

## Chapter 6

### Compliance, enforcement, appeals

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

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

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

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

#### Assessment and recommendations

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

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

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

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## Background

### *Compliance and enforcement*

There is no available information on general compliance with regulations.

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

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

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

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

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

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

### *Appeals*

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

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

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

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

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

### *Parliamentary Ombudsman*

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

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

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

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

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

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

### *Chancellor of Justice of the Government*

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

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

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

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

## Notes

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

