

Better legislation – more competitive edge

SÄVY
Project of business
impact assessment
in legislative drafting

REPORT FROM THE YEAR 2005

Contents

Minister of Trade and Industry Mauri Pekkarinen Added value from impact assessments	3
Project Director Antti Neimala Pragmatism for business impact assessment	4
SÄVY Project Better business impact assessment	5
Research Professor Jaakko Kiander How can business impacts of regulation be assessed?	10
Professor Jyrki Tala More precise information on the impact of legislation	16
Director Jukka Ahtela Business and the legislator- towards a new kind of partnership	20
SÄVY Project – Contact Details	23

Photos: Timo Rautio / Studio Timo Rautio

Added value from impact assessments

Business competitiveness is closely linked to the quality of the regulatory system. A good regulatory system encourages entrepreneurship and investment, and is also characterised by stability and predictability in the long term. The purpose of impact assessment, on the other hand, is to bring added value to the drafting process and to improve the knowledge base feeding into political decisions.

The SÄVY Project is closely linked to the Government's Entrepreneurship Policy Programme, which aims to create concrete reforms in order to promote entrepreneurship and business activity. The project also has an important link to the Lisbon Strategy, which aims to improve the competitive edge of Europe. In the European Union, the Better Regulation theme is a core political priority. Improved regulatory impact assessment also occupies centre stage of this work at EU level.

Transparency and flexibility are the strengths of the Finnish system. A special feature of our system is the extensive and direct participation of a variety of interest groups in the legislative process, in working groups, commissions and committees. In this way,



stakeholders and experts are able to bring their views on the best alternatives and their impacts to the drafting process.

Experiences from the first operational year of the SÄVY Project have shown that, despite our strengths, we are facing many challenges. It is striking to note how narrowly impact assessments have been documented for Government bills. This, in turn, reflects the fact that, in practice, impact assessments have not been mandatory, although clear guidelines on the issue exist.

The assessment of alternatives and their impacts is genuinely beneficial only if they are scrutinised in depth at a sufficiently early stage. As Minister responsible for the Entrepreneurship Policy Programme, I will be paying special attention to the assessment of business impacts, both in my own Ministry and, more extensively, in all regulatory initiatives on the Government agenda.

Mauri Pekkarinen

Minister of Trade and Industry

Pragmatism for business impact assessment



Antti Neimala heads the SÄVY Project, which is linked to the Government's Entrepreneurship Policy Programme.

A good regulation effectively fulfils the objectives and goals set for it, but does not excessively burden citizens, businesses or administration. Systematic business impact assessment supports decision-making – it is not a substitute for political decision-making.

During the drafting process, impact assessment furthers the attainment of the goals set for the legislation. The analysis of the current state of affairs, the identification of alternatives and the assessment of impacts are essential elements of good legislative drafting. We must be aware of the practical impact of regulations already in force, and be able to combine them with our view of the effects of changes in regulations.

Setting up of the SÄVY Project for the years 2005–2007 in itself showed that there is room for improvement in business impact assessment. Experience from the project's first year of operation confirms this view. Our system has many strengths, such as flexibility and efficiency, as well as open and intensive co-operation with interest groups.

Finnish legislative drafting may be deemed to be pragmatic and problem-oriented. If there is a problem in the system, it is dealt with quickly and effectively. In a small country, complex processes for regulating the drafting of legislation are not necessary.

However, our great challenge is a more systematic analysis of alternatives and their impacts, and the transparent documentation of this work. This challenge is common to all – it is impossible for legislative drafters to develop their own work without co-operative input from interest groups.

This report describes the operation of the first year of the SÄVY Project, and provides expert views on the central themes of impact assessment. We hope that the report will stimulate discussion and provide inspiration for ever better impact assessment work. Our guiding light might be the sometimes-quoted phrase: "Impact assessment is no rocket science." So, let's continue to be pragmatic. The most effective results are achieved when systems are made to suit practical requirements.

Better business impact assessment

The Ministry of Trade and Industry set up a project for assessing the business impacts of proposed legislation, the SÄVY Project, to operate as an expert unit common to all ministries for the years 2005–2007. The aim of the project is to make consideration and assessment of business impacts an integral part of good legislative drafting. The project is linked to the Government's Entrepreneurship Policy Programme, and is run jointly with the Ministry of Justice. The assessment of the business impact of legislation is based on guidelines issued in the 1999 Government decision-in-principle.

In its first year of operation, 2005, the SÄVY Project defined the current status of the assessment of the business impacts of legislation and initiated close collaboration between ministries, business sector associations and research institutes, in order to improve the assessment of business impacts. In addition, the project investigated impact assessment practices at EU level and in a number of different countries, and participated in the preparation and national coordination of issues relating to EU's Better Regulation agenda. The project published its own website (www.ktm.fi/savy/english), containing basic information on business impact assessment and Finnish enterprises. In December 2005,



The SÄVY Project is managed by Project Director Antti Neimala (above right), Senior Specialist Liisa Lundelin-Nuortio (below) and Assistant Jonna Sjögrén.

What is the SÄVY Project?

- The project operates as a shared specialist unit for Government ministries and promotes business impact assessment as part of the legislative drafting process.
- The project works to develop methods for assessing business impacts.
- The project organises regular contact between ministries and the commercial and business sector in order to assess business impacts.
- The project participates in international work in the field of business impact assessment.

the SÄVY Project also launched a series of training events aimed at officials involved in the legislative drafting process.

Open co-operation and communication

The early stages of the project were dominated by the creation of a collaborative network. In order to achieve the targets set for the project, a continuous and close system of co-operation has been organised with the ministries and interest groups, such as business stakeholders and research institutes. Each ministry continues to take responsibility for the quality of its own legislative drafting from start to finish. The most important remit of the SÄVY Project is the provision of support for the ministries, not quality control of their drafting procedure. For the stakeholders, the project functions as a channel for the exchange of views in issues concerning business impact assessment. Business stakeholders are also encouraged to actively develop methods for developing and improving impact assessment work.

