

Chapter 8

The interface between subnational and national levels of government

Multilevel regulatory governance- that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level - is another core element of effective regulatory management. The OECD's 2005 Guiding Principles for Regulatory Quality and Performance "encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government". It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Assessment and recommendations

There is little evidence at this stage of Better Regulation penetrating the subnational levels of Finnish government. The review could not go very deep on this issue, but there appears to be little evidence of the application of Better Regulation to this important part of the institutional landscape. Subnational levels of government play a core role in planning, and in the interface with business through other responsibilities such as building regulations, environmental regulation and waste management. This is a key missing link in Finland's Better Regulation strategy.

The reforms underway to strengthen and rationalise regional and local government management and structures are important, and probably a necessary pre-condition for addressing Better Regulation issues at this level. Significant reforms, not yet completed, will change the Finnish local government landscape, enabling it to function more effectively and efficiently. Regional state administration is to be strengthened and given a more strategic focus, and municipalities are being encouraged to merge or join up for key services. These developments, when complete, look like providing a much sounder basis for implanting Better Regulation, as a second stage.

The reforms need to be complemented by addressing other important issues, such as the fragmentation and autonomy of ministry responsibilities for local government. Municipal affairs are overseen by a range of ministries: the Finance ministry (overall co-ordination); as well as the Environment; Transport and Communications and Employment and Economy ministries; the Education and Social Affairs ministries; and even the Justice ministry for some matters. This is not an issue so long as there is some co-ordination and exchange on the way in which each ministry goes about imposing requirements on municipalities, so as to avoid unnecessary burdens on municipal administrations and to promote a coherent approach. Two initiatives look promising in this regard and show that there is awareness of the issues. The Basic Public Services Programme, set up in 2008, aims to improve the horizontal co-operation and co-ordination between ministries, and between municipalities and ministries. It seeks to facilitate the management of local government services and their financing. Another important initiative seeks to address the issue of how central state legislation affects the municipal level. A joint task force for revising legal norms hampering the efficiency of municipal services was established by the government in June 2009.

The strong autonomy of municipalities and the decentralisation of responsibilities to this level also raise issues of co-ordination across local government itself. The review could not go into this in any depth, but this is likely to raise issues of variable treatment of the same issue across the country. In this context, the work of the Association of Finnish Local and Regional Authorities (for example, drawing up model ordinances) is important.

Recommendation 8.1. Review the scope for developing a Better Regulation strategy for the subnational levels of government. Review the co-ordination mechanisms to support dialogue between responsible ministries, and between the latter and municipalities. Encourage the municipalities to review what they can do to promote Better Regulation practices in their own activities. Consider whether the initiatives of other countries facing similar issues could be adapted to the Finnish context. For example, the UK's Local Better Regulation Office which provides a bridge between the central and local governments.

Background

General context

Structure of local governments

Finland's subnational levels of government consist of a somewhat complex mix of locally elected municipal authorities, a regional layer which is steered partly by the municipalities through several kinds of regional councils and partly by central government regional administration, and a large subnational structure of authorities attached to central government. Finland is currently divided into 6 regions (*lääni/ län*), and 348 municipalities

(*kunta/ kommuner*). The municipalities co-operate in 20 regional associations with councils nominated by the municipalities (*maakunnan liitto/ landskapsförbund*) and in some 250 other inter-municipal associations (*kuntayhtymä/ samkommun*). The Åland Islands are a special case (Annex 1). Municipalities vary greatly in size, population and industrial structure. The average population is 15 306 in 2009, but actual populations vary from 115 to 576 632.

The prefecture (*länsstyrelsen*) represents national government in each region and supervises the municipalities on the government's behalf.

Municipal affairs are overseen by several ministries. The Finance ministry has recently acquired co-ordinating responsibility from the Interior ministry. It has responsibility for the development of municipal legislation and administration, calculations and analyses relating to local government finances and the promotion of co-operation between the State and municipalities. It handles municipal tax matters. The Ministry of Justice is responsible for developing, preparing and implementing legislation concerning municipal elections and referendum procedures. The Ministry of the Environment, the Ministry of Transport and Communications as well as the Ministry of Employment and Industry develop and carry out tasks related to municipal infrastructure and develop and implement related legislation. The Ministry of Education and the Ministry of Social Affairs and Health develop basic municipal services and related legislation and handle central government transfers concerning these services. The range of ministries involved in oversight of municipal activities raises the issue of co-ordination, and disparate obligations on municipalities.

