



**Better Regulation in Europe**  
**FINLAND**



# **Better Regulation in Europe: Finland 2010**



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## *Foreword*

The OECD Review of Better Regulation in Finland is one of a series of country reports launched by the OECD Public Governance and Territorial Development Directorate, in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom). This includes reviewing trends in their development and identifying gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process, (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews) and to find out what has happened in respect of the recommendations made at the time. The multidisciplinary review of Finland was published in 2003 [OECD (2003), *OECD Reviews of Regulatory Reform: Finland 2003: A New Consensus for Change*, OECD, Paris].

Finland is part of the second group of countries to be reviewed – the other five are Belgium, France, Germany, Spain and Sweden. The first group of reports, covering Denmark, the Netherlands, Portugal and the United Kingdom, were initially released in May 2009 and reports on the remaining countries will follow in the second half of 2010. This report was discussed and approved for publication at a meeting of the OECD's Regulatory Policy Committee on 15 April 2010.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.



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## *Abbreviations and acronyms*

<b>BLI</b>	Bureau for Legislative Inspection
<b>BRCC</b>	Better Regulation Consultative Committee
<b>GFN</b>	Government Foresight Network
<b>FFE</b>	Federation of Finnish Enterprises
<b>FICORA</b>	Finnish Communications Regulatory Authority
<b>GSD</b>	Government Strategy Document
<b>HELO Instructions</b>	Instructions on the Drafting of Government Proposals ( <i>i.e.</i> Bill Drafting Instructions)
<b>MEE</b>	Ministry of Employment and the Economy
<b>MOF</b>	Ministry of Finance
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOJ</b>	Ministry of Justice
<b>NAOF</b>	National Audit Office of Finland
<b>PMO</b>	Prime Minister’s Office
<b>SÄKE group</b>	Law Drafting Development Group
<b>SME</b>	Small and Medium-Sized Enterprises



*Country profile - Finland*

Source: CIA factbook [www.cia.gov/library/publications/the-world-factbook/geos/fi.html](http://www.cia.gov/library/publications/the-world-factbook/geos/fi.html).

### Country profile - Finland

<b>The land</b>		
Total Area (1 000km <sup>2</sup> ):	338.1	
Agricultural (1 000km <sup>2</sup> ):	22.6	
Major regions/cities (thousand inhabitants, 2006):	Helsinki	564.5
	Espoo	235.0
	Tampere	206.4
	Vantaa	189.7
<b>The people</b>		
Population (thousands, 2006):	5 277	
Number of inhabitants per sq km:	17.4	
Net increase (2006/07):	0.4%	
Total labour force (thousands):	2 675	
Unemployment rate (% of civilian labour force, 2009):	9.7%	
<b>The economy</b>		
Gross domestic product in USD billion (2008):	188.3	
Per capita (PPP in USD):	35 400	
Exports of goods and services (% of GDP):	44.8	
Imports of goods and services (% of GDP):	40.1	
Monetary unit:	Euro	
<b>The government</b>		
System of executive power:	Dual Executive	
Type of legislature:	Unicameral	
Date of last general election:	18 March 2007	
Date of next general election:	January 2012 (Presidential), Early 2011 (Parliament)	
State structure:	Unitary	
Date of entry into the EU:	1995	
Composition of the main chamber (% political parties):	Centre Party	51
	Social Democratic Party	45
	National Coalition Party (conservatives)	50
	Left Alliance	17
	Green League	15
	Swedish People's Party	9
	Christian League	7
	Other	6
	<b>Total</b>	<b>200</b>

Note: 2007 unless otherwise stated.

Sources: OECD Economic Survey of Finland 2008, OECD in figures 2009, OECD Employment Outlook 2009 and OECD Government at a Glance 2009.

## Executive summary

### Economic context and drivers of Better Regulation

Finland has been one of the best performers of the OECD, with high levels of income and quality of life. The impact on the Finnish economy of the global slowdown following the 2008 financial crisis has been felt acutely, hitting Finnish exports and production disproportionately hard. Weakening competitiveness, and exposure to the hard-hit ICT and capital goods sectors, has contributed to a faster and deeper drop in GDP than in most comparable countries. At the same time, and in common with many other European countries, Finland faces the need to sustain a high standard of public services when financial resources for the public sector are under strain. The public sector is large by OECD standards. This challenging context implies, among other actions, raising productivity and efficiency, and the government has committed to reducing numbers within the public service.

Against this background, internal demand for Better Regulation has acquired momentum, which can be expected to grow further. The Better Regulation strategy document adopted in 2006, and developed since then, for the first time made an important link between Better Regulation and public policy goals. It states that innovation, productivity, competitiveness and public finances will benefit from a more effective approach to regulatory management. The Government Programme states that the Finnish government will step up its efforts to improve the conditions necessary for entrepreneurship and create a more favourable entrepreneurial environment.

There remains, however, an overall a lack of understanding as to how Better Regulation can make a difference, and until the global financial crisis, the continuing strength of the Finnish economy deflected attention from policies which could contribute to Finnish competitiveness. The mainstreaming of Better Regulation is not complete. The recession induced by the financial crisis may help to “lift” Better Regulation into a more central position, and is an opportunity for buy in. The mid-term review of the Government Strategy Document suggests that this is happening. It sets a promising framework for further mainstreaming of Better Regulation by underlining the need for effective evidence based evaluation to underpin decision making, implementation and follow up processes.

EU initiatives are a motor for Better Regulation in Finland. The EU Services Directive, for example, has encouraged a review of issues such as one-stop shops for small to medium-sized enterprises (SMEs). The recently adopted programme for reducing administrative burdens on business was encouraged by the EU programme. A significant and increasing proportion of Finnish law (perhaps up to 80% in some areas) derives from EU origin legislation.

Post crisis, it may prove easier for Finland to sustain momentum on Better Regulation policy as a key contributor to a sound economic environment and the international competitiveness of Finnish firms. The link between Better Regulation and efforts to reform the public service and sustain high-quality services could also be exploited. More effective regulatory management could bring a significant contribution to these reforms.

## The public governance framework for Better Regulation

The Finnish public governance context has a number of distinctive features. There is acceptance of a strong role for the state, which is seen as the main guardian and defender of society. The government owns substantial economic assets, the public expects high standards of social, environmental and consumer protection and is ready to finance an extensive social welfare system. Finnish governance and regulatory practices are characterised by consensus building, informality, collegiality, gradualism and often corporatist attitudes. The rule of law has been an ideal in Finland's history and culture and explains a heavy reliance on laws to this day. The Finnish culture does not make a clear distinction between policy-making and law drafting. The government works through a decentralised executive, where regulatory powers are devolved to ministers, official bodies and municipalities. This has important implications for the design of overarching regulatory policies. It also has implications for policy co-ordination and coherence.

There is a growing acceptance of the fact that changes to longstanding traditions are necessary if Finland is to sustain its quality of life and competitive edge. Some important reforms in recent years underscore this evolution. Constitutional reforms have strengthened the parliamentary features of the public governance system, and have given the courts an enhanced role, to exercise judicial review of primary laws for their conformity with the constitution. Reforms to the public administration have also been taken forward. The government has progressively moved away from its former role as substantial producer and owner of services towards a framework that allows more competition. Public administration reforms have also been a major feature of the last few years. These include, notably, the Action Programme on Public Sector Productivity, to raise productivity across all ministries and their agencies by reducing numbers, led by the Finance ministry.

A “whole-of-government” approach to strategic thinking and management is also being promoted, with an enhanced role for the Prime Minister's Office (PMO) in overseeing the roll out of the policy programmes. Efforts are also being deployed to look ahead. The Government Foresight Network, an inter-ministerial network, aims to take a long term view of policy development, beyond the policies set out for the current legislative term, and in the process, promoting a more horizontal approach to policy development. Parliament's Committee for the Future is engaged in a similar exercise. Last but not least, two major reforms of subnational levels of government are underway – the ALKU project for a more effective regional state administration focused on citizen and customer needs, and the PARAS reform project for streamlining the municipalities.

## Developments in Better Regulation and main findings of this review

### *Strategy and policies for Better Regulation*

*Finland's policy for Better Regulation has evolved significantly since 1996.* Early reform initiatives focusing on deregulation and the technical quality of law drafting started giving way to a broader emphasis on regulatory quality and regulatory management. In 1996, the government issued a formal regulatory policy for the first time. It has since been refined and extended. Finland is one of a growing number of countries to have an explicit Better Regulation Strategy, a significant step forward from the situation recorded in the OECD's 2003 review.

*Important tools and processes supporting good regulatory practice are now in place.* These include longstanding processes such as the forward looking legislative plan, the *HELO* instructions on effective law drafting, the procedures for defining negotiating

strategy at the EU level, and the well established traditions for consulting and reaching consensus on key issues, as well as more recent developments such as the Government Strategy Document principles and activities for Better Regulation, e-Government initiatives, the government's integrated new Guidelines for Impact Assessment, and a consultation code.

*The government's integrated new guidelines for ex ante impact assessment, bring together in one document previous fragmented guidance, and support this with training. However challenges remain.* In particular, the nature of policy development/law drafting in Finland which has not yet integrated the importance of early efforts in the process to collect clear evidence and data for a robust analysis of the likely consequences (positive, negative) of a proposal. The mid-term policy review of the Government Strategy Document in February 2009 re-assessed the situation and launched new initiatives for the second part of the government term. One of these is to strengthen the impact assessment of policy measures.

*EU aspects of Better Regulation policy are fundamentally strong and help to drive the domestic agenda.* This is an aspect of Better Regulation for Finland that needs special emphasis and attention. A more pro-active EU stance is identified as an objective in the Government Strategy Document. Further attention needs to be paid to the way in which Finland seeks to exert influence in EU negotiations, in order to avoid some of the problems which appear in transposition.

*Strong traditions of trust and consensus building continue to frame the Finnish approach, to public consultation and communication.* These have helped Finland to reach consensus on how to address major policy challenges in the past. This approach does present challenges for developing a more strategic approach to policy making and to identifying what may be the best – as opposed to the least contentious – solution to regulatory or policy challenges. The system may be losing valuable inputs and the innovative views and ideas which outsiders can bring to policy making. Finland has, however, been taking a number of initiatives to broaden the approach. Timing is critical: those who wish to participate must be able to do so before a decision is well advanced.

*An important gap was recently filled with the establishment of a programme for the reduction of administrative burdens on business.* This new programme, which aims to reduce administrative burdens on business by 25% by 2012, is part of the efforts to address competitiveness issues. The roll out of the programme will need to be carefully monitored. It is not yet clear whether effective supporting processes and institutional structures are in place.

*The Better Regulation Strategy covers a lot of ground but there are still gaps. There is no common approach to enforcement policy, with individual ministries and agencies making their own policy.* Given the pressures on public spending and the efforts to increase productivity in the public sector, it makes sense for Finland to review whether enforcement and inspection processes could be made more efficient, for example by encouraging the adoption of risk based approaches, at the same time minimising burdens on companies. Municipalities appear relatively untouched by Better Regulation processes.

*For now, there are no explicit programmes to address burdens on citizens or inside the administration.* Such initiatives could well make sense in the Finnish context. A programme for the reduction of administrative burdens on citizens could be linked with efforts at encouraging citizens into a stronger engagement with the government in policy and regulatory development. In the same way, a programme to address burdens on public sector officials could be a very helpful adjunct to the public sector productivity programme.

Significant efforts are underway to make it easier for citizens to access services, but there does not appear to be a distinct simplification programme for their benefit.

*The practical framework for applying Better Regulation processes needs strengthening.* The principles set out in the Government Strategy Document are excellent. None of the current processes, however, looks likely to provide a strong enough framework in practice for addressing the regulatory stock, or the flow of new regulations, or for ensuring that all relevant stakeholders have a clear and timely opportunity to make their views heard. Some of what the 2003 OECD report had to say remains relevant: Better Regulation instructions contain few concrete criteria, and implementation of Better Regulation policies is poor.

*Although Better Regulation is now part of the Government Strategy Document, it is not yet well integrated into government policy thinking.* Many in the government still appear to see it as an expanded (and resource intensive) form of legal quality in law drafting, missing its real potential. Alongside the Better Regulation Strategy, the Finnish government has launched significant programmes for strengthening public governance, notably the productivity programme, and major initiatives to promote a stronger democratic basis for policy making through the engagement of citizens. These are obvious policies for “joining up” with the Better Regulation strategy. Mainstreaming also requires ongoing efforts to link Better Regulation with broader goals of public policy, such as competitiveness, innovation and public finances. There also remains an underlying culture and perception issue. Policy and law drafting are often synonymous, with a presumption that a law is needed. Better Regulation is largely seen as a “legislative” issue – primarily of interest to those involved in drafting legislation. Finland might benefit from marketing the use of the tools of Better Regulation (such as impact assessment, consultation), as policy-making tools.

*Communication on the Better Regulation Strategy appears to be somewhat ad hoc and undeveloped.* A notable exception is communication by the MEE of the measures to reduce administrative burdens on business. This misses the opportunity to better sell the advantages of Better Regulation to improving policy-making and service delivery process, and the contribution it can make in achieving greater efficiencies.

*Ad hoc evaluations of policies need to be deployed more vigorously and systematically.* As in many other countries, the approach to evaluating policies and programmes tends to be ad hoc. It also relies too much on the decisions of external bodies such as the National Audit Office to carry them out. The recent mid-term review of the GSD was a positive step in checking progress on Better Regulation tools and processes. Examples of where evaluation could be beneficial at this stage are public consultation, *ex ante* impact assessment, and the programme to reduce administrative burdens on business.

*Making more explicit the linkages between e-Government and Better Regulation could help to increase awareness of Better Regulation as an important policy.* Finland started on e-Government initiatives early and successfully, compared with most other European countries. It recognises the need now to address the fragmentation of approaches and develop a more joined up central strategy.

### ***Institutional capacities for Better Regulation***

*Institutional capacities for Better Regulation have improved since the last OECD report, but remain quite weak.* The Justice ministry, in particular, has made considerable efforts to co-ordinate, encourage and spread best practice. Still, there is some way to go. The backdrop of autonomous ministries, no clear political leadership and a dominant legal culture in the civil service has not fundamentally changed. It has proved impossible, for

now at least, to establish a central monitoring and challenge unit, and a networked approach has emerged instead.

*At the same time, there is a growing awareness of weakness combined with a desire on the part of many officials for a stronger, more coherent and horizontal approach.* The gap in interest appears to be mainly at the top, politicians certainly, some permanent secretaries also. Concern about the resource implications of deploying Better Regulation policies more strongly is balanced by a growing perception that more effective co-operation and sharing of best practice could achieve much, without more staff. Advancing Better Regulation is probably less an issue of inadequate resources, and more an issue of the more efficient use of available resources through shared effort.

*Will the current networked approach be adequate?* A cross ministry expert group, the Better Regulation Consultative Committee, set up in November 2007, represents an effort at developing a networked approach to Better Regulation management. It is too soon to say to what extent the current arrangements will be effective, but it is already clear that some further changes will be needed.

*The Justice ministry cannot, in the long run, be left alone to spearhead Better Regulation.* For now the Better Regulation ministerial group and official level consultation committee are both chaired by the Justice ministry. Other key institutional actors at the centre of government are the Prime Minister's Office (which as in other countries, has a strategic view of policy making and co-ordinates the Government Strategy Document), the Finance ministry (which is responsible for the public administration and performance measures, budget allocations, and co-ordination of local government), and the Economy and Employment ministry (which runs the recently established administrative burden reduction programme and promotes competitiveness). The Ministry of Economy and Employment (MEE) is promising as another option if the underlying focus is competitiveness, but may lack the leverage and influence of the first two. Finland is more effectively organised, via a strong PMO presence, for EU regulatory affairs than it is for domestic issues. Could the well-functioning co-ordination process for the EU be adapted for the national Better Regulation policy?

*Effective monitoring and some "teeth" are also essential, to ensure that policies such as public consultation and ex ante impact assessment are properly applied.* It is difficult to do without an officials unit to flank the ministerial and networking activity. As well as the (very small) Justice ministry resources for Better Regulation, the MEE has recently established a (slightly larger) Better Regulation unit whose functions include taking forward the administrative burden reduction programme for business. In order to make the most of limited resources and to share ownership, it makes sense to bring these two centres of activity closer together.

*An external advisory board would add further weight to the institutional set up and help to challenge ministries to perform better.* For now, Finland relies on external think tanks and the National Audit Office to provide a challenge function. But challenge is not their primary role, effective though they have been in helping to put Better Regulation on the map.

*The Finnish parliament is quite engaged, compared with some other European countries, and this is an asset.* Four committees: the Audit Committee, the Constitutional Law Committee and more broadly the Future Committee, as well as the Grand Committee for EU matters, are regularly involved in issues related to Better Regulation. The parliamentary committees in general pay careful attention to the drafting of bills and take an interest in impact assessments. This relationship needs to be nurtured.

### ***Transparency through public consultation and communication***

*Finland's longstanding and broad commitment to an open democracy has traditionally been given expression by extensive consultation with established groups.* Finland has a well anchored tradition of participative decision-making which includes a wide range of groups, including NGOs. Strong traditions of trust and consensus building continue to frame the Finnish approach, and have helped Finland to reach consensus on how to address major policy challenges in the past. The approach does present challenges for developing a more strategic approach to policy making and to identifying what may be the best – as opposed to the least contentious – solution to regulatory or policy challenges. Post financial crisis, the need to ensure that effective consultation is in place to identify the best way forward is all the more important.

*Alongside the traditional approaches, Finland has for some time also been making use of the Internet for the dissemination of information, and to engage the general public.* There is, for example, a widespread practice of posting draft legislation on the Internet. Renewed efforts are being made to expand the use of the Internet through new portals aimed at encouraging a wider participation by citizens in policy issues.

*Despite these developments, some of the issues raised in the 2003 OECD report are not yet fully resolved.* That report noted that consultation still favoured organised groups, that consultation requirements were not monitored and there were no sanctions, and that the consultation-impact assessment relationship remained weak.

*There is now a code of consultation, but consultation requirements are not monitored and there are no sanctions.* Since the 2003 OECD report, there has been significant progress with the establishment of a code of consultation in 2005. This is now being renewed and strengthened. But there continues to be a lack of monitoring or sanctions for non-compliance. For example, there are no sanctions if a consultation is poorly organised. There is a tendency to disregard – or lack awareness of- the consultation code. Also, the tradition of ministerial autonomy stands in the way of sharing best practices. Autonomous policy development work means that opportunities are lost to share good practice.

*The participative system of consultation may be blocking efforts at a more inclusive approach.* The system is based on a strong network of relationships between ministries and key stakeholders, works very effectively at one level, delivering agreement on policies and protecting policies from unravelling when adopted and implemented. But it may be blocking efforts at a more inclusive approach to rule making, and it loses valuable inputs and the innovative views and ideas which outsiders can bring to policy making.

*Those who wish to participate must be able to do so before a decision is well advanced.* It may be necessary to change from a reactive gear to a more pro-active one for citizens. It is not enough to make information available: they must be encouraged to use it. This does require culture change on a large scale. Consultation with citizens and other broad stakeholder groups will need to become a more embedded part of the daily life of public servants. Traditional approaches to consultation (such as organised hearings and written statements with established groups) will need to be complemented with alternative and broader approaches such as workshops, public meetings, and the use of web 2.0 technologies.

*The relationship between public consultation and ex ante impact assessment remains weak.* Consultation is carried out more with the aim of building consensus than to gather evidence and assess potential impacts of proposed new regulations. This explains in part why it is difficult to make headway with a strong *ex ante* impact assessment policy: it is not in the culture to think of regulatory development in this way.

*Access by the public to regulations is transparent and clear, aided by longstanding efforts to promote e-Government.* Finland stands up well in this regard compared with many other OECD countries. The principle of free access to information prevails, backed up by a number of provisions, including several primary laws, publication of laws and secondary regulations by the Ministry of Justice, and online information services.

### ***The development of new regulations***

*Procedures for the development of new regulations appear to be generally well established and work smoothly, with the possible exception of forward planning.* The process for forward planning of primary legislation is well structured compared with some other European countries. Forward planning of secondary regulations may need attention.

*Sustaining the quality of legal drafting is an issue that appears to need continued attention.* There appears to be variability in the performance of ministries and the Justice ministry has difficulty keeping up with the demands made on it as “guarantor” and checker of legal quality. An important part of the objectives for Better Regulation contained in the Government Strategy Document seeks to reinforce the processes for ensuring legal quality. This is clearly necessary.

*Efforts have been made since the 2003 OECD report to strengthen the approach to ex ante impact assessment, and there is now an awareness of the need for action.* Significant efforts have been engaged by the Justice ministry to raise consciousness of the importance of this process. With its integrated guidelines issued in 2007, and enhanced training, prepared and organised in co-operation with other ministries, the ministry has succeeded in generating some momentum for a change in attitudes among ministries. There is widespread awareness of the new guidelines, and a generally positive attitude to their use. The training offered has been taken up enthusiastically. This is a good start for building stronger performance.

*But there remains room for considerable improvement, and the main recommendations of the 2003 OECD report continue to be relevant.* The last OECD report highlighted a range of issues that needed attention including weak institutional capacities for quality assurance and support, undeveloped use of the benefit-cost principle and lack of analytical rigour, and a failure to use public consultation in support of the process. The issue remains of how to give *ex ante* impact assessment greater rigour, substance and teeth in the Finnish decision making system. Policy making and law drafting tend to be synonymous in the Finnish system, with decisions taken on a legislative text which is well advanced, rather than on a policy proposal where the options are still open (such as no action, or alternatives to regulation). At the same time, however, there is evidence of some change in attitudes.

*Changing habits and promoting a new culture calls for new organisational arrangements.* Will the new expert network chaired by the Justice ministry be enough? The Justice ministry can only go so far, given its limited resources and legal orientation. It also lacks authority to act as a gatekeeper. It reviews the legal and procedural aspects but not the policy substance. Effective and “joined up” impact analysis- not just collections of different assessments -demands a real co-operation between ministries and sharing of skills and competences, making best use of scarce resources, together with a system that can weigh up the substantive aspects of what is presented.

*The methodological approach to developing effective impact assessments needs considerable strengthening.* There is a particular need to strengthen the support for more quantitative and economic assessments. Most Finnish officials engaged in impact assessment have a legal background. Guidance and methodology remain too vague. Some

of what is required is relatively simple to put in place, for example “model” impact assessments, best practice examples and a clear template. Some aspects will need a more substantial approach, aimed at providing officials with no real experience of handling numbers a means by which they can be supported in the quantitative aspects of the work. Many other countries face a similar problem.

*Public consultation is not yet an automatic part of the process.* Finland has a strong tradition of consensus building, but this is not the same as active consultation on a specific proposal aimed at ascertaining likely impacts and collecting data to this end. A different mindset needs to be vigorously promoted. This is not yet evident. The guidelines define consultation as an essential part of the process but do not go much further than this. The importance of consulting early, before it is too late to alter the course of a decision, is not sufficiently emphasised. Going out to public consultation would also help to reinforce the process – external stakeholders acting as an alternative form of watchdog to encourage quality work and raise the political profile of the process. Use of the SCM for assessing administrative burdens automatically requires interactive consultation with stakeholders to gather data so this too can be a lever for change.

*There are only weak links in the Finnish system between law drafting and downstream compliance and enforcement.* Could systematic feedback on issues with the latter help to strengthen the system and even develop demand for more effective impact assessments? It seems that Finland could benefit from a closer relationship between drafters and those who will need to enforce regulations (as well as those who will have to comply).

*So as not to overwhelm the system, and given increasing resource constraints on the Finnish public administration, Finland could benefit from introducing a threshold test.* This would allow officials to prioritise efforts on proposals which are likely to have most impacts. Some countries, for example, have introduced a financial threshold to capture the more significant proposals for full analysis.

*Continued efforts appear to be needed in order for alternatives to regulation to be taken seriously.* There does not appear to be much change on the ground since the 2003 OECD report, which recommended that requirements to consider alternatives should be effectively enforced. It is not automatic to consider alternatives in a culture which carries the presumption that laws are the automatic solution to fixing a policy issue. This is frustrating for some external stakeholders who would like to see greater use made of alternatives. There is a need to move beyond statements of principle and to take practical actions to embed the idea of considering alternatives.

### ***The management and rationalisation of existing regulations***

*Finland has strengthened its approach to simplification of the legislative stock since the 2003 OECD report.* Legislative maintenance is highlighted as part of the Better Regulation Strategy. This is in contrast to some other European countries which have tended to neglect this important part of regulatory policy.

*Since the 2003 OECD report, Finland has also adopted a promising national programme to reduce administrative burdens on business.* The programme, which builds on previous initiatives, was launched in 2009 with a target to reduce burdens by 25% over the 2006 level by 2012, and is an important contribution to the Better Regulation Strategy. This initiative means that Finland has now caught up with other European countries and most importantly, now has a coherent and cross government approach to burden reduction which did not exist previously. Given that the cost of burdens on business has been estimated at some EUR 3.6 billion, a well run programme can be expected to make a

significant contribution to the competitiveness of Finnish enterprises. There is a serious level of drive and commitment to make it work from the Employment and Economy ministry.

*It is too soon to judge a programme which has only been in place for a few months, and certain issues will need careful management.* These are: the need for effective carrots and sticks on ministries; the need for an effective challenge and support function; the need for robust methodologies for identifying and tracking burdens; the need for effective communication; and the need to extend the work to subnational levels of government. Effective communication is also critical. As the early starters around Europe have found, communication on progress and results is essential if the support of key-actors such as the parliament and the business community is to be sustained. In order to be fully successful, the programme, which is currently only a national plan, also needs at some point to cover burdens arising out of other levels of government.

*There is no specific programme for the reduction of burdens on citizens.* A growing number of European countries have established programmes to address burdens on citizens as well as businesses. This could make particular sense in the Finnish context at this stage. It could help to give substance and focus to the efforts to encourage citizens into greater participation in the development of policies and regulations, and support for Better Regulation, if they feel that they have their “own” programme, which addresses their specific concerns. As with the business programme, setting it up would require a structure for citizens to make proposals for what should go into the programme. A strong link with the local level of government would help to capture issues around the delivery of public services and social welfare support.

*Also, there is no specific programme to address administrative burdens inside government itself.* This could be a useful adjunct to the public sector productivity programme. It might help with buy in to a contentious policy if the government is also seen to be engaging in efforts to streamline requirements on officials which take them away from the “front line” of public service delivery.

### ***Compliance, enforcement, appeals***

*A missing link in Finland’s Better Regulation Strategy is a policy addressing compliance and enforcement issues.* As might be expected in a system with autonomous actors, there is no common approach to enforcement policy, with individual ministries and agencies making their own policy. Some risk-based enforcement approaches have been adopted, for example in the area of food safety. Given the pressures on public spending and the efforts to increase productivity in the public sector, it makes sense for Finland to review whether enforcement and inspection processes could be made more efficient, for example by encouraging the adoption of risk based approaches, at the same time minimising burdens on companies. Some other European countries such as the UK, Denmark and the Netherlands have made this an important part of their Better Regulation strategy.

### ***The interface between member states and the European Union***

*The EU is important for Finland both in terms of stimulating efforts to improve regulatory management, and the need to cope with EU origin legislation which has to be absorbed into the system.* It is an aspect of Better Regulation for Finland that needs special emphasis and attention. This is recognised by the government: a more pro active EU stance is identified as an objective in the Government Strategy Document.

*Against the background of an executive consisting of highly autonomous ministries, Finland has a remarkably inclusive and co-ordinated approach to the development and agreement of its negotiating positions on EU proposals.* Ministries, the parliament and other stakeholders are consulted in a process which is carefully orchestrated from the Prime Minister's Office. The 2003 OECD report had already noted that the institutional structures and processes established to co-ordinate relations with the EU on regulatory matters appear to be consistent, coherent and functioning at a high level. This review confirms the previous analysis. Why does it work effectively? The institutional framework would appear to be a key ingredient: the strong role of the PMO; a strong Cabinet Committee on EU affairs that meets weekly (and other institutional support such as the Justice ministry's EU unit); and the pro-active engagement and support of the parliament in formulating negotiating positions, which helps to identify important impacts and issues to take into account in negotiation.

*There are, however, some weaknesses in Finland's approach to the development of EU legislation which compromise the effective and straightforward transposition of adopted directives later on.* Influencing the development of EU directives needs to start early, before formal negotiations begin. Finland may need to strengthen its presence at the early and informal stages of policy making in Brussels, as well as later when effective negotiation can help to prune back an over detailed draft or ensure that needed flexibilities are built into the text. Finland may also need to put more effort into building alliances with like-minded member states. As negotiations within the Council evolve and amendments are proposed by the European Parliament, it is not clear whether the co-ordinated and inclusive approach to establish a negotiating position is re-engaged, or whether the responsible ministry is left to carry on alone.

*The effective application and updating of impact assessment on draft EU proposals would help to secure a strong Finnish position as negotiations unfold.* Responsible ministries already carry out a summary form of impact assessment on EU proposals. Improvements to this process could help to secure a more effective and durable negotiating position. If the initial impact assessment is well done, updates to take account of drafting developments would be relatively straight forward and less time consuming. The information could be used systematically to identify potential allies among other member states in negotiation. The European Commission's own impact assessments and the views of the EU Impact Assessment Board should be taken into account.

*EU training and guidance for officials may not be adequate to cover all the (policy as well as legal) issues that it would be helpful to address.* Finnish training on EU matters is offered to officials and appears especially strong for the judiciary. The Justice ministry has an EU unit which provides legal guidance and it has produced a legal drafter's guide to the EU. Training and guidance in some other EU countries is broad and significant (for example, a full policy as well as legal guidance document in the UK, and training in negotiating techniques in Ireland). The Justice ministry's initiative to integrate all the guidance for domestic impact assessments has been a hit. Could this approach be extended to the EU dimension?

*The Finnish parliament plays a substantial role in the establishment of the Finnish position on EU matters.* This is one of the strengths of the Finnish system. The considerable efforts that are put into the process by the government as well as the parliament to establish a shared position for negotiation needs to be carried through as negotiations unfold, taking account of the parliament's heavy legislative work load.

*The transposition of EU directives needs attention.* Transposition is left to ministries without any central guidance. The default option for transposition appears to be to

transplant an adopted directive word for word into Finnish law, which complicates the latter. Improving Finland's capacities to influence and negotiate effectively for clearer and shorter texts would help to prevent at least some of the problems. Negotiators need to focus on implementation from the outset. Finland might also review how other countries with similar cultures and legal systems approach transposition as this could reveal flexibilities that have not previously been exploited, and reduce the costs and burdens associated with transposition. Impact assessment carried out at the transposition stage could also help to identify more effective approaches.

### ***The interface between subnational and national levels of government***

*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 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; 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.

