

Ex-post Evaluation of Legislation

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Legislative Process in Greece



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I. Supervision of Laws

1. Never Forget ...



I. Supervision of Laws

2. Good Legislation

Legislator must not "forget" its law once passed but ...

- ... consider effective implementation early in the process,
- ... foresee possible costs and opposition,
- ... establish adequate processes for supervision (ex-post evaluation),
- ... reconsider and amend (or abolish) the law if necessary.

II. Duty of Supervision

1. Constitution

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Federal Constitution of the Swiss Confederation

of 18 April 1999 (Status as of 1 January 2024)

Art. 170 Evaluation of effectiveness

The Federal Assembly shall ensure that federal measures are evaluated with regard to their effectiveness.

II. Duty of Supervision

2. Proportionality

Art. 5 Rule of law

- ¹ All activities of the state are based on and limited by law.
- ² State activities must be conducted **in the public interest and be proportionate** to the ends sought.
- ³ State institutions and private persons shall act in good faith.
- ⁴ The Confederation and the Cantons shall respect international law.

II. Duty of Supervision

3. Proportionality – and Time

BGE 147 I 16 seq., 46 c. 5 (Swiss Supreme Court)

«Il fatto che il legislatore cantonale abbia introdotto nella legge l'obbligo di analizzare, dopo un periodo di prova, l'efficacia della tassa di collegamento, oltre ad essere la dimostrazione che questi era consapevole dei problemi concernenti il rispetto delle garanzie costituzionali, permette in concreto di ritenerla ammissibile e quindi di tutelare la normativa impugnata. In effetti, la valutazione che verrà effettuata permetterà di controllare l'efficacia e la conformità della tassa con riferimento agli obiettivi perseguiti e di adottare, se del caso, i necessari correttivi.»

II. Duty of Supervision

3. Proportionality – and Time

BGE 147 I 16 seq., 46 c. 5 (Swiss Supreme Court)

«The fact that the cantonal legislator introduced into the law the obligation to analyze, after a trial period, the effectiveness of the levy, as well as being the demonstration that he was aware of the problems concerning compliance with constitutional guarantees, allows to consider it admissible and therefore to protect the contested legislation. **In fact, the evaluation that will be carried out will allow us to check the effectiveness and compliance of the tax with reference to the objectives pursued and to adopt, if necessary, corrective measures.**»

III. Evaluation Clauses

1. Examples

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Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA)

of 6 October 1995 (Status as of 1 December 2014)

Chapter 6a:⁴⁸ Evaluation

Art. 59a

¹ The Federal Council shall arrange for the evaluation of the effectiveness of the measures and the application of this Act.

² After conclusion of the evaluation and at the latest five years after this provision has come into force, the Federal Council shall report to Parliament and submit proposals for further action.

III. Evaluation Clauses

1. Examples

152.3

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**Federal Act
on Freedom of Information in the Administration
(Freedom of Information Act, FoIA)**

of 17 December 2004 (Status as of 1 November 2023)

Art. 19 Evaluation

¹ The FDPIC shall review the execution and effectiveness of this Act and, in particular, the **costs incurred** in its implementation, and shall report on a regular basis to the Federal Council.

III. Evaluation Clauses

1. Examples

**Bundespersonalgesetz
(BPG)**

172.220.1

vom 24. März 2000 (Stand am 1. Januar 2024)

Art. 5 Koordination und Controlling

¹ Der Bundesrat koordiniert und steuert die Umsetzung der Personalpolitik. Er überprüft periodisch, ob die Ziele dieses Gesetzes erreicht werden; er erstattet der Bundesversammlung darüber Bericht und beantragt ihr rechtzeitig die erforderlichen Massnahmen. Er vereinbart mit den parlamentarischen Aufsichtskommissionen Form und Inhalt der Berichterstattung.

«The Federal Council coordinates and controls the implementation of personnel policy. It periodically checks whether the objectives of this law are being achieved and reports to the Federal Assembly and requests the necessary measures in a timely manner. It agrees with the parliamentary supervisory commissions on the form and content of the reporting.»

