Law Evaluation in Chile
EXECUTIVE SUMMARY

Ex post evaluation is a critical and essential field to the regulatory policy cycle. In the case of laws and regulations, ex post evaluation has the goal to determine if the regulatory framework in place has achieved the desired objectives, if the law or regulation was sufficiently efficient and effective in its implementation, and to what extent the 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 core function of regulatory institutions and it is an essential element for high-quality legislation.

This Executive Summary contains key messages of a more comprehensive OECD Report on Law Evaluation in Chile. It presents the main findings, assessment and recommendations of a collaborative work with the Law Evaluation Department of the Chilean Chamber of Deputies, concentrating on institutional, methodological, and governance issues. 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 legislation in the country.
1. Relevance of *ex post* evaluation for high-quality regulation

*Ex post* evaluation is a critical and essential field to the regulatory policy cycle. In the case of laws and regulations, *ex post* evaluation has the goal to determine if the regulatory framework in place has achieved the desired objectives, if the law or regulation was sufficiently efficient and effective in its implementation, and to what extent the (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 therefore be a core function of regulatory institutions and it is an essential element for high-quality regulation.

Once a law or regulation is enacted and implemented, its provisions bind a society, unless and until it is subsequently repealed or amended.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 Furthermore, laws may become outdated as circumstances change and regular review is needed to guard against this possibility.

Methodological approaches to *ex post* evaluation change according to the policy field, technical capacities and data availability. However, some key questions should be answered when conducting *ex post* evaluation:

- **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 i) technically sound, clear and comprehensible, the subject of legal challenges and ii) 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, and 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.

*Ex post* evaluation serves various purposes. Among them, *ex post* evaluation can make important contributions to redefine new interventions and improve the quality of future decisions by pointing out to unintended consequences that had not been properly assessed before; it can enhance transparency by opening new possibilities for stakeholders’ participation to better understand how they have been affected by the regulation; and it can bring additional 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 in this policy field. Despite efforts made to ensure that implementation of laws and regulations meet the goals they are intended to serve, there is little evidence that *ex post* evaluation is systematically conducted in OECD countries. In most cases, the impact of regulations is rarely assessed systematically, and furthermore weakened by the lack of *ex ante* analysis and available data.

*Ex post* evaluation is a key component of the regulatory and policy cycle. *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, which is essential when preparing a new intervention. 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.
Specific primary laws include automatic review requirements.
Sunsetting is used for laws.

There are mechanisms by which the public can make recommendations to modify specific regulations.

Reviews required to consider explicitly the consistency of regulations in different areas and take steps to address areas of overlap/duplication/inconsistency.

Standardised evaluation techniques or decision criteria to be used when regulation is reviewed.

Periodic evaluation of existing regulation mandatory.

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.


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Ex post evaluation
Ex ante evaluation for preparation and design
Implementation and monitoring
Adoption

Source: OECD.
The link between *ex post* and *ex ante* evaluation also calls for co-ordination between the executive and the legislative. When it comes to law evaluation, both branches of government should seek to find a common purpose in ensuring that mechanisms and commitments promote high-quality regulation. The executive should commit to best 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.

2. Current efforts in Chile to conduct *ex post* evaluation

*Ex post* evaluation is a new policy field in Chile, both in the executive and the legislative. The relationship between both branches of government 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 and the process follows a clear interaction between both branches of government. As in other countries, despite a bigger number of proposals from the Legislative, those approved mainly have their origin in the executive.¹

According to the Chilean Constitution, the President of the Republic can use the law initiative through a message (mensaje) and deputies and senators can table a motion (moción).² Both messages and motions have to be presented in writing with an explanation on the reasons and clarify the various articles contained in the law. Messages, in addition, should also include the source and amount of financial resources, in case the law implies some expenses in the national budget.³ Draft laws however are not required to present an analysis of possible impacts they might produced nor the options that were envisaged to achieve policy objectives.

1. From 1990 to 2011, Chilean Parliamentarians have 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.
2. According to Article 65 of the Constitution, the motion cannot be proposed by more than ten Deputies or five Senators.
3. Article 14 of Law 18 918.

Chile has a strong record in the use of fiscal management as a tool for control and evaluation; however, regulatory interventions are not systematically assessed neither *ex ante* nor *ex post*. 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 Law Evaluation Department

Despite this shortcoming, the Chilean legislative branch is seeking a more systematic approach to *ex post* law evaluations. In the past, evaluation actions of some Thematic Workshops, developed by the various parliamentary Commissions and where some topic of interests for parliamentarians and the society have been discussed, have laid the ground for a deeper discussion on the need to integrate *ex post* law evaluation.

