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Finnish Council of Regulatory Impact Analysis

Annual Review 2018



THE FINNISH COUNCIL
OF REGULATORY IMPACT ANALYSIS

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PREAMBLE

The first term of the Finnish Council of Regulatory Impact Analysis has already quite clearly brought to light the strengths and weaknesses of the Finnish approach to regulatory impact analysis.

The Council is tasked with contributing to improvement in the quality of law drafting, primarily by means of scrutinising impact assessments. The approach adopted in this work is based on extremely lean resourcing, the issue of statements on around 10% of draft government proposals towards the end of the legislative process, and the publicity of the Council's statements. The nature and resource deficiency of the system thus do not allow the oft-voiced desire of law drafting officials for advice and support at the early stages of the legislative process. Therefore the aim is for law drafting officials to learn from all statements issued by the Council, i.e. also from the successes and failures of others, as well as from their own as their proposal is scrutinised.

The two most important strengths of the Finnish approach to regulatory impact analysis are the independence and autonomy of the Council and its comprehensive review of impact assessments.

Of the 51 nations in Europe, only a small minority plus the EU have in place an independent and autonomous regulatory oversight body. Independence and autonomy in this context refer expressly to independence relative to political actors and administration, which safeguards the Council's right to unpressured deliberations and the free expression of its opinions while at the same time also reinforcing trust in the work of the Council. This first term has demonstrated the high regard in which the Council's independence is held.

Unlike their Finnish counterpart, most of the European regulatory oversight bodies only assess either corporate impact assessments or economic impact assessments. In Finland, the analysis extends also to impacts on the authorities, environmental impacts and other societal impacts. Consequently, the Council has a societally balanced take on law drafting, which further fosters trust in the work of the Council among the various groups in society.

Sound impact assessments are globally recognised as an important contributor to sound legislation. Legislative projects tend to involve wide-ranging and lengthy processes with numerous moving parts. This provides several instances and process points at which to influence the quality of the drafting. The role of the Government and the high officials of the ministries play an essential role here. The Government's realistic objectives for its term, its legislative agendas that enable a professional approach to the work, and sufficient time allocated to drafting within the ministries are the fundamental considerations in sound law drafting.

The Council has had to draw attention to the blurring of the line between policy making and law drafting. Good law drafting practices entail that policy is set by the Government and the options for achieving the policy objectives are presented by the law drafting officials. When political actors assume control over matters that fall within the domain of law drafting, they are hamstringing the drafting process in a manner that undermines the conditions for a well-rounded assessment of options and their impacts.

Feedback from administration and stakeholders would suggest that during its first term, the Council has gained an established footing within the legislative system of the Government. Expectations ran high, however, and these could not be fully met with the resources made available. Resourcing decisions are indeed an essential concern if the ambit of the Council is to be broadened and reinforced.

The establishment of the Council was the result of several years of discussions, studies and preparations. The Decree to establish the Council was finally issued by Prime Minister Sipilä's Government, which also appointed the Council. In terms of the quality of law drafting, this decision is to be applauded even if the Government in taking it brought into being yet another body to cast a critical eye over its activities. The work of the Council has been made possible by the Prime Minister's Office, from which a great deal of practical support has also been received. Preparing the Council's statements, publicising these and attending to the Council's international cooperation has required the staff of the Office to perform a vast volume of work that for the most part goes unseen.

The Council's secretariat deserve a special 'thank you' for their flexibility, professionalism and ability to rise to any challenge. The statements of the Council largely come about in the presentation procedure and the presenting officials are therefore a crucial component in its work.

Helsinki, 11 March 2019

Leila Kostiainen
Chairperson

1 Finnish Council of Regulatory Impact Analysis

1.1 Establishment and composition

The Government Decree on the Finnish Council of Regulatory Impact Analysis (1735/2015) entered into force in February 2016. The Council is tasked with carrying out autonomous and independent analysis of regulatory impact assessments. Administratively, the Council is based in the Prime Minister's Office and its two secretaries and permanent expert are public servants attached to the Office.