III. Evaluation Clauses

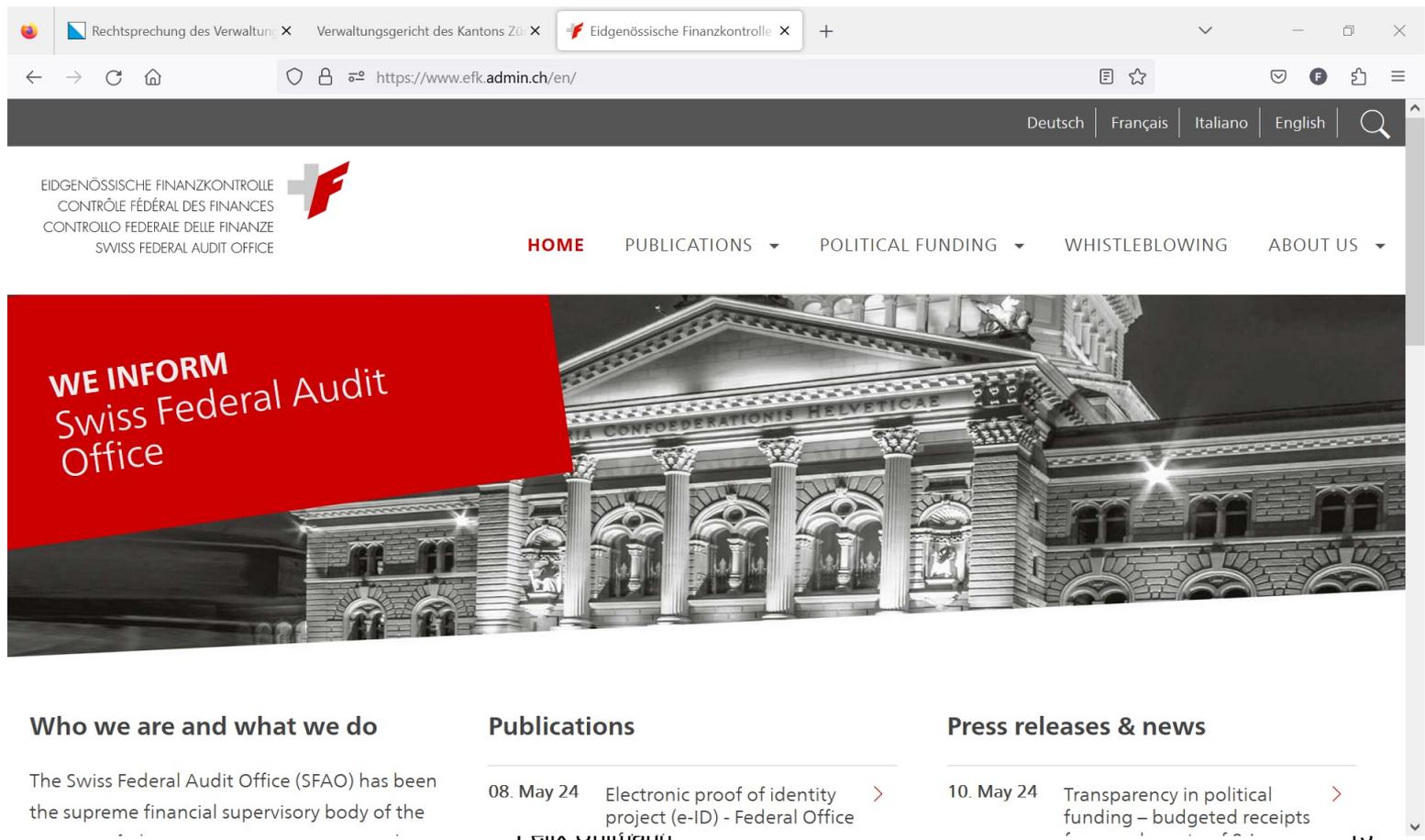
2. Design

In drafting evaluation clauses, legislator should consider ...

- ... what to evaluate (law, parts of it, effectiveness in general, specific questions etc.),
- ... by whom (administration, Parliament, independent body etc.),
- ... how (methods, benchmarks etc.),
- ... in which periods (annually, after a certain time etc.),
- ... to do what with the results (to advise Parliament, to inform the public etc.), and
- ... to achieve what (improvement of the law, abrogation etc.).

