

# Regulatory Reform in Finland

**Government Capacity to Assure High Quality  
Regulation**



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LA CAPACITÉ DU GOUVERNEMENT A PRODUIRE DES RÉGLEMENTATIONS DE GRANDE QUALITÉ

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## FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government Capacity to Assure High Quality Regulation* analyses the institutional set-up and use of policy instruments in Finland. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Finland* published in 2003. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was principally prepared by Cesar Córdova-Novion, Regulatory Management and Reform. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Finland. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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## 1. Regulatory reform in a national context

### 1.1. *The administrative and legal environment in Finland*

Finland enjoys high levels of income and quality of life. International comparisons such as the United Nations Human Development Index, the World Competitiveness Yearbook and Transparency International's benchmarking rank Finland among the top three countries in terms of its economic performance, competitiveness and ethical behaviour. Finland's competitiveness, in particular, has improved markedly in recent years: Finland ranked third in 2001, while not being listed among the top 20 a few years earlier.<sup>1</sup> Past regulatory reforms have contributed decisively to these outcomes. However, as Finland continues its economic integration with an increasingly globalised world, and as its population ages, new challenges arise. A second generation of reforms is needed. The transition from traditional regulatory practices to an efficient system of regulatory governance remains to be completed.

Four key features frame the legal and administrative culture of Finland. ***First, Finns have 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>2</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.

Secondly, 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>3</sup> informal procedures, institutionalised power sharing amongst government, employees and enterprises and a preference for making changes gradually.<sup>4</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 nowhere 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 regulatory policy has been built on a series of continuing improvements of the HELO Instruction as well as other instructions (see Section 3).

***Thirdly, 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 (see Box 1). Notably, while this tendency has inevitably contributed to the problem of “regulatory inflation” experienced in most OECD countries but exacerbated in Finland by the recent reforms triggered by the implementation of the new Constitution<sup>6</sup>, the awareness of the importance of legal quality has also contributed to efforts in the 1990s to improve clarity by controlling regulatory inflation (see Section 4).

**Box 1. Finnish Legislative Instruments**

*The Constitution and Acts of a constitutional character* such as EU regulations and international treaties, provide the framework within which general legislation operates. The constitution defines basic individual rights, relations between the state and the people, and the separation of power among the institutions.

*Parliamentary Acts.* The “ordinary” laws issued by the parliament. Both the government and individual members of parliament have the right of initiative for proposed laws.

*Decrees.* The power to issue decrees belongs to the government unless a law specifies that the President of the Republic or a minister is entitled to issue decrees concerning the matter in question.

*Regulations.* Lower level government bodies can issue regulations by law, which are normally technical measures.

*Government Resolutions.* Resolutions are decisions-in-principle made by the government, expressing the will of the government and initiating measures to be taken to fulfil the government objectives. A good example of a government resolution is the HELO Instructions. Though in theory they create obligations and requirements only on the public sector, indirectly they have an impact on businesses and citizens.

*Regional and municipal norms, ordinances and licences.* Municipalities can issue local measures and licences on matters described in parliamentary acts, for instance to regulate transport (bus, taxis, etc), as well as on matters concerning building and land use, waste management, health protection and order in schools and harbours. The regional councils have responsibilities for regional planning, environmental protection and roads.

*Informal regulation.* In some areas of Finnish law, acts permit the use of codes of conduct, guidelines, standards and certification. Most apply to agents within government but some may affect private agents.

Fourth, Finland favours 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.

These fundamental elements of the legal and administrative culture necessarily shape Finland’s responses to the policy challenges it currently faces. The quality of the system of regulatory governance will be an important factor determining Finland’s capacity to meet and overcome these challenges. Five main areas merit particular attention within this context:

- While **membership of the European Monetary Union brings considerable social and economic benefits to Finland**, the European Stability and Growth Pact diminishes participants’ freedom to pursue active fiscal policies. This means supply-side measures – including regulatory responses – necessarily become more important in addressing current issues such as persistently high unemployment, improvement to health service delivery and human resources for an ageing population, and problems with economic performance in some sectors. The greater demand for such supply-side responses means that **traditions of gradualism** come under increasing pressure, as greater policy responsiveness becomes necessary to meet social expectations.
- Traditions of **consensus and corporatism** have strengthened political stability, and have smoothed the management of policy trade-offs, such as those needed to address the 1991 recession. A particular issue is the lack of transparency for outsiders of a system based on using 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. In many OECD countries, these groups are demanding greater participation. 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.

- Paradoxically, given the focus on consensus, concerns regarding a **lack of policy co-ordination** across government are becoming increasingly apparent. The high degree of independence of ministries has led to the so-called “**stovepipe government executive**” and the associated difficulties in managing issues that involve several ministries require a whole-of-government position to be reached.<sup>7</sup> This co-ordination problem is made more difficult by the difficulties posed by coalition governments of as many as five political parties, spanning the political spectrum. The reduced use of inter-ministerial committees when developing and drafting legal instruments in recent years has also exacerbated the problem. Moreover, this is happening at a time when policy issues increasingly require solutions that are co-ordinated across government. (For example, individual policies set for health, food, agriculture and trade all impact on each other.) 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.<sup>8</sup>
- The **decentralisation of powers to municipalities** is also raising regulatory governance issues. Unfunded mandates and the small size of municipalities create problems for service delivery and intensify disparities between municipalities. On the other hand, the increasing role of local administrations in delivering services mandated in national legislation raises important issues about accountability, representation and franchise; having implications for regulatory reform and implementation (See Section 2.3.1).
- **Stronger regulatory policies** are required. Despite efforts to improve the quality of the law, regulatory policy still plays only a small role in the governance process.<sup>9</sup> 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.<sup>10</sup> 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. The fact that preparing robust benefit-cost analysis is not a standard practice and the fragmentation of results obtained from different “partial” RIAs limit the effectiveness of the tool (See Section 3).

## ***1.2. Recent regulatory reform initiatives to improve public administration capacities***

Finland’s recent reforms include both important changes to regulatory capacities within the public administration and moves toward an increasing market orientation in formerly heavily regulated sectors.

Since the early 1980s, regulatory reform in Finland has been a key part of successive governments’ programmes of structural reform, which have aimed to open the economy to the global market and strengthen competition and the private sector (see Box 2). Prior to 1996, the focus of regulatory reform was largely on deregulation as a means to free up markets. Economy wide initiatives included the *Norms Project* (1984-1993) and the *Licence Reform Project* (1989-1993). In key sectors, including telecommunications, transport, electricity and broadcasting, substantial liberalisation was achieved by removing licensing requirements and eliminating controls on the number of market participants. Thus, the *Licence Reform Project* was a mechanism by which these sectors were opened to competition by dismantling the barriers of entry contained in previous regulatory frameworks.

**Box 2 Milestones in improving capacities to assure high quality regulation**

|         |   |
|---------|---|
| 1975    | Instructions on the Drafting of Government Proposals ( <i>i.e.</i> HELO Instructions)   |
| 1980    | Reform to the HELO Instructions   |
| 1981-87 | Study of the Finnish law drafting (which produced about 900 pages)  |
| 1984-93 | Norms Project   |
| 1988    | Act on the State Enterprises<br>Cabinet Committee on Public Management Reform   |
| 1989-93 | Licence Reform Project  |
| 1992    | Reforms to the HELO Instructions  |
| 1993    | Government Resolution on measures to reform central and regional government   |
| 1994    | Comprehensive reform of the municipalities Act<br>New decision on rationalisation of permit procedures<br>Reorganisation of key elements of the SOE sector ( <i>e.g.</i> Forestry, Post and Telecommunications)   |
| 1995    | New Local Government Act<br>Further reorganisations within SOE sector   |
| 1996    | SME policy programme<br>Government Resolution to establish the Programme of the Government to Improve Law Drafting<br>Law Drafter's Guide   |
| 1997    | The Regional Administrative Reforms:<br>Law Drafter's EU Guide<br>Participation Project   |
| 1998    | New reporting system of performance measures<br>Instructions for Assessing the Economic Impacts of Legislation<br>Instructions for Assessing the Environmental Impacts of Legislation<br>Government Decision on Electronic Transactions<br>Finnish Checklist: On Quality Requirements of Proper Law Drafting. The Implementation of the OECD Recommendation in Finland.   |
| 1999    | Government Resolution: "High-Quality Services, Good Governance and a Responsible Civic Society"<br>Ministerial Working Group on Regional Development and Public Management Reform<br>Revised Act on the Openness of Government Activities<br>A Memorandum of the High-Level Working Group on Legislative Policy on the formulation of the Government Legislative Policy<br>"Hear the Citizen" project<br>Instructions on the Assessment of Business Impacts |
| 2000    | Act on electronic service in the administration<br>New Constitution<br>Second Government Resolution, the II Programme of the Government to Improve Law Drafting<br>Law Drafter's Constitution Guide<br>Reform of Central Government 2000-2001   |
| 2001    | Standpoint of the Ministerial Steering Group to the Reform of Central Government  |
| 2002    | A national portal on public sector information and its services<br>Recommendation on the Reform of the Central Government   |

*Source:* OECD and Government of Finland.

Increasing competition and trade have been central to Finland's regulatory reform activity over many years. In particular, the role of competition policy and advocacy has continued to grow. Since its inception in 1988, the Finnish Competition Authority has been a key driver of regulatory reform (see Section 2.2 and Chapter 3.) Increased trade focus was originally a response to the recognition of greater foreign competition in the domestic economy beginning in the 1980s. Further, trade liberalisation was to some extent driven by the prospect of EU membership during the early 1990s. However, in some sectors, such as telecom and energy, Finland has been at forefront of liberalisation and has moved well beyond EU requirements (see Section 2.3.2 and Chapter 4).

Increased market orientation has also meant that, in many sectors previously characterised by a government monopoly provider, a competitive market has developed, while the former government monopolies have been restructured as State Owned Enterprises (SOEs) and have in many cases been partly privatised. Partial privatisation appears to have been driven in part by budget pressures arising from the economic problems of the 1980s. On the other hand, the retention of majority public ownership arguably reflects Finnish concerns about relying on the private sector to deliver important social objectives, even where substantial regulatory structures are in place.

These changes have in turn required reconsideration of the locus of regulatory responsibilities and the building of new institutions. As in most countries that have undertaken these reforms, the regulatory and commercial roles of the former government monopolist have been separated in order to ensure appropriate competitive conditions. While Finland has established independent regulatory bodies in a number of sectors (see Section 2.2), substantial regulatory powers have also flown to the ministries responsible for the sectors in question.

Linked to the objective of increasing the competitiveness of the economy, Finland has launched significant reforms to its public administration since the end of the 1980s. The Finnish government has progressively moved away from its former substantial role as a producer and owner of services and products towards a model where the public administration ensures that public services are provided universally in an environment that facilitates competition and market operations.<sup>11</sup> Administrative reform began with an “anti-bureaucracy” drive, which made minor improvements to services and cuts to red tape. This was followed by reforms to increase the service orientation of the bureaucracy and to decentralise government while strengthening municipal government.<sup>12</sup>

These changing role of the government implied new tasks for the centre of government and the line ministries and other bodies responsible for delivering outcomes. The nature of the control mechanisms employed by the centre of government has changed the means of ensuring policy co-ordination across ministries. In the 1990s, Finland adopted performance management systems with significant delegation of decision-making powers to individual bodies as well as clear accountability measures for results and performance. Increasingly, control is based on setting objectives and monitoring the achievement of agreed targets and results, facilitated by the establishment of mechanisms to guide and monitor the provision of services.<sup>13</sup>

The changes are reflected in reforms to the budgetary process. The former line-item breakdown of agency budgets was discontinued and replaced with a lump sum allocation, while *ex-ante* budget controls were replaced by *ex-post* reporting, auditing and evaluation. A 1993 reform also relaxed most central controls on municipalities’ state-aided services, thus giving them similar freedom to apply more rational, results-oriented budgeting and management practices and to rely more on market mechanisms. The autonomy of line ministries and municipal governments has been strengthened at the expense of the Ministry of Finance. This is due to the removal of the latter’s powers of detailed micro-management and co-ordination in favour of an effective delegation of responsibility for implementation to the ministries and agencies, subject only to the Ministry of Finance’s general guidelines and strategy documents.

Following the implementation of these reforms, concerns have been expressed as to the extent to which centrally determined policy is actually being followed, and whether policy coherence may be undermined if too many decisions are made at the ministerial level rather than at the centre of government. The Ministry of Finance has conducted evaluations of the programme in 1994 and 1998, aimed in particular at developing strategies and guidelines for programme evaluation and performance monitoring and at raising the quality of evaluation within agencies. The Ministry also commissioned a study of the administration, including an assessment of its basic systems and dynamics, and the potential for adjusting the existing division of tasks and functions. The report, published in 2000,<sup>14</sup> assessed four dimensions of

government management judged to be particularly relevant to Finland: (1) ministries and other government structures; (2) policy processes, (3) performance management systems, and (4) policy instruments. It concluded that establishing effective cross-government approaches would require significant cultural change in the administration and enhanced focus on policy and political priorities. It recommended that horizontal governance requires: whole-of-government strategic thinking and management; co-operative policy development and project management co-ordinated from the Prime Minister's Office; and overcoming ministerial "stovepipes" by using processes and incentives to reduce horizontal bureaucratic competition.

In response, the Ministry of Finance has initiated an ambitious programme to move towards making whole-of-government decisions.<sup>15</sup> The stated objectives of the reforms are to increase trust in and influence of citizens in government; to manage horizontal issues; to base longer-term planning on national strengths; to achieve results; to respond to globalisation and flexibly manage change. The ministerial task force in charge of the programme published a final report in June 2002. The proposals focus on improving the work of the government, ministries and working methods in general of the public administration. It is expected that the incoming government, after the March 2003 general elections, will implement the proposals.

Fundamental aspects of the recent reform proposals emphasise the importance of horizontal policy co-ordination. According to the report, the government would agree at the beginning of its terms on three to five policy programmes. A co-ordinating minister and a programme manager would be in charge of each horizontal programme. The report also proposes to enhance the role of the Prime Minister's Office and to strengthen it as a strategic unit. The strengthened role of the PMO in managing policy programmes would carry further the provision of the new Constitution. For the first time, the duties of the Prime Minister are itemised, while there has been an important shift in power from the office of the President to the Prime Minister and the executive government. The increase in the formal power of the Prime Minister should provide substantially greater scope for policy co-ordination structures and initiatives to be put in place to combat the problem of "stovepipe" ministries.

Another pillar of the current public management reforms consists of a series of proposals to address ongoing problems with delivering legislative programmes.<sup>16</sup> Recommendations of relevance to regulatory reform include:

- Making the Government Programme better fulfil its role as an overview document outlining the government's main policy objectives, and setting criteria for measuring effectiveness;
- Preparing the Project Portfolio as a planning document that sets out more detailed plans for achieving the Government Programme with a focus on inter-ministerial co-operation requirements;
- Developing proposals to manage and co-ordinate whole-of-government projects;
- Preparing a Project Register (HARE) of Government to provide up-to-date and consistent information on progress with the Government Programme;
- Clarifying the performance responsibilities of agencies;
- Developing guidelines to increase the contribution of outside parties to the development of legislative proposals, including suggestions to increase the use of committees and commissions.