Under the Decree, the Council has the following duties:

- to issue statements on the impact assessments included in draft government proposals,
- to issue statements also on the impact assessments of other draft legislation,
- to submit initiatives towards improving the quality of law drafting and in particular the quality and performance of impact assessments,
- to benchmark the impacts of legislation against assessments,
- to monitor the development of the quality of impact assessments and to assess the effectiveness of its own operations, and
- to submit an annual review of its operations to the Prime Minister's Office.

The Council consists of a chairperson, two vice-chairpersons and a maximum of six other members. The chairperson and other members of the Council are appointed by the Government¹ for a term of office of three years. The Council must possess expertise in law drafting as well as the depth and breadth of expertise required by the scope of

¹ The explanatory memorandum for the Government Decree (21 December 2015) reviews in greater detail the duties, composition and appointment of the Council.

Finnish Council of Regulatory Impact Analysis and the secretariat of the Council. The member of the Council Bo Harald and the Council's permanent expert Arno Liukko are not in the picture. Photo: Laura Kotila



the impact areas assessed. The Council selects two vice-chairpersons from among its members. The secretaries and any permanent experts of the Council are appointed by the Prime Minister's Office. The Council has two full-time secretaries who are assigned to the Office's Government Session Unit.

The government plenary session appointed the chairperson and members of the Council for the first term running from 15 April 2016 to 14 April 2019 and the Council launched its operations in April 2016. The first chairperson of the Council, serving until 31 December 2016, was Kalle Määttä, Adjunct Professor, LL.D. In December 2016, the government plenary session modified the Council's composition: as of the start of 2017, the Council is chaired by Leila Kostiainen, LL.M, and Määttä continues to serve as a member. The Council's vice-chairpersons are Leena Linnainmaa, Deputy Chief Executive, Finland Chamber of Commerce, and Professor Jyrki Tala. They are joined on the Council by Määttä, Senior Adviser Bo Harald, Professor Ari Hyytinen, Professor Eva Liljebloom, Professor Tuula Linna, and Rauno Vanhanen, LL.M. Senior Government Adviser Arno Liukko serves as the Council's permanent expert appointed by the Prime Minister's Office. The secretaries to the Council

are Senior Ministerial Advisor Meri Virolainen, who has served for the Council's entire term, along with Senior Ministerial Advisor Antti Moisio until and Senior Ministerial Advisor Kati Rantala as from the end of May 2018. Specialist Tuomas Lühr also served on the Council's secretariat from September 2017 until the end of June 2018.

1.2 Issuance of statements on draft government proposals

A key duty of the Finnish Council of Regulatory Impact Analysis is to issue statements on draft government proposals. The Council scrutinises government proposals holistically in as finalised form as possible, meaning that the observations made during the consultation round have already been included in the draft proposal and the contents of the draft proposal have been finalised to the highest extent possible. The Council selects independently the draft government proposals taken under consideration, making use of e.g. the Government's legislative plans and legislative projects put forward by the meeting of permanent secretaries. While the focus in selection is on economic and social significance, the Council also strives for equal coverage of the ministries and the issue of statements on draft government proposals of varying scope.

The Council's analysis takes place towards the end of the law drafting process and the Council does not take part in the drafting. Weighing in on the constitutionality of the draft proposals is also excluded from the Council's ambit.

The Council's statements are public and released on the website of the Prime Minister's Office (<http://vnk.fi/arviointineuvosto>). The publication of statements is accompanied by a news item or press release, and also announced on Twitter. The website moreover contains a list of the draft government proposals already selected for analysis. The statements of the Council have regularly been addressed in the media and they have staked out their place in the debate on impact assessments.

2 Activities in 2018

2.1 Statements

When the Council decides to take a certain government proposal under consideration, the relevant ministry is immediately informed and it is requested to provide the Council with as finalised a version as possible of the relevant proposal. The government proposal, statements received during the consultation round and a summary of the statements are sent to the Government Registry at the Prime Minister's Office (registry@vnk.fi) and to the Council's Secretariat. After the government proposal has been received by the Registry, the Council will have about four weeks for preparing its analysis. The Council publishes its statement once it has been adopted and signed.