There is a dense network of State regional and local administration (Box 8.1). At the regional level, State regional authorities perform tasks allotted to them by central government and direct the activities of State local administration. Regional administration based on local self-government is driven by the joint municipal authorities and 19 Regional Councils. Each Regional Council develops 4 year strategic plans. The joint municipal authorities organise high-cost services, and the Regional Councils are responsible for regional development and land use planning.

Box 8.1. State representation at the subnational level

State regional administration¹

There are six Regional State Administrative Agencies that started operating on 1 January 2010. The agencies' tasks consist of those of the former state provincial offices, occupational health and safety districts, environmental permit agencies and regional environmental centres. The centres work in close collaboration with local authorities.

The agencies' mission is to foster regional parity by executing all legislative implementation, steering and supervision functions in the regions. They aim to strengthen implementation of basic rights and legal protection, access to basic public services, environmental protection, environmental sustainability, public safety and a safe and healthy living and working environment in the regions.

State local administration

State local administration comprises State Local Offices, offices of State Local Districts, employment offices and tax offices. The main authorities are the District Police, Register Offices, employment offices and tax offices. The services of the police and Register Offices as well as enforcement and prosecution services are organised by State Local Districts. There are 90 State Local Districts.

The service delivery network of State local administration is extensive. There are close to 300 service offices of State Local Offices and of the offices of State Local Districts, 148 employment offices, 140 other service and reception points of employment offices, and 53 tax offices and 73 service offices of

tax administration. The total number of State local administration service offices is over 600. The service network of the Social Insurance Institution of Finland (KELA) is particularly significant in terms of service delivery. KELA has 263 offices throughout the country. Furthermore, services of different administrative sectors are provided in Citizens' Offices according to local needs and circumstances.

Reform programmes

Two significant reform programmes are underway in Finland to reform both regional (ALKU project) and municipal (PARAS reform project) levels of government:

The ALKU Reform Project

This aims to create a system of regional state administration that will build on citizen and customer needs, and work more effectively by clarifying and reorganising the roles, duties, steering and regional division of all regional administrative authorities. It aims to increase the powers of the Regional Councils to bring together and co-ordinate regional development activities where they will be given increased responsibility for strategic tasks.

The PARAS Reform Project

Under this project, municipalities have the choice either to merge into a bigger municipality or to form a joint-authority in order to take care of basic services. Transitional framework legislation is in place until 2012, when one of the options needs to be chosen. 20 000 inhabitants will be the minimum population base. Municipalities with less than this number of inhabitants must merge or co-operate with other municipalities in order to provide certain services. The number of municipalities has already been reduced from 416 to 348. The reform is considered to be working better than expected although benefits are declining as municipal revenues reduce, so additional incentives will be required if mergers are to continue.

Box 8.2. Reform programmes for subnational government

Reform Project for Regional Administration (ALKU project)

The system of Finnish regional state administration was re-organised at the beginning of 2010. As a part of the Reform Project for Regional Administration (ALKU), all state provincial offices, employment and economic centres, regional environmental centres, environmental permit agencies, road districts and occupational health and safety districts were phased out and their functions and tasks were re-organised and streamlined into two new regional state administrative bodies: the Regional State Administrative Agencies (AVI) and the Centres for Economic Development, Transport and the Environment (ELY). The new administrative structure will also form a backdrop for future changes in regional state administration.

The Reform Project for Regional Administration was launched in the summer of 2007 to make the roles, duties, steering and regional division of all regional state administrative authorities clearer. The reform aims to enhance the citizen and customer orientation of regional administration as well as to increase efficiency and productivity in its functions. The reform also enhances the role of the regional councils in co-ordinating and harmonising regional development activities.

PARAS reforms for municipal structures

These reforms, started in 2005, aim to strengthen municipal and service structures and improve the way in which services are organised and provided. There are two key components:

Voluntary municipal mergers

A requirement to establish partnerships or co-operative bodies where municipalities do not reach a minimum of 20,000 inhabitants. A population of at least 20 000 is required in a municipality or partnership area in order for primary health care / social services etc to be provided. A population of at least 50 000 is required from a municipality or a partnership area to provide vocational basic education.

Three acts (the Act on Restructuring Local Government and Services (the Framework Act); the Act amending the Act on Local Authority Boundaries, and the Act amending the Asset Transfer Tax Act were introduced in February 2007 to give effect to the reforms. No change has been made to the constitution: this is important as Finnish municipalities enjoy constitutional independence. It is for the municipalities to choose between the options set out above.