An important form of co-operation with ministries and interest groups is the maintenance of contacts with the project's support group and with contact persons in different ministries. The project is also always at the disposal of those engaged in legislative drafting in the ministries, when support in business impact assessment is required. Nevertheless, only a small number of requests have come from ministries during the project's first year of operation.

The Group of Permanent Secretaries for Legislative Drafting has acted as the steering group for the SÄVY Project. Once the Group completed its work in the autumn of 2005, the project then reports to the Enterprise Advisory Committee of the Ministry of Trade and Industry. This committee is chaired by the Minister of Trade and Industry and includes representatives from the main interest groups from the business sector. In addition, the SÄVY Project reports at least twice a year to the ministerial group of the Entrepreneurship Policy Programme. In this way, a close link is maintained with the Policy Pro-

gramme, on whose initiative the project was launched.

Clear room for improvement in the assessment of regulatory impacts on business

The SÄVY Project arranged in early 2005 bilateral meetings with ministries and the principal interest groups. The events were used to provide information on the tasks, objectives and working methods of the project. At the same time, a good picture emerged on what the strengths, problems and challenges are in analysing proposed legislative alternatives from the business impact assessment point of view.

As a view shared by the ministries and the business sector, it may be summarised that the strengths of the Finnish system are flexibility and efficiency in the drafting process, and the good opportunities provided for interest groups to participate in that process itself. Business impacts are continuously assessed during regulatory drafting, even if the documentation of the assessments is occasionally incomplete.

The greatest problems in legislative drafting, in addition to the meagre documentation, are insufficient management and a lack of resources for legislative drafting projects. The practical know-how of the drafters in the area of business impact assessment also requires additional support. Within the timetables allowed, personnel and other resources provided and work assignments allocated, it has not been possible to systematically focus on business impact assessment. Attention is often paid too late to impact assessment, when it is no longer possible to genuinely compare the benefits and adverse effects of various legislative alternatives.

A separate investigation was conducted to evaluate the extent to which the 1999 guidelines on business impact assessments are applied. It appeared that their use has been minimal. One crucial reason for the low uptake of these guidelines, in addition to the resource problems of legislative drafting, has been the great number and overlapping nature

of impact assessment guidelines for different impact areas – in addition to business impacts, separate guidelines have been given for the assessment of economic impacts, impacts on regional development, environmental impacts and gender impacts.

An important reason for the poor implementation of impact assessment has also been the lack of support and training for legislative drafters. The knowledge on methods used in impact assessment is not sufficient, and the guidelines are not practical enough. Consequently, right at the start, the SÄVY Project signed a collaboration agreement with the Government Institute for Economic Research (VATT). The agreement lasts the entire term of the SÄVY Project, and VATT supports the project especially in developing assessment methods. Research Professor Jaakko Kiander, writing on the methods of business impact assessment later in this report, is the contact person for the SÄVY Project at VATT.

Along with the creation of a co-operative network and conducting a general survey of the current situation, an important task during the early stages of the project has been the creation of the project's own website. The aim is to disseminate information as transparently as possible via the Internet. The website contains basic information on impact assessment, along with information on the Finnish business sector. To further improve the provision of information about businesses, a service was acquired which set up a continuously updating business information image library. By providing business information, the SÄVY Project wants to draw the drafters' attention to the structure of the Finnish enterprise sector, such as the overwhelming proportion of small businesses in the whole entrepreneurial field.

Pilot projects and the analysis of Government bills during 2005

The SÄVY Project identified 11 pilot legislative initiatives right at the start of its operation jointly with the ministries and interest groups. The intention was that the pilot projects should be of significance from the business perspective, and additionally be from a comprehensive range of different ministries.

The objective of the pilot projects is to test various methods for assessing business impacts, and, thus, to obtain good practices for use in other legislative projects. By the end of 2005, one of the pilot projects, the regulations for promoting demand for low-paid work had progressed to Parliament and had already become law.

The pilot projects and the responsible ministries:

- Amendments to the Act on the Protection of Privacy in Electronic Communications (Ministry of Transport and Communications)
- Class Action (Ministry of Justice)
- Development of Legislation on the Reorganisation of Companies (Ministry of Justice)
- Implementation of the Directive on Environmental Liability (Ministry of the Environment)
- The Port Act (Ministry of Transport and Communications)
- Promoting Demand for Low-paid Work (Ministry of Finance)
- Proposal for a Directive on services in the internal market (Ministry of Trade and Industry)
- Prospectus Liability (Ministry of Finance)
- Reform of the Entrepreneurs' and Farmers' Pension Schemes (Ministry of Social Affairs and Health)
- Revision of the Act on Co-operation within Undertakings (Ministry of Labour)
- Revision of the Auditing Act (Ministry of Trade and Industry)

Progress on the pilot projects may be followed on the SÄVY Project website.



Jonna Sjögren takes care of the administration for the SÄVY Project and ensures, amongst other things, that its website is updated.

Dozens of regulatory initiatives are constantly ongoing in Government. In the autumn of 2005, in order to improve business impact assessment, the SÄVY Project endeavoured to identify in every ministry, in addition to the pilot projects, those regulatory initiatives, still in their early stages of drafting, that would benefit from setting up consultations between the drafters and the SÄVY Project. The purpose was to create a rolling procedure. However, as the ministries only put forward about half a dozen initiatives into the consultative process, the system will have to be modified during 2006.

In order to implement systematic monitoring, the SÄVY Project also analysed all Government bills passed to Parliament in 2005. The analysis established how business impacts are assessed in the main legislative drafting documents, such as the preambles to Government bills and the memoranda and statements of parliamentary committees. The results of the analysis will be actively used dur-

ing 2006 in the collaboration of the project with the ministries and interest groups, and the analysis will be repeated each year the project is in operation. The analysis will be utilised e.g. by citing examples of good impact assessments as models for future initiatives. In his article later in this report, Professor Jyrki Tala touches upon the results of this analysis.