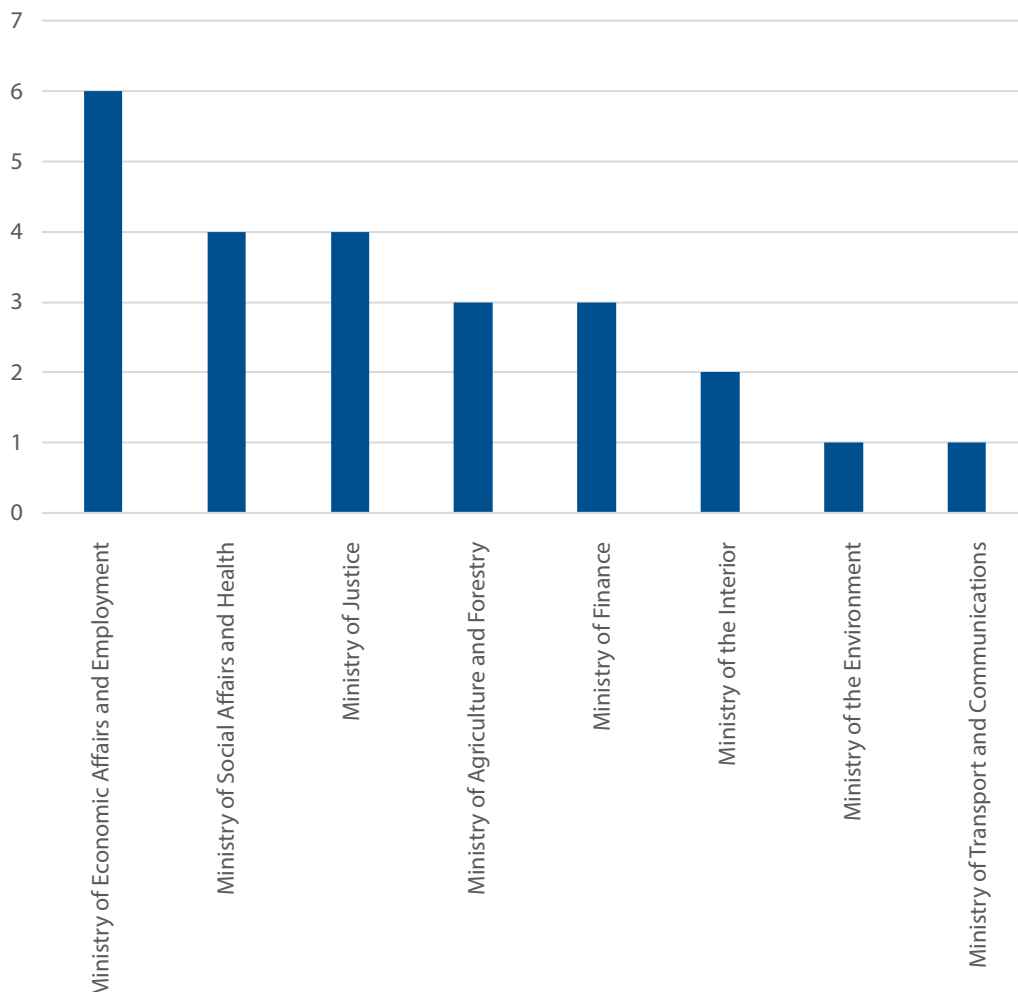
During 2018, the Council took a total of 27 draft government proposals under consideration and prepared statements on 24 of these by the end of the year.² The Council issued a further three statements to Committees of Parliament, concerning in particular the government proposal for the Act on customers' freedom of choice in social services and healthcare and certain related Acts.³ At the request of the Ministry of Transport and Communications, the Council furthermore issued a statement on the 'one in, one out' approach, thus bringing the total number of statements in the year to 28.