Following the introduction of the Framework Act, municipalities had approximately 6 months to report on how they were going to implement the reform (up to August 2007). As of January 2009, 32 municipal mergers had taken place, and the number of municipalities went from 415 to 348. In one region, for example, 10 municipalities merged into one while another three merged to form one of over 130 000 inhabitants. There are no upper limits on population levels. Some 60 municipalities have not yet made a final decision on how to implement their reforms. Incentives put in place to encourage mergers are scheduled to be phased out by 2012. Possible reasons for this include:

- neighbouring municipalities are waiting to see what others will do before acting;
- some municipalities have not “bought” the reforms and see no positive benefits from increasing the catchment area or population base;
- there is no binding legislation requiring municipalities to comply with the reforms;
- municipal economies are strongly based on local tax revenues: small municipalities that have a small but affluent population will lose their “pot” to the whole of the merged area and could “end up with less”; and
- an important mechanism available to the Finnish electorate to express its opinion is the use of citizen initiated consultative referenda at municipal level. Between 1991 and 1998, 24 municipal referenda were held – principally to approve mergers of municipalities.

Responsibilities and powers of local governments

There is strong, constitutionally protected, local self-government in Finland. Municipal administration is based on the Local Government Act, which governs how municipalities may organise their administration.

Responsibilities

The key responsibilities for the regional level of government are land use planning and regional development. Municipalities have a broad range of responsibilities and organise the majority of public services provided to citizens. The most important of these are in the fields of social welfare and health, education and culture. They are also important in the interface with business, through their responsibilities for land use planning, building regulation, environmental protection and waste management.

Municipalities are also responsible for:

- the maintenance of streets and local roads in their territory;
- a number of functions in the area of rural industries;

- under the Electoral Act, they must contribute to the organisation of national and local elections; and
- provision of infrastructure services such as water and power.

As in most other European countries, municipalities have both statutory and discretionary functions. They have a statutory obligation to perform a number of duties. There are special laws, for example, on the services municipalities must provide for their residents. The law also sets out a number of functions that are at municipalities' own discretion, provided that they observe the legal provisions for carrying out these functions.

Regulatory powers

Only the municipalities have regulatory powers. Since all legislative powers are vested in the national government, municipalities can only make regulations (ordinances) based on laws passed by parliament. These powers relate largely to public order and security and physical planning and health care. The process for making ordinances is stipulated in specific legislation such as the Building Act. In practice, model ordinances are widely followed by municipalities.

Funding of local governments

Municipalities are funded by a combination of local tax revenue, charges for municipal services and a block grant from central government. They decide on their municipal tax rate and on the charges to be made for municipal services. Public opposition to higher taxes and the need to remain fiscally competitive *vis-à-vis* other municipalities have driven municipalities to achieve their policy goals and mandate through regulatory approaches (e.g. delivering concessions, privatising service providers, setting up public-private partnerships) rather than through taxing and spending. *Ex ante* oversight by the national government to ensure that the new approaches are effective, transparent and accountable is weak. Specific quality control on public services and new market-based measures (e.g. competitive tendering of services) continues to be decentralised and based on self-assessment. Legally, the relevant ministry (e.g. the education ministry) establishes the national standards and monitors results. But in practice the courts provide the fundamental control, which are necessarily *ex post* in nature.

They receive block grants from central government for their basic services. A “Principle of Finance” is followed, in that once an obligation or power is given to a municipality, then it must be funded to allow it meet its task (which means that in principle at least, there are no “unfunded mandates”, as in some other European countries). There have been queries as to the legality of this principle, but the Constitutional Committee has examined this and determined it to be legal.

Better Regulation policies deployed at local level

There appears to be very little Better Regulation policy applied at the local level at this stage, although this was an area which this review did not cover in any depth. Finland's Better Regulation programme is largely focused on the activities of central government. The constitutionally protected autonomy of municipalities means that in principle at least, central government cannot dictate that municipalities should follow Better Regulation processes, and any provisions would have to be laid down in a law. The OECD peer review team were told that the only way that standards or obligations can be set on municipalities is through legislation – meaning that a law would most likely be required to oblige local government to comply with Better Regulation reforms. There appears to be no co-

ordination between the central level and local government regarding the potential use of Better Regulation tools and processes, and there would be variability in the level of Better Regulation awareness within local government.

Co-ordination mechanisms

Co-ordination between central and local government

Advisory Board on Municipal Economy and Administration

The Advisory Board on Municipal Economy and Administration works under the Ministry of Finance and deals with matters involving local government legislation and municipal administration and finances that are far-reaching and of importance. The Board brings together representatives of the central government and the Association of Finnish Local and Regional Authorities. The Board examines government proposals with an impact on local government administration and finances, and the sections of the national budget covering local government finances, assesses prospects for local government finances, monitors the functioning of central government transfers to local government and makes proposals for improving it.