In conclusion, the move towards greater competition and market openness, together with an evolving conception of the role of the state in a market economy, have largely driven regulatory reform in Finland over the past two decades. A key theme is to ensure that the benefits of an efficient and vigorous market are achieved while commitment to a broad social and environmental agenda is maintained.

## 2. Drivers of regulatory reform: national policies and institutions

### 2.1. Regulatory reform policies and core principles

The 1997 *OECD Report on Regulatory Reform* recommends that countries “adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.” The 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation* contains a set of best practice principles against which reform policies can be measured.<sup>17</sup> (See Box 3) Finnish policies on regulatory reform show a substantial measure of consistency with these recommendations, and successive policy initiatives since 1996 have moved further in the direction advocated by OECD recommendations. However, gaps and weaknesses still exist.

Finland’s official regulatory policy is set out in the 2000 Government Ordinance *The Second Programme of the Government to Improve Law Drafting*. Its primary focus is to improve the quality of new primary legislation, in part due to the prevalence of laws in relation to decrees. The current policy has evolved since 1996, when previous reform initiatives focusing on “deregulation” and the technical quality of law-drafting gave way to broader emphasis on “regulatory quality” and regulatory management.<sup>18</sup> In 1996, the government issued a formal regulatory policy for the first time. It has since been refined and extended through three successive formal restatements. The policy is implemented with the help of guiding material, in particular the 1998 *Finnish Checklist*, which is based on the 1995 *OECD Recommendation of the Council on Improving the Quality of Government Regulation*. It also is in line with the 1992 update of the *Instruction on the Drafting of Governmental Proposals (i.e. the HELO Instructions)*, which controls and manages the preparation of bills and regulations by the public servants.

**Box 3. Good practices for improving the capacities of national administrations to assure high-quality regulation**

The OECD Report on Regulatory Reform, which was welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this Chapter, and are reproduced below:

**A. BUILDING A REGULATORY MANAGEMENT SYSTEM**

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities

**B. IMPROVING THE QUALITY OF NEW REGULATIONS**

1. Assess regulatory impacts
2. Consult systematically with affected interests
3. Use alternatives to regulation
4. Improve regulatory co-ordination

**C. UPGRADING THE QUALITY OF EXISTING REGULATIONS**

(In addition to the strategies listed above)

1. Review and update existing regulations
2. Reduce red tape and government formalities

Table 1, below, summarises the key elements of each of these policy statements and highlights the evolution of the policy over time. As it indicates, the current regulatory policy framework demonstrates a high level of consistency with the 1995 OECD Recommendation. A notable element is its focus on the quality of the regulatory information flows between government and parliament.

However, five major weaknesses may need further work. First, the policy and the *HELO Instructions* have few concrete criteria to guide the assessment of each test. Second, though applicable to all regulations, the policy focuses primarily on primary legislation and therefore has limited influence on the quality of lower level rules. Third, 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. Fourth, the relationship between the current policy's impact tests (see Table 1) and the Checklist is unclear at the outset and probably duplicative. Fifth, the implementation of the policy is relatively poor (see next subsection). 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.

Table 1. Evolution of the Finnish regulatory policy

| Date and Title of Government Resolutions   | Main elements / main reforms   | Comments and Outcomes  |
|--|--|--|
| 1996 <i>Programme of the Government to Improve Law Drafting</i>                            | <p>Introduction of a regulatory management perspective into law drafting, based on four main principles:</p> <ul style="list-style-type: none"> <li>– ensuring law drafting requirements form part of ministries’ operational planning,</li> <li>– forecasting and monitoring the impact of law proposals,</li> <li>– giving more attention to organising law drafting and arranging for hearings and opinions; and</li> <li>– providing more intensive training in law drafting.</li> </ul> <p>Establishment of five “minimum tests” for draft measures:</p> <ol style="list-style-type: none"> <li>1. Is the legislation needed? Will it achieve the desired goals, and is it the best way of doing so?</li> <li>2. Is the impact of legislation properly and adequately assessed?</li> <li>3. Is the text of high juridical quality (including in terms of technical legislative procedure)?</li> <li>4. Is the measure clear and drafted in a readily understandable language?</li> <li>5. Is there a clear link between the legislative objective and the substance of the proposed measure?</li> </ol> | <p>The major concrete results were the publication of guidelines on regulatory impact assessment; the provision of training on regulatory quality issues and the publication of summaries of proposed regulatory activities (i.e. a “regulatory plan” or “regulatory agenda”) as a tool to increase policy co-ordination between ministries.</p> |
| 1998: <i>The Implementation of the OECD Recommendation in Finland, Finland’s Checklist</i> | <p>The purpose of the statement was to implement the 1995 OECD Recommendation.</p> <p>A working group lead by the Ministry of Finance developed a regulatory checklist. The <i>Finnish Checklist</i> in particular includes the question: “Have the impacts been assessed extensively enough?” With the following parameter: “During the preparation, the total costs as well as the other effects of each legislative proposal and other possible alternative must be assessed. The results of the assessment must be given to decision-makers in a readily understandable form. The expected benefits must justify the costs and the other effects of the activity”.</p> <p>The <i>Finnish Checklist</i> also adds a number of clarifying questions to the rest of the items.</p>  | <p>The Checklist was widely circulated within ministries.</p> <p>Despite the fact that the checklist is a process-based list it was not integrated into the law-drafting process and practical effects have been limited.</p>  |

| <b>Date and Title of Government Resolutions</b>                               | <b>Main elements / main reforms</b>  | <b>Comments and Outcomes</b>   |
|---|--|--|
| 1999: <i>Government Legislative Policy</i> .                                  | <p>The objective of the policy was to ensure that good processes are followed during policy and legislative development. In particular the policy focussed on:</p> <ul style="list-style-type: none"> <li>– Improving the co-ordination of legislative work between the ministries and between the government and parliament, including clarification of the respective roles of the government and parliament; and</li> <li>– Ensuring that rule makers use regulatory impact assessment and consider regulatory alternatives.</li> </ul>   | <p>The Working Party outputs formed the basis for the Second Programme.</p> <p>In 2000, a Ministry of Justice report documented problems with compliance with the policy. In particular, it noted:19</p> <ul style="list-style-type: none"> <li>– The organisation and management of law drafting function is deficient in most cases.</li> <li>– Law drafters often lack sufficient resources in terms of time, skills and resources to follow the guidelines.</li> <li>– Law drafters were found uncommitted to implementing the guidelines and, in some cases, even unaware of their existence.</li> <li>– In general no proper assessment of the impacts of proposals and of different alternatives to regulation.</li> </ul> <p>In parallel to that Ministry of Justice assessment, parliament strongly criticised the fact that government legislative proposals were not accompanied by sufficient information on likely impacts.</p> |
| 2000: <i>The Second Programme of the Government to Improve Law Drafting</i> . | <p>The objective of the policy was to overhaul the 1996 Policy. Four major innovations were introduced:</p> <ul style="list-style-type: none"> <li>– Improvement of the regulatory information on government proposals provided to parliament. In particular, the policy states that the list of proposed Bills should be more realistic and contain a description of the most important legislative proposals as well as a time schedule for their introduction to parliament and foreseen entry into force. It also requires that law drafters contact relevant parliamentary committees before the government submits its proposal, especially in the case of major initiatives.</li> </ul> | <ul style="list-style-type: none"> <li>– Specific mechanisms to implement RIA requirements have not yet been established, though the Ministry of Justice is currently updating the section on impact analysis of the HELO Instruction.</li> <li>– The development and harmonisation of the various instructions on the impact assessment has not yet been realised.</li> <li>– The Bureau was not provided with additional</li> </ul>  |

| <b>Date and Title of Government Resolutions</b> | <b>Main elements / main reforms</b>   | <b>Comments and Outcomes</b> |
|---|---|------------------------------|
|   | <ul style="list-style-type: none"> <li data-bbox="327 757 414 1742">– Strengthening of the enforcement of Rios through a specific mandate given to the Bureau of Legislative Inspection of the Law Drafting Department within the Ministry of Justice.</li> <li data-bbox="430 757 502 1742">– Development by the Ministry of Finance, together with other ministries of a harmonised RIA instruction/guideline.</li> <li data-bbox="518 757 566 1742">– Encouraging the Ministry of Finance to outsource the analysis of RIA to various sectoral research institutions and development centres.</li> </ul> | resources or specific tools. |

## 2.2. *Mechanisms to promote regulatory reform within the public administration*

Mechanisms for managing, tracking and promoting high quality regulation inside the administration are needed to keep reform on schedule. As in all countries, each Finnish minister is primarily responsible for the management of regulatory quality and reform in his or her field of responsibility. In theory, the Policy's requirements are woven into the law-drafting process (see Box 4). However, as discussed in Section 1, Finland, like many other small countries, is relatively informal, consensual, and decentralised in its policy structures. Moreover, Finland does not have a body located within the centre of government with overall responsibility for directing the government's policy on regulatory quality and reform. Thus, the implementation of regulatory policies has so far been driven to a very large degree by persuasion and education of rule-makers, rather than by the exercise of formal powers. The following sections describe the respective roles of the different bodies with responsibilities for the implementation of the regulatory policy.

### Box 4. **The process of law drafting in Finland**

The law-making process in Finland can be roughly been described into 9 steps. Different tools and institutions intervene during the decision-making process followed by proponent minister and the final authorities (Cabinet or Parliament).

#### **Step 1: Starting the project: Initiative**

The starting point for a legislative drafting project may be the Government Programme, decisions-in-principle of the Cabinet, expressions of opinion by the Parliamentary Ombudsman, the Chancellor of Justice or the State Auditors, any member of parliament or the need to implement requirements of an international convention. Initiatives may also have their roots in the broader social debate and come in the first instance from citizens. A specific legislative proposal usually comes from the responsible ministry itself, with the minister, the ministry's leading officials or a law drafter taking the initiative.

#### **Step 2: Research and preparation of drafting**

Once the decision is taken, the proponent ministry plans the drafting process and designates the 'rule maker'. That is, whether a committee, a working party or the ministry's administrator will be in charge of the drafting.

#### **Step 3: Drafting**

The next step is to collect historical data and international comparative material concerning the matter; define the specific problem, social needs and the goals of the reform and consider the different alternatives and make a preliminary assessment of their impacts. At this stage the rule maker will plan the actions required to precede or accompany the entry into force of a statute, the date for entry into force and monitoring outcomes. These questions are closely linked with the contents of the regulation and, especially where the rule maker will need expert advice.

#### **Step 4: Public consultation**

The rule maker decides whether a target group or other interest groups are to be consulted. The rule maker can also hear from experts and arrange seminars or discussions. Often, committee reports are prepared and made available to the public. The proponent ministry usually asks for written statements on the report, allowing between 1 and 6 months. Based on the comments and suggestions, a second report is 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 the round of written comments, largely to speed the process.

### **Step 5: Evaluation and redrafting**

The proponent minister evaluates the result of the consultation. The project may be stopped if a majority of opinions is opposed to the reform or adjusted and approved accordingly. Senior level officials in the proponent ministry are charged at this point to complete the process and in particular the drafting of the law. Greater attention to legislative technique is given at this stage. The proposals are generally drafted in Finnish and then translated into Swedish (Finland's second official language), as both language are considered original. According to the *Instructions*, the drafters need to draft the RIA at this stage and include it as part of the government proposal. When the drafting is completed, the proposal is sent to the Ministry of Justice for its opinion.

### **Step 6: Review by the Cabinet**

Generally, 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 Cabinet. Alternatively, the matter might first be discussed in ministerial working groups, in ministerial committees, in informal evening meetings of the government and in different 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 budgetary impacts (*i.e.* a budget impact over five million euros). Important legislative projects may also be referred to the Supreme Courts for comments. The ministry in charge of the drafting then presents the proposal to the Cabinet's general meeting for decision. At this stage, matters normally proceed without discussion.

### **Step 7: Parliamentary review and decision**

After the final decision of the Cabinet, the President submits the proposal (*i.e.* now a bill) to Parliament. 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 Parliament's 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.

### **Step 8: Enactment, publication and entry into force**

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.

### **Step 9: Monitoring**

After the entry into force of an act, the proponent ministry is responsible for monitoring its effects. The ministry can outsource this task to other authorities such as a university or an independent research institute.

The *Ministry of Justice* is responsible for the development of proposed laws within the government. It has also been largely responsible for preparing the Government Resolutions, or decisions-in-principle, through which regulatory policy has been implemented. The Law Drafting Department carries out the examination of proposals for new legislation. Within the Department, the *Bureau of Legislative Inspection*<sup>20</sup> is responsible for the technical legal quality of laws, including ensuring the consistency of individual laws with the existing legal framework. In particular, the Bureau checks that the *HELO Instructions* and the *Law Drafter's Guide* have been applied. The extent of this checking appears to have increased significantly in recent years. Today the Bureau checks 75% of the draft Government bills.

In 2000, the *Second Programme to Improve Law Drafting* assigned to the Bureau the specific responsibility to monitor compliance with RIA by ministries, in addition to its general inspection of draft laws for technical legal quality. To date, however, it has largely focused on checking whether or not RIA requirements have been addressed, rather than assessing the substantive quality of the analysis. This is perhaps an inevitable result of the limited resources deployed by the Bureau: it employs only seven professionals, all of whom are primarily legal experts, rather than economic analysts.

The *Ministry of Finance* 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>21</sup> The 2000 *Second Programme of the Government to Improve Law Drafting* has expanded this role by giving the Ministry of Finance responsibility to provide support to other ministries in conducting such assessments. However, this role has not yet been put into practice.

The *Prime Minister's Office* has played a minor role in terms of regulatory governance.<sup>22</sup> The PMO has general responsibility for co-ordinating and drawing up the twice a year legislative programme, in co-operation with other ministries. The PMO provides the focal point for the implementation of the *Government Project Portfolio*, based on the Government Programme announced at the commencement of a government's term, and co-ordinates a monitoring system. In particular, it also monitors progress through weekly reports. So far, its co-ordination and monitoring functions have been weak, though the new Constitution is expected to substantially strengthen its role.

The *Finnish Competition Authority* (FCA) has substantial power in relation to proposed economic legislation.<sup>23</sup> Competition advocacy – the Authority's powers to take initiatives to promote competition and dismantle any restrictive regulations – is one of the FCA's main tasks and substantial resources have been allocated to this purpose. The Authority has been one of the main drivers of regulatory reform, especially in sectors such as telecom, energy, traffic and financing. The role of the FCA is discussed further in Chapters 3 and 5.

