

SÄVY
Business Impact Assessment Project
REPORT FROM THE YEAR
2006

BETTER LEGISLATION
– MORE COMPETITIVE EDGE

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IMPROVEMENT OF LEGISLATIVE ENVIRONMENT REQUIRES SUSTAINED EFFORTS

Improvement of the legislative environment is an important part of the Lisbon Strategy of the European Union, which aims to reinforce the EU's competitiveness on a global scale. The theme of Better Regulation was also represented during the Finnish EU Presidency in 2006.

During its Presidency, Finland emphasised taking the principles and objectives of Better Regulation into practical legislative work. The Council's working groups consistently made sure that in the handling of the Commission's proposals impact assessments were also taken into account. In my opinion, we succeeded in this work very well.

The development of better legislation and legislative drafting requires both EU and national-level measures. The SÄVY Project of the Ministry of Trade and Industry is a good example of the national measures. During its first two years, the project has promoted assessments of the regulatory impacts on business in a practical way and that way aimed to improve the regulatory environment of companies.

It has also been possible to utilise the experiences gained during the SÄVY Project in the general development of legislative drafting. Examples of this include the preparations of the national Better Regulation Programme and the pending reforms of the guidelines for impact assessment and supporting services.

Impact assessment and the utilisation of the assessments as an information base for political decision-making require sustained efforts – and even a cultural change. This is indicated by the experiences gained from the EU-level and the operation of the SÄVY Project.

On the EU level, Germany and subsequent EU Presidencies will continue to invest in Better Regulation. On the national level in Finland, it is necessary to ensure that the work that has been started will also continue during the next term of government. This requires political commitment and implementation of the recommendations made in the Better Regulation Programme in practical legislative work.

Mauri Pekkarinen
Minister of Trade and Industry



OPEN AND ACTIVE CO-OPERATION

Project Director Antti Neimala

Since the beginning, the SÄVY Project has encouraged legislative drafters to practical assessments of business impacts. We have hoped that the Ministries would actively use the provided support.

We carried on working along these lines in 2006, and this is how we will also proceed in the last year of our project. The experience gained by our team and our networks are at the Ministries' disposal.

The EU Presidency characterised the operations of the Ministries and legislative drafting last year. Despite the Presidency, the number of Government bills submitted to Parliament was high, 280. This means that impact assessments have again been carried out on a number of very different kinds of projects. In addition to practical legislative drafting, the EU and Finland have worked on the general development of legislative drafting and impact assessments.

The analyses in the SÄVY Project on Government bills submitted in 2005 and 2006 indicate that the assessment of business impacts has taken the right course. According to the summary figures, impact assessments and their documentation as a whole have developed in a positive way: the number of extensive assessments has grown and the assessments have a clearer structure.

Despite the positive trend, the challenge of the SÄVY Project remains unchanged: gaining an active contact with legislative projects launched by the Ministries as early as possible. Succeeding in this would also support the general implementation of legislative policy and safeguard the continuity of work launched through our project. •

“The challenge of the SÄVY Project is to activate the Ministries and launch co-operation as early as possible.”

SÄVY PROJECT IN 2006

COMMON EXPERT RESOURCE FOR THE MINISTRIES

In 2006, the SÄVY Project continued close co-operation with the legislative drafters of the Ministries. Co-operation included individual legislation projects and support in their business impact assessment. In each Ministry, there is a nominated contact person for the project. However, it was a practical challenge to activate legislative drafters to utilise the support provided by the SÄVY Project and to launch the co-operation at a sufficiently early stage during legislative drafting.

Furthermore, the SÄVY Project established direct contacts with the management of key Ministries. An analysis of the business impact assessments in the 2005 Government bills was produced, tailored to each Ministry and

used as the basis for discussions. The analysis on Government bills had a positive reception, and the Ministries expressed their willingness to strengthen co-operation with the SÄVY Project. The reports also included concrete examples of the impact assessments in the Ministries' proposals.

The SÄVY Project also monitored the business impact assessments in Government bills with the Government's electronic decision-making system (PTJ). At this stage, the monitoring focuses especially on the fact whether business impact assessment and the consultation of interest groups have been conducted to a sufficient extent in regulatory drafting.

Two training events were organised for legislative drafters, with a total of about one hundred participants. The training events dealt with the methods and information sources of business impact assessment, consultation of interest groups, procurement of expert services related to impact assessment, and alternatives to regulation.

SÄVY, the project for assessment of the regulatory impacts on business, is an expert unit shared by the ministries. The Ministry of Trade and Industry set a period of 1 December 2004 – 31 December 2007 for the project, and it is implemented in co-operation with the Ministry of Justice. Ministry of Trade and Industry's Enterprise Advisory Committee acts as the Monitoring Group to the project.

THE SÄVY PROJECT OFFERS

- Expert support in the performance of business impact assessment in legislative drafting
- Examples of good business impact assessments
- A Business Test Panel for the use of legislative drafters
- Training in business impact assessment
- Website www.ktm.fi/savy – information on impact assessment and entrepreneurship
- An opportunity to utilise the networks of the SÄVY Project between ministries, business organisations and research institutes
- Knowledge of the international Better Regulation activities

PILOT PROJECTS MADE PROGRESS

Five of the eleven legislative projects that were selected as pilots at the early stage of the SÄVY Project were brought before Parliament in 2006: Government bill on Class Action, and the bills on the Auditing Act, the Act on Co-operation within Undertakings, entrepreneurs' and farmers' pension schemes, and legislation on reorganisation of companies. The drafting of the Services Directive was completed during the Finnish EU Presidency, and the implementation of the directive is currently underway. The progress of the pilot projects can be followed on the SÄVY Project website.

The purpose of the pilot projects is to test various methods for assessing business impacts and to obtain concrete examples for use in other legislative projects. In practice, the pilot projects have proved that legislative projects vary also from the viewpoint of business impact assessment. The organisation, time schedules and



– The SÄVY Project website has, for example, an automatically updating graphics database containing basic business information, says Jonna Sjögrén who is responsible for the administration of the SÄVY Project.

resources of drafting, contents of assignments and the political interest towards drafting have had a significant impact on the way the SÄVY Project has carried out co-operation with projects selected as pilots.