2 In departure from its original plans, the Council did not issue a statement on four draft government proposals taken under consideration. The proposals on the distance selling of alcohol and the promotion of the income information system were withdrawn and no statement was therefore issued. The proposal on amending the Act on Ships' Medical Stores also resulted in no statement due to the suspension of its consideration in Parliament. In 2016, the Council elected to take under consideration the draft proposal concerning multichannel funding in social services and healthcare and also planned to issue a statement thereon. However, the timeline for the hearing of the proposal announced by the ministry in November 2018 was so tight that the Council decided to forego its statement. The Council would have been required to issue its statement in only two weeks on the basis of draft versions that were still being circulated for consultation, after which period the draft proposal was to be submitted to Parliament. The Council held that under its mandate, it was not to take under consideration a consultation round version of a proposal, especially since the hurried hearing timeline made it appear unlikely that any observations on the draft proposal would be taken into account.

3 Some of the statements issued to Committees of Parliament were prepared and signed by the Council's secretariat.

The statements prepared by the Council in 2018 concerned draft proposals prepared by eight different ministries (Figure 1). The highest number of statements, six in total, was issued on proposals by the Ministry of Economic Affairs and Employment, followed by the Ministry of Justice and the Ministry of Social Affairs and Health, both having four each. The proposals considered accounted for just under 8% of all government proposals in 2018 and included a total of well over 3,000 pages ('one in, one out' project included). Measured in pages devoted to rationale⁴, the Council analysed around 16% of the total rationales in government proposals in the previous year. The emphasis in the Council's work thus was clearly on proposals of broader than average scope.

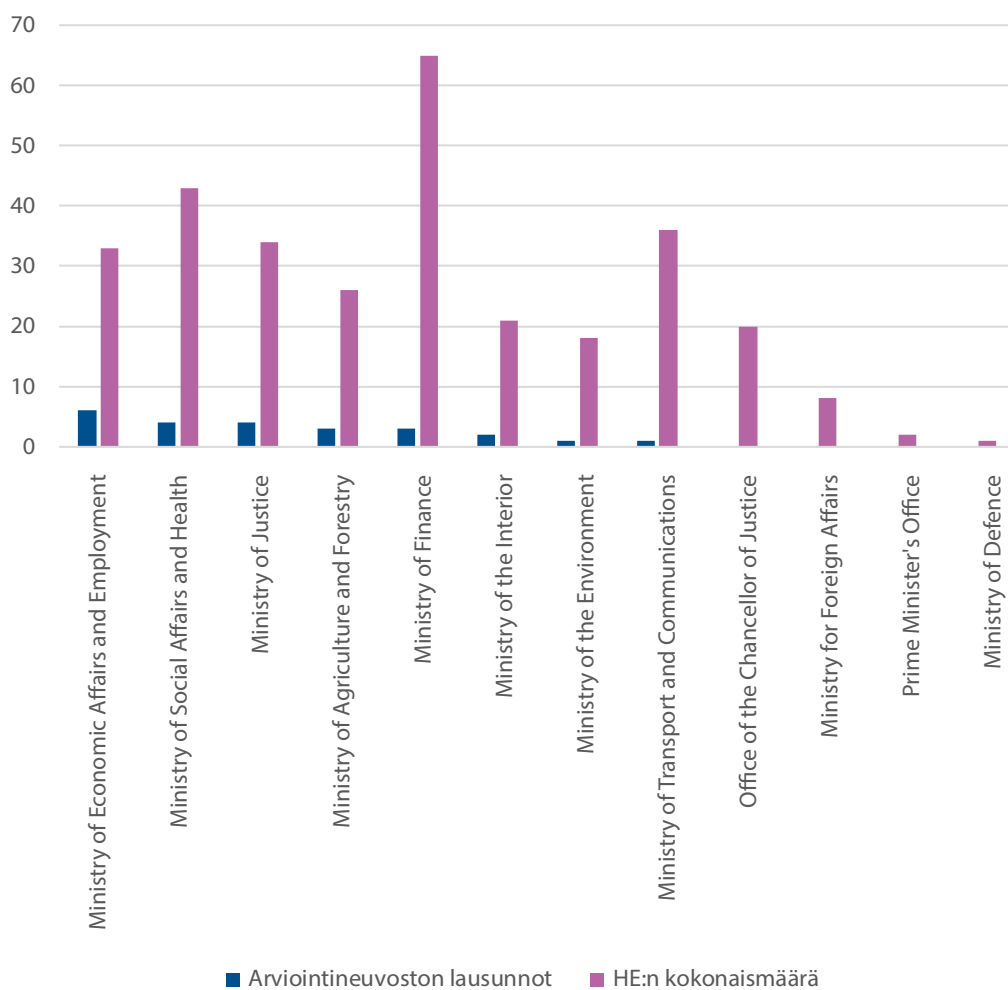
Figure 1: Statements issued by the Council in 2018 by ministry



⁴ Rationale refers to the general and detailed reasons in a government proposal.

