efficiency Commission's functions in relation to regulatory reviews.
- The institutional set up of the Law Evaluation Department does not have so far clear indications on several relevant operational issues, such as the interaction with other bodies in the Chamber of Deputies, the way its Head should appointed, the way laws would be selected for review, the best way to disseminate results of the review process, the way the Department could guarantee full access to information from other government bodies, etc. In many countries having full access to information is a challenge that can only be completed with strong political support and a clear legal mandate for that. Some of these issues are dealt by traditional procedures and the Department might well operate like this today. The Department could however benefit more if it had clearer internal rules that establish a better basis for its functioning, ensuring a well defined institutional strength and the power to conduct *ex post* reviews without depending of traditional procedures.
- Another institutional challenge remains in the co-ordination degree between the legislative and the executive to conduct *ex post* reviews of laws. The application of laws, in most cases, lies in institutions of the executive branch that are responsible for ensuring a certain degree of compliance and enforcement. Any information for the *ex post* reviews should be collected in co-ordination with those institutions responsible for law implementation. Co-ordination is key in this process and if the Law Evaluation Department is located in the legislative, there has to be an agreement of how the interaction between branches of government would operate in practice.

- One important challenge common to most countries is the integration of *ex post* evaluation of laws and regulations to all branches of government. *Ex post* evaluation should be a task for all institutions involved in law preparation and implementation. In many OECD countries, like the United Kingdom (see Box 3.1), *ex post* evaluation is a continuous work of various institutions that work on the implementation of regulations and to understand the effects of such regulatory instruments.

Box 3.1. Key actors in the United Kingdom dealing with *ex post* evaluation

In the United Kingdom, ex post evaluation is an area where various actors play a fundamental role to understand the effects of regulations. In the executive branch, the Better Regulation Executive and the Treasury have embarked in guiding the ex post efforts in the British administration. These institutions are pursuing post implementation review and close follow up of the outcomes of regulations. Particular attention is paid to enforcement, ensuring that regulators comply with what is expected or explain the reasons why outcomes are not achieved. The Executive is also considering the inclusion of sunsetting as a way to ensure regular reviews of regulatory regimes.

The British parliament is also involved in ex post evaluation. Selected committees deal with sectoral regulatory frameworks, but also there are cross-cutting issues that these committees deal with, such as regulatory reform, merits of statutory instruments, etc. The parliament is involved in post implementation review and post legislative scrutiny.

The National Audit Office (NAO) is also involved in ex post evaluation through the regular work that has been developing on evaluating the quality of impact assessments and reviews on specific topics.

- An additional institutional challenge lies in what is expected from the *ex post* evaluation *per se* and the way the results of that evaluation are incorporated into the law making process and the possible revision of the law. In the current Chilean approach, there is a need to better link the work on *ex post* evaluation conducted by the Law Evaluation Department (the final report to be presented to the Committee on Law Evaluation and other Commissions) to the recommendations of implementation and the potential changes or amendments that will result from their work. It is important to think about the mechanisms for implementation of the recommendations, avoiding delays that could result in instability or legal uncertainty because a particular area is being reviewed and the regulatory framework needs to be adjusted accordingly. The results of the first pilot project, for instance, were shared with the Commission on Health in the Chamber of Deputies. The report was published in the website of the Law Evaluation Department and it was also sent to the Commission on Health in the Senate and to institutions that participated in the review.
- Another important institutional challenge in Chile refers to the need to link *ex post* evaluation to *ex ante* assessment that is currently missing in the country. *Ex post* evaluation can be seen as the last or the first step in the policy cycle. In both cases, its link to *ex ante* evaluation is fundamental. A proper understanding of the status quo can only have an impact and bring results in the medium and long term, if there are modifications, amendments or new laws that capture the suggested changes of the conducted evaluation. At the institutional level, this means that the work done

by the Chamber of Deputies needs to feed the policy and regulatory cycle as a whole and Chile should seriously consider the introduction and implementation of a system for Regulatory Impact Analysis (RIA).

Methodological challenges

An essential element of the *ex post* review of law refers to the methodological procedures and approaches that will be used to gather, process and assess information. In this particular area, there are various challenges that should be taken into account:

- The recent creation of the Law Evaluation Department still raises concerns in itself in terms of the systematisation of its working methods and approach to *ex post* evaluation of laws. There is a need to establish clear criteria for the review of laws, and to consolidate the current list of types of impacts to be analysed. One of the main challenges is to come up with a model for law evaluation that is technically strong and can be replicated for various types of legal norms. So far the current experience lies in a single pilot project that has served to accumulate experience and ensure technical assistance to create a valid methodology. Certainly good lessons would be extracted from that experience that can help the Department review the initial approach and identify key areas that can be used for other laws.

Box 3.2. Prioritisation for *ex post* law evaluation

Prioritisation is essential for successful ex post review. Not all laws will be reviewed and there has to be an agreement of what are the criteria for selection.