Two bodies have had important roles in terms of advocating further improvements to regulatory policy. The *ad hoc High-level Working Group on Legislative Policy* was established in 1998 to prepare the Formulation of the Government Legislative Policy. It comprised representatives of the Ministry of Justice, the Prime Minister's Office, and the Ministries of Finance, Trade and Industry and the Environment, as well as the Parliament and the National Research Institute of Legal Policy. The *Cabinet Network on Promoting Regulatory Reform* is a standing group set up to discuss national and international trends in regulatory reform and exchanges views and information. The Network consists of the representatives of all ministries, Parliament and the Finnish Institute of Public Management Ltd, which provides training on law drafting, and the National Research Institute of Legal Policy.

**Government research bodies and public and private think tanks** also play an important role in furthering debate on regulatory governance, often providing the forums 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 to the 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 Ltd.**

**Managing the process.** While there have been some problems with getting ministries to deliver draft legislation in conformity with the Government Programme, in general Finnish administrative procedures are clear and followed by rule-makers. However, progress toward ensuring compliance with criteria and processes designed to ensure high quality regulation – *i.e.* with the fundamentals of the regulatory policy – is, to date, limited. This reflects the very recent acknowledgement that ministries will not systematically follow the guidelines without outside monitoring and enforcement activity. Due to time and resource constraints (including a lack of economic expertise), the Bureau of Legislative Inspection's checking of compliance with the substance of government's regulatory policy is carried out at a fairly superficial level, and its ability to provide an effective challenge and monitoring function is limited.

**Advice and support.** Written guidance material is abundant but often general and does not provide detailed step-by-step directions and criteria (see Table 2). The predominance of legal expertise throughout the bureaucracy means there is limited access to non-legal expert assistance, especially expertise on assessing impacts and identifying non-regulatory alternatives. However, the recent provision of case studies, including ideal-type RIA, may lead to some improvement in this regard.

**Enforcement.** A central pillar of regulatory policy is the concept of an independent body assessing the quality of the existing and new regulation in policy, rather than legal, terms, and providing incentives for departments to comply with the assessment criteria. There is no oversight body in Finland providing a regulatory challenge function on the technical quality of RIA and regulatory proposals. Establishing such an oversight body, with the technical capacities to verify the analysis of impacts and the political power to reduce the risk of being overridden should be considered a priority in Finland.

The regulatory challenge function should include both RIA prepared 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 Finland's existing think tanks. To be carried out successfully, this task must be undertaken by a body or bodies with considerable expertise, together with the standing and prestige to compete with ministers and regulators.

In sum, the tradition of substantial ministerial independence in law drafting means in practice 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-ordinating regulation-making and in enforcing a consistent standard for analysis of accompanying 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.

Table 2. **Different types of impact analysis used in Finland**

| Instructions issued by Ministry       | Type of Impact Analysis           | Government Decision  |
|---------------------------------------|-----------------------------------|--|
| Ministry of Finance                   | Budget                            | The overall application provisions concerning the State budget (1989) revised 1995.  |
|                                       | Economic                          | Instructions on the assessment of the economic effects (1998)<br>Instructions on the Drafting of Government Proposals (HELO Instructions) (1992),<br>Instructions on the assessment of the economic effects (1998) |
| Ministry of Justice*Labour            | Organisational and manpower       | Instructions on the Drafting of Government Proposals (HELO Instructions) (1992)<br>HELO Instructions (1992)  |
| Ministry of the Environment           | Environmental                     | HELO Instructions (1992),<br>Instructions on the assessment of the environmental effects (1998)  |
| Ministry of Health and Social Affairs | Different sectors of the public   | HELO Instructions (1992)   |
|                                       | Human (Social and Health impacts) | The use of human impact Assessment are of Environmental Effects being developed by the National Research and Development Centre for Welfare and Health (STAKES)  |
| Ministry of Trade and Industry        | SMEs                              | Developed in line with the SME Policy Programme of 1996 and reflected in the Instructions on the assessment of the business impacts (1999)   |
| Ministry of the Interior              | Regional policy                   | Programme of Prime minister Paavo Lipponen's Second Government (1999)  |
|                                       | Gender equity**                   | Instructions being developed.  |

\* Through its oversight competencies of the HELO Instructions, the Ministry of Justice also verifies economic, environmental, health and social impacts, as well as those of different governmental areas.

\*\* The Ministry of Health and Social Affairs is also involved in the oversight of the gender equity impacts.

Source: OECD

A general lack of strong institutional support and a quality control function 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 where EU matters are concerned (see Section 2.3.2). At the same time, the technical legal quality of Government Bills introduced to Parliament has in recent years improved. This can in part be attributed to the increased coverage by the Bureau of Legislative Inspection of the Ministry of Justice; along with the greater training and guidance being given on law-drafting techniques.<sup>24</sup>

### 2.3. *Co-ordination between levels of government*

The 1997 OECD Report advises governments to “encourage reform at all levels of government”. This difficult task is increasingly important as regulatory responsibilities become more widely distributed among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels while, conversely, co-ordination can vastly expand the benefits of reform. In Finland, responsibility for providing services has devolved from the centre to municipal governments while regulation-making power has tended to move back to the centre. At the same time, Finnish law has progressively embraced EU requirements. The policies and mechanisms for co-ordination between levels of administration are increasingly important for the development and maintenance of an effective regulatory framework.

### 2.3.1. National – Local

Municipalities have limited regulatory power.<sup>25</sup> Since all legislative powers are vested in the national government, municipalities can only make regulations (*i.e.* ordinances) that are consistent with laws passed by parliament. Their powers relate largely to public service delivery and physical planning. The process for making ordinances is stipulated in the *Finnish Local Government Act* and in specific legislation such as the *Building Act*. In practice, a model ordinance is widely followed by municipalities.

Municipalities have extensive responsibilities to provide services in areas such as primary education, social services, primary health care, housing, town planning and transport.<sup>26</sup> In addition there is a tendency towards more decentralisation, where many of the licenses and permits procedures can be carried out at regional and local levels. However, responsibilities have in many cases been transferred to municipalities without a corresponding budgetary allocation. Though municipalities decide on their municipal tax rate and on the charges to be made for municipal services, many of them have faced difficulties in financing these new legal mandates, when no specific funds have transferred from the central government. 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 it is the courts that provide the fundamental control, though it is necessarily *ex post* in nature.

Adequate management of the regulatory framework between levels of government is important to avoid duplication, overlap or contradictions. In Finland, the ***Advisory Board on Municipal Economy and Administration***, which is based on the *Finnish Local Government Act*, plays this crucial co-ordination role. The Advisory Board works under the Ministry of the Interior and deals with major matters involving local government legislation and municipal administration and finances. The Board includes representatives of the central government and the Association of Finnish Local and Regional Authorities, and the Ministry's Department for Municipal Affairs acts as its secretariat. The Board examines government proposals, which impact on local government administration and finances, and the sections of the Budget covering local government finances, assesses prospects for local government finances, and monitors the functioning of the system of central government transfers to local government and makes proposals for improving it. Furthermore, an agreement between the central government and the Association of Finnish Local and Regional Authorities has been signed in the late 1990s to improve the co-operation at the political level. Meetings between the Association and responsible ministries are periodically arranged for this purpose.

Improving regulatory co-ordination between municipalities is also fundamental. In 2001, there were 252 joint municipal boards.<sup>27</sup> The Ministry of Interior promotes the establishment of regional structures. The co-ordination is done through official and non-official (*i.e.* companies, associations and assemblies) joint committees at municipal level. The ***Association of Finnish Local and Regional Authorities*** has played a crucial role in this field. Its AKSESTRA project encourages closer co-operation between municipalities. Projects implemented in target regions assess and encourage best practices. As well, the AKSESTRA project is creating a network of the districts interested in developing district co-operation.

At regional level, the *Sub-Regional Co-operation Experiment Act*, which entered into force in August 2002, has fostered co-operation between municipalities in eight sub regions. It permitted the introduction of new methods of organising co-operation between municipalities and between the sub-regions and the central government. The Act has a sunset clause limiting the experiment until 31 December 2005. After that date, the Parliament will have the possibility to decide its implementation across the country.

### 2.3.2. *European level*

Like all EU member countries, Finland faces an imperative for effective and efficient co-ordination with the European Union institutions, as well as other supra-national entities. A significant, and increasing, proportion of Finnish law originates in European legislation; hence effective co-ordination with European institutions is essential to ensure effective input into the design of legislation, as well as the smooth implementation of European legislation. Finland's small size in the EU means that ensuring its voice is heard is considered extremely important. As a result, it has implemented an extensive and effective structure for co-ordinating dealings with the European Union. This comprises the following bodies:

- ***Competent ministries:*** Individual ministries are responsible for the preparation and monitoring of affairs relating to the European Union and the determination of Finland's positions on EU issues.
- ***Cabinet Committee on European Union Affairs:*** The Committee is chaired by the Prime minister and meets weekly. It discusses politically, economically and legally important EU affairs and sets Finland's priorities. ***Committee for EU Affairs.*** The Committee is chaired by the head of the Government Secretariat for EU Affairs and serves as an advisory and facilitator body in the co-ordination of EU affairs within the administration, discussing broad issues involving several ministries. It also handles issues related to courts and enforcement and nominates national experts to EU institutions. Each ministry, the Prime Minister's Office, the Office of the President, the Office of the Chancellor of Justice, the Bank of Finland and the Provincial Government of Åland are represented in the Committee for EU Affairs. The ministries are represented by Permanent Secretaries or their deputies.
- ***The sub-committees to the Committee for EU Affairs.*** There are 40 sector-specific sub-committees, which conduct the basic work on EU affairs by civil servants. The chair and secretary of each EU sub-committee usually represents the competent ministry. The sub-committees can also include representatives from various interest groups. Each sub-committee has representation from the Government Secretariat for EU Affairs.
- ***The Government Secretariat for EU Affairs:*** The Secretariat was transferred from the Ministry for Foreign Affairs to the Prime Minister's Office on July 1, 2000. Its main duty is to oversee the co-ordination of EU affairs. It serves as the secretariat for the Cabinet Committee on European Union Affairs and for the chair and secretariat for the Committee for EU Affairs; and is represented on each of the preparative sub-committees. The Secretariat's duties also include preparation for European Councils, institutional questions and preparation of instructions to the Permanent Representation of Finland to the European Union. It also ensures the flow of information between the Permanent Representation and national authorities, and is involved in training, information dissemination and documentation relating to EU affairs.
- The Permanent Representation of Finland to the European Union in Brussels.

- **Parliament:** EU affairs are discussed in the Grand Committee, which is the main body in the Finnish Parliament dealing with EU affairs.<sup>28</sup> Other parliamentary committees provide the Grand Committee with opinions on the issues under debate. This Committee is essentially a mechanism to avoid the possibility of the government binding Finland to a position that the Parliament will not ratify.

European Commission data indicate that Finland, along with the other Nordic countries, has among the highest rates of transposition of European legislation into national law, notwithstanding the frustration expressed by Finnish officials regarding the experience of dealing with complex laws without clear explanations of their purpose. Membership of the EU and the EMU has been a major driver of global integration for Finland contributing substantially to the opening of the economy to trade and competition. 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.

### **3. Administrative capacities for making new regulation of high quality**

#### **3.1. Administrative transparency and predictability**

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Just as important is the role of transparency in reinforcing the legitimacy and fairness of regulatory processes and supporting democratic values of fairness and accountability. Transparency is a multi-faceted concept that involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeals processes that are predictable and consistent. The Finnish regulatory system is in its way to become one of the most transparent among OECD countries, involving an extensive series of formal and informal arrangements involving social partners, businesses, local governments, and other interests. However, some imbalances in access and representation, often arising in part from the largely informal nature of many processes, merit attention.

##### *3.1.1. Transparency of rule-making procedures*

In Finland, information on future legal activity is provided by ministries to the PMO. Based on this information, the PMO sends to Parliament every six months a list of the titles of the bills, so that it can better plan and co-ordinate its work. This list provides the basis for scheduling the work of parliament, including assessments by the various Parliamentary Committees. However, it is not a complete, systematic legislative programme. The *Second Programme of the Government to Improve Law Drafting* requires that Parliament be given more precise information on these government legislative proposals.

Concrete measures taken to implement the *Government Programme* (prepared every four year after a parliamentary an election)) are included in the *Project Portfolio of the Government* and, in successively more detail, in the *Action and Economic Plans* of each of the ministries and the ensuing *Ministerial Project Lists*, which itemise all proposals to be implemented by each of the ministries. The *Project Portfolio* is designed to facilitate internal inter-ministerial co-operation. It includes the most important projects of the government, particularly wide-ranging projects concerning a number of ministries. The *Project Portfolio* both operationalises the Programme with specific projects and monitors their results.

All these documents are generally available electronically. Many ministries also publish their project lists in their own home pages.

The *Act on the Openness of Government Activities (1999)* sets legal standards for transparency, requiring that most official documents be made available to the public in a timely manner. The Act requires that studies and reports relating to any government proposal, including legislative initiatives, should be made public as soon as they are “fit for this purpose”. Ministries, municipal authorities and State Owned Enterprises must now provide access to information on legislation being drafted and on other pending projects of general importance. All this facilitates participation in the legislative process by interested groups, including the public, since these intra-governmental procedures are supplemented by open and inclusive processes for developing the policy content of legislation, (see Section 3.1.3).

Transparent and consistent processes for making legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the preparation of laws and regulations. In many OECD countries, such procedures are established in legislation.<sup>29</sup> Despite the absence of legislation in Finland, law-drafting requirements and procedures are set out in a range of publicly available documents including the *HELO Instructions* (1992 – original edition 1975); *the Law Drafter’s Guide* (1996); *the Law Drafter’s EU Guide* (1997); *the Law Drafter’s Constitution Guide* (2000); and *the Programme of the Government to Improve Law Drafting* (1996 and 2000). As outlined in Section 2.2, the steps in the legislative development process and the opportunities for participation are widely known and understood.

### 3.1.2. Transparency in decision criteria: proportionality

OECD Members have agreed that regulations should be based on explicit quality criteria that identify when regulation is needed. Some governments have adopted strict requirements that benefits should justify costs, while others have adopted more general proportionality criteria. These criteria ask whether the size of the policy problem is sufficient to justify action and, if so, if the action proposed is the least cost option. Consideration of proportionality is important as a check against regulatory inflation and to ensure that standards of regulatory quality — such as minimum trade restrictiveness — are protected.

As mentioned above, Finland’s regulatory policy has extensive requirements to assess specific impacts and thus fulfils the proportionality principle requirement of the 1995 OECD Recommendation. Particularly, since 1998, the *Finnish Checklist* covers the benefit-cost test in three central questions:

- Question 3 demands, in the early preparatory stages of law drafting, a thorough comparison of the alternatives, at which stage, among others, the costs and benefits to those affected by the regulation, have to be considered.
- Question 4 checks if “the impacts have been properly and extensively assessed”. It requires that the results of the assessment must be provided to decision makers in an understandable form. A sub question also verifies if the expected benefits justify the costs and the other effects of the activity.
- Question 5, again, asks rule makers if the economic and other effects – including the distribution of the effects – to different social and other groups have been communicated in an open manner.