It may be concluded on the basis of the experience gained that the earlier the impact assessment is started, the more useful it can be expected to be. This is an essential observation, for example, in view of the legislative drafting of the future Government. It can also be said that sufficient impact assessment is necessary in both politically interesting and ordinary projects.

CO-OPERATION WITH INTEREST GROUPS

In addition to Ministries, the SÄVY Project continued open co-operation with other interest groups, especially Parliament, business organisations and economic research institutes. In addition to key Ministries, the other interest groups of the project are also represented in the support group designated for the SÄVY Project. The support group had a total of four meetings in 2006.

Co-operation with Parliament was organised through the Committee Counsels. A summary report was drawn up of the business impact assessments in the Government bills in 2005 also from the viewpoint of Parliament

and its positions. The key observations of the report were discussed in the meeting of Committee Counsels.

Versatile co-operation with business organisations continued. In addition to the support group of the SÄVY Project, the organisations were involved in individual projects. At the initiative of the SÄVY Project, business organisations launched a development work among themselves, with the objective of more intensive dialogue with legislative drafters.

DEVELOPMENT OF METHODS

The Government Institute for Economic Research (VATT) is also one of the co-operation partners of the SÄVY Project. VATT supports the project in the development work on the methods of business impact assessment and takes part in the support of individual legislative projects. In 2006, the SÄVY Project ordered a memorandum from Research Professor Jaakko Kiander, entitled Impacts of Legislation on Business, and their Assessment. The memorandum was widely distributed to those in charge of legislative drafting. It is also available on the SÄVY project website (in Finnish).

The SÄVY Project also ordered a case study on business impact assessment from the Institute for Competition

Policy Studies, Turku School of Economics and Business Administration. The study investigates three legislative reforms that have already been implemented and the business impact assessments carried out in connection with the reforms. Those under examination are the Co-operatives Act, the amendment of the merger control thresholds in the Act on Competition Restrictions, and the introduction of so-called tie-in sales in the Communications Market Act. The results of the study, which serve the development of impact assessment, will be published in March 2007.

BETTER REGULATION PROGRAMME

The Better Regulation Programme, which was launched at the initiative of the business sector, submitted its

proposal to Prime Minister Matti Vanhanen in August 2006. A representative of the SÄVY Project took part in the project group drafting the programme. The programme presents outlines on regulatory policy principles and measures for promoting international competitiveness and the welfare of the citizens.

Development of impact assessment is one of the key action areas in the Better Regulation Programme. The programme also undertakes to systematically examine and utilise alternatives to regulation. As regards business impact assessment, the Programme includes a recommendation to improve business and other economic impact assessment by undertaking to arrange permanent expert support for impact assessment.

The implementation of the recommendations made in the Programme depends on next Government's decisions.

GOVERNMENT BILLS AND BUSINESS IMPACT ASSESSMENT 2006

In the same way as the 2005 Government bills, the SÄVY Project analysed all bills passed during parliamentary year 2006 that were regarded to have a greater-than-minor impact on companies. In the analysis, it was investigated whether the drafting originated from EU legislation or other international obligations, or from domestic need. Other aspects in the analysis included the organisation of drafting based on either drafting by individual officials or as broad-based drafting (committee, working party etc), the extent and nature of business impact assessments included in the bill, consulting the business sector in drafting work, and Parliament's stands on the business impacts of the bill.

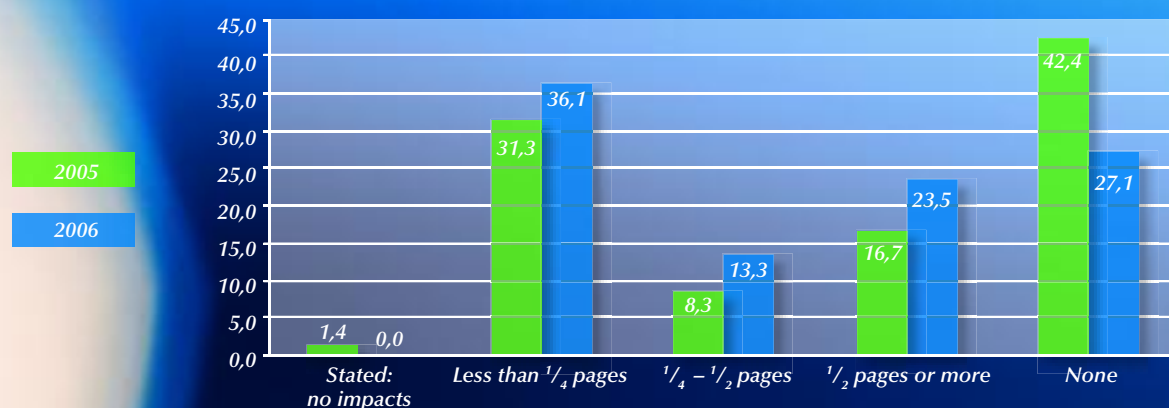
The purpose of the analysis is not to measure the quality of business impact assessments as such, but to analyse

their contents with concrete, but neutral criteria. This way, it is also possible to identify general development needs related to impact assessment and to find assessments that have been drawn up in an exemplary way and that can be utilised in legislative drafting by the Ministries.

In parliamentary year 2006, a total of 280 Government bills were presented to Parliament. Of these, 166 were regarded as having a greater-than-minor impact on companies, which proportionally is the same number (about 60 per cent) as in 2005.

A key result is that business impacts have been assessed somewhat more thoroughly than in 2005. In a total of some 24 per cent of the bills, assessments on business impacts are in the most extensive category in the assessment, more than

LENGTH OF BUSINESS IMPACT ASSESSMENTS, TOTAL %



If these kinds of decisions are made, the methods of regulatory drafting, which include business impact assessments, will also be fundamentally developed. Efforts are made to include impact assessment as a systematic part of regulatory drafting. It is the intention to build a Government Legislative Agenda of the key legislative initiatives, according to the recommendations of the Programme, and special attention would be paid to impact assessment in the projects within the Agenda.