Figure 2 indicates that in 2018, the highest number of government proposals was issued by the Ministry of Finance. When examined relative to the total number of proposals issued, the Council issued the most statements on proposals prepared by the Ministry of Economic Affairs and Employment, followed by the Ministry of Justice and the Ministry of Agriculture and Forestry.

Figure 2: Statements issued relative to number of government proposals



The Council generally begins to review the subject matter in hand well before the ministry provides the draft government proposal for analysis. Having received the finalised draft proposal for consideration, the median processing time for statements was 13 working days when holidays are included (Table 1). In practice, the Council's statement was provided to ministries one day earlier, i.e. within 12 working days, because the statement is submitted to the ministry the day before publication.

Table 1. Details of Statements issued in 2018

Topic of draft proposal	Ministry responsible	Revised draft proposal received from ministry, date	Statement issued, date	Processing time, working days	Number of sections in Bill	Number of pages in draft proposal	Standard appraisal
Traffic Accident Board and Patient Injury Board	Social Affairs and Health	21.12.2017	10.1.2018	14	53	66	other
Growth services	Economic Affairs and Employment	15.1.2018	31.1.2018	12	57	151	other
GDPR implementation	Justice	19.1.2018	8.2.2018	14	42	150	5
Freedom of choice in social services and healthcare reform ²	Social Affairs and Health	22.1.2018	16.2.2018	19	102	334	other
Trade Secrets Act	Economic Affairs and Employment	26.2.2018	9.3.2018	9	56	112	3
Rescue Act (chimney sweeping)	Interior	22.3.2018	13.4.2018	16	12	57	2
Act on Roadworthiness Tests	Transport and Communications	24.4.2018	15.5.2018	15	28	66	2
Restriction of GM plants	Agriculture and Forestry	2.5.2018	16.5.2018	10	14	20	3
Working Time Act	Economic Affairs and Employment	21.5.2018	12.6.2018	16	70	187	2
Animal welfare	Agriculture and Forestry	19.6.2018	2.7.2018	9	129	302	2
Court Administration Office	Justice	26.6.2018	4.7.2018	6	38	109	3
Customer data in social services and healthcare reform	Social Affairs and Health	28.6.2018	11.7.2018	9	97	143	3
Electricity Markets Act Datahub	Economic Affairs and Employment	3.7.2018	27.8.2018	39	24	106	3
Business Income Tax	Finance	7.9.2018	19.9.2018	8	6	154	2
Dividends on nominee registered shares	Finance	13.9.2018	26.9.2018	9	12	58	4
Environmental permit procedures	Environment	7.9.2018	27.9.2018	14	41	134	2
Money Collection Act	Interior	18.9.2018	2.10.2018	10	40	176	2
Ban on coal use	Economic Affairs and Employment	19.9.2018	8.10.2018	13	17	53	2
Bankruptcy Act	Justice	24.9.2018	16.10.2018	16	54	140	3
Diminishing protection against dismissal	Economic Affairs and Employment	18.10.2018	26.10.2018	6	2	31	other
Food Act	Agriculture and Forestry	11.10.2018	29.10.2018	12	94	122	3
Consumer credit	Justice	12.10.2018	1.11.2018	14	9	47	2
Investment savings account	Finance	22.11.2018	27.11.2018	3	19	50	3
Medicines Act	Social Affairs and Health	6.11.2018	26.11.2018	14	7	44	3
Other statements							
One in, one out project			27.4.2018	34		223 (final reports)	