Following these efforts, the Chilean Parliament established the Law Evaluation Department (Departamento de Evaluación de la Ley) on 21 December 2010, created by an agreement of the Commission on Internal Regime, Administration and Regulations. This was communicated by Official Note 381 of the Presidency of the Chamber of Representatives. The agreement was ratified by Resolution 857 of 27 January 2011 signed by the Secretary-General of the Chamber of Representatives.

The main responsibilities of this Department are the following:

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 evaluated law.
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.
Institutional design of the Law Evaluation Department

The institutional set up of the Law Evaluation Department was established by Resolution 857, providing the basis for the following:

» 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.

» 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 would 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 Representatives.

Methodological approach to ex post evaluation

The Law Evaluation Department is also constructing the methodological approach to law evaluation. 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.

1. The Law Evaluation Department has currently six permanent staff and one Head. All of them have extensive experience in the various years they have served in the Chamber of Representatives. At the current stage, they do not envisage to expand the staff, even if they acknowledge the relevance of having additional expertise, like a sociologist and an economist, to help with the analytical tasks of the Department.

The Law Evaluation Department has developed a three-stage project to evaluate the effectiveness of the law that covers the following issues:

1. Law analysis
2. Citizens’ perception
3. Final report

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.

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 Representatives, 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 is 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 does not exceed four or five months, so as to generate products in a period adequate to the parliamentary institutional dynamic.

6. Criterion of technical feasibility. Selected norms must be susceptible of evaluation with the technical, human and financial means available.

7. Criterion of time of application. Laws to be selected must have a minimum of one year in force period of time.

According to the current approach of the Law Evaluation Department, law evaluation in Chile could carefully look into some of the impacts described in Table 1, depending on the scope of the law.

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

As part of the various stages of 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.

### Table 1. Types of impacts to be evaluated

<table>
<thead>
<tr>
<th>Economic</th>
<th>Implementation costs (expected vs. effective); non-expected costs; projected or expected benefit vs. delivered benefits; benefits on productive activities and/or commercial</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial</td>
<td>Sources and resources expected to implement the law</td>
</tr>
<tr>
<td>Social</td>
<td>Outcomes related to the expected beneficiary; non-expected effects; degree of satisfaction with the expectations of beneficiaries and citizens</td>
</tr>
<tr>
<td>Cultural</td>
<td>Outcomes produced by the law and its implementation in relation to the way the society perceives and conceptualises the subject of the law</td>
</tr>
<tr>
<td>Environmental</td>
<td>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.)</td>
</tr>
<tr>
<td>Institutional</td>
<td>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</td>
</tr>
<tr>
<td>Legal</td>
<td>Expected impact on other laws (modifications, etc.); non-expected impacts on other laws and regulations; regulations passed by the Executive to implement the law</td>
</tr>
</tbody>
</table>


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The Law Evaluation Department is also building a database containing all registries of civil organisations and people that are linked to the Chamber of Representatives, in terms of their participation in legislating, supervising or representing particular stakeholders. This database will translate into the creation of a Forum of Citizens that will keep a close contact with the Chamber of Representatives. The Law Evaluation Department will be in charge of moderating the Forum and co-ordinate all activities to ensure and encourage proper participation.

First ex post evaluation report

The Law Evaluation Department has finalised a pilot project to test the methodological approach that has been prepared for its tasks. The pilot project is reviewing Law 20 413 that establishes the principle of universal donor for organs transplant. The analysis of various stages of the process has been finalised, basically covering the following activities of the various steps according to the proposed methodology:

1. The study has concentrated the analysis on the main issues: the motion and parliamentary debate of the project, the law itself and the legal environment, and comparative legislation at international level.

2. There was a revision of the information published in the media at the moment of the discussion in Parliament, as this 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 in the topic.

3. The Law Evaluation Department has 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. An important number of interviews were conducted with representatives from public institutions, such as the National Coordination of 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 done some studies.

5. The Law Evaluation Department has requested also information to various institutions in order to evaluate and assess the impact of the law.

The Law Evaluation Department has published its evaluation with some recommendations for improvement, based on the analysis made to the current legal framework. The analysis conducted has 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 about donor transplants that could include issues related to education, financing and a transparent system to deal with information. The law was short on implementation also due to lack of infrastructure and human resources devoted to ensure that a donor policy is in place.

3. Assessment and recommendations

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 well succeeded. But to reach that stage, various conditions have to be met and there is a need to put this effort in the broader context of the regulatory policy development and regulatory quality management.

For countries where there is no previous experience with any kind of impact assessments, ex post evaluation of laws can be a good starting point to think about 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 regulation. However, it is essential to establish clear criteria for analysis, prioritise the 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 that can reduce risks and failures is the responsibility of regulators. Implementation of those analyses is important to guarantee the effectiveness of the approach.