EU affairs and international collaboration

The SÄVY Project participates in international work in the field of business impact assessment. In 2005, business impact assessment procedures in the EU and other countries were explored. The aim was to survey best practices in impact assessment and to make use of them in the development of the Finnish system. The subjects of the study were the EU impact assessment system, as well as countries where business impact assessment is well developed, such as United Kingdom, the Netherlands, Denmark, Sweden, the United States and Canada. Of these, the project made visits to Brussels, United Kingdom, the Netherlands and Sweden, with meetings arranged both with civil service colleagues and representatives of interest groups from the business sector. Information on the practices of other countries and the contacts created will be utilised in the future, particularly when developing the Guidelines for impact assessment.

Carrying out impact assessments and using them as an aid for decision-making is one of the most important processes at EU level, when the intention is the creation of a better regulatory environment for businesses and citizens. The SÄVY Project has taken part in the national preparation and co-ordination of issues relating to the EU's Better Regulation agenda. The SÄVY Project also participated in the meeting of 'Directors of Better Regulation' organised in Vienna.

Training for legislative drafters

The SÄVY Project launched a training programme by organising a seminar entitled 'Business impact

assessment: a challenge for legislative drafting' in December 2005. The seminar gathered together more than a hundred legislative drafters and representatives from different interest groups. The training programme will continue with events targeted at key people with the responsibility for the legislative drafting process. The topics for the 2006 training events are: Methods of business impact assessment, Commissioning an impact assessment report by an outside specialist and Alternatives to regulation.

Future focus on methodology development and support for regulatory initiatives

In order to increase the efficiency of impact assessment work, the SÄVY Project has proposed that the various current, separate impact assessment guidelines should be integrated. As a result, the task of reforming the guidelines was begun in February 2006 under the direction of the Ministry of Justice. Compiling the new impact assessment guidelines and at the same time ensuring ongoing support for legislative drafters, as well as monitoring the system will be one of the main tasks for the remaining term of the SÄVY Project. In 2006, special attention will also be paid to alternatives to regulation.

Activities in the second half of 2006 will be characterised by Finland's term of Presidency of the EU. The handling of impact assessments of the Commission by the working groups of the Council forms a central and practical issue on the Better Regulation agenda during Finland's Presidency. Finland will also, amongst other things, endeavour to promote the production of impact assessments for significant changes proposed by the Council.

In inter-ministry collaboration, the aim of the SÄVY Project remains to provide support for individual regulatory initiatives. Methods and procedures are under development in co-operation with legislative drafters. In addition, the project will have direct contacts with the leadership of the ministries. Systematic monitoring of Government bills will continue in the vein of the 2005 monitoring.



The responsibilities of Liisa Lundelin-Nuortio include EU and international issues, as well as the reform of impact assessment guidelines.

SÄVY 2005 – Key Figures

- At meetings organised with the ministries and interest groups, direct contact with over 100 regulatory drafting and impact assessment specialists was established
- 11 pilot projects were identified
- The 13th December seminar 'Business impact assessment: a challenge for legislative drafting' was attended by around 120 drafters and representatives from interest groups
- All of the 232 Government bills of the year 2005 were analysed

How can business impacts of regulation be assessed?

Naturally, regulations affect all human activity, including businesses. During the last 5–10 years, many industrialised countries have become increasingly interested in how the regulatory environment affects business activity. This interest has been furthered by e.g. the OECD's efforts to develop a better regulatory environment, and the European Union's concern over the Continent's low competitiveness and growth potential.

The EU would like the European economies to be dynamic, innovative and fast growing. The growth targets, in turn, are deemed to require entrepreneurship, and consequently also a regulatory environment favourable to enterprises and entrepreneurship.

In order to be able to assess the business impacts of legislation, some kind of idea is required of what factors affect business activity, what these effects are, and how important they are. Unfortunately, there is no accurate information about this. Micro-economic thinking does provide certain qualitative assessments on the impacts of various factors.



Research Professor Jaakko Kiander of the Government Institute for Economic Research (VATT) is the SÄVY Project expert in methodology development.

However, the information required for making quantitative assessments is usually lacking.

Are the markets functioning?

A crucial question from the point of view of entrepreneurship is the functioning of the market. In some sectors, it may be difficult for new companies to gain entry into the market. The reason may be official operational licensing policy or protectionism, or the monopoly power of strong companies already operating in the market, which can be used to make entry into a market difficult or practically impossible.

In some cases, regulations may influence the actual competitive situation in the market. It is good for the legislative drafter to know that it is usually to the advantage of companies already operating in a market to prevent the entry of new competitors. However, justifications for regulations with this result are usually built on other objectives, such as alleged consumer benefit.

Exit from the market often takes place through bankruptcy. Inefficient or unlucky businesses may drift into bankruptcy. That is why bankruptcy legislation plays an important role. It is good that unprofitable businesses are weeded from the market, but on the other hand, severe bankruptcy legislation may result in inordinate situations for entrepreneurs, for instance in cases where they have been forced to assume personal liability for their companies' debts. This excludes from the market entrepreneurs, who may be bankrupt for a long period of time or even indefinitely.

Licenses and standards regulate

The operation of businesses is regulated through many types of licenses and standards. Setting up a business in Finland in itself is easy and inexpensive. Conversely, in most sectors, many kinds of regulations are applied to business premises and actual productive operation.

Often, the regulations serve to promote safety, or protect the environment or the health of personnel or customers. Indeed, such regulations are often drafted from health and environmental points of view, with possible impacts on businesses confronted only in the final preparatory stages. It should be possible to quantify and take into consideration the impacts of regulations on businesses in the final cost-benefit analysis.

Subsidies and costs

Business subsidies and costs – both direct and indirect – are in principle easier to grasp as factors affecting business operations. The most important and obvious are of course business taxation and business subsidies. On the other hand, other taxes (e.g. employee National Insurance payments or energy taxes) and subsidies also have an indirect impact on businesses, for example through the prices of productive inputs.