## Key recommendations

<b><i>Better Regulation strategy and policies</i></b>	
1.1.	Ensure that the Justice ministry gets full support for its ongoing efforts to raise awareness of impact assessment. Take steps to address weaknesses in the current system.
1.2.	Continue the efforts at a more pro-active EU stance and consider a review of the issues related to transposition of EU legislation.
1.3.	Initiatives to broaden the scope of public consultation need to be encouraged. There is a need give real teeth to the code of consultation.
1.4.	Ensure that the business burden reduction programme is effectively monitored and evaluated.
1.5.	Consider expanding the Better Regulation strategy to cover enforcement policy. Take steps, in discussion with the subnational levels of government, to bring them into the Better Regulation programme.
1.6.	Consider the establishment of programmes for the reduction of administrative burdens on citizens and public sector officials.
1.7.	Take steps, systematically, to review the weaknesses of current processes and how they can be strengthened and enforced.
1.8.	Monitor the efforts to give Better Regulation a sharper profile in government policy making.
1.9.	Consider how Better Regulation can be more effectively promoted, so that it does not come across as a legalistic activity.
1.10.	Establish a clear communication strategy using different tools and aimed at both internal and external stakeholders (newsletters, annual report, presentations etc) taking inspiration from countries such as the Netherlands which have done this. Ensure that communications on broader government strategy and related programmes such as the productivity programme are used to convey the Better Regulation messages.
1.11.	Establish a clear policy to evaluate progress, strengths and weaknesses of key Better Regulation policies as they unfold.

<b><i>Institutional capacities for Better Regulation</i></b>	
2.1.	An early evaluation of the effectiveness of the current networked approach in strengthening Better Regulation in key dimensions such as public consultation and <i>ex ante</i> impact assessment is essential. Use the evaluation results to take the institutional structure a step further forward.
2.2.	Consider whether the Prime Minister's Office could play a stronger role by chairing the Better Regulation ministerial committee. If this is difficult, a rotation of the chairmanship over time across the core ministries could help to spread ownership and exert greater leverage than is currently possible via the Justice ministry. A minister to act as political champion is essential at this stage in Finland, and this task would automatically devolve to the chair.
2.3.	Take action to develop a closer relationship between the Justice and MEE Better Regulation units. If a merger is not appropriate, consider (as some other countries have done) whether there could be shared staff or activities, collocated offices, a rotating leadership, or a combination of these. In any event, take steps to connect individual Better Regulation units and other relevant units such as those attached to Permanent Secretaries, to the central structure.
2.4.	Consider establishing an advisory board independent of the government and of political cycles, to monitor, advise and challenge on Better Regulation progress, with particular reference to key issues such as <i>ex ante</i> impact assessment and the administrative burden reduction programme.

<b><i>Transparency through public consultation and communication</i></b>	
3.1.	Continue the efforts to encourage a wider range of stakeholders into the consultative process, including pro-active (not just reactive) processes to engage citizens. Ensure that the opportunities made available to do so are timely, so that comments can have a real influence on outcomes.
3.2.	Back up the code of consultation with a system that will put real pressure on ministries to comply.
3.3.	Identify and implement a process whereby best consultation practices among ministries can be identified and publicised within the government.

<b><i>Development of new regulations</i></b>	
4.1.	Arrange an external evaluation of the network approach to <i>ex ante</i> impact assessment within the coming year. If it fails, a more effective approach should be developed, drawing inspiration from the institutional framework that supports the management of EU affairs, or returning to the proposal of a central co-ordinating unit. A further idea that has proved effective in some other European countries is to establish an external watchdog, to add pressure for change (the UK provides a good example).
4.2.	Review thoroughly the current support structure for officials carrying out impact assessments, with a view to strengthening it through a range of actions aimed at facilitating the task and raising standards. Consider whether economic research institutes could be used to help fill the gap between the legally dominated civil service culture and the need for a more economic approach.
4.3.	Take steps to strengthen the requirement for early and timely public consultation as part of the <i>ex ante</i> impact assessment process, and ensure that effective guidance and best practice examples are in place on how to do this.
4.4.	Require an <i>ex post</i> evaluation of regulations after they have adopted, to check real outcomes.
4.5.	Introduce a threshold test aimed at capturing the more important policy and regulatory proposals for a full impact analysis.
4.6.	Establish and implement an action plan to promote the use of alternatives. Some of the recommendations of the 2003 OECD report remain valid in this context, such as documentation of examples, special training and progress reports. Reinforce the requirement to consider alternatives (including no action) at an early stage in the impact assessment process.
<b><i>The management and rationalisation of existing regulations</i></b>	
5.1.	Arrange for an early evaluation of the administrative burden reduction programme to ensure that it is on track and that supporting structures are functioning adequately to secure success. Make sure that each participating ministry has a net target to meet as its contribution to the overall target. Consider whether other carrots and sticks for good performance should be put in place. Make sure that the business community has a full opportunity to contribute, and consider the establishment of sector or ministry specific structures for this. Develop and implement a reporting and communication strategy. Finally, make plans for the programme to be extended to the local levels of government.

5.2.	Consider setting up a programme for the reduction of administrative burdens on citizens, drawing on the experiences of other European countries. Link this to efforts aimed at encouraging citizens into a stronger engagement with the government in policy and regulatory development.
5.3.	Consider whether it would be useful to make focused efforts, as part of the public sector productivity programme, at reducing administrative burdens on officials.

### ***Compliance, enforcement, appeals***

6.1.	Consider carrying out a review of the approach to inspections and enforcement, to identify and share best practices across ministries and agencies, and to highlight the scope for adopting the most efficient approaches.
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### ***The interface between member states and the European Union***

7.1.	Consider whether it is possible to transplant the successful ingredients of EU management in order to strengthen domestic Better Regulation management (for example, strong central co-ordination by the PMO).
7.2.	Improve capacities to influence the development of EU legislation: with the European Commission (at all levels) before proposals are published; and with like-minded member states (at all levels) to build alliances on key issues. Take the initiative in developing alliances. Ensure that back home the negotiating position is collectively reviewed and refreshed regularly to take account of developments. Do not leave the lead ministry alone in the process. Check that the officials carrying out key negotiations have the capacities (and if necessary seniority) to negotiate effectively.
7.3.	The Prime Minister's Office should review the current process for carrying out impact assessments on EU drafts with a view to strengthening it, particularly as regards the early consultation of the widest range of stakeholders, strengthening the analysis of potential impacts, and ensuring that updates are carried out when there are significant changes in the development of the draft in Brussels. Target priority legislation, where Finnish interests are most exposed, for full treatment of this kind. Ensure that the results are used in the development and update of the briefs used by Finnish negotiators.
7.4.	Review the current training and guidance offered to officials on EU matters with a view to broadening and strengthening this. Ensure that policy issues and negotiating techniques are covered as well as legal aspects.

7.5.	Review the arrangements for ensuring that the parliament is kept in touch with negotiating developments, based on priority dossiers, so as to avoid overload of the system.
7.6.	Ensure that negotiation briefs include issues that will be important for implementation later on, and if possible that negotiators are in direct touch with colleagues who will be involved in implementation. Review the approaches taken to transposition by like-minded member states. Ensure that impact assessment and as part of this, consultation of key stakeholders is carried out to inform transposition of significant directives. Monitor progress.

***The interface between subnational and national levels of government***

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.
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## *Introduction: Conduct of the review*

### **Peer review and country contributions**

The current review of Finland reflects contributions from the Finnish government and discussions at meetings held in Helsinki on 19 September and 27-31 October 2008 by an OECD peer review team with Finnish officials and external stakeholders. Major initiatives and developments between these missions and clearance of the report for publication in April 2010 are referenced in the report, but have not been evaluated.

The OECD peer review team combined the OECD secretariat and two peer reviewers from other European countries<sup>1</sup>:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Kirstin Lindloff, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Stinne Henriksen, Chief of Division, Division for Better Business Regulation, Danish Commerce and Companies Agency, Denmark.
- Ian Ascough, Assistant Director, Department for Business, Enterprise and Regulatory Reform, Better Regulation Executive, United Kingdom.

The team interviewed representatives from the following organisations:

- Association of Finnish Local and Regional Authorities.
- Central Chamber of Commerce.
- Central Organisation of Finnish Trade Unions.
- Chancellor of Justice's Office.
- Confederation of Finnish Industries (CFI).
- Confederation of Unions for Professional and Managerial Staff in Finland.
- Federation of Finnish Enterprises (FFE).
- Finnish Communications Regulatory Authority (FICORA).
- Finnish Confederation of Salaried Employees.
- Finnish Consumers Association.
- Finnish Federation of Social Welfare and Health.
- Finnish Financial Supervision Authority (FSA).
- Government Institute for Economic Research.
- Ministry of Employment and the Economy.
- Ministry of Environment.

- Ministry of Finance.
- Ministry of Foreign Affairs.
- Ministry of Justice.
- Ministry of Social Affairs and Health.
- Ministry of Transport and Communications.
- National Audit Office.
- National Research Institute of Legal Policy.
- Office of the Chancellor of Justice.
- Parliamentary Office.
- Prime Minister’s Office.
- Supreme Court.
- Supreme Administrative Court.

### Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- **Strategy and policies for Better Regulation.** This chapter first considers the drivers of Better Regulation policies and the country’s public governance framework seeks to provide a “helicopter view” of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.
- **Institutional capacities for Better Regulation.** This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.
- **Transparency through consultation and communication.** This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.
- **The development of new regulations.** This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning; administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.

- **The management and rationalisation of existing regulations.** This chapter looks at regulatory policies focused on the management of the “stock” of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- **Compliance, enforcement, appeals.** This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- **The interface between the national level and the EU.** This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- **The interface between subnational and national levels of government.** This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

## Methodology

The starting point for the reviews is a “project baseline” which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD’s multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.
- The OECD/SIGMA regulatory management reviews in the 12 “new” EU member states carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission’s 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially small to medium-sized enterprises, drawing attention to the need for a reduction in administrative burdens.

- The European Commission's follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission's development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD's recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by Finland.

The report is also based on material provided by Finland in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

### **Regulation: what the term means for this project**

The term "regulation" in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).

### **Note**

1. Audrey O'Byrne of the OECD Secretariat made a major contribution to the drafting of the report.

## Chapter 1

### Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole-of-government” policy to pursue high-quality regulation. A key part of the OECD’s 2005 *Guiding Principles for Regulatory Quality and Performance* is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements, and how progress can be effectively communicated (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance, *i.e.* “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this project and would be inappropriate, the report makes a few comments that may prove helpful for a more in depth analysis.

#### Assessment and recommendations

##### *Development of Better Regulation strategy and policies*

*Finland is one of a growing number of countries to have an explicit Better Regulation Strategy, a significant step forward from 2003.* The last OECD report in 2003 had a core recommendation for Finland to “establish that regulatory policy is a key priority of the government”. This is now on the way to being achieved. Better Regulation is mentioned for

the first time in the Government Strategy Document (GSD) drawn up at the start of this government term, and recently reconfirmed in the mid-term review of the GSD. It seems that Better Regulation has finally become embedded, in principle at least, as an important horizontal policy in its own right.

*Important tools and processes supporting good regulatory practice are in place.* These include longstanding processes such as the forward looking legislative plan, the *HELO* instructions on effective law drafting, the procedures for defining negotiating strategy at the EU level, and the well established traditions for consulting and reaching consensus on key issues, as well as more recent developments such as the Government Strategy Document principles and activities for Better Regulation and 22 key law proposals to give it effect, e-Government initiatives, the government's integrated new Guidelines for Impact Assessment, and a consultation code.

*Work done so far by the Justice ministry to raise awareness of Better Regulation and especially of impact assessment, deserves strong support.* The government's integrated new guidelines for *ex ante* impact assessment, bring together in one document previous fragmented guidance, and support this with training. However, challenges remain: in particular, the nature of policy development/law drafting in Finland which has not yet integrated the importance of early efforts in the process to collect clear evidence and data for a robust analysis of the likely consequences (positive, negative) of a proposal (see Chapter 4). The mid-term policy review of the Government Strategy Document in February 2009 re-assessed the situation and launched new initiatives for the second part of the government term. One of these is to strengthen the impact assessment of policy measures.

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**Recommendation 1.1. Ensure that the Justice ministry gets full support for its ongoing efforts to raise awareness of impact assessment. Take steps to address weaknesses in the current system.**

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*EU aspects of Better Regulation policy are fundamentally strong and help to drive the domestic agenda.* EU initiatives are a motor for Better Regulation in Finland. The EU Services Directive, for example, has encouraged a review of issues such as one-stop shops for small to medium-sized enterprises (SMEs). The recently adopted programme for reducing administrative burdens on business was encouraged by the EU programme. A significant and increasing proportion of Finnish law (perhaps up to 80% in some areas) derives from EU origin legislation. This is an aspect of Better Regulation for Finland that needs special emphasis and attention. A more pro-active EU stance is identified as an objective in the Government Strategy Document. Further attention needs to be paid to the way in which Finland seeks to exert influence in EU negotiations, in order to avoid some of the problems which appear in transposition (see Chapter 8).

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**Recommendation 1.2. Continue the efforts at a more pro-active EU stance and consider a review of the issues related to transposition of EU legislation.**

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*Public consultation is based on long standing traditions and needs to evolve further.* Strong traditions of trust and consensus building continue to frame the Finnish approach, and have helped Finland to reach consensus on how to address major policy challenges in the past. This approach does present challenges for developing a more strategic approach to policy making and to identifying what may be the best – as opposed to the least contentious – solution to regulatory or policy challenges. The system may be losing valuable inputs and the innovative views and ideas which outsiders can bring to policy making. Finland

has, however, been taking a number of initiatives to broaden the approach. Timing is critical: those who wish to participate must be able to do so before a decision is well advanced (see Chapter 3).

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**Recommendation 1.3. Initiatives to broaden the scope of public consultation need to be encouraged. There is a need give real teeth to the code of consultation.**

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*An important gap was recently filled with the establishment of a programme for the reduction of administrative burdens on business. This new programme, which aims to reduce administrative burdens on business by 25% by 2012, is part of the efforts to address competitiveness issues. The roll out of the programme will need to be carefully monitored. It is not yet clear whether effective supporting processes and institutional structures are in place (see Chapter 5).*

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**Recommendation 1.4. Ensure that the business burden reduction programme is effectively monitored and evaluated.**

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*There remain, however, significant gaps in the framework, notably as regards enforcement policy and the lack of engagement by the subnational levels. The Better Regulation Strategy covers a lot of ground but there are still gaps. There is no common approach to enforcement policy, with individual ministries and agencies making their own policy. Given the pressures on public spending and the efforts to increase productivity in the public sector, it makes sense for Finland to review whether enforcement and inspection processes could be made more efficient, for example by encouraging the adoption of risk based approaches, at the same time minimising burdens on companies. Municipalities appear relatively untouched by Better Regulation processes (see Chapters 6 and 7).*

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**Recommendation 1.5. Consider expanding the Better Regulation strategy to cover enforcement policy. Take steps, in discussion with the subnational levels of government, to bring them into the Better Regulation programme.**

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*For now, there are no explicit programmes to address burdens on citizens or inside the administration. Such initiatives could well make sense in the Finnish context. A programme for the reduction of administrative burdens on citizens could be linked with efforts at encouraging citizens into a stronger engagement with the government in policy and regulatory development. In the same way, a programme to address burdens on public sector officials could be a very helpful adjunct to the public sector productivity programme. Significant efforts are underway to make it easier for citizens to access services, but there does not appear to be a distinct simplification programme for their benefit (see Chapter 5).*

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**Recommendation 1.6. Consider the establishment of programmes for the reduction of administrative burdens on citizens and public sector officials.**

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*There is an urgent need to “mind the gap” between principles and practice. The principles set out in the Government Strategy Document are excellent and can scarcely be faulted. Some of the more recent processes may not have had enough time yet to prove themselves. None of the current processes, however, looks likely to provide a strong enough framework in practice for addressing the regulatory stock, or the flow of new regulations, or for ensuring that all relevant stakeholders have a clear and timely opportunity to make their views heard. As one stakeholder put it “the tools are in place, but the tools do not have any teeth”. Some of what the 2003 OECD report had to say remains*

relevant: Better Regulation instructions contain few concrete criteria, and implementation of Better Regulation policies is poor.

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**Recommendation 1.7. Take steps, systematically, to review the weaknesses of current processes and how they can be strengthened and enforced.**

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*The mainstreaming of Better Regulation is not complete: the policy is not yet effectively joined up with other key public governance initiatives despite mutually reinforcing synergies.* Better Regulation is now part of the Government Strategy Document and is followed up by the Prime Minister’s Office. However it largely remains an add-on rather than integrated into government policy thinking. Many in the government still appear to see it as an expanded (and resource intensive) form of legal quality in law drafting, missing its real potential. Alongside the Better Regulation Strategy, the Finnish government has launched significant programmes for strengthening public governance, notably the productivity programme, and major initiatives to promote a stronger democratic basis for policy making through the engagement of citizens. These are obvious policies for “joining up” with the Better Regulation strategy.

*Mainstreaming also requires ongoing efforts to link Better Regulation with broader goals of public policy.* An important link is made with public policy goals: innovation, productivity, competitiveness and public finances will benefit from a more effective approach to regulatory management. However for some, there is still considerable uncertainty about the relationship between Better Regulation and the achievement of public policy goals. Joining up public policy goals and Better Regulation has so far been done in principle, but the connections have not been fleshed out. Although the Government Strategy Document makes the link between Better Regulation and key public policy goals (such as competitiveness and the promotion of innovation, productivity and public finances) there has not been any systematic any effort, beyond this, at drawing out the significance of Better Regulation for meeting these wider objectives. The recession induced by the financial crisis may help to “lift” Better Regulation into a more central position, and is an opportunity for buy in. The mid-term review of the Government Strategy Document suggests that this is happening. It sets a promising framework for further mainstreaming of Better Regulation by underlining the need for effective evidence based evaluation to underpin decision making, implementation and follow up processes.

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**Recommendation 1.8. Monitor the efforts to give Better Regulation a sharper profile in government policy making (communication is an important part of this, see below).**

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*There remains an underlying culture and perception issue.* Policy and law drafting are often synonymous, with a presumption that a law is needed. Better Regulation is largely seen as a “legislative” issue –primarily of interest to those involved in drafting legislation. Is “Better Regulation” the best expression to use in the Finnish context, as it is still too closely associated with legal quality? Finland might benefit from marketing the use of the tools of Better Regulation (such as impact assessment, consultation), as policy-making tools.

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**Recommendation 1.9. Consider how Better Regulation can be more effectively promoted, so that it does not come across as a legalistic activity.**

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### Box 1.1. Recommendation from the 2003 OECD review

#### Recommendation

##### *Establish regulatory policy as a key priority of the government*

Competition from other policies blurs the role and importance of ensuring the quality of regulatory policy instruments in a modern society. Without replacing other policies, regulatory policy deserves a more central role in governance arrangements. The decentralised nature of government and the resultant lack of responsibility for regulatory policy at the ministerial level mean that there is no clear view within the administration that regulatory policy constitutes a key priority of government. Put in a crude way, the current policy is one government resolution among others. The implementation of a new Constitution provides additional authority to the Prime Minister – and hence the centre of government – and this provides an ideal opportunity to address this issue and establish regulatory policy as a key policy priority. Adopting enhanced institutional responsibilities and powers would also substantially reinforce this message.

#### Background comments

##### *Stronger regulatory policies are now required*

Despite efforts to improve the quality of the law, regulatory policy still plays only a small role in the governance process. Problems with the regulatory development process are reflected in the practice of frequently amending legal instruments in light of problems encountered after they have been passed, rather than before. A lack of strong institutional support and quality control means there have been substantial difficulties in implementing the regulatory policies of 1996, 1998, 1999 and 2000. This strongly suggests there has been insufficient political support for regulatory reform, as Finland has demonstrated its capacity to co-ordinate reform across government in other contexts – both under adversity during the 1991 recession and in order to speak with one voice on EU matters.

##### *Five major weaknesses need further work:*

1. The policy and the *HELO* Instructions have few concrete criteria to guide the assessment of each test.
2. Though applicable to all regulations, the policy focuses primarily on primary legislation and therefore has limited influence on the quality of lower level rules.
3. The policy focuses solely on new legislative proposals, lacking a focus on the dynamics of ensuring that existing laws are reviewed and updated over time.
4. The relationship between the current policy's impact tests and the Checklist is unclear at the outset and probably duplicative.
5. Implementation of the policy is relatively poor. Insufficient attention is given to changing the processes and establishing positive and negative incentives by which regulation is made, establishing clear lines of institutional responsibility for providing guidance and quality assurance, supporting the requirements via provision of adequate resources, and providing adequate sanctions for non-compliance.

#### *Communication on Better Regulation strategy and policies*

*Communication on the Better Regulation Strategy appears to be somewhat ad hoc and undeveloped.* A comprehensive and systematic communication strategy actively targeting officials does not appear to have taken place. Nor does there appear to be any pro-active effort at systematically communicating Better Regulation messages to the wider public and external stakeholders. A notable exception is communication by the MEE of the measures

to reduce administrative burdens on business. Beyond this, the Government Strategy Document makes the link between Better Regulation and policy goals, but the communication appears to stop there. No other communication channels appear to be deployed. This misses the opportunity to better sell the advantages of Better Regulation to improving policy-making and service delivery process, and the contribution it can make in achieving greater efficiencies.

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**Recommendation 1.10. Establish a clear communication strategy using different tools and aimed at both internal and external stakeholders (newsletters, annual report, presentations etc) taking inspiration from countries such as the Netherlands which have done this. Ensure that communications on broader government strategy and related programmes such as the productivity programme are used to convey the Better Regulation messages.**

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### ***Ex post evaluation of Better Regulation strategy and policies***

*Ad hoc evaluations of policies are already an important feature of the Finnish approach, but need to be deployed more vigorously and systematically.* As in many other countries, the approach to evaluating policies and programmes tends to be ad hoc. It also relies too much on the decisions of external bodies such as the National Audit Office to carry them out. The recent mid-term review of the GSD was a positive step in checking progress on Better Regulation tools and processes. It is important that the approach becomes more systematic, in order to test progress and remedy weaknesses as Better Regulation tools and processes are rolled out, and that they are on course to deliver the expected benefits. Examples of where evaluation could be beneficial at this stage are public consultation, *ex ante* impact assessment, and the programme to reduce administrative burdens on business. As noted above, the mid-term review of the Government Strategy Document underlines the need for effective evidence based evaluation to underpin not only decision making, but implementation and follow up processes.

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**Recommendation 1.11. Establish a clear policy to evaluate progress, strengths and weaknesses of key Better Regulation policies as they unfold.**

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### ***E-Government in support of Better Regulation***

*Finland's activism in this area is very positive, but it needs to ensure that e-Government initiatives are systematically linked to Better Regulation, where this makes sense.* Finland's activism is noteworthy, compared with some other European countries. It started on these issues early and successfully. It recognises the need now to address the fragmentation of approaches and develop a more joined up central strategy. Making more explicit the linkages between e-Government and Better Regulation could help to increase awareness of Better Regulation as an important policy. For example, although there are implicit linkages between the ICT components of the productivity programme and Better Regulation (for example improving customer service), surprisingly there are no explicit links.

## **Background**

### ***Economic context and drivers of Better Regulation***

Finland's economy has been transformed over the last twenty years. A banking crisis combined with the worldwide recession of the early 1990s, and the collapse of the trade

with the Soviet Union, accelerated reforms to liberalise the economy. Since then, the economy has grown strongly, productivity has improved and Finland became one of the best performers of the OECD, with high levels of income and quality of life. However the recent picture is less comfortable. The impact on the Finnish economy of the global slowdown following the 2009 financial crisis has been felt acutely, hitting Finnish exports and production disproportionately hard. Weakening competitiveness, among other factors, has contributed to a faster and deeper drop in GDP than in most comparable countries (ECO survey September 2009).

At the same time, and in common with many other European countries, Finland faces the need to boost its public services when financial resources for the public sector are under strain. The public sector is large by OECD standards. The public demands high standards of social, environmental and consumer protection. The State is seen as the main guardian and defender of society (Government at a Glance). Although the structure of the Finnish economy has changed and some government services have been commercialised, public sector employment (both central and local government) accounts for nearly a quarter of total employment. This challenging context implies, among other actions, raising productivity and efficiency, and the government has committed to reducing numbers within the public service. Major reforms to local government are also on the agenda.

Against this background, internal demand for Better Regulation has acquired momentum, which can be expected to grow further. Although, in common with other EU countries, Finland is partly driven by the EU context to pay more attention to Better Regulation (pressures from the European Commission and the fact that a large proportion of regulations are EU-origin), internal pressures are increasingly evident. The Better Regulation strategy document adopted in 2006, and developed since then, for the first time made an important link between Better Regulation and public policy goals. It states that innovation, productivity, competitiveness and public finances will benefit from a more effective approach to regulatory management. Reflecting its broader scope and relevance to policy making, as well as its potential contribution to key objectives such as competitiveness, Better Regulation policy is now included in the Government Programme and Government Strategy Document which define the work proposed for the legislative term. The Government Programme states that the Finnish government will step up its efforts to improve the conditions necessary for entrepreneurship and create a more favourable entrepreneurial environment.<sup>1</sup>

However, the OECD peer review team heard different views about whether the connection between Better Regulation and public policy goals had been well understood in principle. Is the integration of Better Regulation as a mainstream horizontal policy possible? If so, what is the justification for this? How can it really contribute to more effective policy making? The Justice ministry – the main current champion for Better Regulation – often struggles to persuade others of the importance of Better Regulation. Others took a more positive view but said that they were waiting for the practical significance of Better Regulation to be drawn out more clearly by colleagues at the centre of government. There remains overall a lack of understanding as to how Better Regulation can make a difference, and until the global financial crisis, the continuing strength of the Finnish economy deflected attention from policies which could contribute to Finnish competitiveness.

Post crisis, it may prove easier for Finland to sustain momentum on Better Regulation policy as a key contributor to a sound economic environment and the international competitiveness of Finnish firms. The link between Better Regulation and efforts to reform

the public service and sustain high-quality services could also be exploited. More effective regulatory management could bring a significant contribution to these reforms.

### ***Developments in Finland's Better Regulation agenda***

As in many other European countries, policies for Better Regulation have developed over a number of years. The current policy has evolved since 1996, when previous reform initiatives focusing on deregulation and the technical quality of law drafting started giving way to a broader emphasis on regulatory quality and regulatory management. In 1996, the government issued a formal regulatory policy for the first time. It has since been refined and extended.

**Table 1.1. Milestones in the development of Better Regulation policies in Finland**

1975	<ul style="list-style-type: none"> <li>• Instructions on the Drafting of Government Proposals (<i>HELO</i> Instructions).</li> </ul>
1980 1981-87	<ul style="list-style-type: none"> <li>• Reform of <i>HELO</i> Instructions.</li> <li>• Study of Finnish Law Drafting.</li> </ul>
1996	<ul style="list-style-type: none"> <li>• SME policy programme.</li> <li>• Government resolution to establish programme to improve law drafting.</li> <li>• Law Drafter's Guide.</li> </ul>
1998	<ul style="list-style-type: none"> <li>• Instructions for Assessing the Economic and the Environmental Impacts of Legislation.</li> <li>• Finnish Checklist: Quality Requirements of Proper Law Drafting.</li> </ul>
1999	<ul style="list-style-type: none"> <li>• Revised Act of the Openness of Government Activities.</li> <li>• Memorandum on the High-Level Working Group on Legislative Policy on the Formulation of the Government Legislative Policy.</li> <li>• Instructions on the Assessment of Business Impacts.</li> <li>• "Have Your Say" web consultation forum.<sup>2</sup></li> </ul>
2000	<ul style="list-style-type: none"> <li>• Government resolution: Programme II to Improve Law Drafting.</li> <li>• Law Drafter's Constitution Guide.</li> <li>• Reform of central government 2000-01.</li> <li>• Hear the Citizens project.</li> </ul>
2003	<ul style="list-style-type: none"> <li>• Instructions for the Assessment of a Law Drafting Project's Impact on Gender Equality.</li> </ul>

	<ul style="list-style-type: none"> <li>• Government Entrepreneurship Policy Programme (2003-07).</li> </ul>
2004	<ul style="list-style-type: none"> <li>• <i>HELO</i> Bill Drafting Instructions revised.</li> <li>• Law Drafter's Guide to the European Union.</li> <li>• Project for assessment of the regulatory impacts on business (<i>SÄVY</i> project 2004-07).</li> <li>• Hear the Citizens project II.</li> </ul>
2005	<ul style="list-style-type: none"> <li>• Working Group for better governance of the Economic Impacts of Legislation.</li> <li>• Code of Consultation "Hear the Citizens".</li> </ul>
2006	<ul style="list-style-type: none"> <li>• Better Regulation Strategy established.</li> <li>• Law Drafter's Guide to the Constitution.</li> </ul>
2007	<ul style="list-style-type: none"> <li>• Government Programme and Better Regulation Strategy.</li> <li>• Programme management within the government.</li> <li>• Integrated RIA Guidelines: Impact Assessment in Legislative Drafting.</li> <li>• Revised Instructions on the Assessment of Law Drafting Project's Impact on Gender Equality.</li> <li>• Better Regulation website set up.</li> <li>• Government Policy Programme for employment, entrepreneurship and work life (2007-2011).</li> </ul>
2008	<ul style="list-style-type: none"> <li>• Project for reducing administrative burdens on business.</li> <li>• Instructions for the Drafting and Enforcement of EU Conventions and Agreements.</li> <li>• Reform of the Government Intranet: Electronic tools and guidance for drafters.</li> <li>• Joint project of the MOF and MOJ for dialogue, consultation and participation (HAVU).</li> </ul>
2009	<ul style="list-style-type: none"> <li>• Mid-term policy review of the Government Programme and Better Regulation.</li> <li>• Programme and target for the reduction of administrative burdens on business established.</li> <li>• Revised Treaty manual.</li> </ul>

Source: OECD and Government of Finland.

## ***Guiding principles for the current Better Regulation agenda***

### ***Better Regulation strategy***

Finland is one of a growing number of European countries to have a published a Better Regulation strategy document. Agreed in 2006, soon after the start of the current legislative term, the Better Regulation Strategy (*Paremmän sääntelyn toimintaohjelma*<sup>3</sup>) was created and adopted in several steps through a broad-based project organisation which engaged a range of internal and external stakeholders.

The Better Regulation Strategy starts with an analysis of the challenges facing regulatory quality in Finland. These include capacity challenges, culture change issues, and the growing influence of the EU through the need to transpose EU directives. The Strategy advocates eleven principles of regulatory quality. It makes a number of recommendations for improvement. It also proposes a forward plan of the government’s major legislative projects covering the full legislative term (Box 1.2).