Basic Public Services Programme

The Basic Public Services Programme is aimed at facilitating the management of local government services and their financing (Box 8.3).

Box 8.3. The Basic Public Services Programme

The Programme is a tool that facilitates the management of local government services and their financing overall in political decision-making. It looks at the state of basic local government services, giving decision-makers an overall picture of large-volume basic public services that are important for customers. The basic public services budget evaluates the outlook for local government finances and the impact of the government's budget proposal on these. The budget is drawn up as part of the government's budget proposal.

The Programme is prepared in a ministerial group that includes the Minister of Finance as the chair, the Minister of Public Administration and Local Government, the Minister of Health and Social Services, the Minister of Social Affairs and Health, the Minister of Education, the Minister of Migration and European Affairs and the Minister of Justice. Permanent expert members participating in the work of the ministerial group are the President and the Director General of the Association of Finnish Local and Regional Authorities.

The Basic Public Services Programme procedure comprises the Basic Public Services Programme and the Basic Public Services budget. The procedure is an integral part of the negotiating procedure in central and local government and of the government Budget formulation. Section 8a of the Local Government Act, which entered into force at the beginning of 2008, lays down provisions on the procedure.

The Programme evaluates changes in the local government operating environment and the demand for services, the trend in local government finances and changes in local government functions, and draws up a plan of the measures required for balancing revenue and expenditure. Local government finances are assessed as a unitary component, as a unit of general government finances and by groups of municipalities. The Programme also examines the financing needed for carrying out the statutory local government functions, for developing them and for increasing productivity.

In the Programme, the term "basic public services" means all services which are based on special legislation and the provision and financing of which are the responsibilities of local government. The

main emphasis is, however, on statutory services related to government transfers for social welfare and health care and for educational and cultural activities. Total spending for these services accounts for more than three quarters of overall local government expenditure.

Joint Task Force for the revision of legal norms hampering the efficiency of municipal services

Consistency across municipalities is determined or set out by legal provisions, and topics that are not regulated by law are left to the discretion of each municipality. The OECD peer review team were also told that there has been significant decentralisation of responsibilities since the 1980s, when municipalities suffered from regulatory burdens imposed by higher level regulations (an issue shared with some other European countries including Sweden). Today, municipalities have more discretion, *e.g.* in spending money or in the application of rules for which they are responsible (notably licences and permits). ICT has also developed on a decentralised basis. The decentralisation is likely to lead to different treatment for the same issue across municipalities, leading to variations across the country given that the number of municipalities remains high. This could well be an issue for businesses seeking to work across different parts of the country (as it is in several other EU countries).

An important initiative seeks to address the issue of how central state legislation affects the municipal level. A joint task force for revising legal norms hampering the efficiency of municipal services was established by the government in June 2009 (Box 8.4).

Box 8.4. Joint Task Force for the revision of legal norms hampering the efficiency of municipal services

The government established in June 2009 a task force for revising legal norms hampering the efficiency in municipal service production and delivery. The members appointed to the co-ordination group of the task force represent:

- Key ministries responsible for legislation in the areas of basic welfare services (Ministry of Social Affairs and Health, Ministry of Education).
- Ministries of Finance and Justice in the capacity of overseeing the quality of legislation.
- Finnish Association of Local and Regional Authorities.

The aim is to develop more integrated and coherent ways of managing the numerous steering mechanisms established by ministries over the last twenty years. These steering mechanisms were developed piecemeal from the late 1990s onwards, when state grants earmarked for municipalities were discontinued and replaced by calculated block grants; the municipalities acquired wide powers to adapt and choose the ways of delivering services, and legislation on municipal services was also changed to framework legislation without detailed links to financing. Unlike legal norms, these ‘new’ steering mechanisms are not required to undergo thorough inter-ministerial procedures and negotiations with the municipal sector (Advisory Board on Municipal Economy and Administration and the Basic Public Services Programme) but may be prepared internally within a ministry and subsequently launched. This kind of steering mechanism may generate incentives/disincentives for the efficiency of municipal services.

Co-ordination between local governments

The Association of Finnish Local and Regional Authorities represents the common interests of municipalities. It provides support for its members, including running an office in Brussels, model ordinances, and guidelines for ensuring that municipalities' infrastructure arms are not in breach of the competition law.

Note

1. This is due to be reformed under the ALKU project (see below) from January 2010. Notably the TE centres cease to exist from then.