III. Evaluation Clauses

2. Design



The screenshot shows the website of the Eidgenössische Finanzkontrolle (Swiss Federal Audit Office). The browser address bar shows the URL <https://www.efk.admin.ch/en/>. The website header includes the organization's name in four languages: EIDGENÖSSISCHE FINANZKONTROLLE, CONTRÔLE FÉDÉRAL DES FINANCES, CONTROLLO FEDERALE DELLE FINANZE, and SWISS FEDERAL AUDIT OFFICE, along with a logo featuring a red cross and the letter 'F'. The navigation menu includes links for HOME, PUBLICATIONS, POLITICAL FUNDING, WHISTLEBLOWING, and ABOUT US. A large banner image of a classical building at night is overlaid with a red diagonal box containing the text "WE INFORM Swiss Federal Audit Office". Below the banner, the page is divided into three columns: "Who we are and what we do", "Publications", and "Press releases & news".

Who we are and what we do

The Swiss Federal Audit Office (SFAO) has been the supreme financial supervisory body of the

Publications

08. May 24 Electronic proof of identity project (e-ID) - Federal Office

Press releases & news

10. May 24 Transparency in political funding – budgeted receipts

III. Evaluation Clauses

3. Advantages

Legislator should consider evaluation clauses, because they ...

- ... prevent legislator from forgetting the law,
- ... allow double-checking of legislative goals,
- ... sustain a certain influence of Parliament (oversight),
- ... allow a tail-made approach to ex-post evaluation
- ... secure ex-post evaluation from the very beginning of implementation,
- ... are no excuse for government to omit further ex-post evaluation.

III. Evaluation Clauses

3. Advantages

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Federal Constitution of the Swiss Confederation

of 18 April 1999 (Status as of 1 January 2024)

Art. 181 Right to initiate legislation

The **Federal Council submits drafts** of Federal Assembly legislation to the Federal Assembly.

Art. 182 Law-making and implementation of legislation

¹ The Federal Council enacts legislative provisions in the form of ordinances, provided it has the authority to do so under the Constitution or the law.

² **It ensures the implementation of legislation,** the resolutions of the Federal Assembly and the judgments of federal judicial authorities.



IV. Sunset Clauses

1. Example

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Federal Constitution of the Swiss Confederation

of 18 April 1999 (Status as of 13 February 2022)

Art. 130⁸¹ Value added tax*

¹ The Confederation may levy value added tax on the supply of goods, on services, including goods and services for personal use, and on imports, at a standard rate of a maximum of 6.5 per cent and at a reduced rate of at least 2.0 per cent.

14.¹²³ Transitional provision to Art. 130 (Value Added Tax)¹²⁴

¹ The power to levy value added tax is limited until the end of 2035.¹²⁵

IV. Sunset Clauses

2. Background

Reasons for Sunset Clauses

- Temporary Problem
- Temporal Public Commitment
- Political Compromise
- Need for confirmation (ex-post evaluation)
- Experiment

V. Summary

Ex-post evaluation is ...

- ... an essential part of good law-making,
- ... often required by the constitution (proportionality),
- ... ideally considered already in the making of law,
- ... is tailor-made to the specific law (evaluation clause), and
- ... maybe also a part of sunset legislation.

V. Summary



OECD Best Practice Principles for Regulatory Policy

Reviewing the Stock of Regulation

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“Programmed” reviews

- For regulations or laws with potentially important impacts on society or the economy, particularly those containing innovative features or where their effectiveness is uncertain, it is desirable to *embed review requirements* in the legislative/regulatory framework itself.
- *Sunset requirements* provide a useful “failsafe” mechanism to ensure the entire stock of subordinate regulation remains fit for purpose over time.
- *Post-implementation reviews* within a shorter timeframe (1 to 2 years) are relevant to situations in which an *ex ante* regulatory assessment was deemed inadequate (by an oversight body for example) or a regulation was introduced despite known deficiencies or downside risks.