In some countries, like Australia, reviews have to be conducted regularly unless the regulation is subject to the review provisions in the Legislative Instruments Act 2003, or to any other statutory review provisions. The new efforts in this direction are yearly reviews that will commence in 2012 when the first of these reviews will be required. A screening process will be conducted to determine which regulations are selected. The review should take into account the nature of the regulation and its perceived performance. Australian agencies will communicate their review schedule (all regulation subject to review in the upcoming year) and strategies in their Annual Regulatory Plan. Five-yearly reviews will also be published on the Office of Best Practice Regulation (OBPR)'s online Regulatory Impact Statement (RIS) register.

In Denmark, the Danish government has established a law surveillance procedure to scrutinise ex post the economic and administrative consequences of existing laws, and also to find out whether they fulfill the goals they are meant to serve. The initiative dates back to 2000, with the first reports issued in 2002-03. Law monitoring applies to a number of laws which are selected every year as part of the preparation of the law programme. The process can also be undertaken for laws that have already been promulgated. Priority is given to laws which regulate in a new area, laws for which there are uncertainties about the consequences or about the management and resources needed to achieve their goals. The report is prepared by the relevant ministry, and sent to the relevant parliamentary committee. The process involves consultation with external stakeholders and relevant authorities.

- Another methodological challenge refers to developing a system of prioritisation of laws to be reviewed that can be done, for instance, on a yearly basis. Even if the Chamber of Deputies will be responsible for the evaluation of laws, a clear

interaction with those institutions in charge of implementation, mainly in the executive branch, is fundamental for success. As for the *ex ante* evaluation, *ex post* evaluation should be based on the same principle for prioritisation: reviews should be done on those laws that have the greatest impact and costs on society or where the greatest net benefit could be found. Given the limited resources in place to conduct exhaustive *ex post* evaluations, there has to be an intelligent selection of laws to be reviewed, based on clear priorities. This would also reduce discretion on which laws to be reviewed and the reasons why they were selected.

- Consultation is essential for *ex post* evaluation of laws in order to understand how laws have affected people and various stakeholders. Regulators can only get information if they talk to people. But that dialogue is not simple. Citizens' perceptions are an interesting tool to bring that perspective into the analysis, but they need to be carefully thought.
- Another methodological challenge refers to developing strong tools to ensure citizens' participation in the evaluation process. Technical capacities need to be developed to make use of well developed techniques, such as surveys, questionnaires, etc., that provide evidence of citizens' perception of law implementation. Those tools have to be constructed to obtain particular data that can provide clear indications of how citizens have been impacted by the law, and not only the subjective perception of how citizens see the law implementation. An interesting study conducted in the UK revealed some of the risks associated to citizens' perception (see Box 3.3).

Box 3.3. Citizens' perceptions on regulations: A UK case study

In 2009, the Better Regulation Executive commissioned a consultancy to carry out research aimed to better understand how people experience regulation through their work and personal lives. To do this, two groups were selected and loosely defined as:

- The general public – members of British society who have had some experience of regulation.
- Business people – in particular key decision makers in businesses who are likely to be in contact with regulation.

Some of the results of this study revealed the following issues:

- **Personal experience is the primary driver of opinion**. Individuals primarily anchor their attitudes in personal experience when discussing regulation. If they do not have personal experience, they will form opinions based on anecdotal evidence gleaned from friends and family or the media. Individuals tend to use media stories to reinforce their opinions. As a result, a strategy that improves personal experiences and simultaneously communicates those improvements through a variety of channels, including the media, will have the widest reach and lead to more cost effective perception management.
- **Regulation is a difficult concept and rarely separated from perceptions around enforcement**. People struggle to articulate a definition of regulation and often talk vaguely about the subject, drawing on different facets of their lives to order their thoughts – a process which often results. Most people struggle to give a coherent and clear picture of how regulation impacts on their personal lives, and how that system meshes with the needs of society.

- **Individuals do not have a uniform opinion of regulation**. Perceptions of regulation vary from one individual to the next but individuals also do not hold uniform views. One person may have a strongly negative opinion of health and safety but a very positive opinion of the smoking ban, for example. Personal experiences of regulation are heavily compartmentalised, which makes it important for regulators to establish exactly which areas are in need of improvements and which are not.
- **The more informed a person is, the more balanced his approach to regulation**. Individuals with higher levels of awareness and a stronger understanding of regulation tend to have more balanced perceptions of drawbacks and benefits, whereas the views of those with a limited understanding tend to be more polarised.
- **The benefits of regulation: protection, a fair playing field, sacrifices worth making**. Where the benefits of regulation can be concretely demonstrated, the discourse quickly moves away from the invasiveness and distraction of regulation to encompass feelings of security and protection.
- **Low recognition of regulatory bodies may hamper the development of trust**. Regulatory bodies are not well known. Very few individuals are able to tie regulation back to the governing regulatory body. Regulation can have a tangible impact on people's everyday lives, which means they have an emotional dimension. Regulatory bodies that take this into account when communicating on regulation, and that are able to demonstrate greater engagement with the public, will more likely than not see acceptance of their regulation than those bodies who circumvent it.
- **"Bad" regulation is more visible while "good" regulation is more closely aligned in people's minds to common sense**. Where individuals discuss 'bad' regulation, the discourse is usually derived from a feeling that regulation lacks a clear purpose and that it is invasive and disruptive. 'Good' regulation on the other hand achieves a certain level of invisibility, because they are deemed to have a clear purpose which is aligned to common sense.
- **Regulatory language has a critical impact on perceptions.** All individuals, whether heavily engaged with business compliance or not, are put off by unclear and convoluted language.