### 3.1. 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 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 that 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 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 about 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 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 law reviews are clearly established in a policy and legal document: 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 Representatives. The latter provides a good initial legal basis for its work. This should ensure the political commitment related to the work of the Department. But sometimes a higher legal instrument, such as a law, might be of help. In Victoria, Australia, for instance, the
Subordinate Legislation Act of 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 so far lacks clear indication on several relevant operational issues, such as the interaction with other bodies in the Chamber of Representatives, the means of appointing its Head, the selection of laws to be reviewed, the best way to disseminate results of the review process, how the Department could guarantee full access to information from other government bodies, etc. Some of these issues are addressed by traditional procedures and the Department might well operate like this today. The Department could however benefit from 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 on traditional procedures.

» Another institutional challenge remains in the co-ordination degree between the legislative and the executive branches 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 branch, an agreement on how branches of the government interact and operate in practice is necessary.

» 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 1), ex post evaluation is the continuous task of various institutions that work on the implementation of regulations and the understanding of the effects of such regulatory instruments.

Box 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 law revision. 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 is to be presented to the Committee on Law Evaluation and other Commissions) with the recommendations on the implementation and the potential changes or amendments that will result from their work. It is important to reflect about the mechanisms for the recommendations implementation, and avoid 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.
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 carried out by the Chamber of Representatives 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 laws refers to the methodological procedures and approaches that will be used to gather, process and assess information. In this particular area, various challenges should be taken into account:

» The recent creation of the Law Evaluation Department still raises concerns 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. 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 drawn from this experience that can help the Department review the initial approach and identify key areas that can be used for other laws.

» Another methodological challenge refers to developing a system of prioritisation of laws to be reviewed that can be carried out, for instance, on a yearly basis. Even if the Chamber of Representatives 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 prioritisation principle: reviews should be done on laws that have the greatest impact and costs on society or where the greatest net benefit can be expected. Given the limited resources in place for *ex post* evaluation, a number of laws to be reviewed need to be clearly defined, based on clear criteria and priorities. This would also reduce discretion on why certain laws are reviewed and why they were selected.

**Box 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 for selection criteria.

In some countries, such as Australia, reviews have to be conducted on a regular basis unless the regulation is subject to the review provisions in the Legislative Instruments Act of 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 regulations 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 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 fulfil the goals they are meant to serve. The initiative dates back to 2000. The first reports were issued in 2002-03. Law monitoring applies to a number of laws that 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 that regulate a new area, or for laws where uncertainties about the consequences or the management and resources needed to achieve their goals exist. The report is prepared by the relevant ministry, and then sent to the relevant parliamentary committee. The process involves consultation with external stakeholders and relevant authorities.
Box 3. Citizens’ perceptions on regulations: A United Kingdom 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 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 that are likely to be in contact with regulation.

Some of the results of this study revealed the following:

» 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 gained 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. 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 one on 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 those that are not.

» The more informed a person is the more balanced their 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 properly 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 see, more likely than not, acceptance of their regulation than those bodies which 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
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. However, 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 United Kingdom revealed some of the risks associated to citizens’ perceptions (Box 3).

### 3.2. Recommendations

The following recommendations are suggested for further discussion with the Chilean authorities to consolidate an *ex post* evaluation system at the Chamber of Representatives, 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 prerequisites for 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 in a unanimous vote. The director should have statutory independence and full freedom to hire staff. His qualifications should be made explicit. This would recognise the complexity of the evaluation process and that only a person with such a background is likely to fully understand its practical implications.

#### 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 types of reports and analysis it is to produce, and clear technical criteria to select the laws to be reviewed. The Chamber of Deputies should have a clear 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.

#### 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 know the results from evaluation reports.

#### FULL ACCESS TO INFORMATION

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

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 coordinate them 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 that 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 developing 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 the Parliament. International experience shows that reviews should be done on the laws that have the greatest impact and costs on society or where the greatest net benefit could be found. The Department should also develop a system of prioritisation that can be exercised on a yearly basis, and the Chamber of Representatives would make a proposal for the laws to be evaluated. Given the limited resources in place for *ex post* evaluation, there has to be an intelligent 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 would 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 could 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 envisioned to facilitate these interactions.
Ex post evaluation is a critical and essential field to the regulatory policy cycle. In the case of laws and regulations, ex post evaluation has the goal to determine if the regulatory framework in place has achieved the desired objectives, if the law or regulation was sufficiently efficient and effective in its implementation, and to what extent the 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 core function of regulatory institutions and it is an essential element for high-quality legislation.

This Executive Summary contains key messages of a more comprehensive OECD Report on Law Evaluation in Chile. It presents the main findings, assessment and recommendations of a collaborative work with the Law Evaluation Department of the Chilean Chamber of Deputies, concentrating on institutional, methodological, and governance issues. 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 legislation in the country.