- The Better Regulation Programme is available on the Prime Minister's Office website (in Finnish with an English summary): <http://www.vnk.fi/julkaisut>

REFORM OF THE IMPACT ASSESSMENT GUIDELINES AND ORGANISATION OF EXPERT SUPPORT

The SÄVY Project has proposed to combine current, separate guidelines on different impact areas. Providing integrated and practical guidelines to those in charge of legislative drafting is one of the key methods of improving the quality of impact assessments.

Measures to reform the impact assessment guidelines were launched in February 2006 with the leadership of the Ministry of Justice. A representative of the SÄVY Project is a member of the working group preparing the new guidelines. The working group will complete its work at the end of March 2007.

The new impact assessment guidelines will cover economic and environmental impacts, as well as other

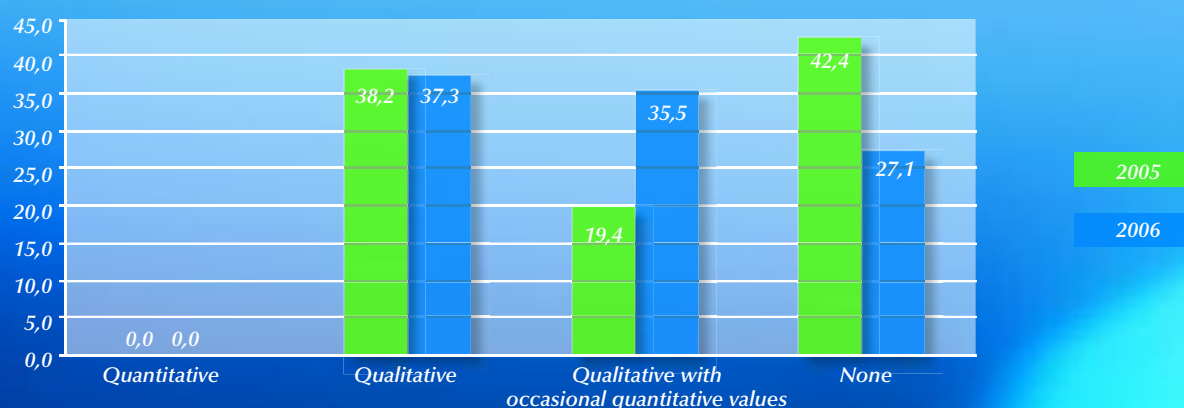
half a page in the Government bill. In 2005, less than 17 per cent of the bills were in the most extensive category. Furthermore, compared with 2005, the number of bills with no business impact assessment diminished clearly.

The examination of the structure and nature of the assessments also indicates a positive development. In 2006, some 22 per cent of the cases examined business impacts under a separate heading, whereas in the previous year these cases constituted less than one-tenth of all bills. In the main, impact assessments were still purely qualitative and descriptive, whereas now some 36 per cent of the bills presented some kind of quantitative estimates in support of qualitative assessment. In 2005, these kinds of evaluations represented less than 20 per cent of the bills.

It is not possible to draw a direct conclusion from the positive trend of business impact assessments that evaluations would have essentially improved in individual cases, as the analysis does not even aim to measure the quality of assessment. Nevertheless, the results are encouraging. The good documentation of the assessments, their clear structure and the increase in information contents are ideal for promoting the ultimate objective of impact assessment, providing a sufficient information base on the practical impacts of various policy options for political decision-makers.

The analyses on Government bills and the separate reports produced for the Ministries in 2006 are available on the SÄVY Project website.

NATURE OF BUSINESS IMPACT ASSESSMENTS, TOTAL %





“The goal of impact assessment is to provide political decision-makers with a sufficient information base on the impacts of various policy options.

Good documentation, clear structure and increased information content of the assessments promote the implementation of this goal.”

impacts on society. The objective of the reform of the guidelines is to provide basic tools for impact assessment in a concise and practical form. The new guidelines will also replace the current guidelines on business impact assessment given in 1999. Material to supplement the guidelines will be gathered in an electronic impact assessment data bank.

In addition to the reform of guidelines, the SÄVY Project has deemed it necessary that legislative drafters have expert support of a permanent nature at their disposal in impact assessment. Therefore, work on this was launched in a working group, which was established jointly by the Ministry of Finance and the Ministry of Trade and Industry in autumn 2006. The SÄVY Project is represented in this working group.

The working group on the organisation of expert services for impact assessment published its intermediate report in January 2007. The report includes preliminary proposals of the working group regarding the key tasks of expert services in impact assessment and possible alternatives of organising the services. After the circulation of the intermediate report for comment, the working group will carry on its work, to be completed by the end of May 2007.

- The intermediate report by the working group on expert services for impact assessment is available on the Ministry of Finance website (in Finnish with an English summary)
<http://www.vm.fi> > Publications and documents

ADMINISTRATIVE COSTS OF VALUE ADDED TAX LEGISLATION ARE MEASURED

In 2006, the SÄVY Project initiated a pilot project on the administrative costs of value added tax legislation. The pilot project was launched especially as systematic measurement and reduction of administrative costs for companies are a key policy area of Better Regulation in several EU countries. The purpose of the study is also to promote one of the key tasks of the SÄVY Project, development of impact assessment methods.

In November 2006, the European Commission launched an initiative to reduce the administrative burdens of enterprises with an extensive, community-wide

programme. In January 2007, the Commission published an Action Programme on the subject, with the objective of reducing the administrative costs incurred by enterprises by 25 per cent by 2012. The plan is based on the observation that a large proportion of the administrative burden of companies incurred by legislation is due to EU legislation. Political decisions on the EU's joint targets and actions to reduce the administrative burden of companies will be taken in spring 2007.

The SÄVY Project's pilot study tests a particular method of measuring administrative costs, the so-called Standard Cost Model (SCM). The SCM method has been in use to some extent in almost all EU countries, and the Commission's initiative is also based on the use of this method. The results of the study on value added tax legislation will be completed by the end of February 2007, after which they will be available via the SÄVY Project website.