Source: *www.bis.gov.uk/files/file53236.pdf.*

Recommendations

The following recommendations are suggested for further discussion with the Chilean authorities to consolidate an *ex post* evaluation system at the Chamber of Deputies, based on good international practices and with the aim to enhance the regulatory management system in the country. They are divided into three categories: institutional, methodological and governance issues.

Institutional issues

The consolidation of the Law Evaluation Department would benefit from the following considerations:

1. Strong political support

Political commitment and support to the work of the Law Evaluation Department should be explicit and sustained over time. The findings of the evaluation reports might raise concerns about the work of specific agencies, which is why strong back up is critical to protect its independence and objectivity.

2. Independence and non-partisanship

Independence and non-partisanship are the pre-requisites for a successful operation of the Law Evaluation Department. This would strongly favour the functional autonomy of the Department.

The director should be appointed by the legislature – ideally by unanimous vote. The director should have statutory independence and full freedom to hire staff. His qualifications should be made explicit. This would draw attention to the complexity of the evaluation process and support his appointment as the only person likely to fully understand the practical implications.

3. Mandate and resources

The mandate of the Law Evaluation Department should be more explicit on the scope of the work on law evaluation – i.e. what type of reports and analysis it is to produce, and provide clear technical criteria to select the laws to be reviewed. The Chamber of Deputies should have a defined role and responsibility in the selection of the law to be evaluated.

The resources (financial, human, technical, etc.) given to the Law Evaluation Department need to be commensurate with its mandate so that it is fulfilled in an adequate and comprehensive manner.

4. Relationship with parliament commissions and parliamentarians

The role of the Law Evaluation Department *vis-à-vis* the Law Evaluation Commission, other commissions and parliamentarians in terms of requests for special analysis should be clearly established in legislation.

Hearings with the director of the Law Evaluation Department could be organised so that commissions are informed about the results of evaluation reports.

5. Full access to information

The attributions of the Law Evaluation Department to request information from the executive should be explicit in its legal mandate.

6. Communications

The information provided by the Law Evaluation Department should be made available concurrently to all political parties and the public.

The release dates of major reports and analysis should be formally established, especially in order to co-ordinate with the deliberation of the parliament. The Department's work needs to be carefully planned not to pre-empt government reports.

The Department should release its reports in its own name, rather than providing them to other parliamentary or government institutions who in turn would release them.

Methodological issues

The work of the Law Evaluation Department would benefit from the following considerations:

1. Systematisation of the working methods

There is an opportunity to improve the systematisation of the working methods and approach to *ex post* evaluation. Based on the lessons learned from the pilot project and the valuable expertise developed, the Department should continue to develop a robust model for law evaluation that is technically strong and can be replicated for various types of legal norms.

2. Clear criteria and prioritisation for law evaluation

The proposal made by the Law Evaluation Department to establish clear criteria for the review of laws should be adopted by parliament. International experience shows that reviews should be carried out on the laws that have the greatest impact and costs on society or where the greatest net benefit can be found. The Department should also develop a system of prioritisation that can be exercised on a yearly basis, and the Chamber of Deputies would make a proposal for the laws to be evaluated. Given the limited resources in place for *ex post* evaluation, there has to be a strategic selection of laws to be reviewed.

3. Quantification of analysis

Ex post exercises are strengthened when accompanied by quantitative analysis of costs and benefits of regulatory impacts. The Department should gradually include quantification techniques in its methodologies, and improve data collection practices. This would help to communicate to the greater public the value derived from law evaluation.

4. Consultation and citizen perception

The Department should make use of various techniques to understand citizen perspectives concerning laws and their effects. It is important to consider that some expertise will have to be developed for the Department's staff and systematic surveys and other techniques might have to be outsourced.

Governance issues

Chile would benefit from the following considerations:

1. Developing a comprehensive regulatory management system and introducing *ex ante* analysis

Ex post evaluation is the latest stage of the regulatory cycle. Therefore, other phases of the cycle need to be upgraded to OECD good practice, such as applying *ex ante* evaluation techniques to anticipate the effects of the messages presented by the executive. The introduction of such a tool would provide valuable information for a later *ex post* evaluation. Both *ex ante* and *ex post* evaluations are necessary and complementary for a sound regulatory management system.