The Strategy advocates the need to pursue reforms at three levels within government: government wide, by administrative sector, and at the level of individual projects. It also underlines the critical importance of mainstreaming regulatory quality strategy and processes, so that these become an integral part of public governance and policy development, setting a sound framework for the planning and implementation of key projects. The Strategy covers many of the key elements of an effective Better Regulation policy- transparency and stakeholder participation, a more pro active approach to the EU, a focus on alternatives to regulation and impact assessment, and “legislative maintenance”. Some important elements are absent- enforcement and the subnational levels of government.

### **Box 1.2. Finland’s Better Regulation Strategy**

#### **Main problems with regulatory quality:**

- constant growth in the volume and detail of regulation;
- failure to pursue a proactive drafting policy;
- shortcomings in the information base for drafting (economic impact, impact on business, other impacts, consistency with the legal system as a whole, lack of legislative research to support the drafting work);
- failure to achieve government-level strategic objectives in law drafting;
- reactivity in respect of EU law drafting; and
- decrease in the real transparency of law drafting arising from the preceding reasons.

#### **Recommendations:**

- adoption of the Government Legislative Agenda;
- establishment of a Better Regulation Ministerial Group or Ministerial Committee;
- establishment of a Better Regulation Consultative Committee;

- careful preliminary planning and evaluation of alternatives; increased scope of participation in the drafting process;
- more intensive assessment of alternatives and impacts;
- introduction of a law drafting quality management system and an intra-governmental law drafting database; and
- development of legislative maintenance.

#### **Eleven Principles of Regulatory Quality**

1. law Drafting and the legislation must be predictable and transparent. Stakeholder participation and stakeholder influence must be ensured;
2. regulation must be clear and comprehensible;
3. legislation must be flexible and have a clear scope of application;
4. regulation must promote legal security and confidence. Legislation must lead to the intended results;
5. the obligations imposed by regulation and the control measures of the authorities must be more closely proportionate than they are now;
6. the various aspects of regulation must interact in a consistent manner;
7. regulation must not be an end in itself and other methods of direction must be actively applied;
8. legislation must support the accrual of competence and promote good working conditions and well-being at work;
9. legislation must promote innovation, access to the market and productivity;
10. legislation must maintain and improve the image of Finland as a place to do business in, as well as create competitive advantages to Finnish business; and
11. legislation must play its part in the sustainability of public finances over the medium and long-term.

#### **Legislative Plan**

This Plan sets out the 22 major legislative drafting projects that will be undertaken by different ministries during the government's term of office. The Plan also describes the legislative policy measures through which the government and the ministries aim to improve the quality and comprehensibility of legislation and promote the implementation of the principles for good legislative drafting. Legislative policy measures are:

- more intensive exertion of influence in European Union legislative work;
- increased transparency and stakeholder participation in law drafting;
- increased assessment of alternatives;
- more intensive assessment of the impacts of legislation; and
- development of legislative maintenance.

*Source:* The Better Regulation Agenda, Part 1, Prime Minister's Office Publications 8/2006, Helsinki.

### *Better Regulation as part of the Government Programme and the Government Strategy Document*

The 2007 Government Programme included a commitment that the government would implement the Better Regulation Strategy and draw up a legislative plan for the most important projects of the government's term. It also states that efforts to improve the entrepreneurial environment will be stepped up. Among other measures, the bureaucracy related to entrepreneurship will be reduced (which has led to the recent establishment of a programme to reduce administrative burdens on business).

#### **Box 1.3. Commitments on Better Regulation in the 2007 Government Programme**

The Government Programme makes the following recommendations in relation to Better Regulation:

The regulatory framework and clarity of legislation will be improved to promote the wellbeing of the citizens and the competitiveness of businesses. The government will implement the Better Regulation Programme and prepare a legislative plan that will include all the major legislative initiatives to be undertaken during the electoral period.

In relation to improving competitiveness for business, the Programme states that, "The government will step up its efforts to improve the conditions necessary for entrepreneurship and to create a more favourable entrepreneurial environment. In particular, the technology foundation, business competence and productivity of small and medium sized enterprises will be strengthened. The business environment required for the growth and internationalisation of companies will be improved. The bureaucracy related to entrepreneurship will be reduced and the reasonableness of tax sanctions monitored. The project evaluating the impact of regulation on enterprises (SÁVY) will be continued."

The Programme also notes in relation to EU legislation, that "...special attention will be paid to improving the standard of quality of legislation and protecting the basis of national legal systems and human rights."

*Source:* Government Programme of Prime Minister Matti Vanhanen's second Cabinet, Prime Minister's Office Publications, Helsinki (2007).

The government reiterated its commitment to the Better Regulation Strategy in the conclusions of the mid-term policy review of the Government Strategy Document (which gives operational effect to the Government Programme) on 24 February 2009 with a series of commitments aimed at improving quality in the development of regulations (Box 1.4). This is an important milestone strategically, as this renewal of a commitment to Better Regulation was not automatic. It seems that Better Regulation has finally become embedded in principle, at least if not in practice, as an important horizontal policy in its own right. The mid-term review introduced a number of new initiatives to be taken forward in the second half of the Government's term of office. One of these is to strengthen the impact assessment of policy measures (regulations, budgets, programmes, resolutions etc.). The work will be led by the PMO. The aim of the project is to develop working methods within the government in order to ensure that adequate assessment and evaluation data is made public and channelled efficiently into the decision making, implementation and follow up processes.

### Box 1.4. Better Regulation and the conclusions of the government's GSD mid-term review

In order to improve quality in the development of regulations, the government decided to take the following actions:

- new solutions will be devised to address human resources issues, such as the establishment of a pool of bill drafters;
- the development of bill-drafting processes and its monitoring will be organised and specified in the performance agreements at all ministries;
- the track record in the implementation of the government proposals list will be specified in the performance agreement;
- the monitoring of bill drafting is to be included as a standard item on the agenda of the meetings of the Permanent Secretaries;
- the government's decision on the hearing procedure;
- procedures for harmonising the practices for evaluating the human implications of the bills (*e.g.* children, people representing different backgrounds or age groups) will be put in place; and
- steps will be taken to determine appropriate measures to co-ordinate the revision of the style and standard of legal language.

*Source:* Finnish Government Mid-Term Policy Review Process (Summary), Prime Minister's Office Publications, 26/2009, Helsinki.

### *Main Better Regulation policies*

The main current pillars of Better Regulation in Finland are:

- **Legal quality and *ex ante* impact assessment** (see Chapter 4 for more detail). Legal quality is an important cornerstone of the Finnish approach to regulatory management. Over time, this has been complemented by a growing emphasis on *ex ante* impact assessments. Considerable support is provided by the Justice ministry to ensure that legal quality and *ex ante* impact assessment are effectively deployed. Impact assessment is required for all national regulations – government bills, decrees and regulations made by the agencies. They may also be prepared on draft EU legislation, although this is not obligatory.
- **Management of EU regulatory affairs** (see Chapter 8 for more detail). There is a longstanding commitment, given effect in a strong organisational framework, to devote considerable efforts to EU regulatory management. A recently adopted government report sets key objectives for Finland's EU policy, and sets the scene for further development of the co-ordination of EU issues, and of tools for better exerting influence in the EU.
- **Legislative maintenance and simplification** (see Chapter 5 for more detail). Simplification is one of the legislative policy measures in the GSD. Ministries are

responsible for launching measures to revise and simplify their regulatory stock. As in other EU countries, the action plan for the reduction of administrative burdens can also give rise to legislative simplification, even if this is not its main objective.

- **Public consultation on draft regulations** (see Chapter 3 for more detail). Finland has a well anchored tradition of participative decision-making which includes a wide range of groups, such as NGOs. Efforts are also being made to expand the use of the Internet through new portals aimed at encouraging a wider participation by citizens in policy issues. A code of consultation has been in place since 2005. A far reaching set of initiatives for strengthening public participation and democracy was started in 2003 and is now being taken forward by the Justice ministry.
- **Administrative burden reduction for businesses** (see Chapter 5 for more detail). In 2009, the government approved a decision in principle for an action plan to reduce administrative burdens for business by a net 25% by 2012. The reduction will be against a baseline for 2006 which estimates that administrative burdens on business to be roughly equivalent to 2% of Finland's GNP.

### *Communication on the Better Regulation agenda*

The Ministry of Justice has a dedicated Better Regulation page on its website, which allows the public or interested parties to access documents related to Better Regulation tools – such as the legislative drafting guidelines and the guidelines on regulatory impact analysis (RIA). Better Regulation policies and developments are communicated on this website.<sup>4</sup> The 2007 Government Programme states that the Finnish government will step up its efforts to improve the conditions necessary for entrepreneurship (which includes regulatory issues, but extends to other policies in support of entrepreneurship<sup>5</sup>) and create a more favourable entrepreneurial environment. The MEE has an active communication strategy on its measures to reduce administrative burdens on business (see Chapter 5). Beyond this, those familiar with the Government Programme and the Government Strategy Document (GSD) can learn about the objectives and principles of the Better Regulation Strategy.

These initiatives stop short, overall, of a more pro-active communication strategy, for audiences both within and outside government. The Better Regulation website is a promising start for the internal audience but is confined to the efforts of a single ministry (for example, it does not appear to link to any communication activities of the Prime Minister's Office). The GSD, whilst more strategic in general terms, and making important connections in principle between Better Regulation and the policy objectives that it can help to support, is not then carried forward through other communication channels to explain the importance of Better Regulation. Other policy documents which could carry the message (such as the Productivity Action Plan) are not used as they might be to make the link between Better Regulation and greater efficiency and effectiveness.

A broad communication strategy with business, citizens, and/or other key stakeholder groups on the different Better Regulation reforms, seeking their support in advancing reforms, would be beneficial. Finland does not use Green Papers as in other OECD countries, as a way of sharing thoughts or inviting comments on how best to address an emerging policy issue. This could be considered, in the context of preparing inputs on emerging high-profile policy areas which may be included in future government programmes.

### ***Ex post evaluation of Better Regulation strategy and policies***

Finland has a number of structures, including the National Audit Office of Finland (NOAD), the Office of the Ombudsman, and the parliament, as well as external research bodies active in the field - who can provide ex-post analysis of performance. The NOAD, especially, carries out *ex post* evaluation of specific issues (which came across to the OECD peer review team in part as an attempt to “pick up the pieces” given the weakness of *ex ante* evaluation). It told the team that it intends to evaluate the recently launched programme to reduce administrative burdens on business. Important *ad hoc* evaluations may also be carried out by specific ministries as well. For example, the former Economy and Employment ministry, through the SÄVY Project, carried out an evaluation of compliance with business impact assessment by ministries. This systematic monitoring of business impact assessments is now continued by the MEE.

Better Regulation policy overall was evaluated for the first time as part of the review of the GSD which took place at the mid-term of the current legislature. The Better Regulation Ministerial Group played an important role in the evaluation. The data-gathering and preparatory work was carried out in co-operation between the Ministry of Justice and the Prime Minister’s Office, the other ministries being data providers in the process. The government released the conclusions of the review on 24 February 2009, together with information on new initiatives for the latter part of the government’s term of office.

### ***E-Government in support of Better Regulation***

#### *General context*

Finland was an early mover in efforts to exploit ICT and has been perceived as a pioneer, using the new technologies for economic renewal and in order to reform its administration. It was one of the first countries in the world to adopt e-Government legislation.<sup>6</sup> Finland’s large geographical size relative to a small dispersed population means that ICT has played an especially important role in the economy and society compared with many other OECD countries. ICT is seen as a key support for the promotion of social and regional equality of access to public services, and for the reinforcement of participative democracy. It is also seen as an important support tool to enhance business productivity and competitiveness.

ICT has been made an integral part of the government’s Productivity Programme. The “Action Programme on Public Sector Productivity” launched in November 2003 *inter alia* contains the measure that ICT will be used and applied increasingly to improve productivity in the public administration, to improve customer service, increase productivity and efficiency, and to promote the re-allocation of resources from administrative routines to more demanding tasks. Among different indicators for the productivity of public service provision, the number and impact of ICT projects is seen as a starting point. Concrete productivity project examples relate to a future “automatic taxation”, a better use of data bases and electronic reporting between public and private sector. Some ministries have reported, however, that smaller and less sophisticated agencies are having a more difficult time developing ICT solutions to meet productivity targets.

#### **New ICT strategy and Action Plan**

In 2006, the government adopted a new ICT strategy “Government Policy Decision on the Development of IT Management in State Administration”.<sup>7</sup> The implementation of this strategy seeks to address some of the challenges that have arisen from the previous

decentralised approach. The organisational model for e-Government has so far been a combination of central guidance and a decentralisation of implementation and responsibilities. Central government has been responsible for the general promotion of e-Government, whereas the subnational levels have functioned as the main service providers. Decisions regarding local government e-services would therefore be taken at the local level. However, challenges have arisen with this approach – not least in the development by different local administrations of their own ICT solutions. Local and decentralised ICT solutions may not be capable of communicating effectively or efficiently with the central executive or with each other. This has led to problems in gathering information, data sharing, and in developing cost-effective service delivery solutions to emerging policy challenges at the central level. The government is now seeking to improve the setting of technical standards across the public administration and to promote the increased use of shared services and solutions. The OECD peer review team heard that the infrastructure for e-Government needs to be strengthened and more horizontal co-operation is needed.

The strategy aims to improve interoperability, develop and agree a common ICT architecture, and to develop common ICT systems for defined support services and basic ICT services<sup>8</sup>. These requirements are essential if Finland is to improve information sharing and dissemination within and across the different levels of the public service, including across the different levels of government.

This was followed in June 2007 by the adoption of a government resolution on the objectives of the information society policy for 2007-11. Projects for the period from 2007 until 2011 have been defined, such as a policy programme for reforming public sector service structures, a project aimed at increasing connection speeds for information networks, and the promotion of digitalisation of business in small to medium-sized enterprises. In autumn 2007, an Action Programme was prepared for the practical implementation of the government resolution and of the information society strategy, drawn up in consultation with interested parties.

To support the programme's implementation, the government appointed a minister led Ubiquitous Information Society Advisory Board. The task of the Board is to co-ordinate the national information society policy, to ensure implementation of the strategy and the aims outlined in the government resolution, and to define priorities. It reports annually to the government on progress of the key projects included in the action programme.

### *ICT related Better Regulation policies*

E-Government is, as in many other European countries, seen as an important support tool for Better Regulation. This takes a number of forms:

- Complex regulation is implemented with the help of ICT (*e.g.* in the area of taxation).
- ICT has also been used for the development of online public consultations via a discussion forum and access to information, including information on the government's regulatory projects and the development of an online register of regulations. Electronic consultation is being developed with the establishment of a web portal to support government organisations as well as the parliament in the introduction of interactive services in support of the decision-making process (see Chapter 3).

- The development of e-Government has been explicitly included in the programme to reduce administrative burdens on businesses, as a horizontal priority area. The reduction of administrative burdens (on businesses and citizens) is one of the objectives of the government's recent (2009) e-Government development measures (the so-called SADe programme led by the Ministry of Finance).
- A citizen gateway to public services is currently under development.

Nevertheless, there appears to be a certain disconnection between Better Regulation and broader ICT programmes. Strategy documents outlining the future work programmes or priority areas of work for Information Society in Finland over the coming years (*e.g.* Ubiquitous Information Society: Action Programme 2008-11), do not have any specific references to the contribution that ICT can play in helping to reduce existing burdens on business or on reducing regulatory requirements. Although there are implicit linkages between the ICT components of the productivity programme and Better Regulation (for example, improving customer service), surprisingly there are no explicit links. The two, however, are mutually reinforcing. For example the application of Better Regulation inside government has scope to release resources currently devoted to unnecessary red tape so that these can be deployed instead on frontline public service delivery. This is an approach which is taken increasingly by other European countries facing similar public sector challenges. That said, the Ministry of Employment and the Economy and the Ministry of Finance have started to discuss the co-ordination of the administrative burden reduction programme and the government's e-Government plans.

## Notes

1. This is not confined to Better Regulation initiatives. It is under the heading “Enterprise and Policy”, while more general Better Regulation statements are under “Legal Policy and Internal Security”.
2. [www.otakantaa.fi](http://www.otakantaa.fi).
3. Valtioneuvoston kanslia (2006), *Paremmän sääntelyn toimintaohjelma, Osa 1, Valtioneuvoston kanslian julkaisusarja 8/2006* [Prime Minister’s Office (2006) The Better Regulation Agenda, Part 1, Prime Minister’s Office Publications 8/2006].
4. [www.om.fi/en/Etusivu/Parempisaantely](http://www.om.fi/en/Etusivu/Parempisaantely) (English version).
5. The Government Programme statement is not exclusively limited to regulatory issues, but relates to a wide range of policy measures to promote a more favourable business environment. See MEE website: [www.tem.fi](http://www.tem.fi).
6. Such as the 1999 Act on Electronic Service in the Administration which has been replaced by the 2003 Act on Electronic Services and Communication in the Public Sector.
7. More information about the National Information Society Strategy is available at: [www.arjentietoyhteiskunta.fi/inenglish](http://www.arjentietoyhteiskunta.fi/inenglish).
8. According to the Ministry of Finance ICT services in Finland would not be regulated to a high degree.

## *Chapter 2*

### **Institutional capacities for Better Regulation**

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

## Assessment and recommendations

*Institutional capacities for Better Regulation have improved since the last OECD report, but remain quite weak if there is to be significant change.* Since the last OECD report in 2003, Finland has equipped itself with an oversight ministerial committee for Better Regulation. The Justice ministry, in particular, has made considerable efforts to coordinate, encourage and spread best practice. Still, there is some way to go. The backdrop of autonomous ministries, no clear political leadership and a dominant legal culture in the civil service has not fundamentally changed. It has proved impossible, for now at least, to establish a central monitoring and challenge unit, and a networked approach has emerged instead.

*At the same time, there is a growing awareness of weakness and evident frustration combined with a desire on the part of many officials for a stronger, more coherent and horizontal approach.* The OECD peer review team heard from some officials who vigorously defended the status quo and saw no need for change. It heard considerably more from others who saw the need for change and for a more effective “whole-of-government” approach if Finland is to sustain a strong economy and high levels of social welfare into the future. As one interviewee put it, “the management of regulatory policies in the ministries is not in order”. The experience of this review had also made them think again about current practices. The gap in interest appears to be mainly at the top, politicians certainly, some permanent secretaries also. Concern about the resource implications of deploying Better Regulation policies more strongly (especially given the Finance ministry’s productivity programme) is balanced by a growing perception that more effective co-operation and sharing of best practice could achieve much, without more staff. As it was put to the OECD peer review team by the Finnish National Audit Office, advancing Better Regulation is probably less an issue of inadequate resources, and more an issue of the more efficient use of available resources through shared effort.

*What should be done to strengthen institutional capacities in practical terms? Will the current networked approach be adequate?* A cross ministry expert group, the Better Regulation Consultative Committee, set up in November 2007 as a support network for the Better Regulation Ministerial Group and promotes the roll out of Better Regulation policies and practices. It represents an effort at developing a networked approach to Better Regulation management. As one Finnish official put it, is a central unit essential for progress, or would it be possible to move forward via the “network” model? It is too soon to say to what extent the current arrangements will be effective, but it is already clear (see below) that some further changes will be needed.

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**Recommendation 2.1. An early evaluation of the effectiveness of the current networked approach in strengthening Better Regulation in key dimensions such as public consultation and *ex ante* impact assessment is essential. Use the evaluation results to take the institutional structure a step further forward.**

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*The Justice ministry cannot, in the long run, be left alone to spearhead Better Regulation.* The Justice ministry cannot be left alone as the main institutional “standard bearer”. For now the Better Regulation ministerial group and official level consultation committee are both chaired by the Justice ministry. The Justice ministry itself knows that it cannot assume the role of Better Regulation champion effectively in the long run, and knows that the future lies in a handover, or at the least, higher level support. Other key institutional actors at the centre of government are the Prime Minister’s Office (which as in

other countries, has a strategic view of policy making and co-ordinates the Government Strategy Document), the Finance ministry (which is responsible for the public administration and performance measures, budget allocations, and co-ordination of local government), and the Economy and Employment ministry (which runs the recently established administrative burden reduction programme and promotes competitiveness). For now, neither the Finance ministry, nor the PMO seem keen to step in with a stronger role (although the PMO has recently picked up an important co-ordination role to follow up Better Regulation following the mid-term review of the Government Strategy Document). Yet in other countries these have proved powerful motors for progress, because of their strategic insights and leverage over the other ministries. The Ministry of Economy and Employment (MEE) is promising as another option if the underlying focus is competitiveness, but may lack the leverage and influence of the first two. Finland is more effectively organised, via a strong PMO presence, for EU regulatory affairs than it is for domestic issues. Could the well-functioning co-ordination process for the EU be adapted for the national Better Regulation policy?

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**Recommendation 2.2. Consider whether the Prime Minister’s Office could play a stronger role by chairing the Better Regulation ministerial committee. If this is difficult, a rotation of the chairmanship over time across the core ministries could help to spread ownership and exert greater leverage than is currently possible via the Justice ministry. A minister to act as political champion is essential at this stage in Finland, and this task would automatically devolve to the chair.**

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*Even if there is no fully fledged central unit for Better Regulation, embryonic forms exist in the Justice and Economy ministries.* Whatever the approach taken at ministerial/political level, effective monitoring and some “teeth” are also essential, to ensure that policies such as public consultation and *ex ante* impact assessment are properly applied. It is difficult to do without an officials unit to flank the ministerial and networking activity. In fact, Finland has started down this path and (see above) there appears to be readiness among many ministries to go a step further. As well as the (very small) Justice ministry resources for Better Regulation, the MEE has recently established a (slightly larger) Better Regulation unit whose functions include taking forward the administrative burden reduction programme for business. In order to make the most of limited resources and to share ownership, it makes sense to bring these two centres of activity closer together. Since the Enterprise ministry is not a member of the Justice chaired committees for “coalition reasons”, this makes even more sense. There may, alongside this strengthening of the centre, be a need to communicate more effectively why a stronger centre is helpful - a combination of reassuring ministries that they remain responsible for applying Better Regulation tools and processes, while also pointing out the advantages a central unit could have for them, to provide ready support on impact assessment, for example, and ensure greater consistency of approach across ministries.

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**Recommendation 2.3. Take action to develop a closer relationship between the Justice and MEE Better Regulation units. If a merger is not appropriate, consider (as some other countries have done) whether there could be shared staff or activities, collocated offices, a rotating leadership, or a combination of these. In any event, take steps to connect individual Better Regulation units and other relevant units such as those attached to Permanent Secretaries, to the central structure.**

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*An external advisory board would add further weight to the institutional set up and help to challenge ministries to perform better.* For now, Finland relies on external think tanks and the National Audit Office to provide a challenge function. But challenge is not their primary role, effective though they have been in helping to put Better Regulation on the map. To some extent, the Better Regulation Consultative Committee (which includes external stakeholders) is also relevant.

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**Recommendation 2.4. Consider establishing an advisory board independent of the government and of political cycles, to monitor, advise and challenge on Better Regulation progress, with particular reference to key issues such as *ex ante* impact assessment and the administrative burden reduction programme.**

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*The role and support of the parliament is important.* The Finnish parliament is quite engaged, compared with some other European countries. Four committees: the Audit Committee, the Constitutional Law Committee and more broadly the Future Committee, as well as the Grand Committee for EU matters, are regularly involved in issues related to Better Regulation. The OECD peer review team also understood that the parliamentary committees in general pay careful attention to the drafting of bills and take an interest in impact assessments. This relationship needs to be nurtured.

### Box 2.1. Recommendation from the 2003 OECD report

#### Recommendation

***Increase accountability for reform results within the ministries by establishing a systematic process of oversight by a ministerial committee and by setting broad targets for reform in high-priority areas, against which ministries will be held accountable.***

There is currently no process for reviewing at the political level, the concrete results achieved by the ministries, against priorities established by the government. While many OECD Member countries provide political oversight via the appointment of a minister responsible for regulatory reform, an alternative that is arguably more suited to the Nordic model followed by Finland is for a committee of ministers to undertake such responsibilities, as occurs in the Netherlands via the MDW Committee. Such a Committee could be particularly valuable in the context of the need to adopt substantial new regulatory policy elements as it would provide the needed authority to drive forward the effective implementation of reforms.

***Establish a technical unit with a mandate, capacities and resources to promote, implement, enforce and evaluate an enhanced regulatory policy.***

Building on the experience of the Bureau of Legislative Inspection, the establishment at the centre of government of an oversight unit with broad responsibility for regulatory policy would strengthen the signal that the government accords political priority to this issue. Its principal function would be to oversee the RIA system and provide technical opinions on the substantive quality of the proposed

measures. The unit could also provide advice and facilitate training on regulatory instruments. In co-operation with the Bureau, the unit may also participate in the management of the legal and regulatory system. Its central position would also do much to address the problems of lack of policy co-ordination or “regulatory stovepipes”, while also providing a secretariat function for the ministerial committee proposed above.

Periodic oversight and assessment of progress would strengthen incentives for ministries to innovate, to learn from each other, and to seek concrete results. It is recommended that this unit be at the centre of government and work with the Prime Minister’s Office in its role of co-ordinating legal advice going to the Council of Ministers. It must be given a credible means by which to fulfil its mandate and in particular the implementation of RIA requirements.

### **Background Comments**

#### ***Whole-of-government policy making is hard to achieve***

Paradoxically, given the focus on consensus, concerns regarding a lack of policy co-ordination across government are becoming increasingly apparent. The independence of ministries has led to the so-called “stovepipe government executive” and undermines the easy development of a whole-of-government position. This co-ordination problem is made more difficult by diverse coalition governments. Analysts suggest that strong leadership based on individual personalities and connections, rather than the formal mechanisms, has often been the driver of important co-ordinated decisions.

#### ***Lack of a strong oversight body to challenge and to raise standards***

There is no oversight body to provide a regulatory challenge function on the technical quality of RIA and regulatory proposals. This should be considered a priority. The challenge function should include both RIA for proposed regulations and the advocacy of reforms to existing regulations. The competition authority, while targeted toward issues of competition and micro-economic reform, currently plays an important role in reviewing existing regulations. This role can potentially also be carried out at least in part by non-governmental bodies, such as think tanks. To be successful, the core need is for the body or bodies to have considerable expertise, with the standing and prestige to stand up to with ministers and regulators.

#### ***Lack of engagement and leadership by key ministries***

The tradition of substantial ministerial independence in law drafting means that there has historically been relatively little involvement by the Prime Minister’s Office, the Ministry of Justice or any other individual Ministry in co-ordination and in enforcing a consistent standard for analysis of legal drafts. As a result, more unresolved issues go to the Cabinet than would occur if there were more dialogue and co-ordination across ministries.

## **Background**

### ***The Finnish public governance context***

The Finnish public governance context remains anchored in the principles described in the 2003 OECD report:

- **Finland has always accepted a strong role for the state.** The state is seen as the main guardian and defender of society. This view underlies the “Nordic model” more generally, as well as being a response to Finland’s historical experiences of foreign aggression. It means that the government owns substantial economic assets, that the public expects high standards of social, environmental and consumer protection and that it is ready to finance an extensive social welfare system.<sup>1</sup> However, as in other Nordic countries, substantial changes have taken place since the 1980s. In Finland’s case, an economic crisis at the end of the 1980s provided the first major spur to reforming the model, while accession to the European Union in 1995 – and in

- particular the requirement to adopt the Single Market directives – has also driven change. Important structural reforms have occurred, including privatisation and market liberalisation, in a range of sectors. Finland has been a pioneer in many reforms and has obtained a competitive edge in some sectors (*e.g.* telecommunications) as a result. However, reform is incomplete, the state remains a major provider of products and services and important economic sectors continue to be highly regulated.
- **Finnish governance and regulatory practices are characterised by consensus building, informality, collegiality, gradualism and often corporatist attitudes.** Finnish political culture is characterised by widespread participation in decision-making, a search for consensus among coalition parties,<sup>2</sup> informal procedures, institutionalised power sharing amongst government, employees and enterprises, and a preference for making changes gradually.<sup>3</sup> Consensual approaches mean that regulatory processes are built around committees and informal procedures, which are widely regarded as facilitating flexibility and the adoption of pragmatic solutions. For example, processes of consultation on new laws are not formally specified in legislation, yet they are widely observed. Corporatist approaches still prevail in policy and rule-making: For more than 25 years, government, employers associations and the labour unions have co-operated to shape economic policy. Change is underway, as Finland recognises the need to adapt the system in order to cope with rapid changes in the external environment, including European integration and wider globalisation. Gradualism continues to rule however – for example, the recently completed review of the Constitution took 30 years to finalise.<sup>4</sup>
  - **The rule of law has been an ideal in Finland’s history and culture** and explains a heavy reliance on laws to this day. Laws played an important role for Finland in its attempts to maintain its autonomy within the former Russian Empire. A strong legalistic tradition has been an enduring feature of the Finnish governing system since then, which also explain the widespread use of very specific and detailed (command and control) laws and in particular, respect for proper legal forms with regard to both the role of public authorities and the behaviour of citizens.<sup>5</sup> The large number of high officials trained in law may be a result as well as a cause of the predominance of legal thinking in public management. In any event, Finland relies on clear, detailed and specific laws to frame its legal system. While this tendency has inevitably contributed to the problem of “regulatory inflation”<sup>6</sup> experienced in most OECD countries, the awareness of the importance of legal quality has also contributed to efforts to improve clarity by controlling regulatory inflation. The Finnish culture does not make a clear distinction between policy-making and law drafting: the policy-development process seems to move nearly instantly into law drafting. Changing this would require a significant cultural shift on the part of both government and the public service.
  - **A decentralised executive**, where regulatory powers are devolved to ministers, official bodies and municipalities. In common with other Nordic countries, Finnish ministries are highly autonomous, while the centre of government (*i.e.* the cabinet and cabinet secretariat) is relatively weak. This has important implications for the design of overarching regulatory policies and regulatory quality assurance strategies. It also has implications for policy co-ordination and coherence.

## *Developments in Finland's public governance context*

### Constitutional reforms

Finland's public governance context has been, and continues to be, the subject of significant waves of reform. The constitution was reformed in 2000. The reform codified several previous amendments. It also strengthened the parliamentary features of the governance system: the parliament acquired the right to elect the Prime Minister. The powers of the Cabinet *vis-a-vis* the President of the Republic were enhanced. The courts were given a power, to exercise judicial review of laws (acts of parliament) for their conformity with the constitution (formerly this power was limited to subordinate regulations).

### Public administration reforms

The 2003 OECD report noted that, linked to the objective of increasing the competitiveness of the economy, Finland has launched successive reforms to its public administration since the end of the 1980s. There have been several stages in this process. The government has progressively moved away from its former role as substantial producer and owner of services towards a framework that allows more competition. Initial efforts to cut red tape expanded into more substantial reforms aimed at increasing the service orientation of the bureaucracy and to decentralise government while strengthening municipal government. Budgetary processes were adjusted accordingly, and central controls were relaxed.