However, there is no over-riding criterion determining whether a proposal should be accepted or rejected according to these tests. The lack of specific criteria and targeted quantification rules for the test weaken the proportionality principle (see Section 3.3). Furthermore, the proliferation of checklists and specific analyses focusing on types of impacts (*i.e.* regional development, gender, etc.), may further detract from the assurance of proportional responses, by increasing the difficulty of taking an overall view of likely impacts.

### 3.1.3. *Transparency as dialogue with affected groups: use of public consultation*

Consultation is a central element of the 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation*. A well-designed and implemented consultation programme can contribute to higher-quality regulations by providing a cost-effective source of data on which to base decision-making, assisting in the identification of effective alternatives, improving compliance and enabling faster regulatory responses to changing conditions. Just as importantly, consultation is a key governance value, improving the credibility and legitimacy of government action and increasing the acceptance of the resulting regulations by those affected. Studies of consultation practices across OECD countries have stated that best practice consultation programmes include the following characteristics.<sup>30</sup> They should:

- be capable of being used in very different circumstances;
- be integrated into the decision-making processes in order to improve regulatory quality;
- make information available early, timed to fit in with the regulatory process;
- make relevant information accessible, at reasonable cost;
- be broadly based and balanced, structuring a continuing dialogue with a wide range of interests;
- use processes which are transparent;
- be regularly evaluated to allow for continued improvement and raise cost-effectiveness; and
- ensure the habit of consultation is embedded into the administrative culture of regulatory organisations.

While Finland has no legally mandated requirements for consultation, practice is based on long-standing traditions backed by guiding principles stated in some laws, law-drafting guidelines, and other programmes, which either specifically request consultation or imply its use in order to fulfil requirements.<sup>31</sup> Important main instruments in this regard include the *Administrative Procedure Act* (1982), the *HELO Instructions* (1992), the *Government Decision on Principles of External Information and Communication* (1994), the *Programme of the Government to Improve Law Drafting I* (1996) and *II* (2000), *On Quality Requirements of Proper Law Drafting, the Implementation of the OECD Recommendations in Finland, Finland's Checklist* (1998), and the *Act on the Openness of Government Activities* (1999).

In particular, the *Act on the Openness of Government Activities* (1999) has increased the transparency of the law-drafting process. The Act sets the 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 a project under work). The Act also requires that the authorities should inform the public on the projects in preparation.

According to the *Second Programme of the Government to Improve Law Drafting* (2000), ministries must ensure that they obtain or hear opinions on “a large scale”. Parties likely to be affected by the proposed law must be given a chance to express their views and lack of time must not constitute a pretext for neglecting this procedure. Traditionally the most influential groups have been the centralised employer and employee organisations. The dominance of these organisations has however decreased recently and consultation has expanded to other interest groups as well. The 1992 *HELO Instructions* identifies 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, SMEs, environmental NGOs, consumer NGOs. However, no body 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.

In practice, public consultation varies considerably according to the level of regulation. For primary legislation, ministries must note which groups were consulted, and briefly to summarise their responses. For lower-level regulations, consultation was quite undeveloped until the *Norms Project* of 1989, which led to Finland’s first general statutory requirement for public consultation for this type of regulations. In 2000, the New Constitution provided a statutory right for the general public to be heard.

The two most widely used means of consultation are *hearings*, which are used during the preliminary phases of the law-drafting process, and *a round of written statements* on the first draft. All written comments received are publicly available. A wide range of interest groups and other stakeholders will also be represented where committees or working groups are used to prepare a draft law. The use of public hearings in the later stages of legislative development is quite recent and is increasingly used to supplement or replace the circulation of proposals for comment. Any interest group can attend hearings. This form of consultation is fairly flexible and provides an interactive contact between the ministry and the interest group. However, some hearings are called at short notice, leaving those consulted with inadequate preparation time and reducing effective participation and transparency. The consultation process is also supplemented by the widespread practice of posting draft legislation on the Internet at the time it is made available for comment. This permits broad access, since any member of the public with Internet access now has the opportunity to be informed of legislative proposals and to comment on them.

Noteworthy the consultation processes are increasingly formalised. In December 2002, the Ministry of Finance issued *Instructions on the Hearing of Citizens* aimed at further improve the public’s possibilities to participate and influence the decision and rule-making process.<sup>32</sup> An important element of these Instructions is that a summary of the comments should be published in the Project Register (HARE) (See Section 4). The Ministry of Justice as one of the four pilot ministries who participated in the pilot project is moving ahead with a subset of institutions to take into account his own specificities.

Finnish rule-makers tend to consult extensively with other governmental agencies and other stakeholders through *committees and councils* (see Box 5). A government-appointed preparatory committee or working party, bringing together a wide range of groups with significant interests in the legislative proposal, sometimes develops major legislation. The Cabinet may set up a Committee when the subject matter under preparation has substantial or wide-ranging social, administrative or economic impacts.<sup>33</sup> A Committee may also be established by a ministry. The establishment of committees occurs at an early stage of legislative development, implying that interested parties can

have a major influence on the final legislation. The composition of the committees is entirely at the discretion of the government. The final Memorandum of a Committee must include an assessment of the social, administrative, economic and other impacts of the proposals made.

**Box 5. The role of Committees and Councils**

One of the more distinctive features of the Finnish legislative system is the role of Committees and Councils. Committees and working groups can take a variety of forms, being either *ad hoc* and permanent, inter-ministerial and intra-ministerial. Committees co-ordinate contributions from all those involved in legislative development, communicate comments and make proposals. Membership is not limited to civil servants and can include representatives of other levels of government, business, consumer and other social interests.

Historical practice has been for committees to include broad stakeholder representation, however, and there has been a marked move away from the use of inter-ministerial towards intra-ministerial committees in recent years. This is widely believed to have had substantial negative impacts on intra-governmental co-ordination, leading to – or at least exacerbating – the problem of the so-called “stovepipe” administration.<sup>34</sup>

While committees and working groups can have varying terms of tenure, *Councils* tend to be part of the permanent machinery of government, often reporting to *Cabinet Committees*. For example, under the inter-ministerial committee for EU Affairs, there are several sub-committees, usually chaired by senior civil servants from different ministries (see Section 2.3.2). While the Prime minister chairs most major ministerial sub-committees (including *the Economic Council*) the secretariats come from the ministries, except in the case of the EU Committee which comes from the Prime Minister’s Office.

While having several advantages, the committee system is subject to a number of potential problems. In particular, as the OECD noted in relation to Denmark<sup>35</sup> the use of committees whose members are chosen at regulators’ discretion necessarily means that the views of entrenched interest groups may tend to steer legislative outcomes in directions that favour incumbent interests and discourage entry and innovation. On the other hand, the fact that the proposals derived from the work of the committees are then released for wider public comment provides a significant safeguard provided that the comment process is itself robust.

As noted in Section 1, *social partners* (i.e. employer and employee groups) have a special place in the consultation traditions of Finland. They not only are heard but also, in some cases, have a determining influence on policy choices. Together with the Finnish government, they have concluded numerous tripartite agreements covering not only wages but also employment policy and developments in working life, promotion of equality between men and women by harmonising the demands of work and family life, benefits and contributions to social welfare and pension schemes, taxation and the principles of good practice in the labour market. The Finnish approach in this regard is largely reflected in the other Nordic countries.

An important concern in relation to this corporatist approach is that there is potential for such tripartite agreements 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. For example, the main employer group, (Suomen Yrittajat) representing SMEs in Finland is not included in these tripartite negotiations. Although half of the members of the Confederation of Finnish Industry and Employers are SMEs, the exclusion of the Suomen Yrittajat from these processes does mean that there is no group at the table primarily representing this group.

Another important mechanism available to the Finnish electorate to express its opinion and influence policy making is the use of *consultative referendums* at municipal level. Between 1991 and 1998, 24 municipal referenda were held – principally to approve merger of municipalities. The voting outcomes of these citizen-initiated plebiscites have no legal standing but rely on strong moral suasion to influence policy outcomes.

The most important roles for consultation in Finland have historically been those of supporting democratic values and building consensus and political support, rather than gathering technical data and exploring alternatives and impacts. These objectives are dominant in most consensus-oriented societies, such as Finland, Denmark, Sweden and the Netherlands, and indicate a view of consultation as predominantly a means by which the legitimacy of government is maximised. However, there is a trend in several of these countries to move towards a greater use of consultation as a means of gathering technical data to support expert analysis. This reflects changes in the way regulatory decisions are made, with factors such as the increasing use of RIA being a driving force.

This trend does not appear to be established in Finland. The lack of use of consultation to assist in gaining a better *ex ante* understanding of likely regulatory impacts both reflects the relatively undeveloped state of RIA in Finland and impedes its further development. The result of this 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, then 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.

Finland has also been a pioneer in using ICT technology to foster ways in which citizens can give feedback and engage in dialogue with governments (central and local). A worth noting initiative is for instance the ‘share your views with us’ electronic forum where regulatees are consulted on earlier stage of policy preparation. Through a specific internet discussion forum (the [www.otakantaa.fi](http://www.otakantaa.fi)), the government provides a platform for individual citizens (and civil servants) to discuss issues that may be regulated or not.<sup>36</sup>

Increasing focus on these objectives does not imply that the importance of supporting democratic values and building consensus will be downgraded. Rather, consultation will have to serve a wider range of objectives and must therefore become more multifaceted. A key challenge will be to adjust consultation structures so that these objectives are met without compromising the achievement of aspects of regulatory quality such as simplicity, coherence and timeliness.

In sum, the consultation procedures used by Finland are adequately integrated into the processes used to develop regulations. Information is made available early, widely and at low-cost and is timed to fit in with the regulation-making process. However, while consultation is usually broadly based, recent trends, including decreased use of inter-ministerial committees and increased complaints by the public that they have not been heard, may indicate a narrowing of this range and a lessening of access to consultation. Second, though RIAs are made available to public in the different stages of the law-drafting process, they are not made available to public as separate documents as is the case with the Canadian “pre-publication” or US-type “note-and-comment” procedures. Thirdly, 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, inspired by the Danish test

panels. 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.

#### 3.1.4. *Transparency in implementation of regulation: Communication*

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 have, since February 2002, been available in Finnish on the webpage of the Ministry of Justice and will be available in Swedish by the end of 2002. According to the above acts, the contents of the *Statute Book* and the *Regulation Series* must be made available electronically in the database of the Ministry of Justice: Finlex ([www.finlex.fi](http://www.finlex.fi)).

Finland places great emphasis on achieving high technical legal quality in its laws and clear drafting is an important aspect of this. Since 1936, the Bureau of Legislative Inspection has been responsible for ensuring that *plain language drafting* requirements are met. The 1996 and 2000 *Programmes of the Government* and the 1992 *HELO Instructions* provide guidance, as does the handbook, *Law Drafter's Guide*. There is also a drafting guide for the Swedish language (*Svenskt Lagspråk i Finland*; SLAF, 1998). The Research Institute for the Languages of Finland (KOTUS) carries out linguistic research concerning the domestic languages of Finland (Finnish, Swedish and the Sami language/Lappish) helping the proper use and comprehension of the regulations.

In Finland, there is no systematic codification exercise, and there have been no efforts to adopt broad codifications concerning the whole of the existing legal framework. But the Ministry of Justice has in the past organised focused "codifications", such as the *Penal Code 1889*, the *Marriage Act 1929* and since the latter part of the 1990's, the *Code of Real Estate 1995* and the *Environment Protection Act 2000*. An ongoing "codification programme" concerns the annual initiative to updating of acts and other statutes update annually in the form of a statute book acts and other statutes in Finlex as well as their continuous electronically updating in Finlex, although the result is unofficial and the "codification" purely informal.

While laws are clear and precise, Finland continues to amend them regularly (and without counting the significant efforts 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.

### 3.2. *Choice of policy instruments: regulation and alternatives*

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. Amongst OECD Member countries, knowledge of the range of policy tools is expanding as experimentation occurs, learning is diffused, and understanding of markets increases. At the same time, administrators, rule-makers and regulators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

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.<sup>37</sup> This is so 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 as part of the Finnish Regulatory Policy. Notably, the *Second Programme of the Government to Improve Law Drafting* (2000) is based on the idea that law drafting always begins with examining alternatives to regulation.

The Finnish tradition of drafting detailed and specific regulation may militate against the use of many kinds of alternative policy instruments. In addition, it is arguable that the new constitution further limits 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 documents on the characteristics of different alternatives and means of selecting alternative instruments suited to particular policy contexts. Moreover, only limited training in their use is available.

Despite the lack of an effective systematic approach to promoting alternatives, progress has been made in some sectors. As in a number of other OECD Member countries, the area of environmental regulation seems clearly to be the most advanced in Finland in terms of the adoption of alternatives to traditional regulation. Alternatives used in this sector include green taxes on specific substances and products, grants for environmentally sound behaviour, voluntary agreements with industry and information programmes targeting both the general public and government agencies. Experience with these instruments is discussed below. Regulatory instruments were typically applied case-by-case, though a recent development is the adoption of integrated pollution prevention legislation. The following discusses the use of specific instruments.

*Economic instruments* operate on the price of activities and products so that producers or consumers receive incentives to modify production. They create markets for previously non-tradable substances, for example granting tradable permits to emit a particular pollutant up to set quota. The tax system has been widely used to pursue environmental objectives in recent years. In the beginning of the 1990s, a number of new economic instruments were introduced for environmental purposes and subsequently, the focus on taxation has slightly shifted from taxation of labour to taxation of the use of natural resources and of activities polluting the environment. Finland was the first country to introduce a tax on CO<sub>2</sub> emissions. Special taxes have been levied on road traffic, energy use (including both vehicle and heating fuels and electricity), disposable containers, oil products, pesticides and waste.<sup>38</sup> These environment-related taxes raised a total of EUR 4 billion in revenue in 2001, equivalent to 11% of total central government budget revenues.<sup>39</sup>

**Subsidies** are extensively used to support energy conservation and renewable energy. More generally, tax expenditures are also used to promote environmental goals, with expenditure programmes ranging from support for environmental forest management, renewable energy investment, environmental management and decontamination and the Nordic Environment Finance Corporation, to support for manure pit investment and environmental NGOs.

**Voluntary agreements** are concluded with industry sectors in pursuit of a specific environmental goal. Finnish agreements cover the agriculture, energy and manufacturing sectors, and address a wide range of environmental concerns, including air, water, and soil quality, as well as climate change, waste management, and ozone depletion. As in virtually all EU countries (the Netherlands is the sole exception), the large majority of these agreements are non-binding in nature.<sup>40</sup>

Voluntary participation by industry in *environmental management systems* under the EU's EMAS (Eco-management and Audit Scheme) programme was established in 1995 for companies operating in manufacturing. A fundamental part of EMAS is the independently verified public statement about the company's environmental performance. As well as this multi-sectoral environmental management system programme, 52 chemical companies take part in the internationally adopted Responsible Care programme, launched in 1992 to promote safety, health and environmental protection.<sup>41</sup> Typically, large companies participate much more in management systems, and gain more from them, than do SMEs. However, Finland has attempted to address this imbalance by instituting various projects to help SMEs to use EMASs, or aspects of them, such as conducting an environmental review or setting up permanent procedures such as internal environmental programmes. Training, information, guidelines and the encouragement of co-operation are all used to promote better environmental outcomes.