- Better Regulation on the website of the European Commission's Directorate General for Enterprise and Industry:
http://ec.europa.eu/enterprise/regulation/better_regulation
- SCM Network to reduce administrative burdens:
<http://www.administrative-burdens.com/>

INTERNATIONAL CO-OPERATION

The SÄVY Project has taken part in national EU preparation and coordination and international co-operation on Better Regulation and development of impact assessment. The development of regulatory impact assessment is a key area of action in the Better Regulation agenda of the European Union. The SÄVY Project took part in the national preparation of this subject area during the Finnish EU Presidency in 2006.

Regulatory reform and related issues are also key topics in the OECD, and Better Regulation is also discussed in the European Directors and Experts of Better Regulation (DBR) network. One of the key targets of the SÄVY Project in international co-operation is to bring the international debate and knowledge on impact assessment to the disposal of national legislative drafting and its development. •

– In addition to the reform of impact assessment guidelines, the SÄVY Project has deemed it necessary that legislative drafters have expert support of a permanent nature at their disposal in impact assessment, emphasises Liisa Lundelin-Nuortio, Senior Specialist of the SÄVY Project.

REGULATORY IMPACT ASSESSMENT AND COST-EFFECTIVENESS OF PUBLIC FINANCES

Auditor General Tuomas Pöysti, State Audit Office

Development of regulatory impact assessment is a never-ending topic in the national and international debate on Better Regulation. However, it has been proved difficult to achieve practical results in both the European Union and Finland. The current administration culture does not favour good impact assessment or adopt its targets as part of legislative drafting practices, at least not to a sufficient extent. In the European Union and in Finland, there is a clear gap between the rhetoric on the development of legislative drafting and the development ideas of top civil servants on the one hand, and between the practices and practical work in legislative drafting and the experts who are in charge of its management on the other hand.

Tasks in the economic impact assessment of regulations have been analysed in the memorandum entitled *To Better Governance of the Economic Impacts of Legislation* (Working Group Memoranda of the Ministry of Finance 2/2006) of the LAITA Project, which has, with the leadership of the Ministry of Finance, developed the governance and assessment of the economic impacts of regulations. Impact assessment contributes to the creation of preconditions for a rational society and economic decision-making. Good impact assessment is also required by the openness and other principles of good governance. Impact assessments provide information about the alternatives and methods of regulation, as well as their advantages and costs.

RATIONAL DEBATE ON IMPACTS IS IMPORTANT

It would be important in view of democracy to have a sufficiently wide-ranging social debate on the functioning and alternatives of regulation. Impact assessments provide understanding on the contents and meaning of regulatory instruments. They also encourage to participate and to have an impact. It is particularly important to have a rational debate and demonstrate the impacts

of regulations in the current condition of an abundance of regulations, which carries a risk that important and far-reaching issues are lost in the torrent of legislative proposals and become more technical. This way, impact assessments provide for the functioning of the purpose of democracy.

Impact assessment of legislation serves both private and public financial management. Impact assessment provides information with significance in the financial planning of the private sector. Impact assessment creates knowledge-based preconditions to maintain and develop a good regulatory environment in respect of economic operations, i.e. the entity of norms to be applied. A good regulatory environment may even contribute to economic activities, create preconditions for business activities, and safeguard market entry and the functioning of competition. It also creates and promotes stability in legal relationship required in business activities and provides credibility in the maintenance and positive development of preconditions for economic activities.

Economic impact assessment has a great significance in respect of cost-effective implementation of economic policy and public finances. Several longer-term challenges in the economic policy of Finland and other European countries are related to economic structures. Structural policy targets often have to be implemented in concrete legislative proposals. Economic impact assessment provides information that is needed when considering the substantiation of legislation and its alternatives with respect to economic policy targets, as well as economic efficiency in general.

Even today, the challenges that are topical in respect of Finnish and EU economy, but at the same time quite permanent, clearly include taking care of the prerequisites for the positive development of companies' competitiveness, economic growth, income formation, and productivity.



– The theme for the supervision by the State Audit Office and related expert activities for 2007–2012 is high-standard legislation as part of financial decision-making by the government, says Tuomas Pöysti, Auditor General of the State Audit Office.

IMPACT ASSESSMENT FROM THE CONSTITUTIONAL POINT OF VIEW

The impact assessment of regulations has constitutional tasks. Impact assessment provides information that is needed in the evaluation of the proportionality and necessity of the protection of freedom of trade, property, private life and personal data, and the restrictions of financial, social and cultural rights safeguarded by the constitution in order to protect the generally accepted interests in accordance with civil rights or the constitution. Especially the proportionality of various restrictions on obligations and rights imposed on individuals may only be considered on the basis of sufficient impact assessment.

The Court of Justice of the European Communities has applied the proportionality principle related to Community law in the judgment in case C-310/04 Spain v. Council of the European Union. An adopted Community legal instrument was repealed on the basis of the fact that the impact assessment was clearly insufficient. The Finnish constitution provides an opportunity to utilise impact assessments and demand them to a greater extent than at present when considering the optimal implementation of the proportionality principle in legisla-

tive drafting and in the parliamentary handling of the Government bill.

From the constitutional point of view, impact assessment is also necessary when ensuring the implementation of the parliamentary authority over central government finances, as prescribed by the Constitution, and the principle of completeness of the budget. The budget shall include, as revenue estimates, all known income and appropriations in the known expenditure for the budget year. However, as legislation takes priority over the annual budget, it is important that Parliament is also able to assess the aspect of economic and central government finances in the matter when deciding on legislation.

Good and cost-effective management of central government finances requires that this assessment covers a period of several years. It would also be justified to present the expenses and benefits of regulations using the gross budget principle and not only settle for laconic comments that the proposal is within the budget appropriations. Impact assessment is constitutionally necessary when assessing the financing principle, based on section 121 of the Constitution, concerning the organisation and appropriate implementation of tasks and financial relations between central and local government.