Public administration reforms have also been a major feature of the last few years. A significant public governance development since the 2003 report is the deployment of an Action Programme on Public Sector Productivity, to raise productivity across all ministries and their agencies by reducing numbers, led by the Finance ministry. This is inevitably contentious, with a “do more with less” approach. The Action Programme was launched in November 2003, as a policy measure to counter the effects of a rapidly ageing population, and increased demand for public services. There is a need to increase productivity in order to meet these challenges. The Programme aims to reduce the need for central government personnel by about 9 600 person work years by 2011. In 2008, the reduction of personnel will be 2 200 person work years. The Programme is steered by the Ministry of Finance and comprises over one hundred projects. Every ministry had to prepare a Productivity Programme, where it *inter alia* had to state how ICT would be used in order to enhance productivity. In 2008, EUR 15 million was made available to support projects. The Finnish government notes that issues such as a growing digital divide, a lower level of privacy protection and information security, and difficulties in adjusting to a new, more technical operating environment will need to be managed.

### “Whole-of-government” approach

An evaluation of the impact of public administration reforms conducted by the Finance ministry in 2000 came to the overall conclusion that there was a need to enhance “whole-of-government” strategic thinking and management, and to give this effect through stronger and clearer horizontal policy co-ordination and forward policy planning via a set of cross cutting policy programmes, with an enhanced role for the Prime Minister's Office (PMO) in overseeing the roll out of the policy programmes.

Significant steps have been taken to move these ideas forward. The policy proposals in the Government Programme (GP), the coalition agreement that is negotiated at the start of

the government's term of office, are given operational effect in the Government Strategy Document (GSD). The GSD contains the government's most important horizontal policies and defines a set of indicators (outcome targets), on which the policies will be monitored and evaluated. The follow up is co-ordinated by the PMO, and implemented by the PMO together with other ministries.

A “whole-of-government” approach to the big policy issues is now understood to be not only desirable, but necessary if Finland is to sustain a strong economy and high levels of social welfare in the future. The autonomy of Finnish ministries and the fact that individual ministries (and ministers) are directly accountable for the policies and regulations they introduce, is a growing challenge for effective policy formulation (and the application of Better Regulation policies, which by definition need to be shared across ministries) in an increasingly complex world. Finland has recognised the challenge. For example the creation of the MEE reflects an understanding that major horizontal issues such as business competitiveness require a stronger approach. Several structures are in place which seek to join up different areas of policy and develop a more “whole-of-government” view than is possible from the vantage point of individual ministries.<sup>7</sup>

#### Futures oriented policy development

The Government Foresight Network (GFN) is an inter-ministerial network, which includes all ministries, aims to take a long term view of policy development, beyond the policies set out in the Government Programme and GSD, and the current legislative term. In this process, it seeks to promote a more horizontal approach to policy development, cutting across the often separate developments within individual ministries and pooling issues and ideas.

Within the parliament, the Committee for the Future is another place where related policy issues are “joined up”, examined and debated. It deliberates, as its name implies, futures-related matters, and may engage other committees in these reflections. It reviews papers submitted to it but it also conducts its own research, and takes a particular interest in technological development and the effects on society of technology. The future of democracy is one of the Committee's themes for the final part of this electoral term. As part of its celebration of 100 years of Parliament, the Committee has started a project in which it joins forces with “futures” researchers to consider long-term issues related to the functioning of democracy, given population ageing (which looks like it will happen more rapidly than elsewhere in Europe) and its effects for issues such as social welfare and regional policy.<sup>8</sup>

#### Focus on the subnational levels of government

Finally, two major reforms of subnational levels of government are underway – the ALKU project for a more effective regional state administration focused on citizen and customer needs, and the PARAS reform project for streamlining the municipalities.

## ***Institutional framework for the Finnish policy, law making and law execution process***

### **Box 2.2. Institutional framework for the Finnish policy, law making and law execution process**

Finland is a representative democracy with a semi-presidential parliamentary system. According to the Constitution, the President is the Head of State, and in co-operation with the government, has responsibility for foreign policy, excluding matters relating to Finland's membership of the European Union. The position of President is filled by direct vote for a term of six years, and is subject to a maximum of two consecutive terms.

#### **The executive**

The government is currently made up of a prime minister, and 19 ministers, all on an equal footing (there are no junior ministers). At present, there are 12 ministries, which can have several ministers, each of whom heads a number of departments independently and with equal authority as agreed by the government.

Each newly elected government develops a Government Programme (GP), equivalent to the coalition agreements of some other EU countries. The GP is presented to the parliament for approval, thereby anchoring government policy for the legislative term and giving it democratic legitimacy. The policy proposals in the GP are given operational effect in the Government Strategy Document (GSD). The GSD contains the government's most important horizontal policies and defines a set of indicators (outcome targets), on which the policies will be monitored and evaluated. It is subject to a thorough review at the government's mid-term point.

As in other EU countries the most important policy decisions are taken by the government (Cabinet)<sup>9</sup>, which is supported by a range of Committees for the different policy areas. Four standing Cabinet committees are very significant: Foreign and Security Policy Committee, Economic Policy Committee, Finance Committee, Cabinet Committee on Economic Policy, and Cabinet Committee on European Union Affairs. The Prime Minister chairs the Cabinet Committees. Each of these consists of the key ministers from the various party groups, aimed at securing consensus in a coalition context. The government makes decisions at the Cabinet Finance Committees on Wednesdays, at the Government Plenary Sessions on Thursdays and at Presidential Sessions on Fridays. Ministers regularly attend meetings of cabinet committees and ministerial working groups and, when necessary, an evening session (evening classes), which are unofficial negotiation sessions of the Cabinet. A Group of Permanent Secretaries (comprising the Permanent or State Secretaries of all ministries) meets once a month and is chaired by the State Secretary in the Prime Minister's Office, who is a political appointee.

Ministers have administrative duties linked to their ministries, as well as duties as members of parliament. The civil service is politically neutral. Civil servants, including the senior hierarchy, do not automatically leave their posts when a new government is elected. Civil servants are recruited permanently or for fixed terms. Senior civil servants are appointed by the government or the President of the Republic. Alongside the senior civil service, there is a category of political appointed officials.

#### **The legislature**

Sovereignty belongs to the people, with the power vested in Parliament. The 200 member unicameral parliament of Finland (*Eduskunta -Riksdag*) exercises the supreme legislative authority. Election to the parliament is based on a system of proportional representation: by proportional vote in multi-seat constituencies, for a term of four years. Parliament passes legislation, decides on the state budget, approves international treaties and supervises the activities of the government. It may alter laws, the constitution, bring about the resignation of the government, and can override presidential vetoes. Acts of Parliament are not subject to judicial review.

Legislation may be initiated by the government, or by a member of the parliament. Legislative decisions are, without exception, based on consideration by committees. All bills and usually also other

issues, on which Parliament will finally decide in plenary session, must be prepared by a committee. Thus, each bill is referred to one - and only one – reporting or "lead" committee, although it can be referred from plenary session to another or several other committees for their opinion. These supporting committees give their statements to the lead reporting committee. The reporting committee may itself request the statement of another committee. The lead committee report, annexed with other committees' statements, forms the basis for consideration of the matter in plenary session.

A special committee, the Constitutional Law Committee, checks whether bills are in conformity with the Constitution and the International Convention on Human Rights.

### **The judiciary**

Finland has a civil law system which is based on Swedish law (which itself is based on the Napoleonic system). The judiciary is divided between courts with regular civil and criminal jurisdiction, and administrative courts with jurisdiction over litigation between individuals or businesses and the public administration. The court system for civil and criminal jurisdiction consists of local courts (*käräjäoikeus*), regional appellate courts (*hovioikeus*), and the Supreme Court (*korkein oikeus*). The administrative arm of the judiciary consists of regional administrative courts (*hallinto-oikeus*) and the Supreme Administrative Court (*korkein hallinto-oikeus*). In addition, there are a few special courts. For example, a High Court of Impeachment examines criminal charges against high-ranking officeholders.

### **Regulatory agencies**

There are some 60 central government agencies, of which 16 currently have significant powers to impose requirements on enterprises and citizens, including the power to make regulations. Agency numbers and structures vary over time, although the system overall appears relatively stable.<sup>10</sup> Unlike in some other European countries which have an agency structure that includes the establishment of a set of independent regulators at arm's length of ministries (especially in the fields of network sector oversight and competition policy) Finnish regulatory agencies as a general rule have limited independence. They report to and are closely tied to a parent ministry.

There is also an indirect level of public administration. Certain functions of the public authorities and market oriented operations such as state enterprises have been delegated in this way. The Social Insurance Institution of Finland (KELA) is an important service unit of the State outside the State administration.

### **Local levels of government**

Finland is divided into 6 regions (*lääni/län*), and 348 municipalities (*kunta/kommuner*) (114 cities and 302 rural municipalities) at the local level. Municipalities have a constitutional right to self-government. The only way central government can impose a requirement on municipalities is through law. They are directed by local councils, whose members are elected through direct elections and have a broad range of responsibilities. The municipalities co-operate in 20 regional associations (*maakunnan liitto/ landskapsförbund*) and in approx. 250 other inter-municipal associations (*kuntayhtymä/samkommun*). The regional council (*länsstyrelsen*) represents national government in each region and supervises the municipalities on the government's behalf.

Åland is an autonomous region, but it constitutes one of the regions, one of the regional associations and 16 of the municipalities. Åland's autonomy gives it the right to pass laws in areas relating to the internal affairs of the region and to exercise its own budgetary power. Åland's legislature (its parliament), is known as *lagtinget*. This parliament appoints the regional Åland government, *landskapsregeringen*. Åland's autonomy is regulated by the Act on the Autonomy of Åland passed by the Parliament of Finland. An amendment of the Autonomy Act must follow the same legislative procedure as constitutional amendment and requires the consent of the Parliament of Åland. The division of power between Åland and Finland can thus only be changed on a consensual basis. The current Autonomy Act, the third in line, entered into force on 1 January 1993. Further information on Åland is outlined in Annex 2.

### *Developments in Finnish Better Regulation institutions*

These have mainly centred on a strengthening of the co-ordination networks for Better Regulation, both at ministerial and official level, after it became clear that the establishment of a single lead and co-ordination unit would not work.

**Table 2.1. Milestones in the development of Better Regulation institutions in Finland**

1998	<i>Ad hoc</i> High-level Working Group on Legislative Policy established to prepare the Government Legislative Policy.
1999	Cabinet Committee on Regional Development and Public Management Reform.
2001	Ministerial Steering Group to prepare Better Regulation strategy.
2003	Government Law Drafting Development Group ( <i>SÄKE</i> I; mandate 2003-5).
2005	<ul style="list-style-type: none"> <li>• <i>Ad hoc</i> group of Permanent Secretaries established to oversee the co-ordinated development of policy.</li> <li>• Government Law Drafting Development Group (<i>SÄKE</i> II, mandate 2005-07).</li> </ul>
2006	<ul style="list-style-type: none"> <li>• Working Party to discuss the organisation of expert services for impact assessment established.</li> <li>• Working Group to develop the broadly based drafting process in government.</li> </ul>
2007	<ul style="list-style-type: none"> <li>• Establishment of the Better Regulation Ministerial Group.</li> <li>• Establishment of the Better Regulation Consultative Committee.</li> </ul>
2008	<ul style="list-style-type: none"> <li>• Law Drafting Development Group (<i>SÄKE</i> III; mandate 2008-11).</li> <li>• Law Drafting Development Group Network for RIA experts (sub group of <i>SÄKE</i> III).</li> <li>• Establishment of Steering Group on administrative burden reduction.</li> <li>• Establishment of Better Regulation Unit at the ministry of Employment and the Economy.</li> </ul>

### ***Key institutional players for Better Regulation policy***

#### *The executive centre of government*

There is no single central co-ordinator or unit responsible for all aspects of Better Regulation in the executive. The Finnish government acknowledges that in this regard, it has not been able to implement the recommendation of the 2003 OECD report. Although efforts were made to create a central unit, to date this has not been accepted, reflecting a reluctance to interfere with the autonomy of individual ministries. A networked approach has emerged instead. The key central government actors are asking themselves at this stage whether a central unit is strictly necessary, or whether “broader criteria” could be used for

the institutional design of Better Regulation. The OECD peer review team were asked “What does an adequate – not too heavy – Better Regulation structure look like?”

In the absence of a central unit, a small unit within the Law Drafting division of Ministry of Justice has so far been the main driver for Better Regulation in Finland. Its leadership in advocating BR flows from its central responsibility for legal quality. Other key players are the Prime Minister’s Office (PMO), the Ministry of Economy and Employment (MEE), and the Ministry of Finance (MOF).

### Ministry of Justice (MOJ)

The core statutory mission of the Ministry of Justice is to oversee the development of proposed laws within the government.<sup>11</sup> The Law Drafting Department gives opinions on proposals for new legislation. The Department is usually consulted via requests for written statements and very often, by offering informal help or advice. Within the Department, the Bureau of Legislative Inspection is responsible for checking the legal quality of laws at the final stage of drafting, which includes ensuring the consistency of individual laws with the existing legal framework (including conformity with the constitution and the existing regulatory system). The Bureau checks that relevant procedures have been applied as set out in the *HELO* Instructions, the Law Drafter’s Guide and other guides, including instructions to carry out impact assessment (the substantive aspects of a proposal are not addressed). It tracks the legislative process as it unfolds, issuing advice and promoting co-ordination between ministries. When the drafting process is completed, the proposal is sent to the ministry for a formal opinion before it is tabled to the Cabinet. The Ministry also has a European Law unit which provides guidance on EU matters.

The ministry’s role in recent years has evolved towards increasingly pro active advocacy for Better Regulation, and the promotion of a more rigorous and consistent application of impact assessment by ministries. This work has been spearheaded by the Law Drafting Department, which now has one full-time official on Better Regulation (and some limited further part time support). It has sought, with some success, to elevate the status and recognition of Better Regulation within government as an important core policy for more effective public governance and regulatory reform. Largely thanks to its work, Better Regulation is now referenced in the GP and the Government Strategy Document (GSD). The ministry chaired the working party which led to the recent production of an integrated guide to impact assessment so as to facilitate the effective application of impact assessment by ministries. The Minister of Justice chairs the Ministerial Working Group on Better Regulation and Better Regulation Consultative Committee which were set up to monitor the development of Better Regulation policies. The ministry also chairs the Government’s Law Drafting Development Group (see below).

### The Prime Minister’s Office (PMO)

The Prime Minister’s Office traditionally plays a relatively low-key role in regulatory governance. However, like its counterparts in many other European countries, it plays an important and central role in the oversight and co-ordination of general government business, and in the development of reform strategies. The Prime Minister has an important role in advocating reforms. In particular, the PMO is responsible for co-ordinating and drawing up the twice yearly legislative programme. It provides the focal point for the implementation of the Government Strategy Programme, based on the Government Programme announced at the start of a government’s term, and monitors developments. One key area where the PMO exercises much more than a co-ordinating function is in EU

Affairs. The PMO's Government Secretariat for EU Affairs plays a substantive role in EU matters (see Chapter 7).

### Ministry for Economy and Employment (MEE)

The Ministry for Economy and Employment was created in 2008 to bring together economic and employment issues under one roof.<sup>12</sup> A specific aim of the reorganisation was to secure a more effective institutional framework to address regulatory issues for business and competitiveness. The ministry's Better Regulation responsibilities include the development of and support for regulatory business impact assessment, and development and co-ordination of the recently launched programme for administrative burden reductions on business. The MEE is also responsible for the national co-ordination of EU Better Regulation issues.

The MEE Better Regulation unit has three main responsibilities:

- the development of the regulatory process and law-drafting in respect of regulations for which the MEE is responsible;
- participation in the development and implementation of the government's Better Regulation policy, such as the action plan to reduce administrative burdens, and the development of and support for business impact assessment; and
- national co-ordination of EU better regulation affairs, and participation in other international activities.

### Ministry of Finance (MOF)

The Ministry of Finance is responsible for the public administration, and its Budget Department is responsible for budget allocations to ministries, as well for the performance measures which are included in the GSD. The Department is also responsible for the Productivity Programme. It is consulted in relation to the expected budgetary impacts of draft laws as well as on any potentially significant impacts on the national economy.<sup>13</sup> The Ministry takes an interest in strategic policy development issues. An evaluation which it carried out in 2000 identified the need to enhance "whole-of-government" strategic thinking and management. It is currently co-ordinating Finland's input to the OECD public management review.<sup>14</sup>

### *Co-ordination across central government on Better Regulation*

An important initiative at political level has been the establishment of a ministerial group for Better Regulation, in recognition of the fact that there is now a Better Regulation Strategy and that Better Regulation has found its way into the GSD. This is now flanked by a cross ministry expert group, the Better Regulation Consultative Committee, set up in November 2007. These developments appear to be a significant step forward in mainstreaming Better Regulation as an integral part of government policy development, and have encouraged the establishment of co-operative cross ministry networks to monitor and give effect to the Better Regulation elements of the GSD. The Justice ministry plays a prominent role in these arrangements, chairing the relevant committees. At the same time, the PMO's lead role in the GSD overall gives it a more general responsibility for ensuring that ministries are giving effect to GSD plans and objectives, including those of Better Regulation.

On the other hand, Finland has struggled, as a number of other European countries have done, to give effect to the OECD's recommendation that a technical unit responsible for the "promotion, implementation, enforcement and evaluation of an enhanced regulatory policy", should also be set up at the centre of government. The Ministry of Finance and the then Ministry of Trade and Industry set up a working group in 2006-2007 to consider the scope for strengthening arrangements. The idea of a Better Regulation unit was abandoned in the face of Finland's entrenched culture of ministerial autonomy, and the difficulty of identifying a clear leader for the process. What has emerged instead is a "network" approach based on two elements: agreement that each ministry should organise practical expert services in its own field of expertise, and that an expert group should be established to promote a more co-ordinated approach to the development of impact assessment (which has been done through the establishment of a sub group of the Law Drafting Development Group). The Justice ministry leads this group.

### Box 2.3. Finland's current structure of Better Regulation committees and groups

#### **Better Regulation Ministerial Group**

The Better Regulation Ministerial Group, set up in spring 2007, is responsible for following up and implementing the legislative policy measures and projects of the GSD. The Group set the assessment criteria for the mid-term review of the GSD's Better Regulation components. The Group is chaired by the Minister of Justice and meets four times a year. Specific decisions in 2007-08 related to the legislative agenda, the RIA guidelines and evaluation criteria for the Legislative Agenda. Implementation of the Administrative Burden reduction programme is also considered on a regular basis by the group. A challenge with the Group is that its membership is decided in the framework of Finland's coalition government and the relative strength of the political parties in the coalition, which means that it does not necessarily represent all the relevant ministries for Better Regulation. The current membership of the Group includes the Minister for Public Administration and Local Government from the Ministry of Finance, the Minister for Housing, the Minister for Migration and European Affairs, the Minister for the Interior, and the Minister for the Environment. The MEE, however, is absent.

#### **Better Regulation Consultative Committee (BRCC)**

The BRCC was established in November 2007. It is also chaired by the Minister of Justice. Its members include ministries, representatives of the judiciary as well as a range of external stakeholders including academics, industry and labour representatives, consumer associations, and other NGOs. The aim of the BRCC is to support the roll out of Better Regulation policies and practices. It meets 4 to 5 times a year. Participating stakeholders are invited to provide information and views on Better Regulation developments and the legislative agenda. They also have an opportunity to ask questions of the Minister at each session of the Committee. The Committee acts as a support network for the Better Regulation Ministerial Group and may submit initiatives to the latter.

#### **Law Drafting Development Group (SÄKE III Group)**

This group was set up in February 2008 with a mandate until March 2011, as a successor to *SÄKE I* and *SÄKE II* which had similar tasks. The Group, chaired by the Justice ministry, co-ordinates and supports the development of legislative drafting in ministries and promotes a sound legislative culture. The work of the group supports the implementation of the Legislative Plan (the 22 major legislative projects) and related work set out in the Better Regulation Strategy. The group includes representatives from all the ministries (those responsible for legislative drafting and its co-ordination), and the parliament. The sub group of *SÄKE III*, a network of experts on RIA, particularly supports impact assessment procedures in the ministries, promotes the new RIA guidelines and co-ordinates training sessions for officials.

It is not yet clear how effective this network approach will prove to be (and what real value it will add compared with previous cross ministry networks). The OECD peer review team picked up support among ministries for more effective co-ordination. There is also a fairly widespread understanding that the current application of Better Regulation is inconsistent, which is damaging to progress.

### *The legislature and Better Regulation*

Finnish parliamentary committees pay careful attention to the drafting of bills and the impact assessments attached to them. There is a perception that impact assessments have improved the quality of bills in recent years. Extensive use is made of hearings with experts and stakeholders in committee meetings. In these hearings, mistakes in legal techniques and harmful impacts, for example administrative burdens for businesses, are revealed, and are a reason committees often make changes to government bills. Committees complain that they currently have to spend a lot of time correcting technical mistakes. They would prefer to concentrate on the underlying political and societal rationale of bills, and the scope for enforcement.

The parliament would like to have a more effective and fuller presentation of bills by the government. There can be a conflict between the demand of presenting government bills in summary form (*inter alia* because the bills must be translated into Swedish and this increases costs) and presenting all the options that would have been possible. The parliament would be interested in seeing the options that have not been chosen.

Two parliamentary committees have a particular connection with Better Regulation policies- the Audit Committee and the Constitutional Law Committee (Box 2.4).

#### **Box 2.4. Parliamentary committees**

##### **Audit Committee**

The main task of the Audit Committee is to oversee the management of government finances and compliance with the budget. It deliberates reports on government finances. The Audit Committee was created by combining the parliamentary oversight of government finances formerly performed by the Parliamentary State Auditors with the related functions performed by the administrative and audit section of the Finance Committee. The task of the Audit Committee is mentioned in the Constitution and the relevant legislative amendment entered into force on 1 June 2007.

##### **Constitutional Law Committee**

The Constitutional Law Committee is a special feature of the Finnish law making system. The Committee supervises legislative quality, and checks whether bills are in conformity with the constitution and the International Convention on Human Rights, on which it provides a statement. It performs these checks during the review of bills by parliament. Its longstanding criticisms of the quality of law drafting helped to promote the launch of the Better Regulation Strategy. The Committee drafts the Constitution as well as legislation closely connected to it, such as the legislation relating to the autonomy of Åland, elections, citizenship, language and defence. It also deals with any ministerial wrongdoings, the reports of the Chancellor of Justice and the Parliamentary Ombudsman and the Government Annual Report.

### *Regulatory agencies and Better Regulation*

According to the Constitution, agencies can have only limited legislative powers which must be clearly defined in a Parliamentary Act. These powers are generally confined to making technical regulations and their main function is to give effect to policies set by

government ministries. Agencies are likely, however, to be consulted by their parent ministry on the development of policies and regulatory frameworks. The OECD peer review team heard that ministries consult agencies during EU negotiations, and agencies may be invited to participate in EU meetings. They tend to be included in ministerial or committee working groups, providing them with an opportunity to contribute to policy development. Their ability to set and enforce sanctions for non-compliance (or to undertake initiatives to facilitate enforcement and/or compliance) can also be limited. They may, however, generate a certain amount of “soft law” (recommendations, instructions etc).

Reflecting the constraints on their independence, agencies do not have their own Better Regulation policies. The government’s Better Regulation Strategy applies to the agencies and all guidance materials and instructions issued by the government are required to be applied to the regulatory work of agencies. Responsibility for monitoring the implementation of Better Regulation policies by the agencies rests with the relevant ministry. Central training on regulatory drafting skills and dealing with EU legislation is open to staff from regulatory agencies. Finland appears to have been successful in integrating the agencies into its regulatory management framework, based on what appear to be generally close relationships and good communication between the agencies and their parent ministries.

### *The judiciary and Better Regulation*

The Judiciary plays a role to secure conformity of laws with the constitution. *Ex ante* control of the constitutionality of draft laws is exercised by the Constitutional Law Committee of the parliament. However the courts may intervene *ex post* to secure conformity with the Constitution and the respect of human rights.<sup>15</sup> Article 106 of the 2000 Constitution empowers the courts to disapply provisions of laws passed by the parliament, if the application of the provision in question would lead to manifest conflict with the Constitution. Usually the conflict cannot be considered manifest if the issue at stake has been evaluated by the parliament’s Constitutional Law Committee during the legislative process that led to the adoption of the provision, or if the normative content of the provision depends on interpretation. In principle all courts have the power of judicial review provided by Article 106 of the Constitution. The Supreme Court, the Supreme Administrative Court and the Insurance Court have exercised this competence in a few individual cases. These cases have concerned conflicts between ordinary laws and the basic rights protected by the Constitution. In most situations, however, it is not necessary for the courts to have recourse to this new competence, as it is possible to give the law in question an interpretation that is in conformity with the Constitution.

### *Other important players*

#### National Audit Office

The National Audit Office (NAO) is the government’s external auditor. It carries out legality, financial and performance audits on government policies, evaluating their efficiency and effectiveness. The Auditor-General is elected by parliament for 6 years (renewable). S/he leads the NAO (section 90 of the constitution). It has 150 staff members (65 of them work on performance audits). Audit reports are delivered to the auditee, to the Finance ministry and to the parliament’s Audit Committee. An annual report is submitted to the parliament.

The NAO is free to take up issues (“parliament’s eye”) as it sees fit. The NAO sees itself as a “strategic informant” but not an “internal consultant of government”. The NAO has regular informal contacts and briefings with the PMO and ministry State Secretaries. It may advise specific ministries at their request. For example, it has briefed the Finance ministry on the reforms of regional policy. It completes around 20-30 performance audits annually. These often concern broad areas of the administration involving several actors. These audits evaluate the success of activities, results and general effectiveness of policies.

A significant part of the NAO’s work is closely linked to Better Regulation. For example it considers the economic and financial impacts of policy and related legislation *ex post*. It also reviews Better Regulation policies and processes. It has, in particular, reviewed the arrangements for *ex ante* impact assessment. It has noted that the net impact on the government budget is considered in impact assessments, but behavioural impacts are not taken into account. The NAO’s recommendations have been taken into account in the *HELO* instructions. Its 2006 audit on impact assessment of EU legislation recommended that benefit analysis should be deployed more often. It told the OECD peer review team that ministries needed to be encouraged to work together at an earlier stage, and that the co-ordination of EU affairs provides a positive model in this regard. It also takes the view that the obstacles to Better Regulation are less to do with inadequate resources and more an issue of the more efficient use of available resources through pooled effort.

### Research bodies and think tanks

Government research bodies and public and private think tanks also play an important role in furthering debate on regulatory governance, often providing the fora through which emerging issues are first aired and possible solutions are put forward. They have performed an important function in promoting the benefits of regulatory reform within government and to the wider public through publication of their research. The more influential include: the Government Institute of Economic Research (VATT), which is linked to the Ministry of Finance; the Research Institute of the Finnish Economy (ETLA) a private research organisation financed mainly by the Finnish Industry; and the National Research Institute of Legal Policy (OPTULA), which conducts research on the state of reform and impartial legislative policy research. Other important institutions are the Centre for Finnish Business and Policy Studies and the Finnish Institute of Public Management.

OPTULA’s 2007 programme, for example, includes research encouraged by the Justice ministry in support of drafting the first legislative plan “Towards a Legislative Strategy of High Quality”.<sup>16</sup> This advocates for embedding a permanent commitment to Better Regulation across the political cycles, and not least effective *ex ante* impact assessment. It points to the need for Finland to maximise its bargaining power in the EU and makes proposals as to how this could be done, such as more systematic collaboration with other administrations and with the European parliament as well as the European Commission. It also draws out the links between effective regulatory management and effective policy in key areas such as the economy, the environment and welfare.

### Chancellor of Justice of the Government

This office is responsible (among other matters) for carrying out a judicial review of legislative proposals just before they go to the Government Plenary Session and the Presidential Session (see also Chapter 6). It receives proposals two days in advance of this, which creates resource challenges. The government may ask for its opinion on proposals (20/30 times per year). It may inquire on specific aspects of laws. It also gives opinions to the parliament. The Office sometimes participates in working groups at an earlier stage

(only when asked). The Office cannot formally stop a proposal, but it can ask ministries for amendments.

### ***Resources and training***

There are currently five full-time officials, four in the Ministry for Economy and Employment (MEE) and one in the Ministry of Justice, involved in co-ordination of Better Regulation policies. In addition there are officials involved in Better Regulation co-ordination among other duties in the MEE, the Prime Minister's Office, the Ministry of Finance and in the Ministry of Justice.

The Ministry of Justice has about 75 legal experts responsible for the regulatory projects of the ministry. They also review draft regulations prepared by ministries (including inspection of legal quality and preparation of statements as part of the internal government consultation process before a draft is tabled to the Cabinet). These include four revisers for the Finnish language and four revisers for the Swedish language.

The mid-term review of the GSD sought the views of ministries on the adequacy of their resources for the regulatory work which they had to carry out, and the proportion of effort which went into national and EU related work. The clear response was that there is a serious lack of resources in the preparation of national regulations, if these are to be done well. An average of 7% of staff years overall goes to the preparation of national regulations, and 4% for EU regulations. At the same time, the OECD peer review team heard from several stakeholders that better co-ordination would help to bridge the resources gap, and free up resources. Autonomous ministries are not the most efficient way to manage finite resources for Better Regulation.

Officials in the ministries and regulatory agencies are trained in drafting, including constitutional matters and legal techniques for the drafting of regulations in a broad sense. A state owned limited company, the Finnish Institute for Public Management (HAUS), arranges regularly, usually twice a year, a five-day training course on basic skills in regulatory drafting. The speakers come mainly from the Justice ministry. The traditional homework for officials participating in the course is to draft a government bill. Every year 40-50 officials take part in this course. The same company also provides shorter trainings on more specific issues such as EU legislation (preparation procedure, legal questions, transposition) constitutional questions and regulatory reforms. The speakers for this training are usually from the ministries.

There is also significant training of the judiciary. During the period of Finland's membership of the European Economic Area and the EU accession negotiations, a training programme on European Communities (EC) law for the judiciary was implemented by the Justice ministry, and a network of judges with responsibility for training on EC law was created. These judges are expected to organise internal and external EC law training in their courts/judicial districts and to act as point of contact when the need to deepen the knowledge on EC law arises within their courts. The Justice ministry seeks to ensure that suitable programmes of EC law training are available, and to give individual judges possibilities to attend more specialised courses on EC law relevant to their field of legal competence (*e.g.* competition law or VAT). Recently the Supreme Court and the Supreme Administrative Court have given their legal staff an opportunity to "brush up" their European Law knowledge with short tailor made courses and visits to the Luxembourg and Strasbourg courts. These courses have been organised in co-operation with the Academy of European Law (ERA) and have raised interest in other Finnish courts.