**Information based strategies** are also widely used in Finland. To provide an information service and promote public awareness on environmental issues, the environmental administration produces reports, magazines, articles, press releases, Internet pages, videos and multimedia products. The first State of the Finnish environment report was published in 1972. The Regional Environment Centres also publish state of the environment reports. More specific policy-oriented information based programmes include some 70 environmental monitoring and statistical programmes. Under the Air Pollution Control, Water and Waste Acts, businesses can be required to monitor the quantity and effects of their own emissions and provide the data to authorities. The Ministry of Environment also promotes life cycle analysis in environmental and product policy. The *National Environmental Policy Programme 2004* emphasises integrated and life cycle approaches. Another important information based strategy is the extensive promotion and use of eco-labelling. More than 800 products on the Finnish market carry the Nordic Swan eco-label. Information-based programmes are not limited to the environmental sector. For example, campaigns against the "grey economy" are used extensively, as are information campaigns relating to safety issues.

**Performance based regulation.** In common with many OECD countries, the major occupational health and safety legislation in Finland is "performance based" and so are, to a large extent, the lower level rules supporting it. The main part of the Occupational, Health and Safety (OHS) legislation in Finland is in accordance with or based on the EC legislation. The aim of the legislation is to eliminate or at least minimise the risks at the workplace. It is an obligation for the employer to observe this requirement, but within certain limits, the employer may choose how to achieve the result. The legislation focuses on output standards, rather than requiring specific inputs. However, in OHS decrees, there are requirements on specific inputs too.<sup>42</sup>

In the environment sector, the *Environmental Permit Procedures Act 1992*, established a unified environmental permit and notification system. Controls are set as effluent or emission limits, leaving the discharger free to adopt the most cost-effective technological solution to meeting the limits. More recently, the new *Environmental Protection Act 2000*, which implements the EU directive on Integrated Pollution Prevention and Control, is a general act on the prevention of pollution which takes an integrated view of environmental outcomes and therefore of the requirements of environmental permits and the prerequisites for granting a permit.<sup>43</sup>

Despite the above, Finland lacks a comprehensive, systematic and co-ordinated approach to the use of alternative policy instruments.<sup>44</sup> While the limited use of alternative instruments is partly explained by the Finnish preference for clearly stated laws and achieving consensus by avoiding controversy, other factors such as the limited practical support provided to regulators are also clearly significant. A large number of guidance documents require the assessment of alternative policy instruments, yet there is little guidance on either how to identify the best alternatives or on how to assess their impact. Courses have been provided by the *Finnish Institute of Public Management Ltd* (HAUS), but there has been no systematic programme of training to ensure that 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 and is likely to be a substantial factor inhibiting the more widespread adoption of alternatives.

### 3.3. *Understanding regulatory impacts: the use of Regulatory Impact Analysis (RIA)*

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments “integrate regulatory impact analysis into the development review and reform of regulations”. A list of best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*<sup>45</sup> and provides a framework for the following description and assessment of RIA practice in Finland.

Finland’s earliest steps toward the implementation of RIA were taken in the 1970s. Early editions of the *HELO Instructions* (1975 and 1980) required economic impacts (on public and private sectors), impacts on organisations and personnel as well as impacts on the position of different groups in society to be assessed. Reflecting these requirements, the provision of advice on the conduct of impact assessment has been part of law-drafter training programmes from their inception in 1976. The adoption of the 1992 edition of the *HELO Instructions* (which remain current) added a requirement to assess environmental impacts as well as an increased focus on the impacts on different groups in society (including assessment of impacts on gender equity and social equality).

These requirements have been updated and supplemented with additional ones for specific kinds of impact assessment, through the adoption of a range of new government instructions and policy instruments throughout the 1990s. (See Table 2 in Section 2.1) Further proposals for the adoption of additional impact assessment requirements are continuing to be developed. The National Research and Development Centre for Welfare and Health (STAKES) is currently developing proposals for so-called “Human Impact Assessment”, which would specifically consider the social and health impacts of government proposals. The various impact assessment requirements are supplemented by the requirement that ministries take account of Finland’s 1998 *Checklist* on improving the quality of government regulation, based on the 1995 *OECD Recommendation*.

Under the current policy, ministries are “advised” to perform any one of the above partial impact assessments if the likely impact of a proposal in that area is deemed ‘significant’. While no guidance is offered on determining ‘significance’, the ministries responsible for those policy areas can provide advice. The Bureau of Legislative Inspection in the Ministry of Justice verifies that impact assessments have been completed.

Two reports published by the Ministry of Finance in 2001 have listed problems with the application of and compliance with RIA. Both acknowledged the challenges in conducting RIAs in circumstances where there is a lack of resources within ministries.<sup>46</sup> Despite the instructions and guidance, the assessments show problems and deficiencies. The lack of quantification is more or less systematic. Previous reports and studies confirm gaps and weaknesses in the costing of economic impacts on citizens and businesses.<sup>47</sup> Overall, most officials agree that RIA has had relatively little impact on the shape of regulation and, therefore, has made little contribution to the regulatory quality improvement programme.<sup>48</sup> Regulators and rule makers on the other hand, continue to doubt about the feasibility of conducting sophisticated RIAs and remain concerned at the risk of policy paralysis due to internal red tape.

The strengths and weaknesses of a RIA programme can be assessed in terms of the best practices identified by the OECD in its publication *Regulatory Impact Analysis: Best Practices in OECD Countries*. Review of a RIA system against these ten criteria can assist in pinpointing key areas of weakness and highlighting priorities for further development of the programme. The following discussion assesses Finland’s current RIA programme in these terms.

**Maximise political commitment to RIA.** Use of RIA should be supported at the highest levels of government. This is a crucial weakness in Finland. Despite the fact of various government ordinances backing RIA have been passed, no political pressure or sanctions exist for the lack of enforcement and compliance of RIA by ministries. The weakness of the central quality control function on non-budgetary impacts of laws and regulations also reflects a low level of political and institutional commitment to ensuring a high and consistent standard of analysis. Addressing this issue should be a high priority for further improving RIA in Finland.

**Allocate responsibilities for RIA programme elements carefully.** To ensure “ownership” by the regulators, while at the same time establish quality control and consistency, responsibilities should be shared between regulators and a central quality control unit. The Finnish approach has positive and negative elements in this regard. Like most countries, Finland requires regulating ministries to be primarily responsible for the conduct of RIA; however, the extent of this decentralised responsibility is greater than in most countries. Individual ministries are subject to minimal challenge from outside the ministry as to whether RIA is required, which impacts should be assessed, and how they should be assessed. Thus, there is extensive discretion as to the type of RIA analysis used in individual cases.

Three external control mechanisms exist. They may be the base for the strengthening of the challenge function. First, the Bureau of Legislative Inspection has the responsibility to verify whether all of the relevant impact assessments have been completed. However, these reviews do not target the substance of the analysis carried out through the RIAs. The second source of central quality is performed by the Ministry of Finance. The Ministry often assesses the economic impact on the economy through its budgetary oversight powers, but these controls are not formalised. Lastly, as a crucial ‘gatekeeper’ before the final decision is made, the Cabinet Finance Committee can block proposals in case it deems that the expected impacts of the measure may be too negative on the economy.

But overall, the Finnish rule-making practice relies primarily on bilateral co-ordination by ministries to scrutinise the future impacts of a measure. It is the responsibility of the ministry in charge of developing a law or regulations to send the draft for consultation to the other ministries involved in the matter and to solve any controversies through dialogue. This may have limitations as more and more regulatory instruments have impacts beyond a specific area. For instance, many social and environmental regulations can have impacts on market openness (see Chapter 4). A situation further complicated by the fact that the government tends to scrutinise with more detail explicit impacts, such as environmental, gender, regional policy, human health, etc, in addition to more specific economic impacts covered by the current RIA. A systematic inter-ministerial communication of an integrated RIA may in that sense provide the basis for a more efficient ‘whole of the government’ rule-making process.

**Train the regulators.** Regulators must have the skills to do high quality RIA. The key means adopted in Finland to ensure that relevant skills are developed has been the issue of guidelines by each responsible ministry. Attempts have been made to ensure that these guidelines are compatible with each other. However, no detailed general manual has been issued on the conduct of impact analyses. In 2001, the Ministry of Finance issued a document providing practical examples of RIAs and general advice on how to improve the quality of RIAs.<sup>49</sup> The courses offered by the Finnish Institute of Public Management Ltd. (HAUS), the state-owned company providing training to civil servants, are potentially an important source of skill acquisition. However, so far there has been very limited participation by those with legal skills in these courses.

In sum, while there is clearly room for improvement in the provision of training and detailed guidance material, an equally important factor is that there is currently a lack of demand for these materials and services. A significant reason for the current infrequent use of the available advice and training is the strong tradition of independence of individual ministries and a consequent reluctance to work closely with another ministry on the policy process due to possible loss of policy autonomy. Second, the lack of a strong quality control requirement for RIA also reduces incentives to take advantage of existing training opportunities.

**Use a consistent, but flexible, analytical method.** The OECD recommends as a key principle that regulations should “produce benefits that justify costs, considering the distribution of effects across society”. A cost-benefit test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being “socially optimal” (*i.e.* maximising welfare). A consistent evidence-based analytical method should be used in RIA to ensure that valid comparisons can be made regarding different policy options and that regulators are clear about the nature and extent of the RIA requirement. The goal of the impact assessment is to produce information that is as reliable as possible and a correct picture of the impacts of legislation for decision-makers.

Finland does not to date, require any particular methodology to be used in the conduct of RIA, nor has it established minimum standards of analytical quality. As noted above, a wide-ranging analysis has been required. The 1992 *HELO Instructions* in particular require that proposals be quantified in monetary terms whenever possible. A cost-benefit analysis is specifically mentioned as one of the many analytical methods, and the *Instruction on the Assessment of Business Impacts* also requires quantitative analysis. The 1998 *Finnish Checklist* also requests drafters to verify cost and benefits of a draft measure, to compare them to alternatives and to assess the distribution of its impacts across the economy, society and country. However, the degree to which proper quantification of impacts has been achieved in practice has been low. The trend in OECD countries is toward the adoption of more rigorous and standardised methodologies over time – particularly as experience and expertise with the use of RIA accumulate. In particular, an increasing number of countries are adopting precise criteria and methods of cost-benefit analysis. While the Finnish experience with RIA

is, as yet, limited, there are major potential benefits in moving step by step to a formal and consistently applied cost-benefit analysis principle, including detailed methodological guidelines for the most significant regulations. As noted above, such a move would have implications for the provision of training and support to ministries and would also need to be linked to data collection strategies and to public consultation.

**Develop and implement data collection strategies.** Finland has adopted a number of innovative strategies to improve the flow of information to ministries on the likely impacts of regulation. In particular, the close links between the government and a range of think tanks and research bodies provide both a useful source of statistical information and a critical analysis of major policy issues and the likely impacts of policy proposals. Also relevant to the issue of data collection is the use in Finland of widely representative “committees” to assist in the initial development of legislative proposals. This mechanism, which has strong roots in the consensual and consultative basis of Finnish political culture, also provides access to a potentially rich set of data sources on regulatory impacts from early stages. This clearly has potential to be drawn upon more strongly if the degree of formal analysis and quantification of impacts in Finnish RIA increases. The integration of an enhanced RIA process with public consultation requirements would be an important further step in improving data availability for policy makers. In general, the question of data collection strategies will become more significant as Finland moves toward the implementation of more rigorous and quantitatively based RIA.

**Target RIA efforts.** RIA resources should be targeted to those regulations where impacts are the most significant and where the prospects are best for altering outcomes. RIA in Finland is largely focussed on primary legislation, although it is also intended to be applied to lower level rules with substantial impacts. Critically, there is no objective test deployed to determine when RIA is required. Moreover, the fragmented nature of the different partial RIA requirements means there is no single, impartial quality assurance body at the centre of government able to exercise judgements in this regard.

The issue of targeting must be addressed in order to enable moves to be made toward more quantitative and rigorous RIA while still recognising questions of feasibility and the scarcity of resources and specific expertise. Finland could consider the multi-faceted targeting employed in Korea and the United States, for example. The Korean RIA system requires a rough estimate of costs for all regulations, and defines as “significant” regulation those that have an annual impact exceeding KRW 10 billion (USD 0.9 million), an impact on more than 1 million people, a clear restriction on market competition, or a clear departure from international standards. Significant regulations, as defined, are subject to the full RIA requirements. This is a well-chosen set of criteria in terms of its ability to highlight regulation likely to require a full and detailed analysis. In the United States, a full benefit/cost analysis is required where annual costs are estimated to exceed USD 100 million where rules are likely to impose major increases in costs for a specific sector or region, or have significant adverse effects on competition, employment, investment, productivity or innovation.<sup>50</sup> This means, OMB currently reviews roughly 600 regulations a year (around 15-17% of the rules published), of which fewer than 100 (around 1 – 2% of the rules published) are “economically significant”, and thus require a full benefit/cost analysis.

**Integrate RIA within the policy development process, beginning as early as possible.** RIA in Finland does not currently demonstrate strong integration with the policy process. Policy officials have difficulty in pointing to cases in which RIA has led to significant changes in legislative proposals, indicating that it currently has little real effect. Improving the integration of RIA with the policy process is crucial and could bring particular benefits in terms of policy coherence within government. That is, it is potentially a fundamental means of addressing the “stovepipe” problem identified above. An important step toward better integration of RIA and the policy process would be to rationalise the

current proliferation of partial impact analyses and ensure that there is coherence within the framework of RIA itself. Work in this regard is being planned, but not yet initiated in practice. In particular, the *HELO Instructions* of 1992 are being revised at the moment. One of the aims of the work is to try to consolidate the large variety of separate guidelines prepared for different impacts.

**Communicate the results.** According to the Instructions on the Assessment of Economic Impacts, the Instruction on the Assessment of Business Impacts, and the Instructions on the Assessment of Environmental Impacts, RIAs must be made available during the consultation process. Section 41 of the Standing Orders of the Cabinet also requires ministries to consult if the proposal requires changes in the legislation belonging to another ministry's sphere of responsibility. Despite these measures, the interministerial consultation seldom includes RIAs. Even when other ministries or agencies have access to RIAs – either by the Ministry of Justice of the proponent ministry – the exceedingly qualitative and general nature of RIAs diminish the potential contribution of such a consultation. Sharing a vague and justificatory RIA cannot function as a useful feedback on the future impacts of a regulation or avoid duplication and contradiction in the regulation. Connected to the above-mentioned lack of quantification of RIAs, this reduces the usefulness of the system. Furthermore, peer pressure and 'shaming' effects among ministries when comparing minimum RIA standards tend to improve the quality of RIAs.