From the viewpoint of cost-effective management of public finances and the practice of economic policy, economic impact assessment is an entity, and it is not possible to place the assessment of impacts on central government finances, business and private people in an order of importance. The competitiveness and economic success of companies boost the national economy, safeguarding the income structure of central and local government, social insurance funds and the rest of the public sector. It must be regarded as a shortcoming in the Finnish impact assessment practice that the business impacts of regulation are not examined in a sufficiently systematic way.

Business impact assessment is an extensive entity, which cannot be limited to the measurement of the administrative burden only. Therefore, in order to maintain cost-effective management of public finances and a good regulatory environment, it would be necessary to reinforce assessment of behavioural effects in impact assessment. Likewise, the estimated impact of regulation on productivity and its preconditions in both the public and private sector is also an essential issue.

A NUMBER OF PROPOSALS FOR BETTER IMPACT ASSESSMENT

The sectoralism of legislative drafting and its management is a significant problem. That is when the viewpoint is limited to the specific interests of a particular sector, and other legislation related to the matter is not necessarily amended at the same pace. Sectoralism is connected to the problem of functional expert authority. Ministers, on the other hand, are assessed in public, and that way they are forced to become profiled as specific advocates of a certain sector or point of view. When pursuing reforms, expenses are underestimated or kept hidden in order to avoid promises for additional funding that break the spending discipline. Furthermore, impact assessment is not always a genuine part of drafting, but too often a necessary formality.

In the past few years, there have been a number of proposals to improve impact assessment. The proposals include especially the report by the Group of Permanent Secretaries for Legislative Drafting (More efficient, systematic and controlled legislative drafting, Prime Minister's Office Publications 13/2005), the above-mentioned memorandum of the Ministry of Finance's LAITA Project, and more recently the extensive and notable Better Regulation Programme (Prime Minister's Office Publications 8/2006).

The report by the Group of Permanent Secretaries and the Better Regulation Programme examine the organisa-

tion of a centralised support unit or support network for regulatory impact assessment. A proposal for examining the need for a support network is also included in the LAITA Project memorandum. The LAITA Project also carried out the most extensive assessment of the risks of centralised support unit and network.

GAP BETWEEN DEVELOPMENT PROPOSALS AND PRACTICE

The Ministry of Finance and the Ministry of Trade and Industry have together established a working group to deal with the issue of arranging support for regulatory impact assessment (Working group on expert services for impact assessment), which was strongly put forward in the Better Regulation Programme. The working group's intermediate report, (Working Group Memoranda of the Ministry of Finance 1/2007), adopts a critical and careful attitude towards new solutions in the organisation of support for regulatory impact assessment. The intermediate report recommends demand-based expert support, and development of current practices would be a significant alternative.

The opinion of the intermediate report seems to partly differ from, for example, the views of the Group of Permanent Secretaries or the Better Regulation Programme. When comparing the views, it becomes evident how the views of Director Generals and unit heads responsible for the operative management of legislative drafting and experienced legislative drafters and, on the other hand, those of Permanent Secretaries and developers of legislative drafting differ from each other.

The difference in opinion is due to justifiable realism or scepticism between those who are more initiated into the matter and, on the other hand, top management and developers who examine the matter at a greater distance and from a wider perspective. It can also be read between the lines that there is concern over the mixing of relations of responsibility, unmanageability of processes and the disappearance of own, exclusive drafting authority.

In the European Union's efforts towards Better Regulation, there is also a discernible gap between the development aspect and practical measures. Better Regulation has been turned into an agreement between EU institutions and, for example, the Ecofin Council and the Competitiveness Council have repeatedly dealt with this issue. However, in practice, Better Regulation and more efficient utilisation of impact assessments does not seem to be so important, for example, in the work of the Council and the expectations of the Presidency of the Council.

Greater courage would be needed in reorganisation at the national level, whenever justifiable. Expansion of an excessive sectoral viewpoint is fairly arduous and slow within current practices. An organised network of expert help and utilisation of the regular meetings of Permanent Secretaries at the highest level would provide the best support for impact assessment and broaden the viewpoint of drafting.

On the other hand, at the EU level, there should be systematic influencing on the fact that the Better Regulation policies will be implemented also in practical work. This is partly a question of a change in the working culture, which inevitably requires patience and perseverance.

THE ROLE OF THE STATE AUDIT OFFICE

As the external supervisor of State's financial management, the State Audit Office also audits the impact assessment of legislation from the economic point of view. The office also audits the functioning of legislation as a steering method and the way the objectives of legislation have been implemented and the impacts the legislation has made.

The viewpoint of the State Audit Office is not only limited to the budget, but assessment takes place from a broader economic aspect. The objective of the auditing and the expert operations of the State Audit Office is, among others, to ensure that correct and sufficient information is reported on the central government finances and the development and functioning of the social impact of government operations. The objective is to contribute to the social impact of the State's financial management and related State activities, i.e. achieving the targets of social policy and functional cost-effectiveness of financial management and administration.

The theme for the supervision by the State Audit Office and related expert activities for 2007–2012 is high-standard legislation as part of financial decision-making by the government. Thus, the functioning of legislation as a steering method and a means of achieving social and administrative performance targets is assessed in the audit. Similarly, the economic and other impacts of legislation, as well as the success of impact assessment of regulations are also assessed.

In 2006, the State Audit Office published an audit on the national preparation and handling of EU proposals, particularly with regard to the assessment of economic impacts (Performance Audit Report 122/2006). The audit brought forward the differing practice between the Ministry-centred preparation of national legislation and

the coordination of EU affairs based on standard participation of several actors, within the scope of which Finland's participation in the preparation of EU legislation takes place.

It appears that assessment of national economic impacts of EU legislative proposals is limited, focusing almost entirely on the analysis of possible costs. Benefits are not analysed. On the basis of the audit, monetary estimates were seldom given.