## Notes

1. Welfare entitlements constitute about one-fifth of the national income. See [www.state.gov/www/background\\_notes/finland\\_9906\\_bgn.html](http://www.state.gov/www/background_notes/finland_9906_bgn.html).
2. The electoral system is characterised by proportional representation, making coalition government a near inevitability. In recent times, as many as five parties have participated in governing coalitions.
3. See Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p.4.
4. The new Constitution entered into force in 2000. It was the result of 30 years of discussions and review.
5. Jaakko Nousiainen (2000), *The Finnish System of Government: From a Mixed Constitution to Parliamentarism*, Ministry of Justice. [www.om.fi/constitution/3344.htm](http://www.om.fi/constitution/3344.htm).
6. During the second half of the 1990s, regulatory inflation has also been the result of the enactment of a new constitution in 1995 and the transposition of EU Single Market directives. In the case of the former, the Constitution required many matters to be regulated by law rather than secondary legislation, for example, basic rights and liberties.
7. Finland's request for the OECD to carry out a public governance review (currently under way) as well as its participation in the EU 15 Better Regulation project (the subject of this review) are further evidence of a commitment to broadening perspectives.
8. Report by the Committee for the Future 1/2005 "Keeping up with Change-background memorandum for the Committee's response to the Government report on population policy.
9. To note both the term « Council of State » and "Government" are used in Finland to denote what is usually known as the « Cabinet » in many other European countries. It should also not be confused with the entities known as Council of State which exist in some other jurisdictions, such as France.
10. No official "list" is kept.
11. The ministry is also specifically responsible for law drafting in constitutional matters and in matters of general administrative law as well as in matters relating to the legal position of private persons and organisations, such as family and inheritance law, contract law, consumer protection, law of damages and company law. The ministry also drafts government bills for the parliament in the fields of enforcement, bankruptcy, debt restructuring, criminal law and legal proceedings.
12. From a merger between the Ministry of Trade and Industry and the Ministry of Labour (excluding migration and integration matters), together with the regional development issues of the Ministry of the Interior. The ministry was established for the following strategic reasons: preventive reaction to structural challenges; innovations to provide higher productivity in a sustainable manner; first rate jobs and

prompt re-employment; sustainable solutions to tackle climate change; new opportunities for all regions of the country. The ministry's mission is defined thus: it is responsible for the operating environment of Finland's entrepreneurship and innovation activities, for securing the functioning of the labour market and workers' employability, as well as for regional development within the global economy.

13. According to Section 40 of the Standing Order of the Council of State.
14. This review started in late 2008 and will be completed in 2010.
15. Before 2000, judicial review of the constitutionality of laws passed by Parliament was not considered to fall within the remit of the courts.
16. National Research Institute of Legal Policy: Towards a Legislative Strategy of High Quality, Publication 228, Ed Jyrki Tala, 2007.

## Chapter 3

### Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text – for example appeals are considered in Chapter 6).

#### Assessment and recommendations

##### *Public consultation on regulations*

*Finland's longstanding and broad commitment to an open democracy has traditionally been given expression by extensive consultation with established groups.* The Constitution states that “democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions”. Provisions on consultation and participation are given further weight in various laws and guidelines including the Act on the Openness of Government Activities. Finland has a well anchored tradition of participative decision-making which includes a wide range of groups, including NGOs. Strong traditions of trust and consensus building continue to frame the Finnish approach, and have helped Finland to reach consensus on how to address major policy challenges in the past. The approach does present challenges for developing a more strategic approach to policy making and to identifying what may be the best – as opposed to the least contentious – solution to regulatory or policy challenges. Post financial crisis, the need to ensure that effective consultation is in place to identify the best way forward is all the more important.

*Alongside the traditional approaches, Finland has for some time also been making use of the Internet for the dissemination of information, and to give the wider public an opportunity to become engaged.* There is, for example, a widespread practice of posting draft legislation on the Internet. Renewed efforts are being made to expand the use of the

Internet through new portals aimed at encouraging a wider participation by citizens in policy issues.

*Despite these developments, some of the issues raised in the 2003 OECD report are not yet fully resolved.* The last OECD report noted that consultation still favoured organised groups, that consultation requirements were not monitored and there were no sanctions, and that the consultation-impact assessment relationship remained weak. These issues continue to need attention.

*Consultation continues to favour organised groups.* The participative system, based on a strong network of relationships between ministries and key stakeholders, works very effectively at one level, delivering agreement on policies and protecting policies from unravelling when adopted and implemented. But it may be blocking efforts at a more inclusive approach to rule making. By the time a draft law comes out of the process there is less scope for outsiders to influence outcomes. The system as a whole may be losing valuable inputs and the innovative views and ideas which outsiders can bring to policy making.

*Timing is critical: those who wish to participate must be able to do so before a decision is well advanced.* It may be necessary to change from a reactive gear to a more pro-active one for citizens. It is not enough to make information available: they must be encouraged to use it. There is a growing recognition of the issue and debate on how to move Finland from a culture based on the need to develop unified positions before they can be made public, to broader and more open debates on policy issues. This does require culture change on a large scale. Consultation with citizens and other broad stakeholder groups will need to become a more embedded part of the daily life of public servants, who will also need to familiarise themselves with new tools. Traditional approaches to consultation (such as organised hearings and written statements with established groups) will need to be complemented with alternative and broader approaches such as workshops, public meetings, and the use of web 2.0 technologies.

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**Recommendation 3.1. Continue the efforts to encourage a wider range of stakeholders into the consultative process, including pro-active (not just reactive) processes to engage citizens. Ensure that the opportunities made available to do so are timely, so that comments can have a real influence on outcomes.**

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*There is now a code of consultation, but consultation requirements are not monitored and there are no sanctions.* Since the last OECD report, there has been significant progress with the establishment of a code of consultation in 2005. This is now being renewed and strengthened (for example, specifying minimum time limits for consultation). A key missing element, however, continues to be the lack of monitoring or sanctions for non-compliance. It seems that ministries face no real questioning on their consultation work, prior to submitting a proposal for government decision. There are no sanctions if a consultation is poorly organised. There is a tendency to disregard - or lack awareness of - the consultation code.

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**Recommendation 3.2. Back up the code of consultation with a system that will put real pressure on ministries to comply.**

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*The relationship between public consultation and impact assessment remains weak.* Chapter 4 addresses this issue. Consultation is carried out more with the aim of building

consensus than to gather evidence and assess potential impacts of proposed new regulations. This explains in part why it is difficult to make headway with a strong *ex ante* impact assessment policy: it is not in the culture to think of regulatory development in this way.

*The tradition of ministerial autonomy stands in the way of sharing best practices.* Autonomous policy development work (not just between ministries but, it seems, between departments within ministries, judging from interviews) means that opportunities are lost to share good practice. The OECD peer review team had the sense that ministries may tend to “reinvent the wheel” when tackling a major new reform.

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**Recommendation 3.3. Identify and implement a process whereby best consultation practices among ministries can be identified and publicised within the government.**

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### Box 3.1. Recommendation from the 2003 OECD report

***Strengthen the policy on consultation, and ensure that consultation and Regulatory Impact Assessment (RIA) programmes are effectively integrated.***

#### **RIA is not supported by consultation**

Reinforcement of public consultation mechanisms is essential to ensure that consultation can adequately support an enhanced RIA programme by acting as a source of relevant data. One key direction for reform is to standardise consultation by adopting more formal requirements to be followed by all ministries and regulatory agencies. A place to start could be the establishment of a mandatory notice and comment system for all draft laws and secondary legislation.

Integrating consultation with RIA would enhance the effectiveness of both policy tools: consultation is better informed and focussed and more likely to yield useful information if it is conducted on the basis of substantial factual information, as provided by RIA. In turn, well directed consultation can be the most cost effective means of gathering the data needed for more reliable and sophisticated RIA.

#### **Consultation favours organised groups**

A particular issue is the lack of transparency for outsiders of a system based on informal practices to achieve consensus among major players. Less organised or influential groups such as taxpayers, consumers, the unemployed, and environmental interests can lack access to policy-making processes. Effectively harnessing their input is crucial to improving regulatory quality. As well, globalisation means that increasing demands for participation from foreign investors and traders must be accommodated, placing further pressure on traditional corporatist and consensus driven models.

An active engagement of some “new” regulated parties might be needed in some cases, as for instance consumers or non-residents. This might be done by creating focus groups. Also, as committee membership is determined by the minister, there is a risk that this mechanism will operate in a way that benefits organised interests and regular or favoured interlocutors of government, at the expense of less organised interests. These factors suggest that there is a need to review existing consultative approaches and objectives to improve their operation and raise their cost-effectiveness.

An important concern is that there is potential to blur the line between obtaining advice and opinion on policy issues from relevant interest groups and undermining the responsibility of democratically elected representatives to make final decisions concerning laws. The problem is exacerbated if the range of groups represented is too narrow to reflect all major social interests.

**Consultation requirements are not monitored**

Nobody is tasked with checking that all those affected have been consulted and ministries vary in practice as to which groups are regularly consulted. No specific time limit is set for providing an opinion, although it must be “reasonable” and averages about 4 to 6 weeks. In most policy areas, traditions and internal government policies govern practices in public consultation. Public consultation varies considerably according to the level of regulation.

***Public communication on regulations***

Access to regulations is transparent and clear, aided by longstanding efforts to promote e-Government. Finland stands up well in this regard compared with many other OECD countries. The principle of free access to information prevails, backed up by a number of provisions, including several primary laws, publication of laws and secondary regulations by the Ministry of Justice, and online information services.

**Background*****Public consultation on regulations****General context*

According to section 2.2 of the Constitution, “Democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions”. In addition to the right to vote, this section requires that participation and influence be supplemented by other democratic tools. The right of individuals to participate and influence is also strengthened by the obligations of public authorities set out in sections 14.3 and 20.2 to:

- promote the opportunities of the individual to participate in societal activity and to influence decisions that concern them; and
- endeavour to guarantee for everyone the possibility of influencing decisions that concern their living environment.

Reflecting this broad commitment to an open democracy, openness is a central goal in Finnish legislative drafting, and consultation is seen as an established part of ministries' legislative drafting process. Provisions on consultation and participation are given further weight in the Act on the Openness of Government Activities, the Administrative Procedure Act and the Language Act, as well as the Bill Drafting Instructions and RIA guidelines. They apply to the development of all central government regulations. The overall message is that ministries must ensure that they obtain or hear opinions on “a large scale”. Parties likely to be affected by a proposed law must be given a chance to express their views, and lack of time must not be a pretext for neglecting this procedure.

The Act on the Openness of Government Activities (1999) was a particular landmark in promoting the principle of increased transparency of the law-drafting process. The Act sets legal standards for transparency and openness of drafting. It provides that, as a general rule, government documents, including preparatory work on draft regulations, should be made available to the public “as soon as they are fit for comments” (*i.e.* even if the draft is still under development). The Act also requires that the authorities should inform the public on projects under development.

Transparency and stakeholder participation is emphasised in the GSD. Ministries are required to provide information about their consultation practices as part of the evaluation of GSD outcomes.

### *Traditional approaches*

The commitment to a participative law making process has traditionally been given effect through longstanding traditions based on government consultation with established groups, with the aim of building consensus on key issues (described by the government as “expert representative democracy”). The *HELO* Instructions, initially issued in 1975, identify the following to be the most important parties to be consulted: other ministries, central agencies, municipal central organisations, leading labour market organisations, and important economic groups and associations representing particular interests, such as industry, small to medium-sized enterprises, environmental NGOs, consumer NGOs. The social partners remain an especially important consultation and consensus building partner.

The two most widely deployed traditional means of consultation are hearings, which are used during the preliminary phases of the law-drafting process, and written statements on the first draft. Ad hoc committees are often used for major legislative proposals, and these follow the development of a proposal from start to finish. Stakeholders have further opportunities to get their views heard once a draft Bill has been laid before the parliament, which often organises hearings as part of the Committee debate on the Bill. Draft Bills sent to the parliament contain a brief summary of conclusions reached following government consultation, including impacts.

### **Box 3.2. Traditional approaches to consultation**

#### **Written statements**

This is the most common consultation method. The ministry asks stakeholders to comment the matter at hand, *e.g.* a working group report, a background report or a draft Bill. The request for comment should be widely circulated.

#### **Hearings**

Hearings are arranged in which the responsible ministry presents the content of the legislative proposal, so that stakeholders have the opportunity to express their opinions and discuss it. Any interest group may attend hearings.

#### **Preparatory bodies**

For a major legislative project, the Council of State or individual ministries may set up an *ad hoc* committee at the start of the process, chaired by the government. This brings together a wide range of interests- civil servants, external stakeholders (business, consumer and other interests), experts and political decision-makers for the duration of the drafting process. The composition of committees is at the government’s discretion. Committees co-ordinate contributions, communicate comments and make proposals. Their final Memorandum must include an assessment of the social, administrative, economic and other impacts of the proposal. An effective recent example is the Commission on Sustainable Development.<sup>1</sup>

### **Social partners**

Social partners have a special place in Finnish society and as part of this, in the consultation traditions.<sup>2</sup> The relationship and scope of their influence – as in some other European countries – extends a considerable way beyond consultation. The social partners

have concluded numerous tripartite agreements with the Finnish government covering not only wages but also a wide range of issues related to employment policy, extending to social welfare and pension schemes, and taxation. There is also considerable self regulation. The federations of trade unions negotiate general framework agreements with the central employers' confederations. These form the basis for collective labour agreements which are formulated by trade unions and the corresponding employers' associations. Local agreements drawn up by workers' representatives and employers are based on the collective labour agreements.

### NGOs

Finland has an open approach to consultation with NGOs, particularly though their participation in working groups with civil servants. There is also co-operation at the regional level. 15 regional NGOs work with the regional governments and there are 200 local groups working with the municipalities (on issues such as roads or parks). The initiative to streamline the policy for climate change is an example of positive collaboration with NGO groups. Environmental NGOs collaborated with the government to help develop sustainable development indicators and prioritise them. However, there has been little feedback on the usage of these indicators. In October 2008, the Ministry of Finance completed a project aimed at improving collaboration between NGOs and ministries. The project group included representatives from the ministries and Swedish-speaking NGOs. The recommendations of the project group cover principles of transparency and hearing.

One issue appears to be that relationships between NGOs and ministries can be somewhat "exclusive". Environmental NGOs, for example, will have good relationships with officials in the Ministry of the Environment, but the relationship with other ministries is weaker. This can be a factor when ministries need to consult with stakeholders that are not their 'usual' stakeholder groups. In such cases, consultation with stakeholders may not take place at all, or may happen quite late in the process.

An Advisory Board on Civil Society Policy was established by the Ministry of Justice in 2007 to strengthen the interaction between NGOs and the government, as part of a broader programme by the ministry to strengthen Finnish democracy (see Box 3.3 below).

### *Requirements for public consultation*

There are no requirements, but recommendations on ministries for effective consultation are set out in the government's *kansanvalta* website. This specifies that, "A comprehensive summary of comments, responses and ideas received must be compiled. A summary of comments, opinions and views expressed in hearings must also be brought up at the decision-making stage. Proposals for decisions must also detail viewpoints that did not result in changes and reasons for not including them. Summaries must be available for public inspection. Individual comments must also be available. There may also be reasons for the government to pro-actively provide information about a summary." Government guidance specifies that both traditional methods, such as written comments, and ICT based approaches may be used. The choice is left to the ministry, depending on the situation and the target group. It is recommended that several different methods for consultation are used during the drafting process to ensure as extensive a consultation as possible. The Better Regulation website also contains information about the processes that should be followed by ministries.

The considerable guidance aimed at securing effective consultation has not so far been backed up by any evident formal monitoring or sanctions for non-compliance. This is reflected in what appears to be very different and uneven performances on consultation

among ministries. The cultural emphasis on reaching consensus also has an impact on how and when a draft proposal is made available for wider comment. Some hearings are called at short notice, leaving those consulted with inadequate preparation time and reducing effective participation and transparency. Some ministries however do a great deal, publishing detailed information on consultation on their websites, and providing feedback to stakeholders. The OECD peer review team heard that the requirement to make information formally available for public inspection comes too late, in that proposals will not be withdrawn or even significantly amended at that point.<sup>3</sup>

### Code of consultation

A code of consultation<sup>4</sup> was published in 2005 by the Ministry of Finance, aimed at bringing the process closer to citizens and applicable to all levels of government. One of the conclusions of the government's mid-term policy review of the GSD was to update the code. After consultation of ministries and stakeholders, a new draft code is under development, through a project group set up by the Ministry of Finance and the Ministry of Justice (HAVU), and is expected to be issued in 2010. The new code aims to support greater transparency in making regulations. Almost all government bills should be drafted in groups with stakeholder members and all regulations, including secondary or subordinate regulations, should be submitted for consultation. Any exception or the use of an alternative procedure must be justified in writing. The code will also specify minimum time limits for the consultation period. Again, there must be written justification if the period is shorter.

### Public consultation and RIA

In the 2007 RIA guidelines, the consultation process is defined as an essential part of the process. However this not a formal requirement, and stakeholders have indicated that if they are approached, it is too late in the process for their inputs to have any real impact. Largely, they are consulted on a preliminary legislative text, rather than during deliberations on the earlier stage of shaping a policy proposal when the means of taking this forward is still open for debate.

### *Development of new approaches and the use of e-Government*

Alongside long established processes, Finland has for some time been developing the use of e-Government to disseminate information, allow comment on government actions and give the wider public an opportunity to become engaged.

The Government Project Register (HARE) is a shared public online service of the parliament and ministries ([www.hare.vn.fi](http://www.hare.vn.fi)). It provides information about government and ministerial projects, and about committees, advisory boards, teams of investigators, working groups and executive organs of central government agencies, departments and unincorporated state enterprises, as well as parliamentary projects relating to the administration. The registry also contains information about legislative projects being prepared by public servants at ministries. Parliament and each ministry are responsible for their respective project information. Information about issues under preparation can also be found on the websites of the ministries. The Official Gazette publishes brief notes on all committee proposals for new legislation.

There is a widespread practice of posting draft legislation on the Internet. Ministries use their websites to disseminate information on current projects and to invite comments. Important initiatives include a “share your views with us” electronic discussion forum for

stakeholders to be consulted in the early stages of policy preparation ([www.otakantaa.fi](http://www.otakantaa.fi)). This was set up in 1999 to allow individual citizens to discuss issues that may be the subject of regulation. A new version of the forum was launched in 2007.

The more recent introduction in 2007 of the democracy database web portal ([www.kansanvalta.fi](http://www.kansanvalta.fi))<sup>5</sup> has the broader aim of providing information for citizens on the policy making process and government activities. The website supports active citizenship by including information on: Finnish democracy and its basic values; citizens' rights; citizens' methods of participation and influence; civil society; political parties; public decision-making; democracy research and projects; current issues and events related to democracy; and links to other useful sites. The website makes considerable information available in a refreshingly clear and direct format for the general public to understand decision-making processes, how to make themselves heard, and how to become involved in the development of legislation if they so wish.

Electronic consultation is also being developed. The programme *Sähköinen asiointi ja demokratia* (e-services and e-democracy) will have a pilot project called “interactive participation environment” during 2010-11. An interactive Internet-based participation environment supported by guidance and information will be created to bring parliamentary, central and local government participation services on to one portal. The participation environment will be integrated into existing e-Government and online services. The participation portal will be offered as a service to government organisations. Through this “electronic consultation and citizen participation service”, the different government organisations will be able to introduce interactive services best suited for each stage of the preparatory and decision-making process, and integrate these into their own electronic services and functions.

### Box 3.3. Public participation in the drafting of legislation

“In the drafting of Finnish legislation, citizens' participation is primarily realised through the procedure of obtaining comments. Non-Governmental Organisations (NGOs) and other civil society groups are heard when ministries prepare legislation. As a rule, the procedure for the obtaining of comments is intended for various communities and existing organisations. In addition to this procedure, citizens can make their voice heard through self-initiated contacts to government and in hearings. Good preparation of legislation should mean that, in addition to public authorities, groups directly affected by the legislation being prepared are heard extensively enough. These can include NGOs and experts.

NGOs and private persons also have the opportunity to provide self-initiated feedback on various details related to the preparation of legislation. It is a good idea for NGOs to keep as well informed as possible about the progress made in the preparations of an issue that interests them. A quick and simple way is to email comments about preparations directly to a public servant working on the issue, or to the registry office or communications unit in the ministry. The latter two will then forward them to the relevant officials. As far as possible, hearings are organised by inviting representatives of a field to the same hearing in order to ensure that supporting opinions can be voiced as extensively as possible.

Source: Government *kansanvalta* democracy website: [www.kansanvalta.fi](http://www.kansanvalta.fi).

Initiatives have, however, so far generally stopped short of initiating direct contact with individual citizens or businesses. If an individual business or citizen wishes to be heard, s/he must usually take the initiative (what the government calls “self-initiated contacts” and “self initiated feedback”). Despite the efforts, there still appears to be some way to go in

engaging citizens. Interviews held with the OECD<sup>6</sup> indicate that public management reforms have been focused more on customer service issues than on citizen participation in the shaping of policies and associated regulation. Large parts of the Finnish decision-making process still appear to operate with traditional methods and in interaction with traditional partners.

Finland recognises the need to improve and broaden its approaches to public engagement on policy and rule making. The development of the *Kansalvata.fi* democracy website is evidence of this. A far reaching set of new initiatives for strengthening public participation and democracy was started in 2003 and is now being taken forward by the Justice ministry (Box 3.4). The Citizen Participation Policy Programme ran from 2003 to 2007 and promoted active citizenship in support of representative democracy. The work is now being carried forward by a Democracy Unit within the Justice ministry. Its mandate is to promote citizen participation, and its responsibilities include maintenance of the discussion forum web site “*otakantaa*” as well as the democracy web portal “*kansanvalta*”.<sup>7</sup> The Democracy Unit has developed a strategy for e-democracy. The ambition is to become one of the best in this field in Europe. The aim is to create an environment in which public organisations can consult with citizens and civil society, and where citizens also can contact each other about public matters.

There is still some way to go. The PMO has identified the need to generate further debate on the way forward and the need to review longstanding traditions with a view to improving public governance and the general functioning of democracy. It notes for example that “the stakes for stronger citizen engagement need to be more clearly discussed within the public administration and with the parliament and civil society in order to develop a consensus about the direction of citizen engagement and the means to further advance such efforts.” It notes that “the Finnish culture is such that there is a strong importance placed on presenting a unified position, discussion occurs behind the scenes until a decision is made”. It recognises that “citizen involvement in policy remains weak despite good will and efforts in some parts of the Finnish public service”. However, the OECD Secretariat understands from discussion with the Democracy Unit that there is now a readiness among civil servants to review how they interact with the public.<sup>8</sup>

### Box 3.4. Finnish government initiatives to strengthen citizen participation

#### Citizen Participation Policy Programme

The Citizen Participation Policy Programme was a Finnish national democracy project run in accordance with the Government Programme (2003–07). It promoted active citizenship, the operation of civil society, exercise of influence by ordinary people, and the effective functioning of representative democracy. Several projects promoting citizen participation were implemented under this cross-administrative programme by many different ministries and in co-operation with civil society and the research community.

The most important achievements of the programme were the increased efficiency of civic and democracy education, improved interaction between government and civil society, promotion of municipal democracy and improved functioning of municipal councils as well as evaluations of the need for legislative policies. The Programme focused particularly on strengthening the knowledge base for democracy and arranging for the permanent collection of related indicator information. The Programme formulated a plan for a democracy policy that will enable the government to promote social participation and influence by citizens as required by the Constitution of Finland.

### **Ministry of Justice Democracy Unit**

The process to promote citizen participation is now co-ordinated by the Democracy Unit, established under the Ministry of Justice in 2007. Its mandate is to promote citizen participation and it is, *inter alia*, responsible for the drafting of democracy policy, organises co-operation between ministries in the area of citizen participation and is in charge of the maintenance of the discussion forum website, [www.otakantaa.fi](http://www.otakantaa.fi) and the web portal site, [www.kansanvalta.fi](http://www.kansanvalta.fi) (the democracy data bank). The *kansanvalta* site is a repository of detailed and readily accessible information on Finnish democracy and serves citizens, government officials and website serves citizens, researchers, government professionals, educators and others interested in democracy and related issues.

The work of the unit is still at an early stage. As such, it is difficult to evaluate the impact that it will have. It has four permanent staff members and three temporary ones, who work on EU-projects. Its work differs from that of the Citizen's Participatory Policy Programme, in that the Policy Programme was mainly aimed at improving representative democracy (role of parties etc.), while the Democracy Unit develops and puts into practice new and more direct ways of citizens' involvement. Municipalities are autonomous in making their own policies in this respect.

The unit has formed a "Democracy Network", in which representatives (Head of department level) of all ministries participate. This network shares good practices and tries to map problems in citizens' involvement efforts of Ministries. The Democracy Network has drafted a "Democracy Policy Document", containing proposals aimed at stimulating citizens and civil organisations to be involved and participate in public matters, as well as at national public sector officials to open up working methods for such involvement and participation. An Advisory Board for Civil Society Policy has also been established; membership is drawn from the ministries, NGOs, academics and business.

### **Democracy Policy Document**

During 2009, the joint democracy network of the ministries, co-ordinated by the Ministry of Justice, has been preparing the first Finnish democracy policy document. The document consists of a broad consultative document and the final act of the Cabinet concerning promotion of democracy. In November 2009, the draft document is to be discussed in a joint seminar of the Ministry of Justice and the Parliament. The Cabinet will discuss the democracy policy document in December 2009.

The democracy policy consultative document aims to recognise the central challenges and problems facing Finnish democracy. In its decision in principle, the Cabinet will define the methods to be used in the coming years to increase the influencing opportunities of the Finnish citizens. A separate action plan to the decision in principle document is currently being drawn up. It will concretely show the methods and schedules of implementing the decided actions.

### ***Public communication on regulations***

Finland was part of Sweden when the first Act on the Freedom of Publishing and the Right of Access to Official Documents was passed in 1776. It was the first Act of its kind in the world. Since then, the principle of free access to information has prevailed. Access to official documents is regulated by the Act on the Publicity of Official Documents (1952). The right of access to information in official documents is a basic right protected by the Constitution. The Act on the Openness of Government Activities extended the principle of access to information in official documents in the public domain, by extending coverage to all those exercising public authority irrespective of their organisational form. Authorities must also promote openness by disseminating information on their activities.

The Ministry of Justice publishes laws, decrees and other regulations specified in the Act of Statute Book of Finland (2000) and the Act of Regulation Series of Ministries and other Authorities (2000). Acts of Parliament, Parliament's Rules of Procedure and Decrees (of the President, the government and the more important ones of the ministries) are published by the Ministry of Justice in the Statute Book of Finland. Treaties are published

in the Treaty Series of the Statute Book. Integrated and up-to-date versions of Acts and other statutes available in Finnish and Swedish on the webpage of the Ministry of Justice. According to the above acts, the contents of the Statute Book and the Regulation Series must be made available electronically in *Finlex*, the database of the Ministry of Justice.<sup>9</sup> Agency regulations, as well non-binding instruments such as recommendations, are also available on *Finlex*.

The Finnish government notes that *otakantaa.fi* ("Have Your Say") and *kansanvalta.fi* are central government online services run by the Ministry of Justice and accessible to all, that provide the public with information and participation channels related to decision-making in society. They have been designed to be mutually supportive: *kansanvalta.fi* is the data bank and *otakantaa.fi* is the participation channel.

## Notes

1. It is chaired by the MEE (previously by the PMO). It is broad based with diverse stakeholders (40), and 5 ministers.
2. Trade union membership in Finland is high although there has been a decline in membership over the past decade. Approx 74% of all workers belong to a trade union as compared to 80% at the beginning of the 1990s. Discrimination against workers based on such as membership in a professional organisation, nationality or origin is prohibited during an employment relationship, in connection with recruitment and when ending an employment relationship. Discrimination at work is punishable by law.
3. The Medicines Patent Law was given as one example where consultation with other ministries and external stakeholders came too late. This resulted in a law which has had a detrimental effect (decrease of innovation activity).
4. Instructions for hearing the citizens in all administrative procedures.
5. [www.kansanvalta.fi](http://www.kansanvalta.fi).
6. As part of the OECD's Public Management Review of Finland.
7. [www.otakantaa.fi](http://www.otakantaa.fi); [www.kansanvalta.fi](http://www.kansanvalta.fi).
8. Discussions held by the OECD secretariat in the context of the OECD 's Public Management review of Finland.
9. [www.finlex.fi](http://www.finlex.fi).

## Chapter 4

### The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

*Ex ante* impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true- impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have- or should have- a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

## Assessment and recommendations

### *Procedures for making new regulations and legal quality*

*Procedures appear to be generally well established and work smoothly, with the possible exception of forward planning.* The process for forward planning of primary legislation is well structured compared with some other European countries. However the OECD peer review team picked some concerns about a tendency for last minute changes, which may need attention. Forward planning of secondary regulations may also need attention. The Prime Minister's Office said that it was planning to co-ordinate more closely with ministries on these matters.

*Sustaining the quality of legal drafting is an issue that appears to need continued attention.* There appears to be variability in the performance of ministries and the Justice ministry has difficulty keeping up with the demands made on it as “guarantor” and checker of legal quality. An important part of the objectives for Better Regulation contained in the Government Strategy Document seeks to reinforce the processes for ensuring legal quality. This is clearly necessary.

### *Ex ante impact assessment of new regulations*

*Efforts have been made since the 2003 OECD report to strengthen the approach to ex ante impact assessment, and there is now an awareness of the need for action.* Significant efforts have been engaged by the Justice ministry to raise consciousness of the importance of this process. With its integrated guidelines issued in 2007, and enhanced training, prepared and organised in co-operation with other ministries, the ministry has succeeded in generating some momentum for a change in attitudes among ministries. There is widespread awareness of the new guidelines, and a generally positive attitude to their use. The training offered has been taken up enthusiastically. This is a good start for building stronger performance.

*But there remains room for considerable improvement, and the main recommendations of the 2003 OECD report continue to be relevant.* The fundamental approach has not changed. The last OECD report highlighted a range of issues that needed attention including weak institutional capacities for quality assurance and support, undeveloped use of the benefit-cost principle and lack of analytical rigour, and a failure to use public consultation in support of the process. The issue remains of how to give *ex ante* impact assessment greater rigour, substance and teeth in the Finnish decision making system. Impact assessment largely remains, as one interviewee put it, a “glued on” document at the end of the process, its real value in support of more effective and evidence based policy making being still unclear among many officials (and politicians). Policy making and law drafting tend to be synonymous in the Finnish system, with decisions taken on a legislative text which is well advanced, rather than on a policy proposal where the options are still open (such as no action, or alternatives to regulation). At the same time, however, there is evidence of some change in attitudes. Several interviewees said that they were ready to strengthen their approach, but needed more substantial help to do this than is currently on offer.