Regulations are also used to influence the extent of company liabilities in different situations. If liabilities are increased, companies are often forced to

take out additional insurance, adding to their costs, or if no insurance is on offer, to take a greater risk.

Direct and indirect impacts

When assessing the impact of regulations on business, we should attempt to establish whether new regulations in some way affect the above dimensions of business operation. Drawing a line is difficult, because everything affects everything, and because even regulations that have no direct impact on businesses may have (unexpected) indirect impacts on them.

When assessing impacts on business, the legislative drafter or impacts assessor should have some idea of the business activity and its particular circumstances. It is thus important also to have some basic understanding of the companies' and various sectors' business size classifications and the main channels of impact. Such an understanding may require additional training of legislative drafters, or alternatively setting up of a specialist body to undertake a supportive role in impact assessment.

What kind of administrative burden?

Regulations and ensuring compliance with them increases the administrative burden on companies, or in other words the resources the business is forced to use in order to operate according to the regulations. In practice, it is almost always a question of the costs of financial management. These costs are incurred either through the entrepreneur's own work input or outsourced services, or, in larger companies, the personnel costs associated with financial management. All reporting requirements and licensing procedures add to the administrative burden.

There is no precise knowledge on the size of the administrative burden and its costs. It would, however, be possible to estimate it through research. In the case of new regulations, an attempt should be made to estimate how much they add to a company's administrative burden. For example, a regulation may create a new reporting requirement,

whose compliance may be estimated to require a certain number of working hours per annum. When estimating such concrete costs created by bureaucracy, it is worth remembering that there are a lot of businesses and that the majority of them are small. Even a very small administrative burden (e.g. taking care of value added tax returns) may result in costs, for a small business amounting to several per cent of its annual turnover.

The administrative burden constitutes a concrete cost item, which due to lack of information has scarcely been taken into account. In the future, more attention should be paid to it.

Taxation and other direct costs

At least in principle, the impact of taxation and various business payments is relatively straightforward to estimate. The immediate costs of changes in taxation and payments are known and their impact can be assessed.

However, assessment of impacts in practice is not so easy. Taxation is usually changed almost every year. Changes in business and capital income taxation in Finland have been made in the years 1993, 1996, 2000 and 2005.

Tax reforms are customarily accompanied by projections on the effects of the tax changes on the national economy. These are so-called static impact projections, i.e. calculations that make the assumption that all other factors apart from the basis of taxation remain unchanged. In reality, however, this is not the case. As a consequence of changes in taxation, the functioning of the economy changes, which also affects tax revenues. Such dynamic effects resulting from behavioural changes are generally not assessed either before or after the event. This is partly understandable, since behavioural effects are always uncertain. On the other hand, their more accurate investigation would be justified by the fact that dynamic impacts are frequently underestimated. For example, the 1993 company tax reform, when the tax rate was reduced, led to a substantial increase in tax revenues.

In addition to company taxation, changes in other taxation also affect businesses more or less directly. Assessment of the impacts is difficult, but not impossible. Businesses are also affected by various changes in consumer taxes, income tax reforms and changes in National Insurance payments.

Learning from experience

We have already established that assessment of the various impacts is difficult. However, it is not always necessary to invent everything from scratch. Prior experience may also be utilised in legislative drafting – either from our own country or others. For example, Finland has traditionally followed Sweden's legislative development with a delay of a few years. A survey and analysis of Swedish experiences may often be a simple and enlightening means of evaluating the impacts of regulations.

Exploiting an analysis of prior experience is a relatively reliable and cost-effective method of predicting the effects of regulatory changes. Ready-made analyses are also often available.

If the regulatory change is a case of the national implementation of an EU directive, a large number of various studies will usually already exist in connection with the directive (or even the proposal for the directive), which might be utilised in impact assessment. Naturally, it must be remembered that national characteristics and special circumstances must be taken into account when drafting domestic legislation. Approximately 30-50 per cent of regulations originate from the EU, so the impact assessments of the EU Commission, the Council and the European Parliament are important sources.

Quantitative assessment: econometric modelling

From the decision-maker's perspective, it would be best if an accurate quantitative estimate of business impacts could be given, e.g. in the vein that reform X will lead to a growth in business turnover of two per cent and help to create a certain number of jobs. In most cases this is not possible, one of the

reasons being that the reforms do not concern any quantifiable concepts.

However, the production of relatively accurate quantitative impact assessments is possible when regulatory changes relate to some quantitatively measurable parameter affecting business activity; examples are taxation, subventions, labour costs and sometimes also administrative costs. If the cost implication is known, it is possible to estimate the effects of the changes on employment rates, profitability and other business variables. Making the estimate requires adequate basic statistical data and econometric modelling. If sufficient statistical data is available, estimation using such a model is possible:

$$Y = a + bX + cZ$$

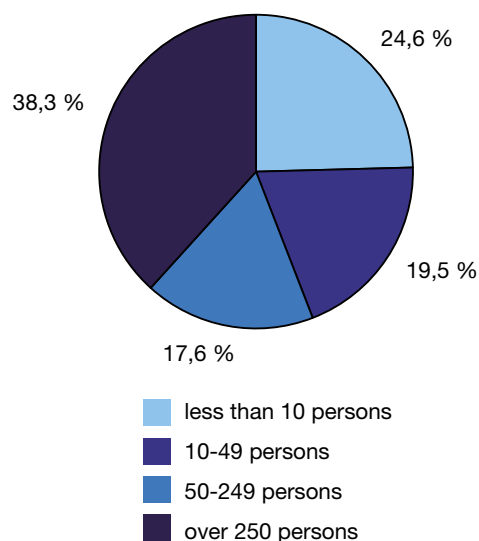
where Y may be the companies' turnover or employment ratio or some other interesting variable, and X a political variable to be changed by the reform (e.g. basis of taxation or business subsidy). The regression equation also takes into account the effect (variable Z) of controllable background variables (such as business sector or general economic trend).