**Involve the public extensively.** Finland has a number of mechanisms by which to ensure public involvement in the development of policy. The committee structure used for developing bills ensures wide representation of organised interest groups and can act as a conduit of RIA data. However, while there is a well-established custom of releasing legislative proposals for public consultation, RIA documents are rarely disseminated as part of this process. Moreover, even if RIA documents were to be used consistently in the public consultation process, the lack of detail and rigour noted above would clearly substantially reduce their potential role in ensuring public involvement in the process.

**Apply RIA to existing as well as new regulation.** RIA disciplines are equally useful in the review of existing regulation as in the *ex ante* assessment of new regulatory proposals. Indeed, the *ex post* nature of regulatory review means that data problems will be fewer and the quality of the resulting analysis potentially higher. Despite this, there is no evidence of a consistent methodological approach being taken to review activity in Finland. Ministries have, to date, been asked to review legislation for which they are responsible but such reviews have not been directed by detailed guidance from the centre, nor have they been subjected to scrutiny by centre of government agencies. Apparently, this is a function of the highly decentralised nature of the governing process in Finland and the strong tradition of individual ministerial responsibility. However, the result is that RIA criteria are not consistently applied to the review of existing regulation.

**Final assessment.** Finland has implemented many of the preconditions for a wide-ranging and effective RIA system, but a number of major weaknesses in the current RIA programme mean that it has so far had little impact on regulatory quality. First, strengthening the criteria and methodological aspects of the benefit-cost based approach to impact analysis is essential as it is only by adopting this principle that an "evidence-based" approach to setting regulatory standards and requirements can be implemented. The degree of quantification and analytical rigour required can then be expanded progressively as experience and expertise develop.

Second, Finland should ensure that all RIAs are made publicly available as part of the consultation process. Publication of RIA is an essential quality assurance mechanism and would do much to improve its contribution to regulatory quality.

Third, the various partial impact assessments must be consolidated so that a single, comprehensive analysis is produced and duplication of effort is avoided. Ultimately, this would reduce efforts while enhancing the quality and utility of the resulting analysis. It would favour timeliness and would simplify and enhance the effectiveness of the quality assurance processes.

### **3.4. Building regulatory bodies**

As in many OECD countries, Finland's State Owned Enterprise (SOE) sector has progressively been restructured and opened to competition since the end of the 1980s. These reforms have in all countries necessitated the development of substantial new regulatory structure and institutions: as the sectors involved move from being government owned monopolies toward being profit maximising and competitive industries new controls are needed to ensure economic and social objectives continue to be achieved.

SOEs have traditionally held a dominant position in Finland's national economy. Reform of the sector began in 1987 with passage of new legislation on SOEs. Much of the initial impetus for change was apparently fiscal: selling state owned assets was seen as a means to address growing budget deficits. The 1987 law effectively "corporatised" the government business enterprises, converting them from being largely budget financed to being SOEs. Further reforms in the 1990s gave them additional autonomy, while changes to their ownership followed. Finland has never had a "privatisation" policy *per se*. 34 arrangements which have widened the ownership of the SOEs have been approved in the last decade under the "ownership policy", but many SOEs remain largely government owned. In tandem with these changes, however, many sectors have been liberalised and competition from private service providers has been introduced. These changes have led to substantial regulatory changes, including the creation of a substantial number of new regulatory agencies.

Except in the case of financial services, Finland has made substantially less use of independent regulators than have countries such as the United Kingdom, the United States and Australia, who have gone furthest in restructuring network-based and formerly SOE dominated sectors (see Table 3).<sup>51</sup> For instance, the Finnish Communications Regulatory Authority (FICORA) and all transport regulators including Finnish Civil Aviation Administration (CAA) and Finnish Rail Administration (RHK) are subordinated to the Ministry of Transport and Communications. The Energy Market Authority and the Finnish Competition Authority are under the remit of the Ministry of Trade and Industry. This approach seems to be related to the relatively gradual liberalisation and privatisation process undertaken in Finland.

In addition to having generally limited independence, the powers of Finnish regulatory agencies are also somewhat limited. They do not usually have the power to make rules and regulations, or thus can make only technical regulations, as in the case of FICORA, while they also frequently lack the power to set and enforce sanctions for non-compliance. Regulation and policy development are also usually responsibilities of line ministries, though regulators may be consulted. In some cases, regulators participate in policy development.

In terms of sector specificity, Finland shows signs of following the general trend among OECD Member countries of industry-level regulation giving way to sectoral regulation. Examples include the energy and communications sectors, where pre-existing industry based bodies have been merged into sectorally focussed units (FICORA and the Energy Markets Authority respectively). However, this process is far from complete. Thus, concerns remain as to the possibility for important synergies to be lost and for regulatory coherence to suffer if co-ordination between related industry regulators is inadequate. On the other hand, the approach of subordinating regulators to ministries in Finland may

offset this potential problem in some respects. An additional area of potential overlap and inconsistency is the relationship between the Finnish Competition Authority and the industry/sectoral regulators. There are no formal agreements between the FCA and sectoral regulators regarding division of responsibilities, although there is usually a general exchange of information and views. Some enterprises consider the overlap between agencies in relation to competition issues to be an important problem.

Table 3. Finland's major regulatory institutions

| Name of organisation   | Laws  | Institutional and Legal Status  | Sectors under the regulators authority  | Selection and Appointment of heads                                      | Financial sources  | Accountability mechanism   |
|--|---|---|---|---|--|--|
| <b>Telecommunication</b><br>Finnish Communications Regulatory Authority (Sept 1st 2001) (FICORA) (formerly Telecommunications Administration Centre 1988). | The Telecommunications Act in 1987 (amended in 2002, updated 1997)<br>Act on the Protection of Privacy and Data Security in Telecommunication, 1999<br>Act on Electronic Signature 2003<br>The Radio Act, 1988/2001<br>The Act on Television and Radio Operations, 1998<br>The Act on the State Television and Radio Fund, 1998<br>The Postal Services Act, 1994 updated amended in 2001<br>The Act on Communications Administration, 2001. | Ministerial agency under the Ministry of Transport and Communications. Decision-making very independent   | Electronic communications, information society services, postal services.                       | The General Director is appointed by the Cabinet.                       | Fees paid by supervised entities   | FICORA submits to the Ministry of Transport and Communications an annual report calendar year. Decisions of FICORA may be appealed to the Administrative Court   |
| <b>Energy</b><br>The Energy Market Authority (2000) (formerly Electricity Market Authority 1995).  | The Electricity Market Act (1995);<br>the Natural Gas Market Act (2000);<br>The Act on the Energy Market Authority (2000).  | Ministerial agency (an expert body) under the Ministry of Trade and Industry. Decision-making very independent  | Electricity and natural gas.  | Appointed by the government for an indefinite mandate.                  | 90% is from supervision and permit fees charged on the network business; rest comes from the state budget. | Its decisions can be appealed to the Supreme Administrative Court of Justice.  |
| <b>Competition authority</b><br>The Finnish Competition Authority (FCA) (1988).*   | The Act on Competition Restrictions (480/1992), the Act on the Finnish Competition Authority (711/1988),<br>The Decree on the Finnish Competition Authority (66/1993).  | Ministerial agency under the Ministry of Trade and Industry. The Ministry has no jurisdiction over individual cases. Decision-making very independent | All sectors except the labour market and a certain primary production of agricultural products. | The Director General is appointed by the Cabinet for indefinite period. | FCA is funded by the government budget.  | FCA submits to the Ministry of Trade and Industry an annual report each calendar year. The Director General can be prosecuted before the Helsinki Court of Appeals in cases of professional misconduct. Also, decisions issued by the FCA may be appealed to |

| Name of organisation   | Laws   | Institutional and Legal Status   | Sectors under the regulators authority  | Selection and Appointment of heads  | Financial sources  | the Market Court. Accountability mechanism  |
|--|--|--|---|---|--|---|
| <b>Financial sector</b><br>The Financial Supervision Authority (FSA) (1993) (formerly the Bank Inspectorate 1922). | Act on the Financial Supervision Authority (503/1993).<br>Credit Institutions Act (1607/1993).<br>Securities Markets Act (495/1998).<br>Investment Firms Act (579/1996)<br>Act on Foreign Credit and Financial institutions in Finland (1608/1993).<br>Act on the supervision of financial conglomerates (44/2002).<br>Act on the Temporary Interruption of the operations of a Deposit Bank (1509/2002) | Independent regulatory body.   | Banks, brokerage firms, stock and derivatives exchanges, and management companies for mutual funds. | The president appoints the Director General of the FSA on recommendations of the Parliamentary Supervisory Council (PSC).<br>The PSC appoints the members of the board for three years at a time on the basis of proposals by the Ministry of Finance, Bank of Finland, and the Ministry of Health and Social Affairs.  | Operating costs are covered by supervision fees and specific fees paid by supervised entities and issuers of securities. | The FSA is accountable to the PSC and the Bank of Finland with respect to administrative matters. Also, a decision made by the FSA can be appealed to the Supreme Administrative Court.   |
| <b>Insurance</b><br>Insurance Supervision Authority (ISA) (April 1999).  | Act on the Insurance Supervision Authority (78/1999)   | Ministerial agency subordinate to the Ministry of Social Affairs and Health. Independent in decision-making. | Insurance and pension institutions and other actors of the insurance sector.                        | The Ministry appoints three members of the board for three years at a time; two of them on the basis of proposals by the Ministry of Finance and Bank of Finland. Furthermore, the director generals of the ISA, FSA and the Insurance Department of the Ministry of Social Affairs and Health are members of the board. The staff of the ISA chooses among themselves a member to the board (only personnel affairs) | Operating costs are covered by fees collected from those subject to supervision.   | The ISA is accountable to the Ministry of Social Affairs and Health: Performance Contract and Annual Report to the Ministry of Social Affairs and Health.<br>A decision made by the ISA can be appealed to the Supreme Administrative Court |

| Name of organisation  | Laws  | Institutional and Legal Status   | Sectors under the regulators authority  | Selection and Appointment of heads   | Financial sources   | Accountability mechanism  |
|---|---|--|---|--|---|---|
| <b>Transport</b><br>Finnish Maritime Administration (FMA) (1990). | Maritime Act 674/1994<br>The Act on the Finnish Maritime Administration, 1990.                | Ministerial agency under the Ministry of Transport and Communications.         | Fairways, Icebreaking, Hydrographical surveys, Pilotage, Vessel Traffic Service and Maritime Safety                 | The Director General and the Board are appointed by the Cabinet.                                 | Fairway dues, pilotage dues, state budget   | The FMA is accountable to the Ministry of Transport and Communications.   |
| Finnish Rail Administration (RHK) (1 July 1995).                  | The Railway net Act 21/1995 (1995).   | Ministerial agency under the Ministry of Transport and Communications.         | Railway transport system.   | The Director General and the board are appointed by the Cabinet.                                 | RHK operates on the net budgeting principle: funds are received through the state budget and other forms of financing (such as charges for the use of the rail network and rental income).          | The RHK is accountable to the Ministry of Transport and Communication. The RHK decisions can be appealed to the Administrative Court of Justice.  |
| The Finnish Civil Aviation Administration (CAA).                  | The Finnish Aviation Act (281/95);<br>the Act on the Civil Aviation Administration (1123/90). | State owned commercial enterprise.   | See Flight Safety Authority. CAA's office for International affairs publishes certain rules concerning air traffic. | The Director General is appointed by the Cabinet.  | CAA is financed by its users. The main resources of income are various charges for air navigation and airport services and incomes from business operations.  | The Cabinet sets the general operational and profit targets for the CAA but otherwise CAA is relatively independent in determining its operations, financing and investments.   |
| Flight Safety Authority.  | Aviation Act 281/1995, Act on Civil Aviation Administration 1123/1990.                        | An independent regulatory unit within the Civil Aviation Administration (CAA). | Flight operations, technical, administrative, airports and air navigation services.                                 | The Director is appointed to the permanent post by the Ministry of Transport and Communications. | Fees for licence issue, renewal, training organisation approval and certification of air operators and maintenance organisations. CAA covers any extra charged related to the regulatory functions. | Accountable to Ministry of Transport and Communications. Its decisions can be appealed to the Administrative Courts and Supreme Administrative Court of Justice. An official complaint to ombudsman is also possible. |

| <b>Name of organisation</b>  | <b>Laws</b>  | <b>Institutional and Legal Status</b>  | <b>Sectors under the regulators authority</b>   | <b>Selection and Appointment of heads</b>  | <b>Financial sources</b>   | <b>Accountability mechanism</b>   |
|--|--|--|---|--|--|---|
| Vehicle Administration (AKE) (1996) (formerly Finnish Car Registration Centre).* | The Act on the Vehicle Administration in 1995.                             | Ministerial agency. It is an administration, service and information centre operating under the aegis of the Ministry of Transport and Communications. | Vehicle, annual vehicle taxation, and driving licence registration, driving instruction, motor vehicle inspection, type approval, car mortgages.                  | The General Director and the Board are appointed by the Cabinet. The maximum amount of directors is six and the grounds for appointment are professional. The term of office of the Board is at most three years. The term is renewable. | The revenue of AKE consists of annual appropriation decided by the Ministry of Finance; levies and fees imposed on the regulated industry and the imposition of tariffs on consumption of the regulated good and service. The main funding resource is levies. | AKE is accountable to the Ministry of Transport and Communications. The Ministry defines fees and tariffs imposed on the regulated industry and consumption of goods and services. The AKE gives regular reports to the Ministry. The AKE's decisions can be appealed to administrative courts on the basis of errors of fact, law or merits of decision. |
| <b>Other sectors</b>   |  |  |   |  |  |   |
| National Product Control Agency for Welfare and Health (STTV) 1.1.1995.*         | Act on Measures to Reduce Tobacco Smoking 693/1976; Alcohol Act 1143/1994. | Ministerial agency (an expert body) subordinate to the Ministry of Social Affairs and Health. Independent in decision-making.                          | Tobacco industry; alcohol industry (including sales).   | The Director General is appointed by the Cabinet for indefinite period.  | Directly from the budget, which collects the fees.   | The agency is accountable to the Ministry of Social Affairs and Health, through a performance contract and an annual report. STTV decisions, errors of law and requirements of objectivity can be appealed to the Supreme Administrative Court  |
| National Agency for Medicines (NAM) (1993)                                       | Act on the National Agency for Medicines (35/1993)                         | Ministerial agency under the Ministry of Social Affairs and Health. Independent in decision-making.  | Medicine control and surveillance of medical devices and supplies, drug information and general planning, and control and surveillance of pharmaceutical service. | The Director General is appointed by the Cabinet for indefinite period.  | Nearly 90% of expenditure is covered by charges levied on manufacturers and traders, rest comes from the state budget.   | NAM is accountable to the Ministry of Social Affairs and Health: Performance Contract and Annual Report to the Ministry of Social Affairs and Health. NAM decisions can be appealed to the Supreme Administrative Court   |

\*. Organisations without power to issue regulations.