The State Audit Office recommends on the basis of the audit that the Ministries pay more attention to seeing that the evaluation of the impacts of EU legislation meets the requirements of good preparation. Proactive strategic planning should be improved in the preparation of both EU and national legislation so that future legislative projects can be prepared for. It should be possible to identify significant projects in respect of their economic and other impacts at a sufficiently early stage, and the quality of their preparation should be particularly ensured.

In legislative projects related to the implementation of EU legislation, it is sensible to connect national impact assessment as part of proactive influencing on EU proposals. In the preparation and handling of EU affairs, the economic and impact assessment aspect should thus be clearly reinforced in strategically significant projects, all the way to the participation of the Cabinet Committee on EU Affairs and Parliament.

GOVERNMENT'S RESPONSIBILITY

The responsibility for appropriate and sufficient regulatory impact assessment lies with the Government and the Ministries. It would be necessary to increase the internalisation of the targets of impact assessment and the responsibility for impact assessment as part of the professional self-comprehension and procedures of various actors in the Government and its Ministries.

In the draft manual for economic impact assessment, related to the memorandum To Better Governance of the Economic Impacts of Legislation by the Ministry of Finance, the responsibilities for impact assessment of the leaders of the Ministries and government officials of various levels have been defined. Moreover, one of the key parts of the Better Regulation Programme are the general principles of Better Regulation. The Programme also states the significance of the aspect of economic competitiveness and welfare with respect to regulations. These principles are part of the basic expertise of every legislative drafter and head of legislative drafting. •

EU'S BETTER REGULATION POLICY – WILL IT MEET COMPANIES' EXPECTATIONS?

Assistant Managing Director Pentti Mäkinen, Central Chamber of Commerce of Finland

The nature of European integration has been, above all, economic. The key target has been the creation of a common market by removing obstacles to business activities imposed by national borders.

The most important method of steering integration has been legislation, on which the European Union has a significant impact. While the legal effects of integration are seen on both EU level and in national legislation, the EU's economic performance has been a disappointment, with Europe losing ground in global competition.

Since legal steering has played a key role in the development of the European Union, improving the quality of regulation has become one of the most important methods of enhancing the EU's competitiveness. The estimated cost impact of unnecessary and incomprehensible regulation in the EU member states is about 4–6% of gross domestic product. According to the European Commission's calculations, 15% of these costs could be avoided by improving the quality of regulation, which would also have an instant, positive impact on economic growth.

SUPPORT FOR THE LISBON STRATEGY

Intensifying economic dynamics and strengthening the EU's competitiveness require regulation by the Union and its member states, which does not prevent but supports economic activities. For this reason, the European Commission published an action plan for improving the regulatory environment. The action plan calls for a commitment from the Commission and the EU's legislative branch, the Council and the Parliament, as well as from the member states.

Until now, the results obtained have been fairly barren although the need to develop legislation is widely recognised. It is difficult to change the course of ponderous legislative projects, and the ambitious competitiveness targets in the Lisbon Strategy are easily forgotten in practical work. For example, the EU's long-prepared legislative framework on chemicals will create a considerable additional expense for European companies, similar to emissions trading.

The Services Directive, which remained half-finished, is another example of the unsuccessful development of the internal market. Compared with the Commission's initiative, the approved Services Directive was watered down with respect to its key parts, while missing the opportunity to create a true internal market for the service industry. The original intention was to increase the freedom of trading with services, but the political compromise by the Parliament and Council did not take account of the targets of the Lisbon Strategy.

UNSOLVED PROBLEMS

Familiarisation with the Community legal order requires an unreasonable amount of time and resources from companies, and the poor standard of legislation creates an added burden on small companies. At worst, the shortcomings of legislation become apparent only at the enforcement stage when unwieldy bureaucracy increases costs, stifles competition and drains companies' resources. This situation is aptly described by the phrase, 'Regulation: another form of taxation'.

– Since legal steering has played a key role in the development of the European Union, improving the quality of regulation has become one of the most important methods of enhancing the EU's competitiveness, says Assistant Managing Director Pentti Mäkinen of the Central Chamber of Commerce of Finland.



Problems connected with legislation could be reduced at EU level through the systematic development of legislative drafting and by avoiding legislation that unnecessarily interferes at the level of detail. For example, regulation of the securities market, the transport industry or the environmental sector could be given no more than a framework at EU level, and detailed regulation could be the responsibility of member states.

Unfortunately, the impact assessment of legislation has often remained insufficient or so superficial that it is of no use in decision-making. Alternative means of regulation, such as self-regulation by industry and commerce, have not been used to a sufficient extent, although self-regulation would often represent a more efficient and flexible way of influencing corporate practices than legislation.

OPEN DIALOGUE

There has been room for improvement in the openness of drafting, but nowadays it is relatively easy to obtain information from the Internet on pending projects. Openness would achieve a continuous dialogue between legislators and the business sector even if the companies' messages had no concrete impact on the actual drafting.

A good example of such a dialogue was the conference on EU company law held during the Finnish Presidency. One of the main themes of the conference was the challenges to Better Regulation in the drafting of EU company law. It is important that the development of the key legal instrument in business activities be based on extensive and open co-operation.

One of the characteristics of the European Union is the comitology procedure, but it is difficult for companies to follow this procedure and have an impact on it.

To entrepreneurs, EU legislation represents and impenetrable jungle. Comprehension of the legal system is also complicated by the preliminary rulings of the European Court of Justice, which may differ from traditional, national approaches to interpretation and drafting.

The national implementation of EU legislation forms a significant element in the development of Better Regulation. If the national implementation of EU legislation is poorly managed, there will be unclear issues in the mutual jurisdiction between national and EU-level authorities. It will be increasingly difficult for a company to know whether it has taken the right decision in letting a national authority deal with the matter or whether the related ruling has even been final.

THE DIFFICULTY OF SIMPLIFICATION

In its Communication published in 2005, the European Commission clearly connects Better Regulation with the promotion of growth and employment. The Commission emphasises with reason that the drafting and application of better legislation can be promoted through impact assessments.

At the same time, the Commission proposes closer co-operation with the member states. All regulatory authorities should systematically apply the principles of Better Regulation in their own activities.