Econometric modelling is often the best and most reliable method of measuring the impacts of changes. However, it is also difficult, above all because it requires quantification of regulatory changes and at the same time also sufficient statistical information. Admittedly, various sources of data are in existence in Finland (eg. tax authority records of businesses) that may allow wider use of econometric methods than are currently applied. The production of reliable quantitative estimates often demands extensive research, and is, therefore, slow and costly.

Qualitative assessment

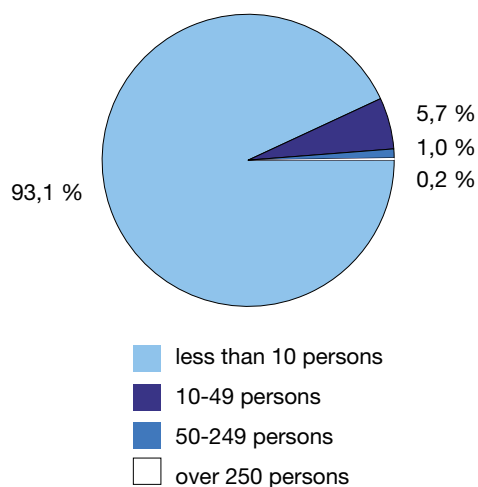
In most cases, a qualitative assessment must suffice as the impact assessment. The reasons may be, in addition to lack of resources, the fact that the regulatory change is difficult to quantify and, on

Distribution of the personnel according to the size of the companies in 2004
Total personnel 1 312 245



In the private sector, small companies employ more than 40 per cent of the workforce.
Source: Toimiala Online / Statistics Finland.

Companies according to their size in 2004
(in total 232 305 companies)



It is essential to note that almost 99 per cent of all enterprises are small businesses.
Source: Toimiala Online / Statistics Finland.

the other hand, the fact that there is no previous experience or empirical data to form the basis of the impact assessment.

Making a qualitative assessment may be easy or not so easy. In the case of most proposed regulations, it is relatively easy to ascertain that they will not result in any significant impact on business. However, a proportion of the regulations are such that the existence of potential impacts on business seems likely, even if quantitative assessment may be impossible. In such cases, the impact assessor should be able to present an assessment of whether the impacts will be significant, and also of their direction. They should also be able to answer questions on whether the regulation will add to the obligations and costs of businesses, and how it will affect their operational environment.

An assessment by leading experts in such situations is generally useful. Conversely, statements by interest groups do not always provide a reliable view, as they reflect special interests.

Qualitative assessment should also be founded on theory and expertise. Often, such assessments may be obtained through the consultative procedure for free. Nevertheless, the regulative drafter must in the final instance weigh up the various assessments and evaluate the different and perhaps conflicting statements.

Statistical data from short-term change

Some regulations are constantly changing, or at least are easy to change. They include e.g. many taxes and subsidies that change every year. Because changes are made frequently, more experience is also gained every year, which should facilitate the assessment of the impacts – naturally provided that sufficient historical statistical data is collected. It is often possible to learn from mistakes, and some changes may be used for ‘experimentation’ (e.g. the social security payment experiment in the municipalities in Lapland). The effects of the

experiments may be assessed frequently in order to form the basis of new decisions. In this way, the assessment of the impacts of short-lived regulatory change is not so fateful, since a decision that turns out to be ill judged can be changed. In such cases, the key tasks are rather the monitoring, recording and systemisation of actual experience into information databases.

Assessment of permanent changes crucial

Some regulations signal permanent institutional changes. Examples are the bill on class action legislation and the EU services directive. If the services directive is adopted, it will not later be revoked. Similarly, the threshold for revoking the class action law may be higher than that of passing it.

The assessment of the impacts of permanent and characteristically institutional changes is difficult, but at the same time also important. There is no previous experience, unless there is something to be learned from those experiences of other countries. On the other hand, assessment is also important, because institutional changes are always significant and lasting. Their impacts emerge only gradually.

The preparation before making large-scale changes is crucial. It is better to make a good assessment than to produce an unsuccessful reform quickly – or a reform with unknown impacts. Consequently, sufficient time and resources should be allocated for assessment and preparation of reforms that are permanent in nature and potentially significant.

Good common sense to the rescue

Assessment of the business impacts (as well as other impacts) of regulations is often difficult, but at the same time it is also important. On the other hand, the difficulties of assessment should not be overemphasised. Good common sense and certain basic information on businesses and the workings of the economy often help resolve the basic questions of

assessment: will the reform affect businesses at all (most do not), and if so, are the effects positive or negative?

Assessment of business impacts requires an understanding of the workings of business and the business sector. However, most basic information is easily adopted. Common sense may also be applied to the assessment of business impacts; reforms that add to the costs of businesses are always likely to have an adverse effect on businesses, even though they might have other beneficial effects. In the final instance, it is the legislator's task to weigh up any benefits and adverse effects that may be different in terms of type and magnitude. It is the task of the impact assessor to produce useful information for this purpose for the legislator.

Under normal circumstances, legislative drafting, and the working groups and consultative procedures usually associated with it, produce sufficient material to enable the assessment of any business impacts. The views of different parties may be conflicting, but nevertheless do help in the conceptualisation of fundamental impact mechanisms.

Assessment studies on significant impacts

In the more complex cases, actual assessment research must be employed. This is necessary when significant business impacts are likely, and when more detailed information on their magnitude and type is required. Tax reforms often fall within this category.

Naturally, sufficient time and resources should be set aside for the assessment of notable reforms. Particularly when planning permanent institutional changes, investment in adequate impact assessments is desirable. Rapid production of reforms per se does not appear to be a sensible goal; what is the sense in reforms, the effects of which we do not know or cannot assess?