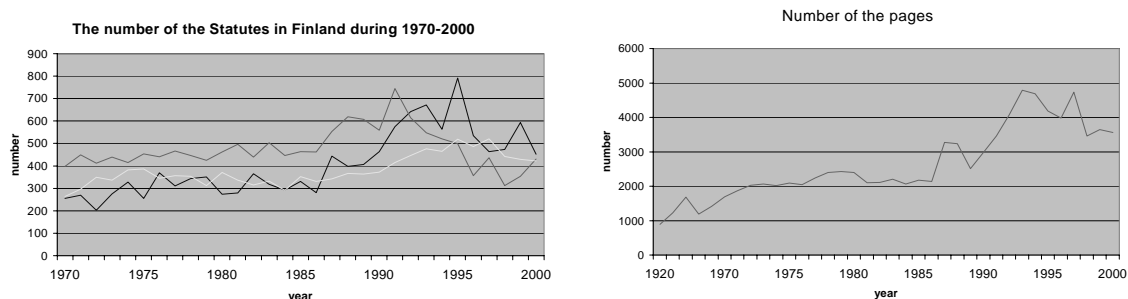
## 4. Dynamic change: keeping regulations up to date

### 4.1. Review and reform of existing regulation

Applying RIA to new regulation is not enough to ensure a high quality regulatory structure. As technology, the economy and society change, even high quality regulations can become progressively more costly and less effective. Thus, regulatory management must also involve a periodic evaluation of existing regulations to determine if they are still the best solution to identified problems and even whether the problems that they were designed to address remain relevant. A systematic approach is most useful in ensuring that all major regulations are regularly subjected to reassessment on the basis of common and transparent criteria. The *OECD Report on Regulatory Reform* recommends that government “review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively”.

Finland has been successful in controlling the rate of growth of new regulations (see Box 6). However, Finland’s regulatory policy does not address the issue of reviewing and reforming existing regulation. Historically, with the exception of the *Norms Project* and the *Licence Reform Project* (See Section 1), review activity has occurred in an *ad hoc* way and has been driven largely by responsible ministries, thus effectively being based on a “self-assessment” principle. A notable change, visible since the latter part of the 1990’s, has been toward the conduct of more strategically focused reviews of laws considered as complete entities, in preference to former approaches that focused on making minor changes, often at the cost of the clarity and consistency of the laws in question. Examples in the justice portfolio include the *Constitution* (four separate constitutional laws brought together), the Act on the *Openness of Government Activities*, and the *Penal Code*.

Box 6. The “stock” of laws and subordinated regulations in Finland



Source: Government of Finland, 2002.

The strength of the tradition of individual ministerial responsibility and the relatively weak co-ordinating role of the centre of government combined to make the establishment of a strategic, centrally directed or supervised programme of review of existing legislation difficult. Nonetheless, important informal co-ordination mechanisms exist. Strategic planning by the centre of government agencies tends to be put into action through informal co-ordination, rather than through widely published “strategic review” programmes. An example of strategic review and reform in Finland is that, over ten years beginning in the late 1980s, the entire structure of environmental regulation has been reformed and modernised, leading the OECD to observe in 1997 that: “The legislative and regulatory framework for environmental management has been considerably extended and updated in the 1990s. This effort has undoubtedly contributed to the reduction in conventional pollution observed in Finland, and further benefits should be felt as the implementation of new measures reaches completion.”<sup>52</sup> More recently, in 2000 the Ministry of Justice started a review of secondary legislation in order to register them into a database.

However, while strategic review initiatives of these kinds are increasingly undertaken, it is clear that many changes to existing laws are reactive, rather than strategic in nature. As noted above, Finland amends existing laws frequently. This appears to be in substantial part a consequence of a tradition of highly specific and detailed laws which imply that as technology or demand changes, or innovative approaches to compliance evolve, their in-built rigidities must be addressed through revision of the law. The costs of continuing to rely on this form of very detailed, command and control based regulation are likely to become increasingly apparent and substantial as regulatory practices in EU and other countries change and the pace of economic and regulatory reform continues to quicken.

Recent involvement of Parliament in promoting the quality of existing laws is worth to note. For instance, Parliament has emphasised the importance of assessing the impacts of laws on an *ex post* as well as an *ex ante* basis. This should provide an added driver for reform. However, as noted above, much of the revision to existing regulation in Finland currently arises in response to the recognition of unanticipated impacts of new regulations. This kind of revision is clearly not strategic in nature, yet resources will continue to be diverted in these directions until *ex ante* impact analysis is improved through better use of RIA and consultation as well as better intra-governmental co-ordination.

Finland makes limited use of mandatory periodic reviews and sunseting clauses as means of updating existing laws. Perhaps where the use of sunseting is greater is in the tax area. In relation to the *Law on Non-Military Service* (647/1985), the use of sunseting was a result of the difficulty in assessing *ex ante* the likely impact of the law. Similarly, in the administrative field the *Bill on Sub regional Co-operation Experiment* is intended to be in force until December 31, 2005, the sunseting data having been inserted due to its experimental nature. Other areas in which sunseting has been used include active labour market measures (*e.g.* job rotation) and supplementary employment services. Overall, however, neither sunseting nor automatic review clauses – which constitute a kind of “soft” sunseting – are used widely or systematically in Finland

In sum, Finland makes relatively few provisions for systematic or strategic review and reform of the structure of existing regulation. On the other hand, recent reforms such as that noted above in relation to environmental regulation demonstrate a capacity to adopt a strategic approach to identified priority areas for reform. Moreover, the fact that there is some experience with mechanisms such as “sunseting” and automatic review clauses in laws provides a basis for the development of a more systematic and thoroughgoing approach in the future. Finland should give consideration to the question of how these and other tools can best be applied toward the development of a more co-ordinated and strategic approach to reviewing and updating the existing regulatory structure in order to enhance and maintain overall regulatory quality.

#### **4.2. *Improving the Business Environment: SMEs, e-government and reducing red tape initiatives***

Finland has implemented several administrative burden reduction programmes over a number of years. An early example is the *Licence Reform Project* of 1989-93 noted above. A further example of burden reduction by reducing regulatory requirements is the changes made to the *Accounting Act and Ordinance* (2001). These changes simplify accounting requirements for small enterprises, for example allowing abridged profit and loss statements to be produced and exempting small limited companies from drafting an annual report.

However, the focus of most burden reduction programmes has been on harnessing new technologies rather than reducing regulatory requirements. Significantly, this is an area in which overall responsibility for co-ordination and promoting the policy has been allocated to a specific agency (the Ministry for Trade and Industry), notwithstanding Finland's generally decentralised approach to regulatory reform. Administrative burdens and use of information technology are among the eight priority areas of the Entrepreneurship Project, established in 2000 to encourage new business start-ups and the growth of existing businesses.

In 1998, the Cabinet made a decision-in-principle to promote electronic transactions and service delivery and reduce data gathering requirements on firms where possible. Currently, almost all units within the public administration have sophisticated web pages containing forms, guides, advice, etc. The TYVI data transfer model is a major project, introduced in 1997 and co-ordinated by the Ministry of Finance, to reduce transactions costs by allowing for electronic data interchange between enterprises and government. For instance, VAT notifications and annual tax returns can be submitted via TYVI as well as Intrastate returns to the Customs, and a number of returns related to social insurance programmes. Agencies have also co-ordinated their data collections through the system. For example, information collected for tax purposes is shared with Statistics Finland. Further co-ordination occurs at the point of data collection, with a number of specific statistical questions being added to tax questionnaires to remove the need for separate contact with companies. Companies using the TYVI service can choose between a number of brokers, who act as a single interface for reporting to several agencies.<sup>53</sup> Some 50 000 companies now use the service regularly.

Development in this area is continuing, notably via the submission in January 2002 of a proposed Action Plan on electronic communication in public administration by the Division on Electronic Communication in Administration. Notably, the plan highlights the need to grasp the potential offered by new technologies in redesigning government/business interactions, rather than simply converting existing services to an electronic delivery mode. The programme also highlights the need for co-operation between authorities to provide effective and efficient electronic services.

A number of initiatives focus on the needs of SMEs. Led by the Ministry of Trade and Industry, Finland has developed a web portal for SMEs, and intending start-ups which allows customers to identify services and conduct business electronically. The Yritys-Suomi (Business Finland) portal was launched in February 2002. The first stage of the portal is built on the co-operation of six major public organisations. The portal targets start up entrepreneurs, new exporters and those needing support for their R&D projects. The Ministry of Trade and Industry is also a national co-ordinator of the European Commission's project European Business Test Panel (EBTP) ([www.europ.eu.int/yourvoice/ebtp](http://www.europ.eu.int/yourvoice/ebtp)). The EBTP allows the EC to contact and obtain by Internet the views of 3000 enterprises whenever major European legislative proposals or policy initiatives are proposed. The panel is part of the EC's overall policy to improve the consultation with businesses as it implements its Better Regulation Action Plan launched in June 2002.

The Tax Administration in co-operation with pension companies is also developing an Internet-based payment system and a settlement centre to facilitate the clearing of employer obligations of SMEs. Employers will be able to take out accident and pensions insurance, calculate wages and salaries, taxes and compulsory social insurance payments and conduct their payment transactions. They will also be able to submit the final notifications related to payments, employees and employment contracts to the pension insurance and accident insurance companies and to the tax administration in connection with salary payments.

Finland has also adopted the “one-stop shop” concept to reduce information search costs in relation to regulatory requirements. It has established Business Service Points, located in the 15 regional Employment and Economic Development Centres, which provide information on applying for licences and permits. The service points also receive applications for some licences and permits, for distribution to appropriate public authorities, as well as providing links to other public services needed by new and would-be entrepreneurs. In addition, they provide general SME assistance functions, including information on matters such as business financing and training issues.

Limited information is available regarding the impact in practice of many of the above initiatives. One indicator is provided by the March 2002 report of the Ministry of Trade and Industry on “Statutory Administrative Procedures and SMEs”. The report, prepared as part of the Government’s Entrepreneurship Project, found that the number of statutory administrative procedures applicable to SMEs has not decreased, but that several reforms have decreased the administrative burden of SMEs. It also found that the increased adoption of electronic and Internet-based mechanisms was playing an important role in this alleviation. Major problems detected concerned the staff recruitment by new entrepreneurs, the notifications and fees related to employers’ obligations and some specific licenses for established enterprises and start up business. The main recommendations of the study were informing the applicant of the estimated handling time of the application and further development of electronic data transfer. The report also called for enhanced information and consultancy from entrepreneurs’ organisations to their member enterprises.

In sum, Finland has been active in embracing the opportunities provided by technology to reduce administrative burdens through the implementation of “E-government” initiatives, for instance through the portals *www.suomi.fi* on public services for citizens and *www.yrityssuomi.fi* for SMEs. It has also undertaken a number of measures aimed to streamline and co-ordinate administrative requirements across government, notwithstanding the generally decentralised nature of the administration. While data on the effectiveness of these measures in practice are relatively scarce, there are indications that substantial benefits have accrued to SMEs and other enterprises as a result of these initiatives.

## **5. Conclusions and policy options for reform**

### **5.1. General assessment of current strengths and weaknesses**

Finland has demonstrated its ability to adapt its economy and its regulatory system via the rapid and thoroughgoing changes it has implemented over the course of the late 1980s and the 1990s. It has responded effectively to the severe economic problems of the late 1980s and has reshaped its economic and regulatory structures in response to both its integration with the European Union in 1995 and the broader trend toward globalisation. The result of these changes is that Finland has rapidly moved toward becoming a more market-oriented and outward-looking economy and society. However, despite these substantial achievements, important challenges remain. An ageing population is demanding ever-higher social and environment regulatory standards (including in public services deliveries), but the government will be constrained in any fiscal/budgetary intervention. The need to boost productivity in non-traded sectors of the economy will necessitate better use of market incentives and thus higher quality of economic regulations. Lastly, a government closer to the specificity of even more specific citizens’ groups will inevitably require more information, and thus further use of administrative regulations.

Meeting these challenges requires change to the structure of the system of regulation-making, to ensure it can deliver high quality regulation as a systemic outcome and that it can manage the dynamic aspects of regulatory quality successfully. While Finland has done much to implement a sound policy basis for a system of regulatory quality assurance, less progress has been made in regard to the implementation and institutions needed to support the policy and ensure it delivers its intended outcomes. Thus, the

development of appropriate processes and institutions must be the focus of further improvement of regulatory policies in Finland. This will require reconsideration of some traditional aspects of governmental and policy-making processes to ensure they better meet the future needs of the Finnish population. In particular, attention should be paid to improving policy co-ordination within government and to adapting consultative processes to ensure they better meet the need for reliable data on which to base evidence-based policy choices, as well as providing greater public confidence in the consultative process.

The difficulties of policy co-ordination – characterised as “regulatory stovepipes” – has been noted by policy-makers and by non-governmental sources. This seems to reflect, to a substantial extent, the relatively decentralised nature of government and the informal approaches taken in many aspects of the policy process. While the Ministry of Justice, in particular, has been active in developing regulatory policy, implementation across government has lagged. The lack of a clear set of responsibilities for the implementation of regulatory policy has meant that there is no organisation with the necessary authority and political support to drive reform and to ensure compliance.

While the major ministries at the centre of government — the Ministry of Finance, the Ministry of Justice and the Ministry of Industry and Trade — are supporters of a stronger and more effective regulatory governance, the focus of each differs substantially. The Ministry of Justice necessarily emphasises legal quality aspects, while the Ministries of Finance and of Industry and Trade focus on achieving reforms through the budget and administrative reform. Co-ordination between these approaches to reform is lacking, a fact which results from the lack of a clear “lead agency” responsibility in relation to the policy.

In general, Finnish regulatory management and reform efforts continue to have a legal focus, with less attention given to the economic aspects of regulatory quality. Issues of ensuring good procedural performance, including adequate parliamentary debate, plain language drafting and guidelines for government openness have been prominent. However, the one key element of the OECD Checklist on regulatory quality that has not been adopted in the Finnish policy is the use of the benefit/cost principle as the basis for regulatory decision-making. This principle, together with the use of a comparative framework for policy analysis, based on identifying and weighing all feasible alternatives, underpins the economic aspect of regulatory quality assurance. Adoption of these approaches would therefore represent a substantial step forward for the Finnish policy. They should be operationalised by strengthening RIA capacities and integrating RIA disciplines into the process of identification and consideration of regulatory alternatives, at the early stages of the policy process.

Another important area for review is the extensive use of informal approaches to policy-making – which contrasts with the preference for detailed and exact legislative styles. The preference for informal policy-making processes is a characteristic that Finland shares with Denmark and other small countries with a consensus-oriented political culture. While the informal approach can have substantial benefits in terms of flexibility and efficiency, particularly in the context of a small government administration and a high degree of social cohesion, there are signs that it is imposing important costs in the current Finnish context. The essentially corporatist approach means also that important interests risk not being adequately represented as society becomes more pluralist. Given these factors, as well as the potential benefits of better integrating consultation with an enhanced RIA process to underpin a more “evidence-based” approach to future regulation-making, a move toward more formal and transparent consultation processes merits consideration.