As security for its Communication, in June 2005, the Commission issued reviewed internal guidelines on the impact assessment of key proposals. Particularly positive is the guidelines' proposal that the impact assessment be extended to cover the entire legislative process. The Commission's assessments include an assessment of the economic, social and environmental impacts of each legislative initiative.

*“The objectives of Better Regulation are good,
but will rapid, bold decision-making prove
sufficient to improve European competitiveness?”*

In December 2005, the European Parliament, Council and Commission agreed on a common approach to be applied to impact assessments. This agreement is significant because it almost regularly proves necessary to make political compromises during the preparation of legislation. Changes to the original proposal diminish the significance of earlier assessments and, at worst, careful preparation with hearings and impact assessments may prove invalid. For this reason, it is necessary to assess the impacts of changes made by the Council and the Parliament.

It is essential that the EU reduce existing regulations in addition to developing the quality of new ones. The Commission has proposed a number of initiatives to simplify legislation and dismantle unnecessary regulation. An impressive example of this can be found in the decision made by the Commission in March 2006 to withdraw 68 pending legislative proposals that were assessed as outdated or unnecessary.

This is naturally a good start, but the fundamental problem remains unsolved. Unnecessary regulation must be dismantled either based on the existing legislation, or fragmented legislation must be codified into a single, sensible entity. Until now, progress has been painfully slow in this respect.

CHALLENGES FACING FINNISH COMPANIES

Finnish companies' expectations of the development of better EU regulation are, in the main, similar to those of companies in the other member states. Finland's membership of the European Union has justifiably been regarded as a success, but adaptation to the challenges of EU law has not been totally smooth.

The Finnish legal system is closely tied to the unique system of the European Union, and problems have largely been the result of connecting these two systems to each other. The Finnish judicial system forms a clear hierarchical whole: constitution, act, decree and subordinate regulations. The mutual legal effect and hierarchy of different parts of EU legislation are not as clear. The mutual relationship of applicable directives and regulations and national legislation may also remain obscure to some companies.

In Finland, it is possible to understand the purpose of the law on the basis of its preliminary work, but the purpose of EU legislation is too often unclear to a company forming the subject of the regulation in hand. EU law is regulated very broadly and generously. The end re-

sult is a sum total of many political compromises, which means that, without extensive preparatory work, it is difficult to understand the purpose.

Therefore, authority is often transferred to the European Court of Justice, which in reality creates new legislation where no EU-level legislation exists. With respect to taxation in particular, the rulings of the Court of Justice form a significant part of the EU judicial system, without any actual legislation. Under such circumstances, companies' trust in the predictability of the legal system diminishes.

Efforts have been made to make Finnish legislative language as clear as possible. Laws are drafted as a unity and outdated regulations are replaced by new ones. EU legislation, on the other hand, has several historical levels and parallel regulations, which inevitably result in an abundance of references and appendices.

The harder the EU-level regulation is to understand, the more difficult the national implementation becomes. Inconsistent and unclear laws cause completely new kinds of interpretive problems for Finnish courts of law. The interpretation of EU legislation according to national principles may result in an excessively harsh ruling in Finland.

RESPONSIBILITY AT NATIONAL LEVEL

The objectives of Better Regulation are sensible and supported by the business sector, but will rapid, bold decision-making prove sufficient to improve European competitiveness? Companies are being forced to live with obscure legislation that causes unnecessary costs, creating a burden on their market value on a daily basis.

However, the blame should not be placed on the European Union alone. Most EU legislation is implemented at national level, so the member states should also bear responsibility in the development of Better Regulation.

EU legislation is not understandable without the help of an expert in EU law. In order to remove added costs that erode competitiveness, companies expect that programmes on Better Regulation will gain concrete results that will ease the operating environment at both national and EU level. Unfortunately, there is still a long way to go towards a favourable regulatory environment. •

COMPETITIVENESS AND BETTER REGULATION – CONCLUSIONS FROM FINLAND’S EU PRESIDENCY

Senior Adviser Liisa Huhtala, Ministry of Trade and Industry

Improvement of the quality of regulation is related to the improvement of competitiveness in a concrete way. In consequence, this theme, which has been a topic of debate for some time, has been raised as one of the priorities on the EU agenda on competitiveness. It should be noted that the EU institutions have a direct impact on EU legislation and its quality, whereas several other activities pertaining to the competitiveness strategy are under the jurisdiction of the Member States.

Better Regulation attracted new political interest in 2004. This was partly contributed by the commitment of the Presidencies and the so-called 6-presidency statement. In the statement, consecutive Irish, Dutch, Luxembourg, UK, Austrian and Finnish Presidencies presented that they regard the development of regulatory quality as important and set out plans to place it at the heart of their consecutive EU Presidencies. Better Regulation, the related monitoring of measures and future policies became a standard topic in the conclusions of the European Councils.

In 2005, in connection with the Lisbon mid-term review, the Commission revised the two-year-old Better Regulation programme and made it a key element to boost European competitiveness. In the same year, the Commission reviewed its guidelines on impact assessment and started to produce impact assessments on all of its key initiatives. Furthermore, the simplification strategy on existing legislation was updated.

In 2005, the European Council committed itself to utilise the impact assessments produced by the Commis-

sion in its own work and to assess the impacts of amendments it has made to the proposals. In early 2006, practical guidelines were also outlined. Furthermore, the Council committed itself to prioritise projects related to the simplification of legislation.

PUTTING COMMITMENTS INTO PRACTICE

When Finland took over the tasks of EU Presidency, the Council’s policy outlines and commitments on complying with the principles of Better Regulation had already been confirmed. Putting these commitments into practice, i.e. adopting them as part of the normal legislative work of the Council, was set as a natural goal for the Presidency. Implementation is never as spectacular as making a new launch. However, this does not mean that it would be easy or effortless – rather on the contrary.

The goal was regarded as important, and Better Regulation was defined at the Government level as one of Finland’s horizontal priorities. The importance of the subject area and Finland’s commitment were emphasised, for example, in most of the Prime Minister’s meetings. The significance of practical implementation was stressed in all contexts.