2. Co-ordination among regulatory institutions

Ex post evaluation requires information that can only be owned by executive agencies. For this reason, the Law Evaluation Department will have to interact on a continuous basis with those institutions. Co-ordination mechanisms should be envisaged to facilitate these interactions.

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Annex A

Ex post Regulatory Review and Evaluation at the Central Government Level

		Sunsetting		Automatic review requirements	
	Periodic *ex post* evaluation of existing regulation is mandatory	Is used for primary laws	Is used for subordinate regulations	Specific primary laws include automatic review requirements	Subordinate regulations include automatic review requirements
Australia	For all policy areas	●	●	●	●
Austria	Not required	●	●	●	●
Belgium	For specific areas	❍	❍	●	●
Canada	For specific areas	●	●	●	●
Chile	Not required	❍	❍	❍	❍
Czech Republic	Not required	❍	❍	❍	❍
Denmark	For specific areas	❍	❍	●	❍
Estonia	Not required	❍	❍	❍	❍
Finland	For specific areas	●	●	●	●
France	For specific areas	●	❍	●	●
Germany	For specific areas	●	●	●	●
Greece	For all policy areas	❍	❍	❍	❍
Hungary	For all policy areas	❍	❍	●	❍
Iceland	For specific areas	●	●	●	❍
Ireland	Not required	❍	❍	❍	❍
Israel	Not required	❍	❍	❍	❍
Italy	For specific areas	❍	❍	●	●
Japan	For all policy areas	❍	❍	●	❍
Korea	For all policy areas	●	●	●	●
Luxembourg	For specific areas	❍	❍	●	●
Mexico	For specific areas	❍	❍	❍	❍
Netherlands	For specific areas	❍	❍	●	❍
New Zealand	For specific areas	●	●	●	❍
Norway	For all policy areas	❍	❍	●	❍
Poland	For specific areas	❍	❍	❍	❍
Portugal	For specific areas	❍	❍	●	●
Slovak Republic	Not required	❍	❍	❍	❍
Slovenia	Not required	❍	❍	❍	❍
Spain	Not required	❍	❍	❍	❍
Sweden	Not required	❍	❍	❍	❍
Switzerland	For specific areas	●	●	●	●
Turkey	Not required	❍	❍	❍	❍
United Kingdom	For specific areas	●	●	●	●
United States	For specific areas	●	●	❍	❍
Brazil	Not required	❍	❍	❍	❍
Russia	Not required	❍	❍	❍	❍
Total OECD 34		**12**	**11**	**20**	**13**

● Yes
❍ No

Source: OECD (2010), "Evaluating Regulatory Performance" in: *Government at a Glance 2011,* Chapter 10, Paris.

Annex B

The Institutional Set-up of the Congressional Budget Office

The Congressional Budget Office (CBO) was founded on July 12, 1974, with the enactment of the Congressional Budget and Impoundment Control Act (P.L. 93-344).

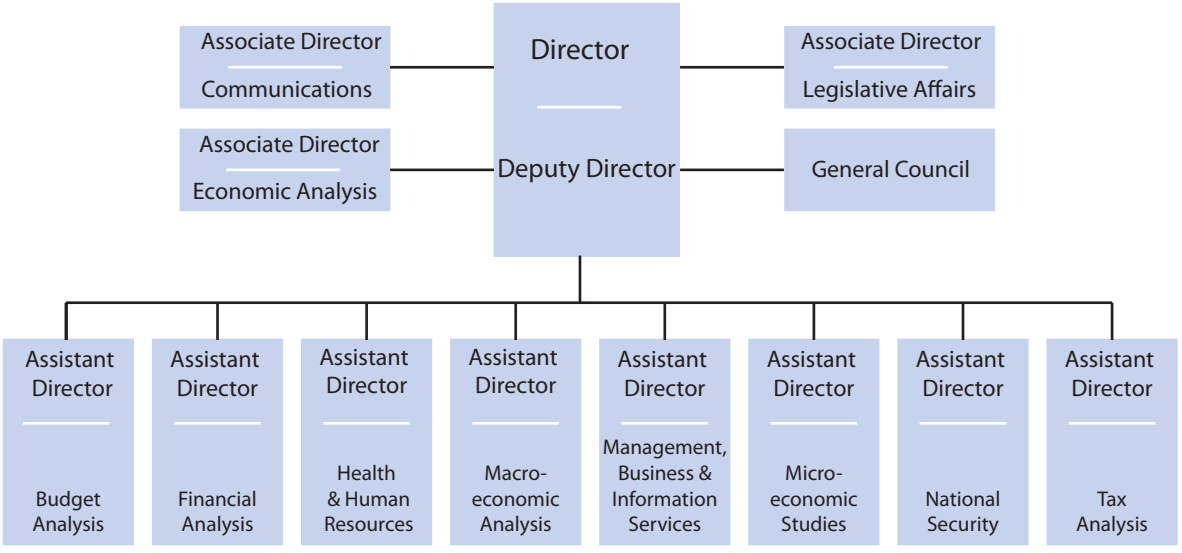
CBO's mandate is to provide the Congress with:

- Objective, nonpartisan, and timely analyses to aid in economic and budgetary decisions on the wide array of programs covered by the federal budget and
- The information and estimates required for the Congressional budget process.

