

Chapter 2

Institutional capacities for Better Regulation

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

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

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

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

Assessment and recommendations

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

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

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

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

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

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

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

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

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

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

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

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

Box 2.1. Recommendation from the 2003 OECD report

Recommendation

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

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

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

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

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

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

Background Comments

Whole-of-government policy making is hard to achieve

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

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

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

Lack of engagement and leadership by key ministries

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

Background

The Finnish public governance context

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

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

particular the requirement to adopt the Single Market directives – has also driven change. Important structural reforms have occurred, including privatisation and market liberalisation, in a range of sectors. Finland has been a pioneer in many reforms and has obtained a competitive edge in some sectors (*e.g.* telecommunications) as a result. However, reform is incomplete, the state remains a major provider of products and services and important economic sectors continue to be highly regulated.

- **Finnish governance and regulatory practices are characterised by consensus building, informality, collegiality, gradualism and often corporatist attitudes.** Finnish political culture is characterised by widespread participation in decision-making, a search for consensus among coalition parties,² informal procedures, institutionalised power sharing amongst government, employees and enterprises, and a preference for making changes gradually.³ Consensual approaches mean that regulatory processes are built around committees and informal procedures, which are widely regarded as facilitating flexibility and the adoption of pragmatic solutions. For example, processes of consultation on new laws are not formally specified in legislation, yet they are widely observed. Corporatist approaches still prevail in policy and rule-making: For more than 25 years, government, employers associations and the labour unions have co-operated to shape economic policy. Change is underway, as Finland recognises the need to adapt the system in order to cope with rapid changes in the external environment, including European integration and wider globalisation. Gradualism continues to rule however – for example, the recently completed review of the Constitution took 30 years to finalise.⁴
- **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.⁵ The large number of high officials trained in law may be a result as well as a cause of the predominance of legal thinking in public management. In any event, Finland relies on clear, detailed and specific laws to frame its legal system. While this tendency has inevitably contributed to the problem of “regulatory inflation”⁶ experienced in most OECD countries, the awareness of the importance of legal quality has also contributed to efforts to improve clarity by controlling regulatory inflation. The Finnish culture does not make a clear distinction between policy-making and law drafting: the policy-development process seems to move nearly instantly into law drafting. Changing this would require a significant cultural shift on the part of both government and the public service.
- **A decentralised executive**, where regulatory powers are devolved to ministers, official bodies and municipalities. In common with other Nordic countries, Finnish ministries are highly autonomous, while the centre of government (*i.e.* the cabinet and cabinet secretariat) is relatively weak. This has important implications for the design of overarching regulatory policies and regulatory quality assurance strategies. It also has implications for policy co-ordination and coherence.

Developments in Finland's public governance context

Constitutional reforms

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

Public administration reforms

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

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

“Whole-of-government” approach

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

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

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

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

Futures oriented policy development

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

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

Focus on the subnational levels of government

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

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

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

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

The executive

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

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

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

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

The legislature

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

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

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

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

The judiciary

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

Regulatory agencies

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

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

Local levels of government

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

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

Developments in Finnish Better Regulation institutions

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

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

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

Key institutional players for Better Regulation policy

The executive centre of government

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

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

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

Ministry of Justice (MOJ)

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

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

The Prime Minister’s Office (PMO)

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

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

Ministry for Economy and Employment (MEE)

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

The MEE Better Regulation unit has three main responsibilities:

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

Ministry of Finance (MOF)

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

Co-ordination across central government on Better Regulation

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

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

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

Better Regulation Ministerial Group

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

Better Regulation Consultative Committee (BRCC)

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

Law Drafting Development Group (SÄKE III Group)

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

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

The legislature and Better Regulation

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

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

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

Box 2.4. Parliamentary committees

Audit Committee

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

Constitutional Law Committee

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

Regulatory agencies and Better Regulation

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

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

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

The judiciary and Better Regulation

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

Other important players

National Audit Office

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

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

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

Research bodies and think tanks

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

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

Chancellor of Justice of the Government

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

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

Resources and training

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

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

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

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

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

Notes

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

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

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