In spring 2018, the Council adopted a set of 'standard appraisals' to describe its opinion on the quality of the draft proposal. The standard appraisals make reference to the guidelines for impact assessment in legislative drafting (Ministry of Justice 2007).⁵ Each statement of the Council is accompanied by one of the following appraisals:

1. The Council finds that the draft government proposal meets the requirements of the guidelines for impact assessment in legislative drafting and only proposes minor amendments to the draft proposal.
2. The Council finds that the draft government proposal to a large extent complies with the guidelines for impact assessment in legislative drafting and recommends that the proposal be supplemented in accordance with the Council's statement prior to its submission to Parliament.
3. The Council finds that the draft government proposal to some extent complies with the guidelines for impact assessment in legislative drafting and recommends that the proposal be revised in accordance with the Council's statement prior to its submission to Parliament.
4. The Council finds that the draft government proposal is deficient from the perspective of the guidelines for impact assessment in legislative drafting and must be revised in accordance with the Council's statement prior to its submission to Parliament.
5. The Council finds that the draft proposal is highly deficient and unlikely to provide a foundation for any sufficient and reasoned understanding of the proposal or its economic and social impacts. Unless the deficiencies are addressed, submission of the proposal to Parliament is discouraged.

The draft government proposals considered by the Council in 2018 included none that would have met the requirements of the guidelines for impact assessment in legislative drafting and thus merited the highest appraisal. However, there were nine draft proposals, drafted by seven different ministries, that to a large extent complied with the guidelines and were accordingly awarded the second-highest appraisal. The Council considers the calibre of draft proposals to have improved somewhat.

⁵ The guidelines were adopted in 2007 in a Government resolution.

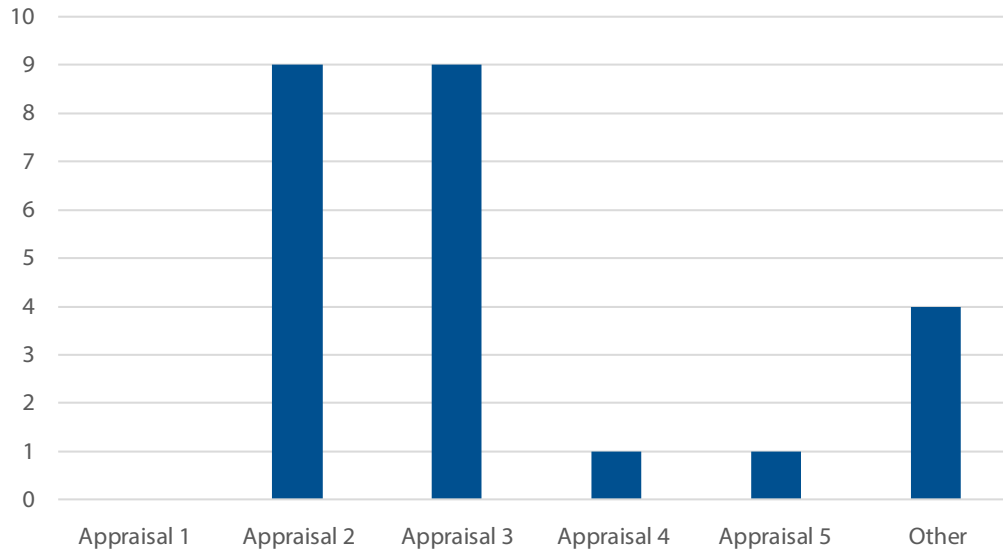
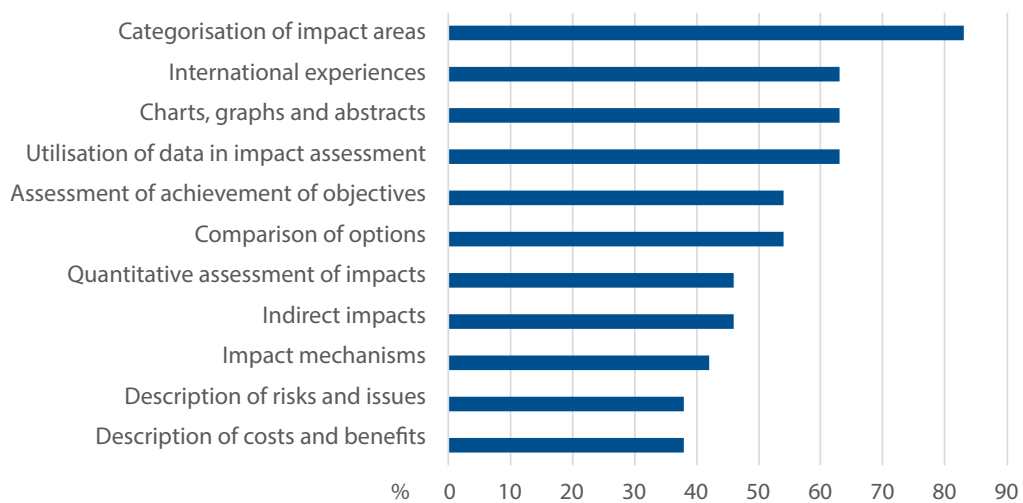
Figure 3: Distribution of appraisals⁶