The speaker of the House of Representatives and the president *pro tempore* of the Senate jointly appoint the CBO director, after considering recommendations from the two budget committees. The term of office is four years, with no limit on the number of terms a director may serve. Either House of Congress, however, may remove the Director by resolution. At the expiration of a term of office, the person serving as director may continue in the position until his or her successor is appointed.

CBO currently employs about 250 people. The agency is composed primarily of economists and public policy analysts. About three-quarters of its professional staff hold advanced degrees, mostly in economics or public policy.

The Director appoints all CBO staff, including the Deputy Director, and all appointments are based solely on professional competence, without regard to political affiliation. The compensation of the Director and the Deputy Director is set by law at levels tied to the annual rate of compensation of House and Senate officers. The Director determines the compensation of all other staff.



Source: www.cbo.gov/aboutcbo/organization/.

Annex C

Code of Good Regulatory Practice in New Zealand

According to the Code of Good Regulatory Practice these are the criteria that have to be observed for *ex post* evaluation of regulations in New Zealand:

Efficiency

Adopt and maintain only regulations for which the costs on society are justified by the benefits to society, and that achieve objectives at lowest cost, taking into account alternative approaches to regulation.

Efficiency guidelines

- Consideration of alternatives to regulation: regulatory design should include an identification and assessment of the most feasible regulatory and non-regulatory alternative(s) to addressing the problem.
- Minimum necessary regulation: when government intervention is desirable, regulatory measures should be the minimum required, and least distorting, in achieving desired outcomes.
- Regulatory benefits outweigh costs: in general, proposals with the greatest net benefit to society should be selected and implemented.
- Reasonable compliance cost: the compliance burden imposed on society by regulation should be reasonable and fair compared to the expected regulatory benefit.
- Minimal fiscal impact: regulators should develop regulatory measures in a way that minimises the financial impact of administration and enforcement.
- Minimal adverse impact on competition: regulation should be designed to have a minimal negative impact on competition.
- International compatibility: where appropriate, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices, in order to maximise the benefits of trade.

Effectiveness

Regulation should be designed to achieve the desired policy outcome.

Effectiveness guidelines

- Reasonable compliance rate: A regulation is neither efficient nor effective if it is not complied with or cannot be effectively enforced. Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest possible cost to all parties. Incentive effects should be made explicit in any regulatory proposal.

- Compatibility with the general body of law, including the statute which it amends, statutes which apply to it, and the general body of the law of statutory interpretation.

- Compliance with basic principles of our legal and constitutional system, including the Treaty of Waitangi, and with New Zealand's international obligations.

- Flexibility of regulation and standards: regulatory measures should be capable of revision to enable them to be adjusted and updated as circumstances change.

- Performance-based requirements that specify outcomes rather than inputs should be used, unless prescriptive requirements are unavoidable. This will help ensure predictability of regulatory outcomes and facilitate innovation.

- Review regulations systematically to ensure they continue to meet their intended objectives efficiently and effectively.

Transparency

The regulation making process should be transparent to both the decision-makers and those affected by regulation.

Transparency guidelines

- Problem adequately defined: identifying the nature and extent of the problem is a key step in the process of evaluating the need for government action. Properly done, problem definition will itself suggest potential solutions and eliminate others clearly not suitable.

- Clear identification of the objective of regulation: the policy goal should be clearly specified against the problem and have a clear link to government policy.

- Cost benefit analysis: regulatory proposals should be subject to a systematic review of the costs and benefit. Resources invested in cost benefit estimation should increase as the potential impact of the regulation increases.

- Risk assessment: regulatory proposals should be subject to a risk assessment which should be as detailed as is appropriate in the circumstances.

- Public consultation should occur as widely as possible, given the circumstances, in the policy development process. A well-designed and implemented consultation programme can contribute to better quality regulations, identification of the more effective alternatives, lower costs to business and administration, ensure better compliance, and promote faster regulatory responses to changing conditions.

- Direct approaches to problem: In general, adopting a direct approach aimed at the root cause of an identified problem will ensure that a more effective and efficient outcome is achieved, compared to an indirect response.

Clarity

Regulatory processes and requirements should be as understandable and accessible as practicable.