*The institutional framework to support the production of quality impact assessments remains weak.* Changing habits and promoting a new culture calls for new organisational arrangements. Will the new expert network chaired by the Justice ministry be enough? This was an issue in the minds of several stakeholders. The Justice ministry can only go so far, given its limited resources and legal orientation. It also lacks authority to act as a gatekeeper. It reviews the legal and procedural aspects but not the policy substance.

Effective and “joined up” impact analysis - not just collections of different assessments - demands a real co-operation between ministries and sharing of skills and competences, making best use of scarce resources, together with a system that can weigh up the substantive aspects of what is presented.

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**Recommendation 4.1. Arrange an external evaluation of the network approach within the coming year. If it fails, a more effective approach should be developed, drawing inspiration from the institutional framework that supports the management of EU affairs, or returning to the proposal of a central co-ordinating unit. A further idea that has proved effective in some other European countries is to establish an external watchdog, to add pressure for change (the UK provides a good example).**

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*The methodological approach to developing effective impact assessments needs considerable strengthening.* There is a particular need to strengthen the support for more quantitative and economic assessments. Most Finnish officials engaged in impact assessment have a legal background. Guidance and methodology remain too vague. Instructions lack essential detail that would help to put ministries on the right track. A number of stakeholders raised the need for more practical support, saying that they are largely left on their own. Some of what is required is relatively simple to put in place, for example “model” impact assessments, best practice examples and a clear template. Some aspects will need a more substantial approach, aimed at providing officials with no real experience of handling numbers a means by which they can be supported in the quantitative aspects of the work. Many other countries face a similar problem. The UK provides an interesting example of how “generalist” officials are supported by a network of more specialised colleagues.

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**Recommendation 4.2. Review thoroughly the current support structure for officials carrying out impact assessments, with a view to strengthening it through a range of actions aimed at facilitating the task and raising standards. Consider whether economic research institutes could be used to help fill the gap between the legally dominated civil service culture and the need for a more economic approach.**

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*Public consultation is not yet an automatic part of the process, and guidance on this aspect is weak.* Finland has a strong tradition of consensus building, but this is not the same as active consultation on a specific proposal aimed at ascertaining likely impacts and collecting data to this end. A different mindset needs to be vigorously promoted. This is not yet evident. The guidelines define consultation as an essential part of the process but do not go much further than this. There is no detailed guidance on how to consult with stakeholders and the different methodologies that might be used. The importance of consulting early, before it is too late to alter the course of a decision, is not sufficiently emphasised. Several stakeholders noted that impact assessments were made too late in the process to have any real effect on outcomes. Going out to public consultation would also help to reinforce the process – external stakeholders acting as an alternative form of watchdog to encourage quality work and raise the political profile of the process. Some current projects show how it can be done. For example, an Environment ministry project on housing is a good example of a new approach to information gathering and involvement of stakeholders in the preparation of new legislation. Use of the SCM for assessing administrative burdens automatically requires interactive consultation with stakeholders to gather data so this too can be a lever for change.

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**Recommendation 4.3. Take steps to strengthen the requirement for early and timely public consultation, and ensure that effective guidance and best practice examples are in place on how to do this.**

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*The current system is also weak in making a link with downstream implementation. There are only weak links in the Finnish system between law drafting and downstream compliance and enforcement. Could systematic feedback on issues with the latter help to strengthen the system and even develop demand for more effective impact assessments? A number of stakeholders raised this issue. It seems that Finland could benefit from a closer relationship between drafters and those who will need to enforce regulations (as well as those who will have to comply).*

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**Recommendation 4.4. Require an *ex post* evaluation of regulations after they have adopted, to check real outcomes.**

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*There is currently no threshold test to focus energy and resources on the more important policy and regulatory issues. So as not to overwhelm the system, and given increasing resource constraints on the Finnish public administration, Finland could benefit from introducing a threshold test. This would allow officials to prioritise efforts on proposals which are likely to have most impacts. Some countries, for example, have introduced a financial threshold to capture the more significant proposals for full analysis.*

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**Recommendation 4.5. Introduce a threshold test aimed at capturing the more important policy and regulatory proposals for a full impact analysis.**

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#### **Box 4.1. Recommendations from the 2003 OECD report**

##### **Recommendations**

***Integrate RIA requirements and place the responsibility for quality assurance in relation to all aspects of RIA with the central unit.***

Finland should address the current fragmentation of RIA requirements by providing that all RIA should be carried out in an integrated fashion and published in a single document. Careful consideration should be given as to whether particular kinds of impact should be specifically required to be addressed. A requirement to address all substantial impacts within a benefit/cost framework would lead to more coherent analyses with better understanding of policy trade-offs resulting.

***Adopt explicit and measurable government-wide criteria for making decisions as to whether and how to regulate through stronger implementation of the benefit-cost principle.***

Finland has adopted all major elements of the 1995 OECD Recommendation including the benefit/cost principle. Non-existence of proper assessments, and deficiencies and weaknesses when they exist invalidate the object of the latter principle. Adopting precise criteria and detailed methodologies for benefit/cost analysis, together with a mechanism to target efforts, will provide an objective basis for policy decision-making, including a basis for comparing a range of policy alternatives. Gradually increasing the analytical rigour required in the analysis of important regulations and expanding the scope of RIA to substantive lower level rules would progressively increase the benefits from the adoption of this principle as expertise increases and resources permit. The accountability and transparency of regulation would be increased, as would the efficiency of public consultation, if it were to be integrated with RIA.

***Adopt systematic processes for review and reform of existing regulation, incorporating major regulatory quality elements, including the use of standardised methodologies, consistent with the RIA requirements applied to proposed new legislation.***

Recognition of the dynamic aspect of the concepts of “regulatory quality” should be embedded by adopting mechanisms to ensure existing legislation is regularly and systematically reviewed and reformed. These processes should incorporate regulatory quality assurance principles equivalent to those applied to proposed new legislation, including impact analysis requirements, identification and assessment of alternative policy options, broad consultation and appropriate oversight by the central regulatory reform body. Given the volume of existing regulation, it is also essential to identify priority areas for reform, particularly in the early stages of the programme.

***Provide detailed written advice and support and train the regulators. Support those principles with consolidated written guidance to ministries.***

Operationalising RIA requirements, particularly in the context of a stricter enforcement of the benefit/cost principle, will require substantial action to provide the necessary skills to officials in regulatory agencies. In addition, more general training in the concepts and importance of the regulatory policy is an important means of developing a constituency for reform within government. The central regulatory reform authority should take responsibility for providing a broad scale training programme covering both RIA disciplines and broader regulatory quality topics. In parallel to these tasks, the current efforts to consolidate into a reformed *HELO Instruction* all the partial impact requirements need to be pursued. This essential “regulation for regulators” would need to be periodically reviewed, updated and improved.

### **Background comments**

#### ***RIA and public consultation***

The quality of the justification documents accompanying the bills is an issue. This detracts from the stability and predictability of the regulatory environment and increases compliance costs. These problems in turn derive from weaknesses in the system of *ex ante* regulatory impact analysis. Preparing robust benefit-cost analysis is not standard practice and the fragmentation of results obtained from different “partial” RIAs limit the effectiveness of the tool.

The most important roles for consultation in Finland have historically been to support democratic values and build consensus and political support, rather than to gather technical data and explore alternatives and impacts. Consultation is seen primarily as a means by which the legitimacy of government is maximised, a view shared with other Nordic countries. Consultation is not therefore used to help gain a better *ex ante* understanding of likely regulatory impacts. The failure to use consultation as a data-gathering resource to support better analysis is seen in the frequent amendment of legal instruments soon after their adoption in light of consequences judged *ex post* to be undesirable but not anticipated *ex ante*. If RIA and consultation are to contribute to improving regulatory quality, their roles in contributing to information collection and impact assessment, before laws are passed, will need to increase. RIA can also play an important role in enhancing the legitimacy of consultation, providing additional transparency that allows the public or other stakeholders to verify that their viewpoints have been taken into account. Moves to improve RIA in Finland will almost certainly require greater emphasis on obtaining quantitative information through the consultation process.

### ***Alternatives to regulations***

*Continued efforts appear to be needed in order for alternatives to be taken seriously.* There does not appear to be much change on the ground since the 2003 OECD report, which recommended that requirements to consider alternatives should be effectively enforced. It is not automatic to consider alternatives in a culture which carries the presumption that laws are the automatic solution to fixing a policy issue. This is frustrating for some external stakeholders who would like to see greater use made of alternatives. The Better Regulation strategy emphasises alternatives. But the GSD as a whole implies that

regulation is the way to give effect to policy objectives. There is a need to move beyond statements of principle and to take practical actions to embed the idea of considering alternatives.

**Recommendation 4.6. Establish and implement an action plan to promote the use of alternatives. Some of the recommendations of the 2003 OECD report remain valid in this context, such as documentation of examples, special training and progress reports. Reinforce the requirement to consider alternatives (including no action) at an early stage in the impact assessment process.**

#### Box 4.2. Recommendation from the 2003 OECD report

##### Recommendation

*Effectively enforce existing requirements to assess alternatives during policy making, ensuring that a wide range of options, including market instruments, are identified and analysed.*

While Finland's existing regulatory policy notionally requires the consideration of alternatives as part of the policy development process, compliance with this requirement remains poor in most policy areas, other than the environment. Giving substance to the requirement to consider alternatives – and therefore to the general principle that policy analysis should be conducted in a comparative context – requires that regulators have a sound understanding of the range of policy instruments available and of the nature of each. The central regulatory policy authority should ensure that these issues are addressed in the context of training courses.

The adoption of rigorous RIA requirements in parallel with an effective “challenge” function would then provide a discipline to ensure that alternatives have been properly considered. However, these steps are not, in themselves sufficient. Adopting untried alternatives necessarily involves an element of policy risk. Thus, government must take on the responsibility of promoting the use of alternatives by policy-makers. A possible first step would be to better document and promote the progress already made in this area, particularly in the environmental field. A further step might be the preparation of a public and periodic report on progress in implementing alternatives.

##### Background comments

The use of alternative policy instruments is not systematically assessed in Finland. Statements of justification included in Bills sent to parliament rarely include analyses of the impacts of alternatives to the proposal, even if they were assessed during the early preparatory stages of law drafting. This is despite the fact that the assessment of alternatives has formally been required since 1975 in the *HELO Instructions* and that this requirement has been re-stated a number of times. The Finnish tradition of drafting detailed and specific regulation may militate against the use of many kinds of alternative policy instruments. In addition, the new constitution may further limit the choice of instruments, by designating about 100 areas of social policy where laws passed by parliament must be used – although, this does not of course preclude the assessment and use of a wide range of alternatives within the frame of regulation. In practical terms, the use of alternatives is constrained by the lack of detailed guidance. There has been no systematic training to ensure those preparing new legislation understand the procedures and concepts underlying the best choice of instrument to achieve outcomes. In addition, the lack of economic training among most rule-makers reduces the availability of the necessary expertise for comparative analysis of policy instruments. Despite this, progress has been made in some sectors. As in a number of other OECD countries, the area of environmental regulation seems to be the most advanced.

## Background

### *General context*

#### *The structure of regulations in Finland*

This is relatively straightforward (Box 4.3). The parliament has an independent right to submit legislative proposals, but in practice, most enacted legislation is based on government proposals. Regulatory agencies and other sub-ordinate bodies have regulatory powers, mainly of a technical nature, which gives rise to a fairly substantial body of regulations (see Figure 4.1 below). There is also provision for the issue of codes, standards and guidance, which are forms of soft law.

#### **Box 4.3. The structure of regulations in Finland**

##### **The hierarchy of Finnish regulations is:**

##### ***The Constitution and Acts of a constitutional character***

The Constitution defines basic individual rights, relations between the state and the people, and the separation of power among the institutions. It provides the overarching framework within which legislation in Finland operates. The Act on autonomy of Åland is an act of constitutional character regarding the enactment procedure in Parliament. EU regulations and international Treaty obligations are superior to national regulations in individual cases if a discrepancy is found.

##### ***Parliamentary Acts***

Laws are enacted by the parliament. Both the government and individual members of parliament have the right of initiative to propose laws.

##### ***Decrees***

Decrees are secondary regulations that give effect to primary laws. The power to issue decrees belongs to the government acting collectively unless a law specifies that the President of the Republic or a minister is entitled to issue decrees.

##### ***Regulations***

Lower level government bodies can issue regulations, which are normally technical measures, and must be based on a higher level law. These include the central regulatory agencies, the regional councils and the municipalities. Municipalities can issue local regulations (ordinances) on matters defined in laws. They may do this on matters relating to planning and land use, waste management, health protection, and safety in schools and harbours. In the same way, regional councils may issue regulations in relation to their areas of responsibility: regional planning, environmental protection and roads.

##### ***Government Resolutions***

These are “decisions-in-principle” made by the government, expressing the will of the government and initiating measures to be taken to fulfill government objectives. They create obligations and requirements on the public sector, but they can also indirectly have an impact on business and citizens. An example of a resolution is the *HELO* Instructions.

##### ***Informal and administrative regulations***

Informal regulations such recommendations, non-binding instructions, codes of conduct and guidelines, are used in many areas of Finnish law. In many cases these apply to agents within government, but others can affect private agents. In central government informal regulations can be

issued without permission stipulated in parliamentary acts, but in relation to private agents and municipalities they are not judiciable. In the database for regulations (*Finlex*), some agencies are publishing texts which technically are not regulations according to the Finnish Constitution – for example, recommendations, non-binding instructions, or administrative regulations that have no effect on citizens or businesses.

### *Trends in the production of new regulations*

Table 4.1 and Figure 4.1 set out the volume of regulations produced in Finland during the period 2001–08. This indicates that there is a downward trend in the production of regulations, as well as in their length, in this timeframe. Figure 4.1 shows the flow of regulations issued by regulatory agencies. The picture here, by contrast, is of an increase. The 2003 OECD report had noted that Finland appears to be successful in controlling the growth rate of new regulations. This still seems to be the case, at least as regards the production of government regulations.

While laws are clear and precise, Finland continues to amend them regularly (and without counting the significant effort of putting many laws and regulations in conformity with the new Constitution). This may, in part, be a result of the tradition of adopting highly specific and detailed laws, which necessarily have limited adaptability to changing circumstances. Rapid amendment to legislation is problematic from the point of view of transparency and effective communication of the law, since those required to comply will have less certainty of being aware of the current state of the law and will be required to undertake greater effort in order to know the law.

**Table 4.1. Volume of regulations introduced 2001-08**

Year	Laws	Subordinate regulations	Pages
2001	590	978	4376
2002	546	825	5634
2003	589	805	4622
2004	619	818	4139
2005	521	766	5523
2006	528	932	4467
2007	656	854	5789
2008	428	727	3604

Source: Finnish Ministry of Justice.

The number of subordinate regulations in Table 4.1 and Figure 4.1 contains decrees issued by the president, the government and the ministries. The regulations issued by the regulatory agencies are not included.

**Figure 4.1. Number of regulations introduced each year from 2001-08 (figure removed in web version)**

Source: Ministry of Justice, Finland.

The number of regulations issued by the sixteen central government bodies with significant powers to impose general rules containing requirements on enterprises and citizens (regulatory agencies) is set out in Figure 4.2.

**Figure 4.2. Flow of regulations issued by regulatory agencies in Finland**

Regulatory Agency	2007	2008
Agency for Rural Affairs	11	44
Criminal Sanctions Agency	3	5
Energy Market Authority	2	0
Finnish Civil Aviation Authority	19	15
Finnish Communications Regulatory Agency	13	9
Finnish Financial Supervision Authority	14	19
Finnish Food Safety Authority	4	0
Finnish Maritime Administration	1	6
Finnish National Board of Education	34	30
Finnish Rail Agency	9	10
National Agency for Medicines	8	2
National Board of Customs	9	7
National Board of Patents and Registration	4	0
National Board of Taxation	0	0
National Land Survey of Finland	0	3
State Treasury	15	14
<b>TOTAL</b>	<b>146</b>	<b>164</b>

Source: Ministry of Justice, Finland.

## *Procedures for making new regulations*

### *The law making process*

Box 4.4 outlines the law-making process in Finland. An important feature of the Finnish system is that there are two official languages, Finnish and Swedish. All regulations are drafted, adopted and published in these two languages. As such, all regulatory proposals drafted for submission to Cabinet and to the parliament must be translated and available in both languages. This can place significant costs on the administration, particularly where drafts are constantly being amended as they proceed through the legislative process.<sup>1</sup>

#### **Box 4.4. The law making process in Finland (government bills)**

##### **Preparation in the executive**

###### *Development of a proposal*

As in most other OECD countries legislation is normally proposed by a specific ministry and drafted by that ministry. The ministry is initially responsible for ensuring that its draft regulations have a correct legal basis and are consistent with higher level regulations. It decides what is to be done and how, *i.e.* timetables, human resources, expert work, studies and researches, consultations, etc. The ministry designates a “rule maker” for the development of the proposal (which can be a committee, a working party or a specific official). The ministry’s responsibilities do not end with the adoption of an act; once it has entered into force, it is responsible for monitoring its effects. A range of guidelines and instructions are available to guide the process, including the long established *HELO* Bill Drafting Instructions (see Box 4.5).

###### **Public consultation**

The rule maker decides whether a target group or other interest groups are to be consulted. It can also hear from experts and arrange seminars or discussions. Often, committee reports are prepared and reports are made available to the public. The ministry usually asks for written statements on the report, allowing between 1 and 6 months. Based on the comments and suggestions, a consultation report is often prepared containing a summary of the statements, describing in detail the major reactions to the proposed measure. In recent times, oral hearings have increasingly replaced written comments, largely to speed up the process.

###### **Impact assessment**

The *HELO* instructions recommend that impact assessments should be carried out at this stage in the development of the proposal, and written up as part of the proposal. The Ministry of Justice’s integrated guidelines on Impact Assessment in Legislative Drafting give more detail.

###### **Role of the Ministry of Justice (MOJ)**

The Ministry of Justice promotes and co-ordinates co-operation between ministries throughout the process in order to improve legislative drafting, by issuing statements during the consultations within the government. The MOJ European Law Unit provides expert advice on issues of EU law. When the drafting is completed, the proposal is translated into Swedish by the Government Translation Unit or by the ministry. After translation the both language versions of the proposal are sent to the Legal Inspection Unit of the Ministry of Justice for its revision. It checks technical legal quality and conformity with the Constitution and the existing legal system in general. It also checks that the Finnish and Swedish versions are identical in contents. The MOJ cannot block legislation from going forward to the Cabinet.

### **Role of the Ministry of Finance (MOF)**

The MOF is also engaged in the final stage of the drafting process. It checks government proposals for their impact on public finances and if necessary goes back to the proponent ministry for comments. The MOF has been known to block legislation, but this has not happened very often.

### **Preparation for the government and review by the government**

The Prime Minister is closely involved with the development of major legislative projects. The most politically important and controversial proposals are considered in “in principle” terms in the government. Alternatively, the matter may first be discussed in ministerial working groups, in cabinet committees, in informal evening meetings of the government and in political negotiations, in which the parliamentary groups representing the opposition may also participate. The Cabinet Finance Committee is requested to comment if a proposal has significant economic, administrative or budgetary impacts (over EUR 5 million). Important legislative projects may also be referred to the Supreme Court for comment. The proponent ministry then presents the proposal to the government’s plenary session for decision. At this stage, matters normally proceed without discussion. The flow of legislation is checked weekly by the Cabinet Finance Committee for budgetary impacts, linked to implementation of the Productivity Programme.

### **Review by the political parties**

Before the government’s plenary session there are two days for review by political parties represented in the government.

### **Judicial review by the Chancellor of Justice’s Office**

This office carries out a judicial review of legislative proposals as well as all the other matters, just before they go to the government’s Plenary Session. It receives proposals two days in advance of this.

### **President of the Republic**

The President of the Republic makes decisions in government on the basis of the proposals put forward in the government’s Plenary Session. After the final decision in the presidential session, the President submits the bill to the parliament.

### **Debate and enactment by the parliament**

Legislative proposals are presented to Parliament in the form of government bills or Members’ initiatives. The bill itself contains proposed pieces of legislation and the reasons for these. The reasons include current situation, objectives, main proposals, impacts and preparation procedure. The length of the bill varies from a few pages up to huge legislative reforms of 250 pages. Usually there are no attachments at this stage. The government bill is public as the President has decided to submit the bill to the Parliament. Each year the government submits 220-300 bills to Parliament and Members submit 150-200 initiatives (motions). In practice the large majority of legislative amendments or new laws are introduced as government bills. Only a few Members’ initiatives lead to legislation each year. Most bills are handled by Parliament in 2-4 months, but major legislative projects take several months longer. Government bills and Members’ initiatives that have not been handled by the end of the electoral period automatically lapse.

The bill and accompanying document are then subject to three levels of discussion/analysis: (1) a plenary session in parliament, where the political groups and individual members of parliament express their opinion on the matter; (2) a detailed review by one of the standing committees, which may ask for statements from other committees; and (3) the parliament, after having received the report of the responsible committee, decides in a plenary session on the detailed contents of the bill and of its approval. Review by the standing committee normally begins with the committee asking a representative of the ministry to present, as an expert, the proposal. The committee normally hears experts and interest groups during the evaluation of the bill. In 2005 for example, the committees had

5 187 hearings altogether which means an average of 8,6 hearings per committee report or statement.

The parliament's Constitutional Law Committee (CLC) formulates its constitutional opinions in written statements to other Committees which review the bills for plenary sessions. Thus, the stage for the CLC's opinions is the normal committee preparation stage of the bills. A statement of the CLC includes an assessment of the bill by constitutional standards. If the CLC finds discrepancy between the Constitution and the bill, the CLC mentions the remedy for the constitutional problem or states under which conditions the bill can be passed, *i.e.* how it should be changed or amended. Reviewing committees, by tradition, always accept the remarks of the CLC.

A simple majority of votes is required to approve or reject ordinary laws. A majority of one vote is sufficient. After passing an act, the Parliament sends it to the government. The proponent minister presents the Act to the President of the Republic. If the President does not confirm the Act, it is returned for the consideration of the parliament. If the parliament readopts the Act without material alterations, it enters into force without confirmation and is published in the national gazette. If the Parliament does not readopt the Act, it is deemed to have lapsed.

### *Forward planning*

The Government Programme (GP), adopted at the beginning of a government's term of office, is the starting point. It announces the government's main objectives and planned measures. The GP is given practical effect in the Government Strategy Document (GSD), which contains a list of major legislative projects for the government's term. At the start of Parliament's spring and autumn sessions, the Prime Minister gives it a list of the bills which the government proposes to present to the parliament twice a year, at the start of the parliament's spring and autumn sessions. The list is published on the government's website. 55-60 % of the bills in the list are usually presented (the remainder may be delayed, or dropped). There is no shared system for forward planning of secondary legislation. This is left to the individual ministries.

The OECD peer review team heard that forward planning was not always smooth and could run into delays. New studies may be commissioned, political priorities change, and delays may also arise from EU developments. The PMO told the OECD peer review team that it intended to step up its co-operation with ministries on forward planning. This issue will feature regularly on the agenda of meetings of ministry permanent secretaries.

### *Administrative procedures*

Finland has a number of well established administrative procedures for the development of legislation, some of which have recently been updated. These mainly apply to bills, and are also usually applied to subordinate regulations.

#### **Box 4.5. Guidelines and instructions for drafting regulations**

The most important instructions and guidelines for officials drafting regulations are as follows:

- Bill Drafting Instructions – *HELO* (2004).
- Guidelines on Impact Assessment in Legislative Drafting (2007).
- Law Drafter's Manual (1996).
- Law Drafter's Guide to the Constitution (2006).

- Manual for Presenting Officials in government (2004).
- Law Drafter’s Guide to the European Union (2004).
- Treaty Manual (2003).
- Instructions for the drafting and enforcement of EU conventions and agreements (2008).

The Better Regulation website provides access to these guidelines and instructions as well as to additional information and useful links.

### *Legal quality*

Whilst the proponent ministry is initially responsible for legal quality as part of the drafting process, the Ministry of Justice plays an important checking role. Government bills and draft decrees are submitted to the Ministry for inspection of legal techniques, unless the urgency of the matter dictates otherwise. Draft decrees need not be submitted for inspection if the matter is of minor importance. The work is carried out by the ministry’s Bureau of Legislative Inspection, which checks the legal basis of the proposal and its consistency with other legislation, as well as compliance with the ministry’s own statements in previous consultation procedures on the proposal. The ministry’s role is advisory. It cannot veto the submission of draft regulations to Cabinet. However its voice is taken seriously.

The Ministry of Justice also provides support to officials for the preparation of major legislative projects listed in the GSD, including special training sessions, for example in impact assessment and clear language; linguistic assistance in selected projects; a helpdesk for language problems; a helpdesk for legal techniques; and a helpdesk for translation aspects (for definitions and wording).

The 2003 OECD report recorded that the technical legal quality of government bills introduced to the parliament had improved over time, thanks to the efforts of the Justice ministry’s Bureau of Legislative Drafting, backed up by training and guidance on law drafting techniques. However this may no longer be the case. The OECD peer review team heard that the technical quality of legislation was now suffering, due to the growing urgency with which proposals needed to be put forward, combined with the fact that generations of experienced drafters have been retiring, and a new generation, not yet experienced enough, has taken over. There is variability between ministries, depending on the extent to which effective regulatory management is given priority by the senior hierarchy of the ministry (it does not always rate very highly). The Justice ministry cannot always keep up with the flow of new regulations. The proportion of laws and decrees inspected by its Bureau of Legislative Inspection has however risen since 2004.<sup>2</sup>

The Chancellor of justice has voiced his concern on the quality of the legislative proposals coming from the ministries to the Government plenary sessions. An important area of concern has been the impact assessments, which are sometimes made in the late stages of law drafting – in those cases they do not serve their purpose of guiding the decisions within the legislative process.

### *The role of parliament*

The Finnish parliament plays a significant role (see Box 4.4). Before the government’s plenary session to consider a draft bill, there are two days for review by political parties represented in the government. When a bill is tabled before the parliament, it is subject to

three levels of discussion and analysis. The parliament's Constitutional Law Committee formulates its constitutional opinions in written statements.

### ***Ex ante impact assessment of new regulations***

#### ***Policy on impact assessment***

*Ex ante* impact assessment has been a feature of the Finnish law drafting process for a number of years, as in most other EU countries. The earliest steps were taken in the 1970s. Early editions of the *HELO* Instructions (1975 and 1980) required economic impacts (on both the public and private sector), impacts on organisations and personnel, as well as impacts on the position of different groups in society to be assessed. Environmental impacts were added in 1992.

As in many other countries, the process was found to have significant weaknesses and was not effectively used by ministries. The government took a significant step forward in 2007 with the consolidation of previously fragmented guidance for ministries into new (and very readable) integrated Guidelines on Impact Assessment in Legislative Drafting, a project led by the Justice ministry, in co-operation with other relevant ministries. These steer the law drafter through the various impact assessments that need to be done (economic, administrative, environmental and societal).

Beyond the integrated guidance the fundamentals have not, however, changed. Impact assessment (IA) is required for all national regulations – government bills, decrees and regulations made by the agencies. They may also be prepared on draft EU legislation, although this is not obligatory. The stated purpose of impact assessment is to deliver information to the legislative drafters, decision-makers and stakeholders on the effects of regulatory options, the relevance of the impacts and the opportunities to reduce possible negative effects. The *HELO* Bill Drafting Instructions have also been amended to include a summary of IA requirements.

#### **Box 4.6. Impact assessments and the integrated Guidelines**

The Guidelines were prepared by a Working Party chaired by the Ministry of Justice. All the ministries which had previously prepared sectoral impact assessment guidelines, and the PMO, were members and participated actively in this work. The secretaries of the Working Party were from the Ministry of Justice and the former Ministry of Trade and Industry. The Guidelines were issued by a government decision in 2007.

The new Guidelines bring together and supersede previous guidance material on *ex ante* impact assessment. They replace earlier government resolutions on economic impact assessment (1998), environmental impact assessment (1998), business impact assessment (1999) and regional development impact assessment (2003). They describe, sector by sector, what kinds of impact may be involved, how the impact may be assessed, and what methods and information sources are available for this purpose. Contact information on guidance and support for impact assessment has been aggregated and is available on the Better Regulation website.

A very broad range of impacts is covered, with the emphasis on four main aspects: economic impacts, public administration impacts, environmental impacts and social impacts. These are disaggregated into more detailed aspects such as impacts on business, households, public finances, public authorities, the state and future of the environment, fundamental rights, democratic participation, health, equality, regional development, crime prevention and the information society.

Business and gender impact assessments have been the subject of special attention. The business impacts of regulation and various implementation alternatives must be examined especially with respect

to the costs and earnings of companies; competition and the functioning of the market; small to medium-sized enterprises, entrepreneurship and the growth opportunities of companies; the investments and innovation operations of companies; and the international competitiveness of companies. Administrative costs are now covered specifically, as part of the recently launched programme to reduce administrative burdens on business, based on the Standard Cost Model. There is no general requirement for considering EU internal market effects.

In the Guidelines the gender impact assessment is dealt with as a subtheme in social impact assessment. However, successive governments have given special attention to gender impact assessment and the requirement for gender impact assessment in law drafting has been reinforced in the government programmes. Since 2003, the Ministry of Social Affairs and Health has offered training in gender impact assessment to ministry officials as part of gender equality policy. The extent and quality of gender impact assessments carried out by ministries has been monitored since year 2005. It seems that the assessments or analyses carried out are still few (about 10% of all government bills given in a year), but the trend has been upward.

### *Institutional framework*

As is generally the case in European countries, the ministry responsible for drafting the legislation is responsible for the related impact assessment and its content. The ministry also monitors the progress of the bill through the parliament. If necessary, impact assessment materials must be sent as background information to the parliamentary committee reviewing the Bill. If the Committee proposes material changes to the Bill, the ministry must draw the attention of the Committee to the need to assess the impact of the proposed changes.

The Ministry of Justice Law Drafting Department plays an important central role in encouraging ministries to apply *ex ante* impact assessment. It was responsible for the development of the integrated Guidelines. The Department's Revision Bureau monitors compliance with the Guidelines in the development of Bills. If it finds shortcomings, it will draw these to the attention of the responsible official/ministry. However, there is no obligation on the ministry to amend the IA, and the MOJ does not have the authority to turn down a draft Bill pending submission of a satisfactory IA. The Bureau told the OECD peer review team that its checks are in practice largely confined to the legal aspects of legislative drafts, because of resource and capacity constraints. Other stakeholders pointed to weaknesses in the support provided to ministries for impact assessment, and suggested that a network approach without a strong central support and challenge function might not prove enough.