Finland’s regulatory policies have had a strong focus on primary legislation, in contrast to many countries where the focus was on lower-level rules. The Finnish focus on laws means that reform efforts are concentrated on the fundamental source of regulation, where potential gains from improving outcome quality are greatest. This is particularly important in the context of Finnish law-making styles which favour

the use of primary legislation, relative to lower-level rules. Appropriate targeting of effort will be particularly important if more rigorous approaches to RIA and the identification and assessment of alternatives are to be adopted, as recommended by this review. These tools can be relatively resource-intensive, while the expertise to apply them effectively will be scarce in the first instance. Thus, these tools must be applied judiciously.

Finally, with the exception of the deregulation efforts of the 1980s, Finnish reform efforts have been directed more at improving the quality of the “flow” of regulations, rather than the quality of the “stock” of regulations. That is, they have focused on the quality of new laws rather than existing laws. Because regulatory quality is necessarily a dynamic, rather than a static concept, the regulatory policy should be extended to embrace the regular and systematic review of existing law, preferably on the basis of consistent methodologies and processes.

Finland has substantially reformed its economy and regulatory system in response to major internal and external challenges in the 1980s and 1990s. It has also adopted many of the key elements of an effective regulatory policy. However, if it is to meet successfully the emerging challenges of the early 21<sup>st</sup> century, it must build on this progress, paying particular attention to adopting supporting processes and institutions to ensure that the policy is implemented effectively. Effective implementation, policy co-ordination and the adoption of a comparative and evidence-based approach to regulatory decision-making must be the touchstones of the next phase of Finnish regulatory reform.

## **5.2. *Potential benefits and costs of further regulatory reform***

The potential benefits of further improving the capacity of the public sector to produce high quality regulation are substantial and would be felt in improved policy effectiveness and economic performance. Finns demand high standards for environmental protection, health and safety, consumer protection, and other social objectives. These preferences make it particularly important that key regulatory quality assurance tools are used to their maximum potential to enhance the government’s ability to deliver higher standards at lower costs. The adoption of more rigorous and more transparent policy-making processes would also enhance policy debate by clarifying the nature and extent of the costs associated with high regulatory standards, as well as laying bare the nature of the trade-offs that exist between different policy options. For example, implementing more rigorous RIA, based on benefit-cost analysis and a requirement to assess all feasible alternative policy actions, will systematically improve the quality of regulatory (and non-regulatory) choices. Integrating these disciplines with public consultation processes can enhance the participation of Finnish citizens in public policy debates by equipping them with the information necessary for effective input.

While these suggestions may seem uncontroversial, they do have the potential for conflict with traditional Finnish (and Nordic) ways of making policy. In particular, achieving greater transparency as to costs, benefits and alternatives can mean that the traditional goal of consensus becomes more difficult to reach, as there is a better understanding on the part of all players of the nature of the issues and the policy trade-offs. On the other hand, it is arguable that a consensus that is reached on the basis of a better informed set of stakeholders will necessarily be a more robust and durable one. Most importantly, the added transparency as to criteria and processes and improved opportunities for participation by all groups should directly address the lack of satisfaction with consultation and loss of trust in government demonstrated by a growing proportion of the population.

### **5.3. Policy options for consideration**

This section identifies actions that, based on international consensus on good regulatory practices and on concrete experiences in OECD countries, are likely to be particularly beneficial to improving regulation in Finland. They are based on the recommendations and policy framework in the *OECD Report on Regulatory Reform*.

#### **1. Establish that regulatory policy is 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, the regulatory policy should deserve a more central role in the governance arrangements existing in Finland. The decentralised nature of government and the resultant lack of responsibility for the regulatory policy at the ministerial level mean that there is not a 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 the others. The implementation of a new Constitution provides additional authority to the Prime minister – and hence the centre of government – provides an ideal opportunity to address this issue and establish regulatory policy as a key policy priority. Adopting enhanced institutional responsibilities and powers, as recommended below, would also substantially reinforce this message.

#### **2. 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 per the following recommendations, as it would provide the needed authority to drive forward the effective implementation of the reforms.

#### **3. 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.<sup>54</sup> 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 help 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 (for instance through precise scoreboards and benchmarks) 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 Cabinet. It must be given a credible means by which to fulfil its mandate and in particular the implementation of RIA requirements (see below).

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

Finland should address the current fragmentation of RIA requirements by providing that all impact assessment currently existing 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.

***5. 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 the precise criteria and detailed methodologies for benefit/cost analysis, together with a mechanism to target the 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, as recommended below.

***6. 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.

***7. 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 as the basis for RIA, 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. Canada’s current initiative to integrate guidance and requirements into a single Internet based tool could also serve as an example to follow.

***8. Strengthen the policy on consultation, and ensure that consultation and RIA programmes are effectively integrated.***

Reinforcement of public consultation mechanisms is essential to ensure that consultation is able adequately to 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.

***9. 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. Thus, the central regulatory policy authority should ensure that these issues are addressed in the context of the training courses proposed above.

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 progresses in implementing alternatives.

***5.4. Managing regulatory reform***

The focus on regulatory quality in current Finnish regulatory reform policy is more likely than the previous deregulation policy of the 1980s to find sustained support in a population with strong demands for social protections such as health, safety and environmental quality, as well as social equity. Implementing the above recommendations for a more open and inclusive approach to consultation, based on better information provision through integration of RIA and consultation, would also increase trust in government among stakeholders and the population.

However, there are also risks that will need to be managed carefully if reforms along the lines recommended above are to be implemented. First, moves to make RIA more rigorous and to embed the benefit/cost principle are likely to be opposed in many quarters as placing additional impediments in the way of adopting new and higher regulatory standards. These concerns must be addressed by focusing on the reality that there are limits to regulation and that the role of RIA is to ensure that regulatory choices conform to social values within those limits. However, raising standards too rapidly without the appropriate resources and capacity building tools will transform RIA into another internal red tape nuisance. Second, while an expanded use of alternative policy tools can yield potentially major efficiency gains, there is a possibility that these approaches will be seen as conflicting with the traditional Finnish preference for clear and detailed laws. Resolving this likely tension will require close attention to be paid to the legislative, regulatory or administrative context within which the alternatives are adopted.

Overall, the first challenge in implementing further regulatory policy reforms will be to convince the general public and specific stakeholder groups that improving regulatory policy is an essential element in the government's response to the emerging challenges facing Finland. Secondly, the benefits of these changes in terms of broader governance values of transparency and accountability must also be conveyed.

## NOTES

1. See *The World Competitiveness Yearbook*, Lausanne.
2. 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)
3. 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.
4. See Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p. 4.
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. See 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)
8. See 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); also Seppo Tiihonen, *From Uniform Administration to Governance and Management of Diversity: Reforming State functions and public administration in Finland*, 1999.
9. Regulatory policies are designed to maximise the efficiency, transparency and accountability of regulations based on an integrated rule-making approach and the application of regulatory tools and institutions. See OECD (2002) *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. Paris.
10. For instance, as recent as 1999, the Speaker of the Parliament sent a letter to the government complaining on the quality of the justification documents accompanying the bills.
11. See Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p. 20.
12. Ministry of Finance (1993), *Government Decision-in-Principle, Reforms in Central and Regional Government*, Helsinki. See Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p. 20.
13. See Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p. 30.

14. Geert Bouckaert, Derry Ormond, Guy Peters, (2000), "A Potential Governance Agenda for Finland: Turning 90° in the Administration's Tasks and Functions" Research Reports, Ministry of Finance, Helsinki, August. Derry Ormond was the former head of OECD's Public Management Service.
15. See Ministry of Finance, Public Management Department, Finland (2001), *Standpoint of the Ministerial Steering Group to the Reform of Central Government*.
16. The reform proposals issued in 2001 are expected to be adopted ahead of the next Parliamentary elections, in March 2003, following extensive debate. See standpoints 16 and 47 in the *Report on the Standpoints of the Ministerial Steering Group to the Reform of Central Government*.
17. OECD (1995), "Recommendation of the OECD Council on Improving the Quality of Government Regulation," incorporating the OECD Reference Checklist for Regulatory Decision-Making, OCDE/GD(95)95, Paris.
18. Historically, the first policy aimed at improving regulatory quality in Finland can be dated to 1975. The 1975 edition of the HELO Instructions required an identification of alternative policy instruments and an assessment of the impacts of proposed laws. During the mid-1980s, the Ministry of Justice invested significant resources and energy on initiatives to improve the quality of law-drafting.
19. Response of the Government of Finland to the OECD Review Questionnaire on Regulatory Reform, 2002, p. 7.
20. While the Bureau is part of the Ministry of Justice, it is independent in its inspection function.
21. According to Section 40 of the Standing Order of the Cabinet
22. See Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p. 22.
23. In past, ministries used to request the Authority's opinion on most legislative projects having implications for competition, even though such consultation was not mandatory. However, the practice is no longer in force.
24. Kaijus Ervasti, Jyrki Taia and Elina Castren (2000), *The Quality of Law drafting from the Viewpoint of Parliament Committee Work*, National Research Institute of Legal Policy, Publication no. 172, Helsinki, p. 151.
25. For administrative purposes the country is composed of six provinces, which are divided into 452446 municipalities. The municipalities vary greatly in size, population and industrial structure. While the average population was 11 355400, in 19982000, actual populations varied from 120 to 532 551 000053.
26. The municipalities are responsible for the production of about 2/3 of all welfare services and 1/5 of GNP, see: Tiihonen, Seppo (1999), *From Uniform Administration to Governance and Management of Diversity, Reforming State Functions and Public Administration in Finland*, p. 14.
27. European Union (2001) *Regional and Local Government in the European Union. Responsibilities and Resources in Finland* Committee of the Regions.
28. See more on web: [www.eduskunta.fi/efakta/vk/suv/suv.htm](http://www.eduskunta.fi/efakta/vk/suv/suv.htm)
29. According to the OECD Regulatory Indicators Database (1998), 17 OECD countries (of 27 respondents) establish procedures for making legislation in a specific law, while 16 countries do so in the case of lower-level rules.

30. OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris.
31. For a further discussion see OECD (2001) *Government-Citizen Relations Country Profile, Finland*, p. 13 and sec.
32. Ohje kansalisten kuulemisesta. VM143:43:00/2001
33. Cabinet Decision on Committees (Number 218/1988)
34. In the 1980s the most significant legislative projects were prepared in committee but by 1994, 61 per cent of bills were prepared solely by civil servants, without using any form of group work. Moreover, there has also been a decline in the average size of committees. These changes may be responses to the need to generate legislative proposals in a timely way, particularly in regard to issues of pressing public concern. See National Research Institute of Public Policy (1997), *The Drafting of Legislation and an Assessment of Its Impact in Finland* by Kaijus Ervasti and Jurki Tala, Helsinki, English translation, p. 29
35. See *Regulatory Reform in Denmark*, OECD, Paris, 2000, p 143.
36. See *Citizen Consultation And Engagement: Share Your Views With Us*. Case study presented at the International Seminar on Open Government, Seoul, Korea, February 2003 (CCNM/GF/GOV/PUBG(2203)2 and for more details on e-government in Finland: OECD (2003) *Report on e-government in Finland*, Paris, forthcoming.
37. A 1997 study by the National Research Institute of Legal Policy concluded that only 4% of Government bills tabled in Parliament in 1994 were accompanied by information on policy instrument(s) other than that actually proposed.
38. Ministry of the Environment (2000) *Economic Instruments in Finnish Environmental Policy*, May. [www.ymparisto.fi](http://www.ymparisto.fi)
39. See *Natural Resources and the Environment Review 2001* at [www.ymparisto.fi](http://www.ymparisto.fi)
40. EEA (1997), Oko-Institut (1998), cited in "Voluntary Approaches for Environmental Protection in the European Union," *op. cit.*, pp. 12, 15.
41. OECD (1997), *OECD Environmental Performance Review of Finland*, Paris, p. 131.
42. For more information on the OHS, please see the report *Finnish Social Protection in 2001*, of which a summary can be found at [www.stm.fi/english/tao/publicat/year2001/summary/htm](http://www.stm.fi/english/tao/publicat/year2001/summary/htm)
43. Ministry of the Environment (2001), *The Environment Protection Act in Finland in a Nutshell* (August) <http://kkwww.vyh.fi/eng/environ/legis/nutshell.htm>
44. See the *Memorandum of the High-Level Working Group on Legislative Policy* (1999)
45. OECD (1997), Paris.
46. Esimerkkejä säädösten vaikutusten arvioinneista. Raportti säädösten vaikutusten arvioinnin pilottihankkeista, In English: *Observations and Proposals for Development of Regulatory Impact Assessment and Examples on Regulatory Impact Assessment: A Report on the Regulatory Impact Assessment in Individual Pilot Projects*.

47. Jyrki Tala (2001) "The Effects of Legislation", English summary of the *National Research Institute of Legal Policy Publication* no. 177, Helsinki. Kaijus Ervasti, Jyrki Tala, and Elina Castrén. (2000), *National Research Institute publication* no. 172, Helsinki. In 1994, the National Audit Office carried out a similar study with similar results.
48. Response of the Government of Finland to the OECD Review Questionnaire on Regulatory Reform, February, 2001, Annexe 7.
49. See Juhani Korhonen and Eija Tetri, (2001) "*Models for Regulatory Impact Analysis*", article in *Hallinto* magazine, May.
50. In 1993, the US Government increased the threshold to streamline the number of RIA being reviewed by OMB. This targeting effort reduced the number of reviews to 600 regulations per year rather than 2 200. See John F. Morrall III. (2001). *In OECD-APEC Co-operative Initiative. Proceedings of the Singapore Conference*. February. Singapore. [www.oecd.org/regreform](http://www.oecd.org/regreform)
51. The three basic categories used in OECD work are: 1) the ministerial department is a regulator established within a Ministry and without any substantial degree of independence. 2) A ministerial agency has a separate budget and operates at arms' length from the relevant ministry, but is ultimately subject to ministerial direction. 3) An independent regulatory body has a generally more substantial degree of independence from ministerial direction, although the extent of this varies considerably across different bodies. See PUMA/REG: PUMA/REG (2001)12 and another study by IEA (2001) *Regulatory Institutions in Liberalised Electricity Market*, Paris.
52. OECD (1997), *Environmental Performance Reviews: Finland*, p. 134.
53. An advantage of the involvement of private companies as TYVI brokers is that they have been active in developing services-such as better integration of collection into business software packages and attracting more users to the service. Some brokers also provide value-added services. For example, a broker may package raw data sent by a company to it into the format requested, which further enhances the value of the service to businesses.
54. In advanced regulatory management systems, potential conflicts of objectives between training and challenging RIAs may occur. See OECD (2002).

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