Preparations were made for the Presidency by making the principles of Better Regulation familiar and providing instructions to the Finnish chairmen of the Council’s working parties. The goal was to utilise impact assessments in all of the Council working parties and to promote the handling of simplification proposals.

“Conducting impact assessments in support of decision-making is an integral part of Better Regulation.”



– The sum total of our Presidency in the utilisation of impact assessments is the increased awareness in various sectors and Council working parties, estimates Senior Adviser Liisa Huhtala of the Ministry of Trade and Industry.

IMPACT ASSESSMENTS – WHAT SHOULD BE DONE ABOUT THEM?

Conducting impact assessments in support of decision-making is an integral part of Better Regulation. Today, the Commission carries out impact assessments on items on its Work Programme, as the basis for its own decision-making. The assessments are also supplied as an annex to the proposal to the Council and the European Parliament who have committed themselves to utilise them in their own work.

The Commission's impact assessments are conducted to present the economic, social and environmental impacts in a single document. With this integrated approach, different kinds of impacts are proportioned to each other, and efforts are made to consider various impacts in all decision-making. Impact assessments help to make decisions and choices. Therefore, costs incurred to companies are taken into account, among others, when drafting legislation on, for example, consumer or environmental protection, and vice versa.

The handling and utilisation of impact assessments is still new within Council working parties, and it will take a while before it is fully adopted as part of stand-

ard procedures. It was noted during the Presidency that some of the working parties had already developed their own way of dealing with the Commission's impact assessments, but for most people the assessments were a novelty. This was a challenge to the chairmen who introduced impact assessments on the agenda of the working party for the first time. Some of the chairmen utilised documents on the purpose of dealing with impact assessments and proposed questions to the working party when preparing the working party for the discussion.

LEARNING BY DOING – THE RIGHT WAY

The Commission's attitude had a significant impact on the success of the working parties' work. The Commission normally presented the legislative proposal or policy initiative and the related impact assessment. If the quality of the impact assessment was high and its presentation extensive, it gave rise to discussion in the working party and the handling of the assessment was deemed useful. Impact assessments provided welcome background information on the goals of the proposal, as well as background material, including reasons, to base the discussion on.

The Commission's preparedness to respond to questions and also to accept criticism had an impact on the handling. It is a fact that the quality of the Commission's impact assessments still varies to a great extent. Some of the chairmen felt that the discussion on impact assessments, and sometimes the strong criticism aimed at the quality of the assessment, gave the Member States an opportunity to express and 'ventilate' their opinions. This, on the other hand, helped to process the proposal itself.

Co-operation with the Commission was also extremely important in another way. Before our Presidency, the Council had a heated debate on the translations of the Commission's impact assessments, or rather the lack of them. As a rule, impact assessments, published as Commission Working Documents, are published in English only, and some Member States are of the opinion that the assessments cannot be utilised for this reason. We wanted to avoid the continuation of this debate and agreed with the Commission that it will draw up a summary of the impact assessments, and these summaries will be translated into all of the official languages.

During our Presidency, experiences in the handling of impact assessments were gathered. These were forwarded to the Competitiveness and Growth Working Party for information and discussion. A progress report was also submitted to the ministers in the Competitiveness Council for information in December 2006. The key message of the report was that there is still room for improvement in both the Commission and the Council although significant steps have already been taken.

Utilisation of impact assessments is still not a normal part of working parties' work in all sectors, despite significant progress. The 'learning by doing' approach is the right way forward. Moreover, the Commission must work hard to improve the quality of impact assessments. The Commission is aware of this, and an Impact Assessment Board was established in late 2006, with the task of inspecting the quality of assessments.

CONCLUSIONS FROM OUR PRESIDENCY

The objective of impact assessment is to increase the knowledge base of decision-making, but what is the best way to utilise impact assessments in Council work? Before this question can be answered, the Council must gather more experiences and seek best practices. Utilisation must be learnt in practice. The first compulsory step is that impact assessments are on the agenda of all working parties at the beginning of the handling of a new proposal.

The sum total of our Presidency in the utilisation of impact assessments is probably the increased awareness in various sectors and Council working parties. Impact assessments were dealt with by 16 different working parties in connection with 24 different initiatives. This broad-ranging approach has now been introduced in the Council's work, and Germany will carry on this work during its Presidency. Furthermore, the Council has also given a clear message to the Commission. The Council takes up a serious and critical attitude towards impact assessments and expects the Commission to further improve the quality of its impact assessments.

The Council's own impact assessments were also under scrutiny. A discussion on the way in which the impact assessment of significant amendments to the Commission's proposals should be carried out in practice was opened with the Council's Secretariat. As the creation of new mechanisms within the Council does not take place overnight, the discussion will continue between the current Presidency and the Council Secretariat.

We are grateful to all the chairmen of the working parties for achieving the goal of our Presidency. They open-mindedly introduced the utilisation of impact assessment in their working parties and contributed to the implanting of the principles of Better Regulation in the practical work of the Council. Thanks to the chairmen of the working parties, we achieved our practical goal with great distinction. •

SÄVY PROJECT – CONTACT DETAILS



Antti Neimala
Project Director
Telephone: +358 9 1606 3631
GSM: +358 50 344 2780
E-mail: antti.neimala@ktm.fi



Liisa Lundelin-Nuortio
Senior Specialist
Telephone: +358 9 1606 2137
GSM: +358 50 434 4920
E-mail: liisa.lundelin-nuortio@ktm.fi



Jonna Sjögrén
Assistant
Telephone: +358 9 1606 3993
GSM: +358 50 375 6217
E-mail: jonna.sjogren@ktm.fi

Ministry of Trade and Industry

Aleksanterinkatu 4, P.O. Box 32, FI-00023 Government, Finland
Telephone: +358 9 160 01
Fax: +358 9 1606 3677
Internet: www.ktm.fi/savy/english



MINISTRY OF
TRADE AND
INDUSTRY

P.O. Box 32, FI-00023 Government, Finland
www.ktm.fi