In October 2008, the Ministry set up an expert group (a sub-group of the Law Drafting Development *Group-SÄKE III*) aimed at supporting impact assessment procedures in ministries, promoting the new guidelines and to co-ordinate training sessions for officials (see also Chapter 2). The members of the group are drawn from ministries and research institutes, and are experts in assessing impacts on different areas. The Ministry, in co-operation with other ministries, also provides in-service training in applying the new guidelines. The number of participants was 210 in 2009. It is too soon to tell whether this network- a substitute for the earlier attempts to set up a dedicated Better Regulation central unit-, will be able to play an effective role in monitoring and challenging impact assessments, going beyond the legal checks which are already carried out. The expert group has so far been an initiative to strengthen collaboration among the ministries. The Justice Ministry completed in 2009 a follow-up survey on impact assessments in government Bills of 2008. The main attention in the impact assessments seemed to be paid in public finances and administration. The survey will be continued in 2010. The OECD peer review team

heard that ministries were largely left on their own, and that there is a need for more practical support for impact assessment.

The MEE is another key actor. In 2004-07, as part of Government's Entrepreneurship Policy Programme the former Ministry of Trade and Industry had a specific project, the SÄVY Project, for the government-wide development of and support for business impact assessment. It included an evaluation of compliance with business impact assessment by ministries, and showed some improvements over time. The Government Programme confirms the continuation of the SÄVY Project, which has now been integrated into the operations of the MEE as part of the ministry's Better Regulation Unit.<sup>3</sup> The MEE provides support for ministries for business impact assessments, as well as regional impact assessments, and monitors these. In May 2009, the MEE set up a working party (which includes representatives of the Ministry of Justice, business stakeholders and the National Research Institute of Legal Policy) to monitor the quality of business impact assessments attached to government bills.

The Ministry of Finance, the Ministry of Social Affairs and Health and the Finnish Environment Institute provide support for impact assessment in their areas of expertise.

### *Methodology and process*

The guidelines include a diagram (Figure 4.3) that outlines in broad terms the stages that should be followed in the development of an IA.

**Figure 4.3. Outline of stages in Finnish IA (figure removed in web version)**

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*Source:* Ministry of Justice, Finland.

Officials are not required to use a particular format: there is no template or prescribed model. There is no threshold test, to identify those proposals which merit a fuller impact assessment, and those which do not. The benefit-cost principle is included in the new guidelines. Data and graphics may be used as support information, but this is not a

requirement. Proposals must take into account the legislation in force. Some stakeholders noted that economic impact assessments remained weak and needed to be stronger. Many impact assessments were of poor quality because the drafters were lawyers, with no access to broader support.

The summary results of the impact assessments must be set out in the Section of Reasons attached to government bills and the Statement of Reasons attached to decrees when they are presented to the Cabinet for approval, and later when the proposal is presented to the parliament. The Section and Statement of Reasons should contain the following information:

- the main findings of the impact assessment;
- the method of assessment;
- the information sources used in the assessment;
- the hearings held with experts or stakeholders regarding the proposal and likely impacts; and
- the assumptions underlying the assessment.

Separate assessments are not annexed to the presentation materials, but they are referenced. Ministries must stand ready to provide the more detailed supporting information if requested. More detailed impact assessment reports and publications can be brought to the attention of ministers *e.g.* in government roundtables or evening classes (informal evening meetings).

#### *Public consultation and communication*

Public consultation on impact assessments is not a mandatory requirement, although it should be noted that openness is a central goal in Finnish legislative drafting, and consultation is an established part of ministries' legislative drafting process, even if full information is often only made available late in the process (see Chapter 3). The reports of commissions and working groups which have done work on impact assessment are published. Whilst summaries are prepared for attachment to the government Bills presented to the parliament, references to any fuller assessments that have been carried out will also be given. Several stakeholders noted that impact assessments only came late in the decision making process.

#### *Alternatives to regulation*

Increased assessment of alternatives is one of the government's Better Regulation policy measures in the GSD. In the evaluation of the GSD ministries are requested to report the measures they have taken to consider alternatives. There are requirements to consider alternatives to regulation and alternative regulatory approaches in the *HELO* Bill Drafting Instructions and the 2007 Impact Assessment Guidelines (in very general terms).

There have been efforts to evaluate the uptake of alternatives. In 2007, the *SÄVY* project of the former Ministry of Trade and Industry commissioned a report by the National Research Institute for Legal Policy on the use of alternatives especially in legislative drafting with an impact on businesses. The aim was to promote the use of alternatives by increasing information about them, and to encourage drafters to consider various operating alternatives more actively and systematically. The report deals with various alternatives

concerning the strategy of regulation (such as self-regulation, co-regulation, replacing steering by the authorities on the market) and the alternatives concerning the selection of regulation methods (such as the general nature vs. differentiation of regulation, implementation alternatives, sanctions and their alternatives) In the report, different examples of the use of alternatives in Finland are described. The Inspection Unit in the Ministry of Justice is responsible for further work in this area. The Ministry monitors the presentation of alternatives in government bills, and its first report will be completed in 2009.

Despite these initiatives, it seems that the use of alternatives to command and control regulation is not yet prominent on officials' "radar screen". There is a general presumption that laws are the automatic solution to fixing a policy issue. The GSD carries a strong presumption that there will be regulations to give effect to the priority areas. A range of interviews with the OECD peer review team also left the strong impression that consideration of alternatives is limited. One stakeholder said that there was "too little time" to consider alternatives. The business community expressed some frustration at this, drawing attention to alternatives which they had promoted (*e.g.* code of good corporate governance).

## Notes

1. Ireland also is required to make legislation available in both English and in Irish: proposals can be drafted in either language, but the requirement to translate them into the other only applies when the law or subordinate regulation has been finalised. This helps to minimise costs and speed up the legislative process.
2. It was rather low in 2004 (63.5% of Acts and 38.2% of decrees). In 2005 the respective numbers were 79.7 and 44.2. In 2006 they were 86.0 and 46.3 and in 2007 they were 85.4 and 47.6.
3. [www.tem.fi/index.phtml?l=en&s=2089](http://www.tem.fi/index.phtml?l=en&s=2089).

## Chapter 5

### The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially small and medium-sized enterprises. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the Standard Cost Model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.<sup>1</sup>

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example, government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

## Assessment and recommendations

### *Simplification of regulations*

*Legislative maintenance is a keystone of the Better Regulation Strategy: this is important.* Finland has strengthened its approach to simplification of the legislative stock since the 2003 OECD report. Legislative maintenance is highlighted as part of the Better Regulation Strategy. This is in contrast to some other European countries which have tended to neglect this important part of regulatory policy.

### *Administrative burden reduction for businesses*

*Since the 2003 OECD report, Finland has also adopted a promising national programme to reduce administrative burdens on business.* The programme, which builds on previous initiatives, was launched in 2009 with a target to reduce burdens by 25% over the 2006 level by 2012, and is an important contribution to the Better Regulation Strategy. This initiative means that Finland has now caught up with other European countries and most importantly, now has a coherent and cross government approach to burden reduction which did not exist previously. Given that the cost of burdens on business has been estimated at some EUR 3.6 billion, a well run programme can be expected to make a significant contribution to the competitiveness of Finnish enterprises. There is a serious level of drive and commitment to make it work from the Employment and Economy ministry, which has survived institutional changes at the centre of government and a temporary dip in general enthusiasm.

*It is too soon to judge a programme which has only been in place for a few months; however certain issues will need careful management.* There are five main issues: the need for effective carrots and sticks on ministries; the need for an effective challenge and support function; the need for robust methodologies for identifying and tracking burdens; the need for effective communication; and the need to extend the work to subnational levels of government. These issues are reviewed more closely below.

*Effective carrots and sticks will be needed.* It is helpful that the Justice ministry chaired Better Regulation ministerial and official committees will be reviewing progress, as well as the MEE steering group. It is not yet clear, however, whether the overall target will be shared out among the different ministries, which would put pressure on them to deliver. Last but not least the current target is not an explicit net target. A net target is important, in order to capture burdens arising in new regulations and to make the link with *ex ante* impact assessment, another cornerstone of effective regulatory management. Other carrots and sticks could prove helpful, for example linking successes to performance appraisals and budget processes (as some other European countries have started to do).

*Effective challenge as well as support are also essential.* The MEE steering group (and the MEE unit of officials which stands behind it) will need to provide a crucial challenge and support function. Their effectiveness in these roles needs to be monitored.

*The underlying methodologies for identifying and tracking burdens need to be robust.* It is not yet clear how easy it will be for ministries to put together their list of contributory measures. Reduction proposals will be identified in consultation with the business community. It is helpful that business is represented on the MEE steering group but will this be sufficient? There does not, as yet, appear to be any particular requirement or guidance on ministries as to how they should keep in close touch with their stakeholders. Many countries have set up specific structures such as working groups to channel business views in specific areas.

*Effective communication is also critical.* As the early starters around Europe have found, communication on progress and results is essential if the support of key-actors such as the parliament and the business community is to be sustained.

*The programme is only a national plan.* This is the obvious starting point but at some stage it needs to cover burdens arising out of other levels of government.

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**Recommendation 5.1. Arrange for an early evaluation of the programme to ensure that it is on track and that supporting structures are functioning adequately to secure success. Make sure that each participating ministry has a net target to meet as its contribution to the overall target. Consider whether other carrots and sticks for good performance should be put in place. Make sure that the business community has a full opportunity to contribute, and consider the establishment of sector or ministry specific structures for this. Develop and implement a reporting and communication strategy. Finally, make plans for the programme to be extended to the local levels of government.**

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### ***Administrative burden reduction for citizens***

*There is no specific programme for the reduction of burdens on citizens: one might be considered.* A growing number of European countries have established programmes to address burdens on citizens as well as businesses. This could make particular sense in the Finnish context at this stage. It could help to give substance and focus to the efforts to encourage citizens into greater participation in the development of policies and regulations, and support for Better Regulation, if they feel that they have their “own” programme, which addresses their specific concerns. As with the business programme, setting it up would require a structure for citizens to make proposals for what should go into the programme. A strong link with the local level of government would help to capture issues around the delivery of public services and social welfare support. The Netherlands provides one of several interesting approaches that are being deployed around Europe.

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**Recommendation 5.2. Consider setting up a programme for the reduction of administrative burdens on citizens, drawing on the experiences of other European countries. Link this to efforts aimed at encouraging citizens into a stronger engagement with the government in policy and regulatory development.**

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### ***Administrative burden reduction for the administration***

*Again, there is no specific programme to address administrative burdens inside government itself.* This could be a useful adjunct to the public sector productivity programme. It might help with buy in to a contentious policy if the government is also seen to be engaging in efforts to streamline requirements on officials which take them away from the “front line” of public service delivery.

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**Recommendation 5.3. Consider whether it would be useful to make focused efforts, as part of the public sector productivity programme, at reducing administrative burdens on officials.**

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## Background

### *Simplification of regulations*

#### *Legislative maintenance*

The OECD's 2003 report noted that Finland's regulatory policy did not directly address the issue of reviewing and reforming existing regulation. Review work was generally carried out *ad hoc*, largely driven by responsible ministries. That said, it also noted that since the 1990s, there had been a tendency to carry out more strategically focused reviews of laws. The approach has now been strengthened further: legislative maintenance is one of the legislative policy measures in the GSD. However, no co-ordinated efforts has been introduced so far. Ministries remain responsible for launching measures to revise and simplify their regulatory stock. As in other EU countries, the action plan for the reduction of administrative burdens (see below) can also give rise to legislative simplification, even if this is not its main objective.

#### *Ex post evaluation of regulations*

Finland does not have a systematic approach to ex-post evaluation of regulations. Regulations may be revised or amended where challenges or difficulties are identified. Sunset and review clauses may be used if there is a specific reason for review. The parliament often passes bills with a statement requiring a report on *ex post* evaluation by the government. There are, however, many examples of *ex post* evaluations in various policy areas, including of transposed EU Directives. Box 5.1 gives some examples of *ex post* evaluation in the field of health and safety linked to EU Directives.

#### **Box 5.1. *Ex post* impact assessment of the Finnish Occupational Safety and Health (OHS) legislation implementing OHS EU Directives**

Case 1: *Ex post* impact assessment of Finnish OHS legislation implementing the EU Directive 90/270 EEC concerning Work with display screen equipment. Application of Government Decision 1405/1993 and the effects of the Decision in workplaces. Helsinki 2008, p.168 (Publications of the Ministry of Social Affairs and Health 2008:7)

Finland participated in ex-post evaluation of six EU member states to carry out a survey concerning the *ex post* evaluation on the application and effects of the regulations in workplaces. Directive 90/270 EEC on display screen equipment VDU was selected as the first topic for the survey. The directive has been transposed by the Government Decree on work with display screen equipment (1405/1993). A summarised report in English is available containing the member states' national surveys under the title "The development of a methodology to assess the quality of EU-directives: a pilot study on basis of the Directive on Visual Display Units (Directive 90/270 EEC): Integrated cross-national report".

Case 2: *Ex post* impact assessment of the Finnish OHS legislation implementing the EU Directives 89/391/EEC and some relating Directives on OHS risk assessment. Helsinki 2009, p.149 ("The effectiveness of risk assessment-related occupational safety and health provisions". Publications of the Ministry of Social Affairs and Health 2009:22)

The *ex post* evaluation study was carried out on national initiative aiming to develop the regulations. The purpose of this study was to examine the effects of the Occupational Safety and Health Act (738/2002) and the OHS Decrees on OHS related activities in workplaces.

## *Administrative burden reduction for businesses*

### *Policy on administrative burden reduction for businesses*

Finland has launched a number of initiatives to support small to medium-sized enterprises (SMEs) over the years. The government uses a wide range of measures to promote entrepreneurship and to improve the conditions for businesses. It also runs a horizontal policy programme for employment, entrepreneurship and work life (2007-12). The recently launched national action plan for the reduction of administrative burdens is an important further step.<sup>2</sup> In 2007, a pilot SCM measurement of VAT legislation was conducted under the SÄVY Project of the former Ministry of Trade and Industry. The Ministry of Agriculture and Forestry completed a survey on administrative burdens concerning agricultural aid procedures. Ideas and initiatives were collected directly from farmers by using a designated mailbox. The survey led to a project in spring 2008.

#### **Box 5.2. Ministry of Agriculture and Forestry administrative burden project**

The Ministry set up three working groups to study and to bring forward measures to reduce administrative burden on SMEs active in the production, processing or marketing of agricultural products. One of the working groups was mandated to study simplification of requirements and control related to agricultural aid. The second one aims at simplification and improvement of the structure of the public aid administration. Representatives of aid beneficiaries are involved in the work. The third working group deals with specific problems related to the Food Act and its implementation encountered by SMEs within the food industry. It presents a special feature as all the members of the group represent the food industry and primary producers.

Initiatives that were previously scattered and largely dependent on the interest of individual ministries in pursuing them have now been given greater coherence. The 2007 Government Strategy Document proposed a national programme to reduce administrative burdens on businesses, aimed at promoting company productivity and competitiveness, whilst respecting the societal objectives of the legislation concerned. A rough estimate of the costs of administrative burdens on business puts this at some 2% of 2007 GNP (EUR 3.6 billion), which includes both national and EU origin burdens.<sup>3</sup> The government considers that burden reduction would primarily benefit SMEs. These make up the overwhelming majority of enterprises in Finland.<sup>4</sup> The push for this initiative seems to be as much from the government (and behind that, from the EU) as from the business community itself. The Chambers of Commerce have done a survey which suggests that there are important issues, for example with burdens on employers. Business has suggested that substantive compliance costs should be the main target, not just information obligations.

The GSD undertaking was given effect in March 2009 when the government approved a decision-in-principle on an action plan for the reduction of administrative burdens on businesses by 25% over the 2006 level by the end of 2012.<sup>5</sup> This reduction goal is targeted at national legislation and official procedures, including the obligations of EU origin legislation. The focus is on information obligations. Administrative burdens will be eased by simplifying reporting obligations stipulated by existing legislation and by the development of ICT. The aim is also to avoid the creation of further burdens in new legislation. The national programme is to be closely co-ordinated with the EU Action Programme. The proposals and results of the EU Programme will be taken into account in the implementation of the national programme. Some stakeholders noted the importance of the net target as a means of “joining up” the programme with efforts to strengthen impact assessment.

### *Institutional framework*

Reduction proposals are to be prepared by the relevant ministry, in consultation with other ministries and business stakeholders.

A steering group of the Ministry of Employment and the Economy (MEE), set up initially until the end of 2010, is tasked with co-ordinating the implementation of the action plan and monitoring its realisation. The group's mandate may be extended if necessary. Ministries, the business community and union representatives as well as other stakeholders are members of the group.<sup>6</sup> The ministries and other relevant authorities report on progress to the steering group on a regular basis. The steering group assesses the need for completing and updating the action plan. At a later stage, it will evaluate whether sector-specific quantitative reduction objectives should be set for priority areas within the action plan. The steering group is supported by a project group (also with ministries and external stakeholders as members) and the MEE's Better Regulation Unit.

Implementation of the action plan is also considered on a regular basis by the ministerial working group on Better Regulation and Better Regulation Consultative committee.

### *Methodology and process*

The action plan focuses on practical measures to alleviate the administrative burdens of enterprises.<sup>7</sup> It contains seven priorities:

1. taxation;
2. statistics;
3. agricultural subsidisation procedures;
4. food safety and quality;
5. employers' reporting obligations;
6. financial reporting legislation; and
7. environmental permit procedures.

The development of electronic communication for businesses is a horizontal priority. The action plan will be updated and completed as appropriate throughout its implementation.

In the priority areas, a comprehensive measurement of the initial level of administrative costs will be implemented, based on the SCM model or a similar method. All of these baseline studies will be finalised by spring 2010. MEE is co-ordinating the baseline studies, in co-operation with the ministries responsible for each area and with business stakeholders. Elsewhere, measurement and monitoring will be implemented on a more general level. The same approach will be used for updating and monitoring.

The action plan includes burdens in new legislation. In preparing legislation, ministries are responsible for assessing the administrative costs imposed on businesses as part of the impact assessment of proposed legislation on business (see Chapter 4). The Standard Cost Model as a method to assess administrative costs on businesses is briefly described in the

Impact Assessment Guidelines. However, so far, the SCM has not been systematically used for this purpose.

The action plan will be co-ordinated with the EU Action Programme. Finland classifies information obligations between those based solely on national legislation, and those arising from EU legislation and other international obligations.

Simplification of legislation and simplification of procedures (use of e-Government, one-stop shops etc.) are expected to be the key approaches to reducing burdens.

### Use of ICT

ICT is an essential part of the programme to reduce administrative burdens on business. The development of electronic communication for businesses has been selected as the action plan's horizontal priority area. Customer-oriented development of electronic communication will be developed. Specific initiatives include:

- *Business portal*<sup>8</sup>

The MEE continues to develop its business portal. It is a public portal available to users free of charge. Currently, Enterprise Finland provides companies and entrepreneurs with information on, for example, the obligations towards public authorities when setting up an enterprise or acting as an employer. The portal also provides information on public funding and developing a business. Enterprise Finland is particularly targeted at SMEs. The development of the portal aims to offer more advanced and customer-oriented enterprise services. The requirements related to the implementation of the EU Services Directive will be taken into account in the development work, as the English part of the portal will offer the main entry for the Directive's point of single contact. The point of single contact will be supported by Enterprise Finland's Contact Centre service.

- *Enterprises account*

The aim is a shared and safe communication channel between businesses and government authorities. It will offer a centralised customer-centric online service where businesses can find e-services of different authorities and use them (users are forwarded to e-service sites), Businesses can also send and receive messages and documents from the administration, and receive decision documents from the latter.

- *Personal account*

A citizen personal account will be developed and introduced first. In the second implementation phase (2011-12), the account will be extended to businesses and other organisations.

The Ministry of Finance plays a key co-ordinating role in the development of projects for electronic communication services. In 2009, it launched the so-called *SADe* programme in order to enhance eServices and eAdministration. The objective is that, by 2013, all the main administrative services are available electronically both for citizens and businesses.

The Services Directive (which requires the establishment of points of single contact for business procedures) has been an important driver of reform. The OECD peer review team heard that it has encouraged "a change of views" stimulating and even demanding the establishment of such structures. It appears, however, that the re-use of data (data protection aspects) are a problematic issue. Sharing of data between different agencies is contentious.

*Public consultation and communication*

The administrative burden reduction proposals are to be identified by ministries in consultation with the business community, which is represented in the MEE steering group as well as the supporting MEE project group. Communication of the plans and progress is offered through the MEE website<sup>9</sup>, as well as through press releases and events.

*Achievements so far*

It is too soon for any concrete achievements, given that the programme was only launched in 2009. Careful monitoring and evaluation are needed to ensure that it does deliver concrete and timely results.

*Other simplification measures for businesses*

Licensing, planning and support for small to medium-sized enterprises were not covered in detail on the mission. The OECD peer review team were told that licensing was no longer a major issue as many had been abolished.

*Administrative burden reduction for citizens*

There is no specific programme, but there are several initiatives. One-stop shops for citizens are under development (Box 5.3). As an e-Government initiative a citizens personal account for state and municipal services via internet will be developed and is expected to be introduced in 2010.

**Box 5.3. One-stop shops for citizens**

The aim is to offer public administration services centrally from a single location (one-stop-shop). This is considered especially important for Finland, as a means of ensuring a variety of high-quality services across the country, both in sparsely populated areas and in population centres. A main goal is to expand and standardise the range of services offered. The development of a physical citizens' services network will be complemented by the provision of services electronically and via call centres. For municipalities, a common basis for participation and for enhancing municipal sector co-operation with central government and the Social Insurance Institution of Finland (KELA) is to be created.

*Administrative burden reduction for the administration*

Finland does not at this stage have any specific programme for burdens inside government. Interviewees did not consider that there were major issues. However there may be an unexploited link with the productivity programme (see Chapter 1). A programme to remove unnecessary burdens inside government would help to release resources for service delivery and improve public sector productivity (including and not least at the local level).

## Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification through consolidation. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is taking account of the impact of new regulations in meeting target reductions.
2. For example, the licence reform project of 1989-93, and changes to specific laws such as the Accounting Act in 2001. E-Government has also been deployed for some years in support of an easier life for SMEs (information portals, web transactions etc).
3. This estimate is based on a review conducted by the Government Institute for Economic Research (VATT) and commissioned by the Ministry of Employment and the Economy. Previously, the European Commission has estimated the figure for Finland as 1.5% of GDP. However, the latter estimate emphasises enterprises' one-off information obligations, failing to take sufficient account of obligations involved in continuous business operations.
4. In 2006, a total of 99.8% of all enterprises in Finland were SMEs.
5. This is not an explicit net target, even though the action plan states that the aim is to avoid the creation of further burdens in new legislation.
6. The Steering Group comprises representatives of the following : Prime Minister's Office, Ministry of Justice, Ministry of Finance, Ministry of Agriculture and Forestry, Ministry of Transport and Communications, Ministry of Employment and the Economy, Ministry of Social Affairs and Health, Ministry of the Environment, Confederation of Unions for Professional and Managerial Staff, Confederation of Finnish Industries, Central Chamber of Commerce, Central Union of Agricultural Producers and Forest Owners, Jyväskylä Regional Development Company, Central Organisation of Finnish Trade Unions, Finnish Federation of Professionals, Federation of Finnish Enterprises, National Board of Taxes, Statistics Finland.
7. According to a preliminary study by the Government Institute for Economic Research (VATT) commissioned by the MEE, the most burdensome information obligations are to be found in the areas of taxation, acting as an employer, accounting and auditing, agricultural subsidies and environmental permits. These results were also based on a business survey among nearly 3 000 SMEs, conducted in co-operation with the Federation of Finnish Enterprises and Finnvera plc.
8. [www.EnterpriseFinland.fi](http://www.EnterpriseFinland.fi).
9. [www.tem.fi](http://www.tem.fi).



## Chapter 6

### Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 9).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes,<sup>1</sup> and the adoption of rules to promote responsiveness, such as “silence is consent”.<sup>2</sup> Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

#### Assessment and recommendations

*A missing link in Finland's Better Regulation Strategy is a policy addressing compliance and enforcement issues.* As might be expected in a system with autonomous actors, there is no common approach to enforcement policy, with individual ministries and agencies making their own policy. Some risk-based enforcement approaches have been adopted, for example in the area of food safety. Given the pressures on public spending and the efforts to increase productivity in the public sector, it makes sense for Finland to review whether enforcement and inspection processes could be made more efficient, for example by encouraging the adoption of risk based approaches, at the same time minimising burdens

on companies. Some other European countries such as the UK, Denmark and the Netherlands have made this an important part of their Better Regulation strategy.

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**Recommendation 6.1. Consider carrying out a review of the approach to inspections and enforcement, to identify and share best practices across ministries and agencies, and to highlight the scope for adopting the most efficient approaches.**

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## Background

### *Compliance and enforcement*

There is no available information on general compliance with regulations.

There is no common approach to the management of enforcement. Individual ministries and regulatory agencies are responsible for enforcing compliance with the laws and regulations in their area of responsibility, and for setting enforcement policies in these areas. Municipalities are responsible for enforcing compliance with their own (limited) local ordinances and as well for enforcement of regulations assigned to them by Acts of Parliament (which includes enforcement of licensing and planning regulations). They are framed in these tasks by provisions in the regulations and by instructions or guidelines from the relevant ministry. This means that they apply different guidelines depending on the sector and the responsible ministry.

Risk-based enforcement is used in some areas. One example is control measures to ensure the quality and safety of food products and the health of animals and plants.<sup>3</sup> Another is financial supervision (Box 6.1).

#### **Box 6.1. Finnish Financial Supervision Authority (FSA)**

The FSA is an authority for the supervision of Finland's financial and insurance sectors. From January 2009 the authority has been responsible for most of the supervisory functions previously undertaken by the Financial Supervision Authority and the Insurance Supervisory Authority. The FSA operates administratively in connection with the Bank of Finland, while being independent in its decision-making. The agency has few rule making powers of its own, but it has considerable autonomy in terms of individual decisions taken on the basis of the rules which it is required to apply, supervise and enforce.

The agency reports to parliament annually with regular meetings taking place during the year. A special parliamentary committee is in place. The parliament takes a particular interest in citizen-related issues such as access to banking services for citizens, the fee structure of basic banking services. It issues opinions on the work of the agency which are not legally binding.

The FSA follows a risk-based and principle based approach to supervision. It monitors risks and assesses them. The agency also monitors and evaluates global and EU level events to establish whether these could affect the Finnish regulatory system.

### *Appeals*

The judiciary system overall is based on the French model which emphasises the legal use of public powers and the protection of citizens against the state. The emphasis is on citizens' rights.

The legality of administrative decisions is subject to control by the regional administrative courts and the Supreme Administrative Court.<sup>4</sup> Any administrative decision

on an individual case may be challenged by an appeal. Persons affected by the administrative decision may seek its annulment or revision of its contents by an appeal lodged with the competent administrative court. Appeals against decisions of the government and ministries are tried directly by the Supreme Administrative Court. In some other cases too, the appeals are tried directly by the Supreme Court. Most of the decisions issued by the Finnish Communications Regulatory Agency (FICORA) fall into this category. In certain matters, there is no direct appeal to an administrative court before the matter has first been considered in proceedings internal to the administration.

On appeal, an administrative court reviews the legality of the administrative decision. Finnish courts have traditionally had competence to exercise judicial review concerning the legality of decrees and other regulations below the level of Act of Parliament. The basis of this review may concern transgression of regulatory/executive powers in the adoption of the act, or its substantial conflicts with higher norms. If, in a matter being tried by a court, the application of an Act would be in evident conflict with the Constitution, the court shall give primacy to the provision in the Constitution. If a provision in a regulation of a lower level than an Act is in conflict with the Constitution or another Act, it shall not be applied by a court or by any other public authority. Courts are not entitled to review rule-making management as such (decisions flowing from the application/execution of the regulation) but a person or a corporation considering that a decision of a public authority in a matter relating to that person or corporation is illegal is as a rule entitled to appeal against the decision. If the appellant is discontent with the decision of the administrative court, it is in most cases possible to appeal further to the Supreme Administrative Court.

The appeals system appears to function well. No issues were raised by interviewees such as business or consumers. There are delays in handling appeals but not major by international standards. The average length of proceedings in administrative courts was nine months in 2007 and 2008. It appears that the different approaches taken by municipalities in the management of licences and planning applications may have given rise to differences of treatment which have triggered a larger number of appeals.

### *Parliamentary Ombudsman*

The Parliamentary Ombudsman is a neutral body elected by the parliament and outside the three branches of power (executive, legislature and judiciary). The main activities of the Ombudsman relate to inquiries into complaints of individuals, enquiries on their own initiative, inspections at offices and institutions (particularly prisons and other closed institutions) and the Defence forces. Special emphasis is given to the areas of human rights, telecommunications, children's rights and undercover operations by security forces (the police). The Ombudsman's office has 60 staff and is responsible for:

- checking that “good administrative practice” is followed;
- ensuring that the courts, other authorities and civil servants, public employees and other persons, when performing a public task, obey the law and fulfil their obligations. The oversight role extends to private bodies which fulfil public tasks – here is a wide interpretation of the definition of “public tasks”. The oversight remit as such includes all State, municipal and ecclesiastical authorities; and
- monitoring the implementation of basic rights and liberties.

An enquiry can lead to the prosecution of civil servants (this has happened on average once a year) or the issue of a reprimand, opinion, or recommendations concerning the

development of legislation. Opinions are used the most often. The decisions of the ombudsman are not legally binding, but they are generally observed.

The Ombudsman's Office also receives information on how legislation is being enforced and applied, and plays a significant role in the development of legislation and the legal system by making written submissions to government and ministries and by appearing as an expert at hearings arranged by law-drafting bodies and parliamentary committees. Unlike some jurisdictions where an ombudsman may not be in a position to comment until after a legislative proposal has been enacted, the Finnish ombudsman can intervene at any stage of the legislative process.

The work of the ombudsman has pointed to the need for greater attention to be given to the implementation of a draft regulation in *ex ante* impact assessments. Developing a detailed model of impact assessment with steps that must be followed – including implementation, review and performance measurement – would be helpful.

### *Chancellor of Justice of the Government*

The Chancellor of Justice is a body elected by the president and working with the government, although outside the three branches of power (executive, legislature and judiciary). The duties of the Chancellor of Justice include overseeing the lawfulness of the official acts of the government and the President. It ensures that the courts of law, other authorities and civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. Special emphasis is given to the implementation of basic rights and liberties and human rights. The office of the Chancellor of Justice has 38 staff.

Overseeing the lawfulness of the official acts of the government and the President consist of:

- *ex ante* review of presentation agendas for the plenary sessions of the President and the government; the Chancellor's opinions are followed very closely;
- attending the sessions;
- issuing opinions on request of the ministries or the President; and
- investigating complaints of individuals made against the government or the President.