Clarity guidelines

- Make things as simple as possible, but not simpler, in achieving the regulatory objective.
- Plain language drafting: where possible, regulatory instruments should be drafted in plain language to improve clarity and simplicity, reduce uncertainty, and to enable those affected to better understand the implications of regulatory measures.
- Discretion should be kept to a minimum, but be consistent with the need for the system to be fair. Good regulation should attempt to both minimise and standardise the exercise of bureaucratic discretion, in order to reduce discrepancies between government regulators, reduce uncertainty, and lower compliance costs.
- Educating the public as to their regulatory obligations is fundamental in ensuring compliance.

Equity

Regulation should be fair and treat those affected equitably.

Equity guidelines

- Obligations, standards, and sanctions should be designed in such a way that they can be imposed impartially and consistently.
- Regulation should be consistent with the principles of the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993, and the expectations of those affected by regulation, as to their legal rights, should be meet.
- People in like situations should be treated in a similar manner. Similarly, people in disparate positions may be treated differently.
- Reliance should be able to place on processes and procedures of the regulatory system: a regulatory system is regarded as fair or equitable when individuals agree on the rules of that system, and any outcome of the system is considered just.

Source: www.med.govt.nz/business/regulatory-reform/information-for-policy-makers/code-of-good-regulatory-practice.

Annex D

The Petrol Station Act (or Pump Act): Evaluation conducted by the Swedish Parliament

This case study provides an example of the issues considered in an ex post legislative evaluation undertaken in the Swedish Riksdag. The Committee on Transport and Communications (TU) followed up the way in which the introduction of the law on the obligation to provide renewable fuels, the Petrol Station Act, was implemented and the consequences it entailed.[1]

The case study, edited from the full evaluation report, shows some of the key features used:

- The use of key questions.
- The focus on economic impact.
- Differential effects, particularly geographical.
- Different methods used; statistical information, case studies.
- The input from external bodies e.g. trade associations.
- The importance of practical aspects of implementation (e.g. signposting).
- The importance of government information and statistics.
- The coverage of the media.
- The need for further follow-up.
- Drawing conclusions and making recommendations.

Background to the Act: In December 2005 the Riksdag decided to adopt the government's proposed new Act on the Obligation to Supply Renewable Fuels, also known as the Pump Act. The Act stated that from 1 April 2006, major filling stations would be obliged to supply renewable fuel, such as ethanol or biogas. The objective of the decision was to reduce carbon dioxide emissions by improving the availability of renewable fuels.

Instigating Evaluation: The Committee on Transport and Communications decided in June 2008 to follow up the implementation and consequences of the introduction of the Pump Act. The work on the follow-up was begun in February 2009.

A special follow-up group was appointed in the Committee with one representative from each parliamentary party. The assignment was carried out by the Parliamentary Evaluation and Research Unit, in close collaboration with the Committee Secretariat.

Key Questions: The report was structured around a number of key questions, including:

- How has the sale of renewable fuels developed in relation to the Riksdag's target that 5.75% of all fuel sold for purposes of transportation should be in the form of renewable fuel in 2010?
- To what extent are there filling stations offering renewable fuels indifferent parts of the country?
- What impact has the introduction of the legislation had on the overall development of the fuel sector in different parts of the country?
- What development has there been of infrastructures for various types of renewable fuels since 2006?
- What consequences are there for sparsely-populated parts of the country as regards proximity to services and travelling distances (including environmental considerations?
- Has the Swedish Transport Agency considered the possibility of increasing access to renewable fuels by providing more signposting?

Some examples of key issues and questions outlined in the evaluation report are described in more detail:

The Pump Act and Technical Neutrality: Prior to the introduction of the Pump Act, it was emphasised that the legislation should be technically neutral and cost efficient. Technical neutrality means that the legislation is not dependent on the technology chosen to achieve the desired effect or to minimise the negative impact of an activity. If the legislation is general it is possible to ensure that its objectives are achieved even if the technology changes.

Does any renewable fuel benefit more than others as a result of central government measures taken as a consequence of the Riksdag's decision to introduce the Pump Act?

There are no indications that any aspect of the Pump Act is such that it favours or disfavours any particular fuel in relation to any other. However the background material produced during the course of the follow-up does show that, even when the legislation was introduced, the investment costs for installing pumps varied considerably depending on the type of fuel, and this has not changed after its introduction either. Even if the intention of the legislation was not to promote the use of any particular renewable fuel, this is in practice what has happened.

Is there any correlation between the introduction of the Pump Act and the fall in the number of filling stations in sparsely-populated areas? The number of filling stations in Sweden closed down every year has increased since 2006. It is not possible from this follow-up to draw the conclusion that the Pump Act is the cause of this development. However, in certain cases the Act may have contributed to the closures. It is feared that the Pump Act may have a certain bearing on coming closures of filling stations.

