

As adopted by the State Secretaries Committee on Bureaucracy Reduction on 23 January 2013

Concept for the evaluation of new regulatory proposals

in line with Section II 3 of the Federal Government's Work Programme on Better Regulation of 28 March 2012

An evaluation connects the objective and purpose of a regulation with its actual effects and the associated costs. All major regulatory projects must be evaluated in accordance with the following guidelines.

I What regulatory projects are evaluated?

Whether or not a regulatory project is considered major under the Work Programme on Better Regulation basically depends on the expected amount of annual compliance costs (threshold). This is in recognition of the fact that part of the purpose of an evaluation is to help keep compliance costs low long term.

Regulatory projects count as major if the ex-ante estimate predicts annual compliance costs of at least

- €1 million in financial costs or 100,000 hours of red tape for private individuals or
- €1 million for businesses or
- €1 million for public authorities

or, where such an estimate is not possible, if that level of compliance costs cannot be ruled out.

An evaluation may also be carried out later, in cases where measuring the actual compliance demonstrates for the first time that they exceed one of the specified thresholds. If the measurement of actual compliance costs shows them to be below the thresholds, then the government ministry responsible may revise the decisions on evaluation laid down in the regulatory proposal.

As before, ministries can plan evaluations for other reasons apart from the level of annual compliance costs – such as high total financial costs, particular political

significance or great uncertainty surrounding the proposal's effects or the administrative implementation process.

Proportionality

The work required by the evaluation must be proportional to the knowledge to be gained from it. This is to be considered in the case of, for example,

- court rulings or international/EU legislation which has to be transposed one to one;
- other comparable reporting obligations, including obligations in respect of international or EU institutions, or legal obligations to continuously monitor the effect of certain legislation.

Under Rule 44(7) of the Joint Rules of Procedure of the Federal Ministries, the explanatory memorandum accompanying any major draft regulation must include comments on whether or not an evaluation is to be carried out.

II. What do evaluations cover?

The key evaluation criterion is achievement of objectives, as regulations which fail to meet the objectives formulated in the proposals tend to cause unnecessary compliance costs.

Depending on the scope of an evaluation, other criteria may include the following:

- side-effects of the regulation (positive or negative);
- attitudes towards the regulation (e.g. whether people are taking advantage of proffered state assistance);
- practicability of the regulation, to be checked in relation to avoidable compliance costs (e.g. having one body administrate several tasks);
- considerations as to whether the costs incurred are proportionate to the outcomes. This does not necessarily have to be from a financial point of view and can instead concentrate on the advantages or disadvantages of a regulation. These considerations are not to anticipate political decisions.

III. How are evaluations carried out?

There are no set rules as to an evaluation's level of detail (e.g. the draft regulation as a whole, parts of a bill amending various pieces of legislation, individual areas of an original act, implementation), methodology (anything from internal to academic evaluation) or scope (anything from a two-page file to an extensive report – partly depending on the availability of resources). These things are decided by the ministry with lead responsibility. The evaluation can build on the outcomes of the measurement of actual compliance costs by the Federal Statistical Office.

Outcomes are to be documented in an evaluation report containing remarks on the delimitation of the subject of the evaluation, on the data and assumptions it was based on and on the relevant evaluation criteria. The report is to present the key outcomes of the evaluation in an easily comprehensible format.

These reports are submitted for information purposes to the affected ministries as well as to the Federal Government Coordinator for Bureaucracy Reduction and Better Regulation and the National Regulatory Control Council.

IV. When are evaluations carried out?

The lead ministry decides when an evaluation is to be conducted, on the basis of its specialist knowledge. The decision should take into account when the regulation can be expected to take effect and, if relevant, other changes in the regulatory environment. As a rule, an evaluation should be carried out three to five years after a regulation has entered into force.

This procedure applies to regulatory proposals submitted for interministerial coordination on or after 1 March 2013.