Outside the area of the government and the President, the Chancellor of Justice has the same powers as the Parliamentary Ombudsman described above. The working methods are the same and the possible results of the enquiries are the same as in the case of the Parliamentary Ombudsman.

## Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. Strategy of Finnish Food Safety Authority Evira, at:  
*[www.evira.fi/portal/en/evira/organisation/strategy\\_2007-2013/](http://www.evira.fi/portal/en/evira/organisation/strategy_2007-2013/)*.
4. In the field of social security, this control is exercised by several appeal boards, and in the last instance by the Insurance Court.



## Chapter 7

### The interface between member states and the European Union

An increasing proportion of national regulations originate at European Union level. Whilst European Union regulations<sup>1</sup> have direct application in member states and do not have to be transposed into national regulations, European Union directives need to be transposed, raising the issue of how to ensure that the regulations implementing European Union law are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market, avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU regulations. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

#### Assessment and recommendations

*The EU is important for Finland both in terms of stimulating efforts to improve regulatory management, and the need to cope with EU origin legislation which has to be absorbed into the system.* European Union initiatives are a motor for Better Regulation in Finland. The Services Directive, for example, has encouraged a review of issues such as one-stop-support for small to medium-sized enterprises. The recently adopted programme for reducing administrative burdens on business was encouraged by the EU programme. A significant and increasing proportion of Finnish law (perhaps up to 80% in some areas) derives from EU origin legislation. This is an aspect of Better Regulation for Finland that needs special emphasis and attention. This is recognised by the government: a more proactive EU stance is identified as an objective in the Government Strategy Document.

*An impressively inclusive and co-ordinated approach has been put in place to deal with EU regulatory affairs.* For an executive consisting of highly autonomous ministries, Finland has an inclusive and co-ordinated approach to the development and agreement of its negotiating positions on European Union proposals. Ministries, the parliament and other stakeholders are consulted in a process which is carefully orchestrated from the Prime Minister’s Office. The OECD’s 2003 report had already noted that the institutional structures and processes established to co-ordinate relations with the EU on regulatory

matters appear to be consistent, coherent and functioning at a high level. This review confirms the previous analysis. Why does it work effectively? The institutional framework would appear to be a key ingredient: the strong role of the PMO, which cannot be ignored by other ministries and which has an overview of key policy issues across government; a strong Cabinet Committee on EU affairs that meets weekly (and other institutional support such as the Justice ministry's EU unit); and the pro-active engagement and support of the parliament in formulating negotiating positions, which helps to identify important impacts and issues to take into account in negotiation.

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**Recommendation 7.1. Consider whether it is possible to transplant the successful ingredients of European Union management in order to strengthen domestic Better Regulation management (for example, strong central co-ordination by the PMO).**

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*There are, however, some weaknesses in Finland's approach to the development of EU legislation which compromise the effective and straightforward transposition of adopted directives later on. Influencing the development of EU directives needs to start early, before formal negotiations begin. Finland may need to strengthen its presence at the early and informal stages of policy making in Brussels, as well as later when effective negotiation can help to prune back an over detailed draft or ensure that needed flexibilities are built into the text. Finland may also need to put more effort into building alliances with like-minded member states. As negotiations within the Council evolve and amendments are proposed by the European Parliament, it is not clear whether the co-ordinated and inclusive approach to establish a negotiating position is re-engaged, or whether the responsible ministry is left to carry on alone.*

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**Recommendation 7.2. Improve capacities to influence the development of EU legislation: with the Commission (at all levels) before proposals are published; and with like-minded member states (at all levels) to build alliances on key issues. Take the initiative in developing alliances. Ensure that back home the negotiating position is collectively reviewed and refreshed regularly to take account of developments. Do not leave the lead ministry alone in the process. Check that the officials carrying out key negotiations have the capacities (and if necessary seniority) to negotiate effectively.**

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*The effective application and updating of impact assessment on draft EU proposals would help to secure a strong Finnish position as negotiations unfold. Responsible ministries already carry out a summary form of impact assessment on EU proposals. Improvements to this process could help to secure a more effective and durable negotiating position. An effective impact assessment (at least on the more significant EU drafts) would capture, early on, the views of relevant stakeholders both inside and outside the government (including those who will later have to implement and enforce the directive), identify all relevant likely impacts, and ensure that these were comprehensively assessed (including cost benefit analysis). If the initial impact assessment is well done, updates to take account of drafting developments would be relatively straight forward and less time consuming. The information could be used systematically to identify potential allies among other member states in negotiation. The European Commission's own impact assessments and the views of the EU Impact Assessment Board should be taken into account.*

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**Recommendation 7.3. The Prime Minister’s Office should review the current process for carrying out impact assessments on EU drafts with a view to strengthening it, particularly as regards the early consultation of the widest range of stakeholders, strengthening the analysis of potential impacts, and ensuring that updates are carried out when there are significant changes in the development of the draft in Brussels. Target priority legislation, where Finnish interests are most exposed, for full treatment of this kind. Ensure that the results are used in the development and update of the briefs used by Finnish negotiators.**

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*Training and guidance on EU affairs is available, but might need to be strengthened.* Finnish training on EU matters is offered to officials and appears especially strong for the judiciary. The Justice ministry has an EU unit which provides legal guidance and it has produced a legal drafter’s guide to the EU. It is not clear, however, that the EU training or guidance for officials is adequate to cover all the (policy as well as legal) issues that it would be helpful to address. Training and guidance in some other EU countries is broad and significant (for example, a full policy as well as legal guidance document in the UK, and training in negotiating techniques in Ireland). The Justice ministry’s initiative to integrate all the guidance for domestic impact assessments has been a hit. Could this approach be extended to the EU dimension?

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**Recommendation 7.4. Review the current training and guidance offered to officials on EU matters with a view to broadening and strengthening this. Ensure that policy issues and negotiating techniques are covered as well as legal aspects.**

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*The role of the parliament is significant in establishing the Finnish negotiating position.* The Finnish parliament plays a substantial role in the establishment of the Finnish position on EU matters. This is one of the strengths of the Finnish system. The considerable efforts that are put into the process by the government as well as the parliament to establish a shared position for negotiation needs to be carried through as negotiations unfold, taking account of the parliament’s heavy legislative work load.

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**Recommendation 7.5. Review the arrangements for ensuring that the parliament is kept in touch with negotiating developments, based on priority dossiers, so as to avoid overload of the system.**

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*The transposition of EU directives is a sore point and needs attention.* Transposition is left to ministries without any central guidance. A large number of stakeholders drew attention to the fact that the default option for transposition is to transplant an adopted directive word for word into Finnish law, which complicates the latter. Improving Finland’s capacities to influence and negotiate effectively for clearer and shorter texts (as recommended above) would help to prevent at least some of the problems. Negotiators need to focus on implementation from the outset. Finland might also review how other countries with similar cultures and legal systems approach transposition as this could reveal flexibilities that have not previously been exploited, and reduce the costs and burdens associated with transposition. Impact assessment carried out at the transposition stage could also help to identify more effective approaches.

**Recommendation 7.6. Ensure that negotiation briefs include issues that will be important for implementation later on, and if possible that negotiators are in direct touch with colleagues who will be involved in implementation. Review the approaches taken to transposition by like-minded member states. Ensure that impact assessment and as part of this, consultation of key stakeholders is carried out to inform transposition of significant directives. Monitor progress.**

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## Background

### *General context*

A significant, and increasing, proportion of Finnish law originates in EU legislation. Some ministries estimate that perhaps 80% of the legislation they produce per annum derives from, or directly relates to, the EU.

The overall system for managing EU affairs, which is more carefully orchestrated than arrangements for domestic policy and rule making, is spoken of highly by the parliament and a range of other stakeholders. Alongside this, there is a recognition of the need for specific improvements and a desire to do even better. There was widespread agreement among interviewees that Finland needs to pay closer attention to the shaping of EU policies and draft legislation, “catching” issues at the earliest possible stage; and that it also needs to take another look at the transposition of directives so as to avoid difficulties (the two issues are linked, since the outcome of negotiations on a specific directive largely set the frame for its implementation).

The government has identified the improvement of its influencing capacity in Brussels as a strategic priority in order to increase the chances of its views and specificities being taken into consideration before proposals are adopted by the European Commission, and of its voice being heard in the subsequent Council negotiations. Greater effectiveness in Brussels at the negotiating stage is linked to a widespread concern that the transposition of EU obligations into national law are often difficult to implement in the Finnish legal system. EU directives are deemed too detailed and prescriptive to implement effectively. Some other EU Member States certainly see the negotiating phase as a time when flexibilities can be inserted in draft directives so as to bring EU proposals closer to existing national rules and to facilitate transposition.

In April 2009, the government adopted a report on Finland’s EU policy<sup>2</sup>. This report analyses the significance of EU membership to Finland, and sets out basic principles and key objectives for Finland’s EU policy. It considers ways to develop influence in the EU. It is intended that the report will help to define Finland’s objectives at EU level for the coming period and outline far-reaching visions for the future development of the EU. It is also proposed that the findings and information contained in the report will serve as a basis for encouraging discussion and debate among citizens on EU membership and will feed into a future project aimed at developing the co-ordination of EU issues, and of tools for better exerting influence in the EU.

A 2009 report by the National Research Institute of Legal Policy in Finland<sup>3</sup> supports the need to take another look at the issues so as to pinpoint just what needs doing better. It found that while officials involved in negotiation in Brussels tend to have good working relationships with Commission officials and do negotiate effectively, a major challenge facing Finland relates to its ability to address key issues early enough. The 2003 OECD report noted an apparent paradox in Finland’s relationship with the EU. It has an excellent record of transposition but at the same time, there was frustration among Finnish officials

regarding the “experience of dealing with complex laws without clear explanation of their purpose”.

### *Negotiating European Union regulations*

#### *Institutional framework and processes*

The institutional structure for co-ordinating EU affairs is set out in Figure 7.1. The Finnish constitution places responsibility for negotiation of EU matters in the remit of the Cabinet. The Prime Minister’s Office (PMO) has a substantive, not just a co-ordinating role in this respect:

- it prepares the general guidelines of Finnish EU policy and co-ordinates preparation and handling of all issues relating to the EU in the ministries;
- it handles the distribution of EU documents, maintenance of a register of documents, filing of documents and information services. These services are used by civil servants preparing EU affairs, mainly ministries;
- it is responsible for action relating to any institutional questions and the general development of the EU;<sup>4</sup>
- it is responsible for the preparation of European Council meetings and co-ordination of issues considered at the Council meetings; and
- the Prime Minister chairs the Cabinet Committee on EU Affairs (see below).

A Cabinet Committee on European Union Affairs meets weekly to discuss key EU affairs and set Finland's priorities.<sup>5</sup> This is flanked by official level committees, comprising a Committee for EU Affairs chaired by the PMO (which also meets weekly as needed), and a network of 40 sectorally based sub-committees chaired by the relevant ministries (which the PMO also attends). The ministries are represented by Permanent Secretaries or their deputies. The sub-committees may include representatives from various interest groups, which allows them to voice their opinions. Decisions are generally taken by consensus. They may be submitted for a final decision to the Cabinet. There are also horizontal co-ordinating networks and working groups within and across ministries, which often reflect EU Council formations (for example, competitiveness). The PMO is also represented in such horizontal work.

The Government Secretariat for EU Affairs within the PMO oversees this work.<sup>6</sup> It serves as the secretariat for the Cabinet Committee on European Union Affairs and as the chair and secretariat for the Committee for EU Affairs; and is represented on the sub-committees. The Secretariat's duties also include preparation for European Councils. It ensures the flow of information between Finland’s Permanent Representation in Brussels and the government, and is involved in training, information dissemination and documentation relating to EU affairs. It also nominates national experts to EU institutions.

The Ministry of Justice also has an EU Unit, which was founded in the early 1990s prior to Finland’s accession to the EU.<sup>7</sup> This Unit acts as an expert on issues of EU law and provides guidance, assistance and advice to individual ministries regarding EU legislation – both during the negotiation phase when draft texts are being negotiated and debated, and during the transposition and implementation phases once agreement has been reached in

Brussels. The unit has developed co-operative links and structures within different ministries to aid it in fulfilling its role. It also co-ordinates with the parliament.

Individual ministries take the lead in the monitoring, preparation and transposition of affairs relating to the EU in their areas of competence. Once a draft law has been published by the EU Commission, the Government Secretariat for EU Affairs assigns the file to the competent ministry. The issue is discussed as necessary by the relevant EU section official sub-committee, and if a position cannot be agreed at this level, it goes to the Cabinet Committee on European Affairs (and if necessary, to the Cabinet).

The Permanent Representation of Finland to the European Union in Brussels has a staff of approximately 100. Half of the staff consists of civil servants, who work in Brussels for 2-4 years. The other half are local recruits. Training is available on dealing with EU legislation, including for the judiciary (see Chapter 2). The OECD peer review team heard, however, that more training would be useful.

**Figure 7.1. Co-ordination of European Union affairs within the Finnish government**

*Source: [www.valtioneuvosto.fi/eu/suomi-ja-eu/asioiden-kasittely/pdf/en.pdf](http://www.valtioneuvosto.fi/eu/suomi-ja-eu/asioiden-kasittely/pdf/en.pdf). (figure removed in web version)*

*The role of the parliament*

Since the early days of membership, the parliament has played a key role in formulating Finland's stance on EU issues. Its role is determined by the constitution.<sup>8</sup> Whilst day-to-day negotiations are handled by the lead ministry and the Permanent Representation in Brussels, the government is constitutionally obliged to consult the parliament for a negotiating position and opinion on EU legislative matters. Once it receives notice from the European Commission that a draft regulatory proposal is published, the government sends a communication on the proposal to the parliament. The parliamentary committees have guaranteed access to information and updates on EU developments including the agendas and results of EU Council meetings.

Three structures are involved in the parliament's scrutiny process:

- **The Grand Committee**

This is the key EU parliamentary committee. A core role of this Committee is to ensure that the government does not enter into binding commitments which the parliament will not ratify. It ensures that parliament has a say in EU decision making and that parliamentary supervision is carried out. It considers all EU documents and information provided by the government (except for foreign and security policy). It has 25 full members and 13 substitute members. It normally meets twice a week to deal with matters submitted by the government, to hear directly from ministers, to obtain statements from other parliamentary committees and to give feedback to the government.

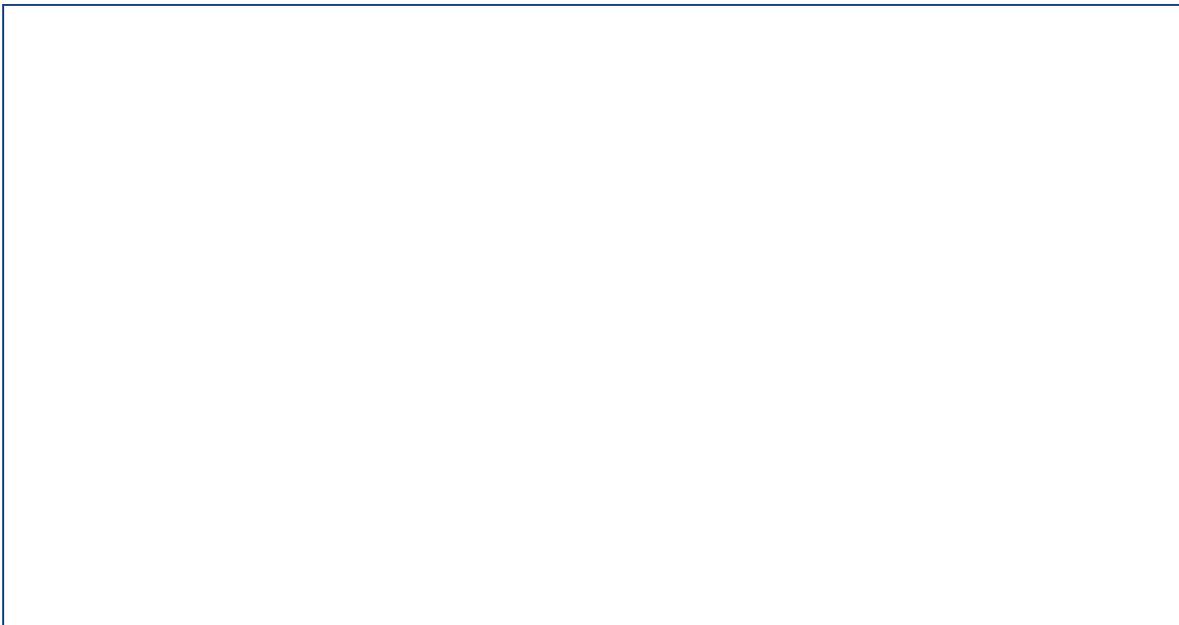
- **The Foreign Affairs Committee**

Its main task is to prepare the parliament's decisions on government proposals regarding significant international treaties, including treaties of the EU. It monitors the EU's Common Foreign and Security Policy.

- **The Sectoral Committees**

Their task is to consider and monitor sectoral EU policy issues, to arrange hearings with the relevant ministry and other stakeholders, and to issue written opinions to the Grand Committee. There are 14 permanent sectoral committees. Ordinarily, draft EU law is considered by one or more of these committees before referral to the Grand Committee.

**Figure 7.2. Flow of information and consultation in EU legislative matters**



*Source:* Parliament of Finland – Parliamentary Scrutiny of European Union Matters in Finland.

The government communicates with the parliament through what are known as letters. The parliament then writes statements in response outlining its views and opinions:

- **“U” letters** (section 96 of the Constitution) are matters that according to the Constitution would otherwise (were it not for membership of the EU), fall within the competence of the parliament. These communications summarise the contents of the proposal and its regulatory, economic and other impact as regards Finland. The communication should also refer to any impact assessment carried out at the EU level.
- **“E” letters** (section 97 of the Constitution) are EU legislative matters with broader significance in terms of principle, scope or political controversy; such matters must be brought before the parliament by a report of the government, before they have proceeded to a stage where a proposal is issued at the EU level – in other words, before a “Green paper” issued by the EU can be developed further into a draft directive. As with the “U letters”, the report sent by the government should include reference to any impact assessment carried out by the Commission and, so far as possible, the preliminary findings or results of any impact assessment that is being carried out in Finland.

Close co-operation between the parliament and the government is an important asset in Finland’s EU policy. Thanks to this system, Finland’s representatives can draw upon the direct support of the parliament when matters are discussed in the EU. For this to work well, it is important that the government ensures that the parliament is provided with timely information on EU issues.

#### *Ex ante impact assessment (negotiation stage)*

Once the European Commission has issued its proposal, the ministry in charge draws up a memorandum in accordance with guidelines laid down by the Ministerial Committee for EU Affairs. This must lay out the main substantive, legal, economic and political aspects of the proposal. It must also cover the main regulatory, economic and other impacts of the proposal as regards Finland. The Commission’s own impact assessment is used in this process, as appropriate (and where it exists). The memorandum is the anchor document in the flow of information and consultation on EU matters. It is used as the basis for the E- and U- letters which are deployed in the later stages of the process.

### ***Transposing European Union regulations***

#### *Institutional framework and processes*

Responsibilities are dispersed, as they are in most other EU countries. Ministries are individually responsible for transposition of EU regulations within their competence. The allocation of responsibilities for the transposition of EU regulations is based on the general division of labour between ministries<sup>9</sup>. The Prime Minister’s Office deals with eventual conflicts regarding responsibilities. The Justice ministry and the Foreign Affairs ministry (MOFA) play supporting roles in the transposition process. The Justice ministry has issued the “Legal Drafter’s Guide to the European Union – Guidelines for Drafting National Legislation”<sup>10</sup> which deals with transposition and other EU related law drafting issues. MOFA oversees the notification process to the European Commission and is responsible for following up on infringement proceedings launched by the European Commission:

- Once a directive has been transposed, notification is sent by the relevant ministry to MOFA, which then processes and inserts this information into the European Commission's notification system. MOFA also checks to ensure that where relevant, the Åland Islands have been heard and consulted.
- MOFA is responsible for managing infringement proceedings initiated by the European Commission. If a new case is initiated by the European Commission, it calls a meeting with the relevant ministry or ministries to determine the government's position. A note on the case is drafted and presented to the EU section dealing with legal affairs (official sub-committee) and, if deemed necessary on the basis of the political, legal or financial interest of the case, to the Cabinet Committee on EU affairs. The actual replies to the European Commission are drafted by MOFA. MOFA also drafts a bi-annual report on the infringement and EU court cases, and presents this to the parliament, which may seek a hearing with MOFA. Taxation, the environment and social affairs are the main areas where infringement cases arise.

There is no centralised monitoring of transposition or compilation of statistics on transposition.

For complex or important transpositions, it is quite common to set up a working party (involving both ministries and stakeholders). This has been the case of the Services Directive, as in other EU countries. In April 2008, a cross-ministerial working group chaired by the MEE for the implementation of the directive was established, with responsibility for taking forward the framework law for its transposition and co-ordination among relevant ministries. The line ministries have been required to screen their sectoral legislation for those aspects which do not “fit” with the directive. This has apparently been a challenging task.

#### *Legal provisions and the role of the parliament*

There are no special regulatory instruments for the transposition of EU laws, and the same process is followed as for national laws. Transposition is generally carried out by primary law (unlike in some other EU countries where more use is made of secondary regulations). The parliament's role follows the process for national laws (see Box 4.4., Chapter 4). It debates the proposal during a first reading in plenary session. Proposals are finally accepted or rejected in the second plenary session reading. Acts accepted or adopted by parliament are then submitted to the President for confirmation – which must be decided within 3 months of submission. If not confirmed, the Act reverts to the parliament for further consideration. If the parliament re-adopts the Act without material alterations, it enters into force without confirmation from the President. It must however be signed by the President.

#### *Ex ante impact assessment (transposition stage)*

There are no special requirements, either for impact assessment or for related processes such as consultation of stakeholders. Consultation may be undertaken on highly technical directives.

## *Monitoring transposition*

### Speed of transposition

Finland has among the highest rates of transposition of EU Internal Market legislation into national law in the EU. The most recent European Commission Internal Market scoreboard<sup>11</sup> shows that Finland has met the 1% transposition deficit target (it achieved a score of 0.4%) and has reduced the number of open infringement proceedings by 25% since May 2006. Its position, however, has deteriorated in relation to transposition of long-overdue directives (those more than 2 years overdue). A total of 30 infringement cases were open against Finland as of May 2009. About 80% of the cases concern directives (incorrect transposition or application, and belated transposition), and the remaining 20% concern other EU legislation.

One reason for the relative difficulties is that Finnish law tends to be broader in scope than EU legislation, and directives are normally transposed within a larger legislative proposal. This has led to infringement procedures for incorrect transposition, or for delays in transposing by the due date.

### Correlation with national regulations

Correlation tables may be drawn up and published by the responsible ministry, but this is not a requirement.

### Goldplating

The OECD peer review team heard a number of comments on this issue. Considerable frustration (echoing what was heard on the 2003 OECD mission) was expressed by Finnish officials regarding the experience of transposition. Much EU legislation is too detailed (“where is Better Regulation at the EU level?”), and there is little apparent room for discretion in transposition. The usual Finnish approach, in order to avoid later difficulties with the Commission, is transposition of EU directives through a direct translation of the original EU text into Finnish. This approach may be leading to over implementation and have a negative impact on business competitiveness in the EU internal market. At the same time, the OECD peer review team heard that high Finnish standards were often at risk from harmonisation.

### ***Interface with Better Regulation policies at the European Union level***

The Finnish government made a number of comments on this matter.<sup>12</sup> It underlines the direct link between improvements in the quality of EU legislation (clarity, consistency, efficiency) and the quality of transposition. Better Regulation applied at the EU level is thus very important. There is a need to “join up” the EU and the national impact assessment processes. The quality of the EU’s own impact assessments is crucial for securing quality regulation at the national level (this entails early consultation with stakeholders among other factors). The OECD peer review team heard that there are issues with EU impact assessments, which vary in quality and cannot always be used effectively. Finland intends to play a more pro active role in the EU’s legislative work.

Finland has put special effort into the improvement of “comitology” procedures. It seeks to ensure that principles of better law-making are applied not only in the drafting of the original directive, but also in the implementing measures which are drafted in the committees set up by directives. A Finnish initiative led to the adoption by the EU institutions of a statement in connection with the latest comitology reform. In the statement

the institutions drew attention to the important role played by implementing measures in legislation. In addition, they considered that the general principles for the quality of drafting should apply to new comitology procedures.<sup>13</sup>

The OECD peer review team had the impression that, with the notable exception of those officials who are regularly and automatically engaged in EU and international work, others appear to be somewhat disconnected from developments in Better Regulation elsewhere in Europe. There does not appear to be a significant body of knowledge or interest around ministries concerning issues such as the latest developments in risk management, or administrative burden reduction inside government.

## Notes

1. Not to be confused with the generic use of the term “regulation” for this project.
2. Government Report on EU Policy, Prime Minister’s Office Publication 20/2009.
3. Hyvärinen, Anna, (2009), *How does the Finnish government influence decision-making on new EU legislation*, Publication no. 241, National Research Institute of Legal Policy, Helsinki.
4. For example, it considers any issues concerning the amendment of the Treaties of the European Union.
5. The rules for membership are set out in the *Government Rules of Procedure*: standing members include the ministers of foreign affairs, economy and employment, agriculture and forestry, justice, the minister with designated responsibility for foreign trade, and three other ministers – two designated by government and the third minister within whose mandate a particular issue for discussion lies. The government can designate a further minister as a member of the committee, and any other minister may take part in the consideration of issues as they wish (though they would not be full-time members of the committee). In addition, given its particular status within the Finnish system, the chairman of the government of Åland has the right to be heard by the committee, when an EU issue is within the jurisdiction of the Åland Province, or is otherwise of particular importance to Åland. Due consideration of Åland’s possibilities for wielding influence is an important part of the implementation of Finland’s EU policy.
6. The Secretariat was transferred from the Ministry of Foreign Affairs in 2000.
7. Finland acceded to the EU in January 1995.
8. Parliament’s approval is required for treaties and other international obligations that are “significant”.
9. The Åland province has legislative power in areas which fall under its competence according to the Act on the Autonomy of Åland, and thus also the responsibility for transposing EU regulations which fall within these areas.
10. This is an unofficial English translation of the title of these guidelines, which are available in Finnish on the website of the Ministry of Justice: *Lainlaatijan EU-opas Kansallisten säädösten valmistelua koskevat ohjeet*. [www.om.fi/1146646930588](http://www.om.fi/1146646930588).
11. Internal Market Scoreboard, July 2009 No. 19, European Communities, Belgium. The “Scoreboard” sets out progress made by EU member states in relation to the transposition of EU Directives and in particular, whether they are in line with the 1% average transposition deficit target.
12. Finnish government reply to OECD questionnaire.
13. Statement by the European Parliament, the Council and the Commission 2006/C 255/01.

## *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.

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**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.**

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## 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 administration<sup>1</sup>

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.



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## *Annex A*

### Åland Province

Åland is an autonomous, demilitarised, Swedish-speaking region of Finland with a right of self-government secured through international guarantees. Åland consists of more than 6 500 islands and skerries. The current population of 26 200 live on only 65 islands. The largest island is the main island of Åland, which makes up 70% of the Islands' total land area and is home to 90% of the population. Over 40% live in the only town, Mariehamn.

Åland's autonomy is regulated by the Act on the Autonomy of Åland passed by the Parliament of Finland. An amendment of the Autonomy Act must follow the same legislative procedure as constitutional amendment and requires the consent of the Parliament of Åland. The division of power between Åland and Finland can thus only be changed on a consensual basis. The current Autonomy Act, the third in line, entered into force on 1 January 1993. Åland's autonomy gives it the right to pass laws in areas relating to the internal affairs of the region and to exercise its own budgetary power. Åland's legislature, its "parliament", is known as *lagtinget*. The Parliament appoints the regional Åland government, *landskapsregeringen*.

The Autonomy Act lists the areas where the Åland Parliament has the right to pass legislation. In these areas Åland functions practically like an independent state with its own laws and administration. The most important of these are:

- education, culture and the preservation of ancient monuments;
- health and medical care;
- the environment;
- promotion of industry;
- internal transports;
- local government;
- policing;
- postal communications; and
- radio and television.

In those areas where the Åland Parliament does not have law-making powers, Finnish State law applies in the same way as in other parts of the country. These include:

- foreign affairs;
- most areas of civil and criminal law;
- the court system;
- customs; and
- state taxation.

To ensure that Åland's interests are taken into account also in these areas, Åland has a representative in the Finnish parliament. Åland's Member of Parliament is elected in the same way as other Finnish MPs. Foreign affairs was not transferred to Åland under the Autonomy Act, but remains under the control of the Finnish government. Even so, Åland has a degree of influence on international treaties that contain provisions relating to areas where Åland is the competent authority. The Autonomy Act states that an international treaty of this kind entered into by Finland requires the consent of the Parliament of Åland to become valid also in Åland.

The laws adopted by the Åland Parliament are referred to the Finnish President, who has a right of veto only in two cases: if the Parliament has exceeded its legislative authority, or if the bill would affect Finland's internal or external security.

The President bases his decision on the opinion of a body known as the Åland Delegation and occasionally also on the opinion expressed by the Supreme Court. Half the members of the Åland Delegation are appointed by the Finnish government and half by the Åland Parliament.

Apart from passing laws, the main task of the parliament is to distribute the budget of Åland. The income consists of Åland's own revenues and a lump sum received from the Finnish government, which constitutes a form of repayment of a part of the taxes paid by Åland to the Finnish State.

The State collects taxes, duties and fees also in Åland. In return, the Finnish government places a sum of money at the disposal of the Åland Parliament. The sum is 0.45% of total government income, excluding government loans. Åland uses this "lump sum", about EUR 160 million in 2003, to pay for services that would otherwise be provided by State authorities.

The Åland government, which may have up to eight members, is appointed by the parliament according to parliamentary principles after negotiations among the various political factions. The objective is to achieve a government which enjoys the support of as wide a majority as possible, but a minority government is also possible. In conducting its duties it is assisted by an administration, which mainly comprises the regional civil service and has six departments. The Åland government is responsible for all areas of government in which the Autonomy Act devolves authority to Åland. The regional government and civil service thus handle tasks which in other parts of Finland are handled by the Finnish government and their ministries, the county administrations and various central government authorities.

Under the Autonomy Act, Swedish is the only official language in Åland. This means, among other things, that Swedish is the language used by regional, municipal and State authorities in Åland. Publications and documents sent by Finnish government agencies to Åland must also be in Swedish.

Åland is divided into 16 municipalities. As local government is a regional concern, the rules relating to municipality self-government are contained in an Ålandic law, *i.e.* one passed by the Parliament. The municipalities' decision making power is exercised by the local council, which is elected by public ballot for a term of four years. Those who have right of domicile or have lived in Åland for three years are entitled to vote and stand for election.

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