The Pump Act has in certain cases resulted in severe economic strain for owners of filling stations when the individual owners have themselves had to bear the investment costs for pumps providing renewable fuel. The possibility to use renewable fuels has increased dramatically since the Pump Act was introduced. However, there are large geographical differences regarding accessibility to renewable fuels, both between different parts of the country and between urban and rural areas.

There are no published statistics that to a sufficient extent shed light upon the development of the number of filling stations and the number of filling stations providing renewable fuels in different parts of the country. It is important to clarify which authority is to be responsible for obtaining such data in the future.

Relationship with Government Information: What report has been made to the Riksdag in the light of the assessment of the Committee on Transport and Communications regarding follow-up and reporting?

- The examinations that have been made of budget bills, etc. in connection with the follow-up show that no report corresponding to that which was requested in the committee report has yet been submitted.
- No further reporting has taken place, neither in accordance with the Riksdag's announcement nor what the Committee otherwise expressed regarding follow-up and reporting in its report.
- The follow-up also indicates that it is difficult to gain access to information that in addition to aggregated statistics at national level illuminates the development of the number of filling stations and filling stations providing ethanol in different parts of the country. This applies both to current information and information regarding the situation a few years ago.
- The follow-up indicates that there is still no regular and systematic follow-up of the development of the number of filling stations and filling stations providing renewable fuels in different parts of the country. Nor is there any cohesive responsibility today at any agency for following this up.
- There is also no information concerning an estimated final deadline for reporting. Nor has any reporting otherwise taken place in accordance with what was requested in the report of the Committee on Transport and Communications prior to the introduction of the Pump Act. A reasonable assumption here is that the government will promptly get back to the Riksdag regarding these issues.
- The lack of requested reporting back to the Riksdag during the previous and present term of office has reduced the preconditions for possible review in accordance with the intentions of the gradual implementation of the legislation.

Use of Comparative Material: The examination of EU documents and answers to questions addressed to the Research Services of other parliaments reveal that no other European country has introduced legislation corresponding to the Swedish Pump Act.

Use of Case Studies: The results of the case studies in the follow-up, carried out in the counties of Värmland, Kronoberg and Västerbotten, show that the biggest structural rationalisations have been made where sales volumes are low. There have also been many cases where oil companies have chosen to terminate their contracts with filling stations with low sales volumes.

One of the problems highlighted by several of the interviewees is that, in connection with current rationalisations, sellers of fuels want to carry on running a filling station even after the petrol company that delivers the fuel has expressed that it wants to discontinue operations. Depending on the ownership structure, a situation can arise where a petrol company does not want to carry the possible costs for land decontamination if the filling station continues to be run by another owner. For filling stations that are threatened with closure, and especially the smaller ones with narrow economic margins, this can have a decisive impact on their possibilities of continuing operations.

However, there are examples of individual owners bearing the investment costs, and this has been highlighted by the Swedish Association of Petrol Traders, as narrow margins, combined with an economic situation in which the banks are very cautious about granting loans, can make it difficult to obtain funding for such investments.

Media Impact: Since the Pump Act came into force, critics in the media etc. have cited the Act as the reason for the closure of so many filling stations. Even though the number of filling stations that are closed each year has increased since 2006, it is not possible to draw the conclusion that the closures to date can be attributed to the Pump Act, though it may have been a contributing factor in some cases. A number of closures, or conversions from manned to automated filling stations are the result of structural rationalisations in the petrol companies in recent years.

Developments in the Number of Filling Stations: The follow-up shows that at the same time as the total number of filling stations has fallen, the number of filling stations that supply renewable fuels has multiplied since 2005. The greatest increase concerns the supply of E85 which has increased from approximately 300 filling stations in 2005 to 1 493 filling stations in September 2009. The number of filling stations supplying methane gas for vehicles has increased from 62 to 103 during the same period. However, the supply of RME has decreased from a total of 23 filling stations in 2005 to 14 in September 2009.

Practical Aspects: Signposting: Prior to the introduction of the Pump Act, the Committee on Transport and Communications stressed that signposting should be used to improve access to renewable fuels, while at the same time, there is reason to limit the number of signposts along our roads. With the organisation that existed when the Pump Act was introduced, the Committee on Transport and Communications pointed out that it was the task of the Swedish Road Administration to consider the possibility of better signposting for filling stations that supplied renewable fuels.

In the follow-up it has emerged that there is no overall national record of the number of applications for and granted cases of new signposting. The follow-up shows that, to date, very limited measures have been taken to improve signposting to filling stations that supply renewable fuels. The new signposts that exist are mainly for filling stations with methane gas for vehicles. The Swedish Gas Association continuously updates the list of places supplying methane gas for vehicles on the Internet. A quick inventory through spot checks carried out by the Swedish Road Administration shows that improved signposting is dependent partly on the ambitions of the individual company or filling station, and partly on the road authorities' varying interest and speed.

Conclusions and Recommendations: The Pump Act has had played an important role in increasing access to renewable fuels since 2006. At the same time, the follow-up shows that there are still great geographical differences as regards access.

