

Audit of the implementation of the revision of the law and the strategic objectives

Swiss Institute of Comparative Law

Key facts

The Swiss Institute of Comparative Law (SICL or "the Institute") is an autonomous institution under public law. It has ensured access to foreign law for Swiss authorities, researchers, lawyers, notaries, companies and individuals since 1982. This access includes information, opinions and studies, as well as the use of the library at the University of Lausanne. The SICL also carries out scientific research activities. In 2020, the Swiss Institute of Comparative Law Act (SICLA) was completely revised to bring the Institute into line with federal governance requirements. The revision introduced management by strategic objectives from the Federal Council and defined the role of the SICL Council based on a board of directors model. The number of Council members was reduced from 22 to 9. The Institute has an annual budget of CHF 8 million and employs around 40 people.

The Swiss Federal Audit Office (SFAO) examined the implementation of the SICLA provisions on governance and management by strategic objectives. Almost three years after their entry into force, these objectives had not been sufficiently documented. Proper representation of interest groups and business areas on the Council is essential. There are significant areas for improvement. Close monitoring of the implementation of the strategic objectives by the SICL bodies is necessary. The ambitions of the reform should result in greater transparency. These shortcomings could be detrimental to the Federal Administration and the judiciary, which are important recipients of the SICL's basic legal duties. In order to make the Institute's governance more transparent and balanced, the SFAO made four recommendations.

Unbalanced governance and no traceability of strategic objectives

The various interests, fields of activity and service recipients are represented on the SICL Council. The academic community was well represented with three out of seven members. One of them was related to a member of management, and Council members were aware of this. However, the Federal Council was not explicitly made aware of this when the first appointee was selected. According to the Confederation's corporate governance guidelines, this relationship should have been identified as a source of possible long-term conflicts of interest. The resignation of the first appointee at the beginning of December 2022 rendered this issue redundant.

The SICL's bodies operate within the legal and regulatory framework. The Council has transposed the strategic objectives 2020-2023 into an action plan. This lists the areas of exclusion, but does not clearly define the scope of the new priority area: public international economic law. The Council's action plan was not subject to consultation with the recipients of SICL's services and/or independent experts. The SFAO found that the decisions of the Institute's bodies (Council and management) are not easily traceable. This is evident in the

implementation of the strategic objectives. The relevance and usefulness of the SICL's reports on the implementation of the strategic objectives remain limited. The SFAO has called on the SICL to improve its reporting by improving its internal financial and statistical data.

The SFAO also recommends that the Institute systematically analyse the needs of the recipients of its legal duties, in particular the Federal Administration and the judicial authorities, in order to establish the Federal Council's future strategic objectives (2024-2027). The SICL is also invited to establish clear sub-objectives for each of the Federal Council's strategic objectives.

Formalisation of operational management under way

The SICL stands out within the Federal Administration for its low level of employee satisfaction. The results of the in-depth survey conducted among all federal offices in 2020 showed a particularly high level of dissatisfaction among employees with the Institute management's decision-making process. The SICL bodies have taken steps to improve this process. The SFAO welcomes the fact that the SICL Council has commissioned an independent expert to examine the causes of this dissatisfaction. It will be possible to assess the impact of the measures based on the results of the next in-depth satisfaction survey in 2023.

The SICL Council now favours higher employee rotation, international mobility and the priority given to recruiting academic researchers for lawyer positions. For the latter, the SFAO noted that management gives only relative importance to the legal requirement of mastering a national language. It suggests that this issue be clarified with the Federal Office of Personnel. The criteria for determining employment rates are not documented.

The process for preparing legal opinions and comparative analysis is in line with the legal and regulatory provisions. It was applied appropriately. The SFAO did not find any systematic deficiencies and highlighted the positive feedback from the federal offices. However, there is room for improvement in the pre-selection process. Here, the SFAO found that the SICL used the lack of expertise as a reason for not dealing with court applications in an area not excluded by the Council's strategy (contract law). In these cases, as in others, the SICL systematically provides the names of potential external experts.

The SFAO was unable to confirm the Council's assumption of a close synergy between research and legal opinions on the expected effects on the quality of legal opinions. This applies in particular to the priority research area of public international economic law. There has been an overall increase in the time invested by its lawyers in research. There is a risk that the time allocated to research will come at the expense of requests for legal opinions. The SFAO recommends that the SICL formalise this research process by defining criteria and resource ceilings.

Original text in French