More precise information on the impact of legislation

For the modern political decision-maker or holder of public office, legislation is the most important means of furthering goals, solving problems and attempting to regulate people, businesses and officials. We still, however, have surprisingly poor idea of how laws are implemented in practice and how they affect us. Not all legislators are even genuinely interested in this topic.

In general, legislation impinges on business activity in three different ways. Some legislation is intended to make a direct impact on companies, their mode of operation and operating environment (eg. company law and competition legislation). A significant proportion of regulation has different principal objectives – employee protection, consumer protection, environmental protection, social security, and management of public authority funding requirements – but, nevertheless, still has a direct impact on business activity. There is also legislation that is not intended or expected to affect business, but still does.

The impacts of legislation have been one of the principal subjects of projects carried out from the 1980s onwards, which aim to improve the quality of legislation and legislative drafting. Naturally, different countries have acted in different ways and tempos. The extensive deregulation programme of the United States brought the prediction and quantification of legislative impacts to the forefront as early as the 1980s. In Finland, continuous efforts to improve legislative standards have been made since



Regulatory impact assessment is one of the areas researched by Professor Jyrki Tala from the Faculty of Law, University of Turku

the mid-1990s. The European Union has made serious efforts in this direction in the 2000s.

Why are impacts of legislation an important issue?

The impacts of legislation have gained attention for two reasons. The results of several reforms, even major ones, have been a disappointment when compared to their fine intentions. Yet, they have simultaneously often caused considerable costs and awkward operational restrictions for both individuals and companies. But still, the mode of thinking still prevails whereby laws and reforms are seen as a means of promoting set targets: as tools for advancing the good and preventing the bad. This instrumentalist thinking has unavoidably evoked critical questions. What kind of an instrument is law, how does it work? The classicist of legislative theory, Baron Montesquieu, already had the insight in the 1700s to summarise: a law must achieve its desired impacts.

In the field of the development of legislative processes, the crucial objective in different countries

and international organisations has become the clear-cut guideline: the impacts of proposed laws must be identified and predicted as comprehensively and multi-dimensionally as possible. If a law is a means of advancing important goals, it is essential to predict the kinds of impacts the law will have and to ensure that the intended impacts indeed emerge. In the hands of the public decision-maker, law is not only an important, but also a powerful tool: it must not be used to take random shots in the dark and then only afterwards cynically review the effects.

Prediction of impacts difficult

The respect for the legislative authority is also an important consideration. If laws do not lead at least approximately to the desired outcome, respect is not created, and nor do decision-makers or legislative drafters deserve it. The complexity of modern society and its judicial system provide strong grounds to make serious efforts to understand and predict the impacts of laws. In the ever more convoluted and specialised operational environments and conditions of multi-layered judicial regulation, it is far from easy to recognise and understand the ways in which regulations finally produce their impacts in all their forms. It requires demanding professional input, know-how and ability for diverse analysis covering all the interrelationships between issues to be made.

The idea of the responsibility of politicians and the holders of legislative office must also be borne in mind. How can systems of responsibility function if there is no advance knowledge of what kinds of effects were intended for the legislative reform, and if no effort is made afterwards to establish whether the desired impacts really happened?

Impact assessment as a part of legislative drafting

Experience of legislative development for around 20 years in different countries has taught us to see more clearly how issues attached to the impacts of the law should be approached during legislative drafting. One of the most important sources of

knowledge has been the Organisation for Economic Co-operation and Development, OECD. It has become the world expert in market economies, especially in the field of developing tools for improving legislation related to economic activity. The OECD has tirelessly stressed the importance of establishing the impacts of laws, both in advance during drafting, and afterwards, in assessing the actual impacts caused by the laws.

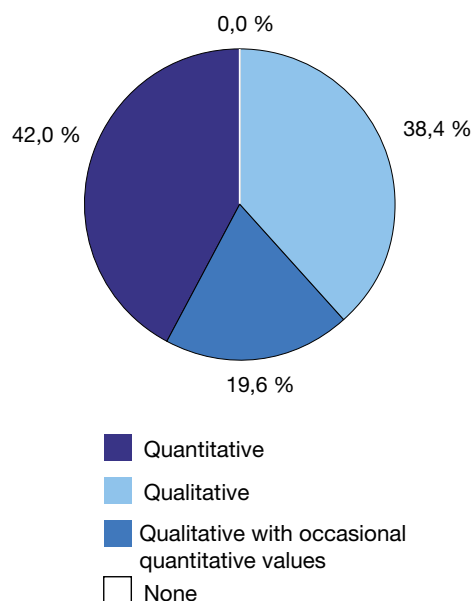
In legislative drafting, the studying of the impacts is part of a four-link chain, in which not one link should be weak or fragile. For legislative drafting to be successful, expertise in both the issue to be regulated and in legislative drafting work is essential. Good legislative drafting demands an open and sufficiently comprehensive examination of two or three alternatives. For each alternative, both the positive and negative impacts must be assessed. The different alternatives and their related impact assessments must be presented in sufficient time for evaluation by external parties, and for critical scrutiny by both experts, the target groups of the regulation, parties likely to gain from it, and civic groups.

Only weak links?

The impacts of the law are in effect the core of this whole issue. Regrettably, Finnish legislative drafting currently suffers from problems in all four links of the chain. Admittedly, development towards professionalisation in the field of legislative drafting is gradually making progress, but we still see evidence of a belief that every young lawyer or inexperienced civil servant is capable of drafting bills as a sideline. Genuine investigation of alternatives still remains scant, and impact analyses are rare and slim, as we will see later.

The above four links are closely-knit. The rationale for studying the alternatives is that a careful analysis of the main impacts of each operational alternative may be made. However, impact assessment only brings slight benefits if the impacts of several different operational alternatives are not examined. Consultative and review feedback received in good time from external parties enriches the knowledge

Nature of the impact assessments in 2005



In 2005, impact assessments of Government Bills were mostly qualitative. Source: The Government Bill analysis by the SÄVY Project.

and argument base of legislative drafting by providing information and insights gained from experience that the civil service legislative drafters mostly cannot and often need not possess.