- People living in sparsely-populated areas rarely have access to renewable fuels within a reasonable distance. Furthermore, there are great geographical differences between northern and southern Sweden as regards access to methane gas for vehicles. The issue of access to fuels and renewable fuels in various parts of the country therefore warrants further attention.
- It is important to examine whether other measures in addition to the Pump Act may be needed, with the aim of evening out current imbalances.
- In addition, it is necessary to review the issue of costs and responsibility for improved signposting to filling stations that supply renewable fuels.
- The follow-up noted among other things that it was not possible to draw the conclusion that the Petrol Station Act lay behind the decrease in the number of petrol stations in Sweden since 2006, but that the law may in one or two cases have contributed to closures and that there may be a risk that the law will have some part to play in relation to future closures.
- In April 2010 the Riksdag decided to communicate to the government that it should review the consequences of the Petrol Station Act for small petrol stations in sparsely populated areas.

Note

1. The Report on the Follow-up of the Act on the obligation to supply renewable fuels (Committee on Transport and Communications. Report 2009/10:RFR7, Report 2009/10, *www.riksdagen.se*; *www.riksdagen.se/templates/R_Page_8391.aspx.*

   The follow-up was published in the Report from the Riksdag series (Report 2009/10:RFR7). (*www.riksdagen.se/webbnav/index.aspx?nid=21001&quicksearchquery=The Pump Act 2006*).

Annex E

Management Audit of the Federal Office for the Environment (FOEN). Summary Report by PCA, Switzerland[1]

The audit was carried out by the PCA for the National Council Control Committee.

- The audit focused on the question of whether the set of instruments in place at the FOEN for the purposes of political and operational steering is adequate for ensuring that the Office can fulfill its mandate.
- In order to answer this question the internal steering cycle was reconstructed and assessed using a standardised model.
- Data was gathered between June and October 2009 and took the form of interviews, on-site visits, standardised and telephone questionnaires and document analyses.
- It was found that, overall, the FOEN's internal steering system is functional. There is room for improvement in various respects, not least with regard to technical implementation.
- Cost effectiveness could be improved through further streamlining and a broader use of information.
- The majority of the FOEN's partners and target groups are satisfied with the Office's services. The FOEN takes care to systematically nurture its contacts.
- The opinions of interest groups as to their relations with the FOEN vary. The FOEN tries to mobilise political support for its aims through the inclusion of specific external partners.
- Conflicting goals in the legal bases governing the Office's work make it difficult to define a common strategy.
- The formalised steering instruments of the Federal Council and the Federal Department are limited. Few requirements are set out and systematic checks are rare.[2]

Evaluation of the Federal Customs Administration: Summary of a Report by the PCA (June 2010)

- After various reports in the last few years, both in politics and the media, about problems occurring in the Federal Customs Administration (FCA) and, in particular, the Border Guards (BG), the Control Committees of both chambers of the Federal Parliament instructed the Parliamentary Control of the Administration (PCA) to conduct an evaluation of the FCA.

- The findings are based on an analysis of the relevant documents and records.
- In particular, it was based on more than 50 interviews with senior staff in the Customs Administration, the Department of Finance and external partners.
- The PCA was supported in its work by an external team from econcept AG.
- Findings: With over 4 000 employees, the FCA generates about one third of the Confederation's annual revenues.

The FCA enforces provisions from about 150 further enactments and repeatedly has to take on new tasks. The evaluation has demonstrated that the FCA has a conceptually complete steering model that satisfies the criteria of output and outcome-oriented public management. The FCA and the BG co-operate closely with other actors in the field of internal security, particularly with the Armed Forces and the cantons.[3]

Notes

1. *www.parlament.ch/e/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/Documents/pvk-%20geschaeftspruefungsaudit-bafu-zus-2010-01-28-e.pdf.*
2. *www.parlament.ch*>Kommissionen>ParlamentarischeVerwaltungskontrolle, 2010 Annual Report of the Parliamentary Control of the Administration Appendix to the 2010 Annual Report by the Control Committees and the Control Delegations of the National Council and the Council of States; *www.parlament.ch/e/dokumentation/berichte/berichte-ufsichtskommissionen/geschaeftspruefungskommission-gpk/berichte- 011/Documents/jahresbericht-2010-pvk-e.pdf.*
3. *www.parlament.ch/e/organe-mitglieder/kommissionen/parlamentarische-verwaltungskontrolle/Documents/bericht-pvk-zollverwaltung-2010-06-11-e.pdf.*

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(42 2012 11 1 P) ISBN 978-92-64-17625-6 – No. 60027 2012

Evaluating Laws and Regulations

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Contents

Please cite this publication as:

OECD (2012), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing.
http://dx.doi.org/10.1787/9789264176263-en

OECD*publishing*
www.oecd.org/publishing

ISBN 978-92-64-17625-6
42 2012 11 1 P