Shortcomings in impact assessment

Legislative drafting in Finland has required quite extensive impact assessment from as early as the latter part of the 1970s. At that time, the first guidelines on the preparation and information content of Government bills were given. In the mid-1990s, the Government set up a comprehensive programme for improving legislative drafting. Ever since, preparation of impact analyses has, in principle, been the target of constant interest and developmental activity.

With the best will in the world, results to date cannot be seen as laudable. The key officials of Government legislative drafting, the Permanent Secretaries of the ministries, gave the following evaluation of the situation in their recent memorandum in autumn 2005: despite a larger number of guidelines, the assessment of regulatory impacts is in practice still insufficient, and impact assessment

still has not become a regular part of drafting. Enquiries show that the situation even deteriorated further in 2003–2004. This assessment of the Permanent Secretaries, almost reminiscent of self-flagellation, is supported by the observations of others, too. In the survey conducted by the Bureau of Legislative Inspection of the Ministry of Justice, the majority of current impact assessments are harshly characterised as follows: “as long as they have made a token effort”. The OECD investigation of the Finnish legislative system in spring 2003 revealed a whole host of major shortcomings in regulative impact assessment.

What does the SÄVY Project survey tell us?

The SÄVY Project has conducted an up-to-date survey of all Government bills in 2005. The total number of bills was 232. Initiatives that were deemed to result in relevant business impacts were selected for closer scrutiny. There were 143 such initiatives, as around a hundred initiatives were deemed to be of little consequence for businesses.

Scant qualitative assessment

Impacts on business have been specifically identified in well over half of the relevant 143 initiatives. It would appear that business impacts are recognised more often than in the 1990s, when the issue was surveyed last. Additional light is cast on this from information on how many legislative drafts from the ministries, that are crucial from a business point of view, have included some information on their likely business impacts:

- of the Ministry of Trade and Industry bills, only one in seven lacked any mention of business impacts;
- in the case of the Ministry of Transport and Communications business impacts were dealt with in 15 initiatives out of a total of 19;
- for the Ministry of Agriculture and Forestry, a mention was found in six bills out of ten;

- out of the ten bills from the Ministry of Justice, no mention was found in four cases;
- of the Ministry of Social Affairs and Health, there was no mention in 15 out of a total of 35 bills;
- as for the Ministry of Finance, there was no mention in almost half the cases, or out of 28 bills in all, only 15 included information on business impacts;
- in the bills drafted by the Ministry of the Environment, again about half included information, or five cases out of nine.

The SÄVY Project also examined the extent and nature of the information on business impacts. In the bulk of the bills, the information on the business impacts of the bill was extremely limited. Impact assessments of more than half a page were found in well under a fifth of the bills. In about four-fifths of the bills, the assessments were purely qualitative, with no numerical assessments whatsoever.

Unequivocal conclusion – clear shortcomings in current situation

The SÄVY Project did not analyse comprehensiveness of the information on business impacts, nor its correctness or critical points. Nevertheless, the conclusion on the current state of legislative drafting is fairly unequivocal. Although about half of the more significant bills from the business perspective include some information on the business impacts of the proposal, glaring problems and shortcomings are attached to the quality and comprehensiveness of the information, and its capacity to help decision-makers and others to assess the significance of the bill – pretty much in line with the cutting description in the above quotation from the Ministry of Justice.

Which way ahead?

How do we move forward from the current poor situation? How do we improve the quality of laws

and legislative drafting? Already, experience has been a hard taskmaster and taught us that there are no easy solutions.

Carl Böhret, a German expert who has conducted valid theoretical research and also assisted in practical legislative drafting, has said a little resignedly: “If only we knew the impacts of laws.”

The lesson contained in this statement is not that we should abandon our efforts towards better legislation. On the contrary, we must redouble our efforts, but they must be correctly targeted.

Practical examples required

We need graphic, good practical examples of the competent analysis of legislative impacts. They are needed above all from initiatives, where impact assessment has brought genuine and tangible benefits to the work of legislative drafting. Secondly, it is evident in the light of international experience that only for a proportion of legislative drafting initiatives is it useful to carry out demanding, comprehensive impact analyses.

Furthermore, the civil service engaged in legislative drafting and its political leadership should understand that outside the Government administration, in the worlds of research, associations, practical life and officials in the field, there is a great deal of potentially important know-how. It should be harnessed to genuinely benefit legislative drafting through consultative procedures, research commissions, peer appraisals and other forms of collaboration.

One of the problems of the current situation is that political decision-makers still do not demand sufficient impact analyses during legislative drafting. Other players should also take more responsibility, as improving the quality of legislative drafting is a common and shared challenge. Consequently, expectations are great for the Better Regulation programme, ending in May 2006. The initiative includes all those important parties in society, through whose action we may achieve concrete improvements. The time for action is now.

Business and the legislator - towards a new kind of partnership

A characteristic of a well-functioning and economically successful society is a good regulatory environment. The quality of regulation is also an important economic success factor. Indeed, clearly defined and well-balanced rights and responsibilities, as well as predictability and assurance of justice in its application and administration are the distinguishing features of both a society governed by law as well as a welfare society.

Companies are genuinely interested in the regulation of their sector and want to influence it. Their wish is naturally shared by other sections of society, such as employees, farmers and consumers. Legislators have an equal need to establish the views of all the parties to which the proposed regulation will apply. Thus, in an ideal situation, a fruitful symbiosis that satisfies all parties is created.

It is clear that businesses and organisations representing them have well-founded views on the direction in which regulation and society, as a whole should be developed. Even before the initiation of a legislative project, a basic tenet of lobbying is



The responsibilities of Jukka Ahtela, Business Environment Director of the Confederation of Finnish Industries (EK), include legislative issues.

that efforts should be made to influence the legislator's agenda, i.e. which areas should be regulated and which should not. In Finland, we have every opportunity for doing so: ultimately, it is a question of what is brought forward in the Government's legislative programme. Lobbying becomes trickier in the case of the political agenda at EU level, but in principle, it is possible to influence the programmes of the Commission and the Council. This is based on an open and functioning dialogue between political decision-makers and interest groups.

"To be heard, to be understood – to influence"

The basic formula of lobbying is "to be heard, to be understood – to influence". All the levels of this three-tier model are important. The legislator will only listen to a party with something relevant to say on an issue. One can only be understood if one is able to explain one's view in such a way that the legislator sees it as significant to the matter at hand. One can only influence if the arguments one presents are better than those of others.

The basic pillar of serious lobbying is objective, factual knowledge of a high standard. Opinions, arguments, attitudes and suppositions are a different matter. They are also necessary in conveying messages, but in the final analysis, it is facts that decide.

In business lobbying, the economic impacts of regulation on enterprise are often stressed. Objective facts are required in this very instance. Naturally, the most concrete information may be found at an individual company. Precise estimation of investment required by new environmental norms is possible, as is that of possible related reporting costs. The situation is quite different if the same question is asked of the whole business sector, let alone commerce at large.

No unnecessary bureaucracy

Obtaining information for impact assessment is challenging for a number of reasons. Companies are under constant pressure to provide information; authorities, research institutes and commercial and business sector organisations require a great variety of information from companies – in itself, mostly for rightful purposes. However, companies often see this as unnecessary bureaucracy. The requirement for the data necessary to assess the impact of legislation only serves to add to this burden.

Business sector organisations naturally have ready-made data obtained from companies at their disposal, which very often can also be utilised for regulatory initiatives. However, the problem is that usually the data was collected for a purpose other than legislative impact assessment. Therefore, its scope and applicability are often inadequate. The same applies to data gathered by research institutes – except in the case of a study commissioned for the project in question.

The Better Regulation programme launched by the Prime Minister's Office provides an excellent opportunity for overall conceptualisation of the principles of high-level regulatory drafting. With the

perspective strongly biased towards the importance of good regulation as a national success factor, this project, terminating at the end of May 2006, particularly serves to add impetus to business impact assessment.

Continuous dialogue necessary

A new *modus operandi* is required here. The starting point should be a continuous dialogue between the business sector and the legislator on the business impacts of regulation. In this respect, the current business impact assessment project (the SÄVY Project) could operate also in the future as a core programme, within whose scope functional procedures for impact assessment could be developed jointly between the business sector and the Government.

The ground rules of joint development projects

1) Long-term view, predictability

It is important that regulatory changes are sufficiently predictable and that legislation is based more on long-term and jointly agreed strategies than haphazard solutions to individual problems. Predictability and legal assurance are the foundations of a good business environment.

2) Genuine consultation and opportunity to influence

Dialogue between the legislative authorities and the business world in Finland is good, but too often situations do arise, where consultation with the business sector is only a formality. There are great differences between ministries in this respect. We must make sure that in future both parties are committed to common ground rules for genuine consultation. Based on these ground rules, the business sector may be charged with ensuring that the opportunities for consultation offered are indeed taken up: it must be able to present relevant information – not just opinions – on the effects of proposed regulations on the operation of businesses.

3) All the alternatives must be weighed up

There are alternatives to regulation. Weighing them up without prejudice is part of a good regulation culture. There are many alternatives: self-regulation of the business sector, recommendations, – and even the alternative of there being no need for any action if investigations point in this direction.

4) Business impact assessment as a part of good legislative drafting

The assessment of impacts on business must be developed to form a natural and fundamental part of good legislative drafting – not a necessary evil that must be seen to one way or another. It should be seen throughout the whole drafting process as an activity benefiting both the legislator and the future object of the regulation. Of fundamental importance is the development of functional and credible tools.

The business sector must be more vociferous in its demands for results from measures aimed at better regulatory drafting. To this end, it is important to systematically monitor the functioning and results of legislative drafting. Once the goals for better regulation are set, the business sector should monitor their realisation and annually submit its assessment of how well its views have been taken into account in drafting – and particularly in the evaluation of impacts on business.

5) Business sector information input for the development of better regulation

For its part, the business sector must also develop its resources to be able to take a more active part in the collection and production of information that is relevant in assessing the impact of regulation on business activity. In particular, this is a task for business sector associations. It is important to inform companies of the opportunities offered by impact assessment for lobbying. It is equally important to expect companies to participate to the best of their ability in the production of necessary information.

SÄVY Project – Contact Details



Antti Neimala
Project Director

Telephone: +358 9 1606 3631

GSM +358 50 344 2780

antti.neimala@ktm.fi

Responsibilities:

collaboration with the Ministry of Trade and Industry, Ministry of Justice, Ministry of Labour, Ministry of Finance, Ministry of the Interior, Ministry of Agriculture and Forestry, general project management, the Ministry of Trade and Industry representative in the Project Team for the Better Regulation Programme.



Liisa Lundelin-Nuortio
Senior Specialist

Telephone: +358 9 1606 2137

GSM +358 50 434 4920

liisa.lundelin-nuortio@ktm.fi

Responsibilities:

collaboration with the Ministry of Transport and Communications, Ministry of the Environment, Ministry of Social Affairs and Health, Ministry of Education, Ministry for Foreign Affairs, Ministry of Defence, EU and international matters, training, the Ministry of Trade and Industry representative in the Working Group on the Reform of Impact Assessment Guidelines



Jonna Sjögrén
Assistant

Telephone: +358 9 1606 3993

GSM +358 50 375 6217

jonna.sjogren@ktm.fi

Responsibilities:

general administrative and secretarial duties, website, image library

Ratakatu 3, P.O.Box 32, 00023 GOVERNMENT, FINLAND

Telephone: +358 9 16001

Facsimile: +358 9 1606 4622

www.ktm.fi/savy/english



MINISTRY OF
TRADE AND
INDUSTRY

P.O.Box 32, 00023 GOVERNMENT, FINLAND

www.ktm.fi