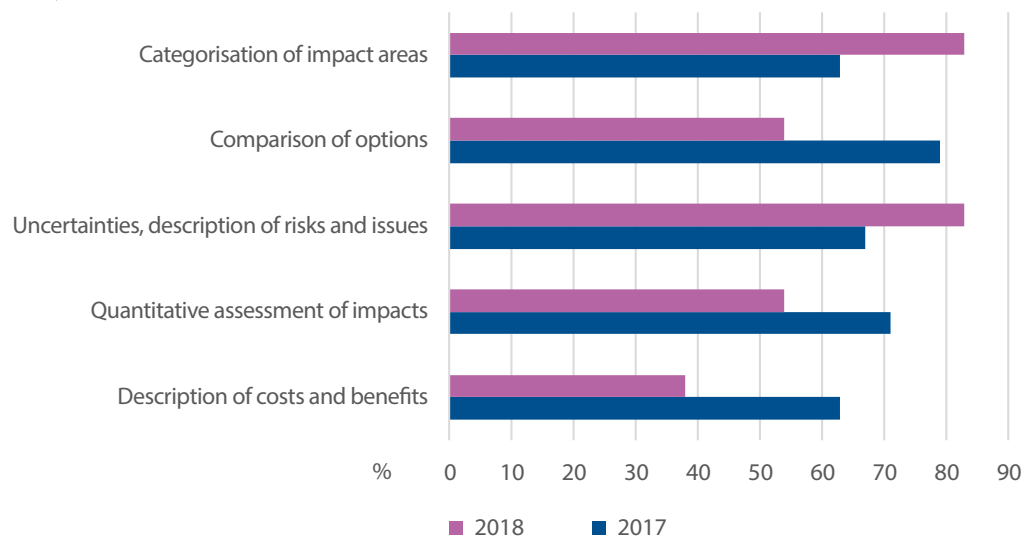
Figure 4 presents the areas for improvement most frequently addressed in the statements. The description of costs and benefits was deficient in over 80% of all draft proposals considered. This means that based on the draft proposal, it would be difficult if not impossible to determine benefits and costs in their entirety. A recurring associated issue is the deficient characterisation of quantitative impact assessment. The Council has found that the magnitudes of costs and benefits are seldom presented in the form of ranges despite such presentation being highly desirable.

Figure 4: Most common areas for improvement in impact assessments in draft government proposals broken down by method.

⁶ The category 'Other' is due to the draft proposals being considered prior to the adoption of the system of standard appraisals.

The areas for improvement addressed in the statements changed only little from the year before. Some improvement was seen in the descriptions of quantitative assessments: early 80% of draft proposals were deficient in this respect in 2017 compared to only just over half in the review year. Costs and benefits were weaker presented, however, with deficiencies observed in more than 60% of the draft proposals in 2017 and more than 80% in the review year. Comparison of options improved on the year, with deficiencies observed in more than 70% of draft proposals in 2017 but just over half in the review year. Improvements were also made in categorisation of impact areas in line with guidelines, in which respect more than 60% of draft proposals were deficient in 2017. In 2018, under 40% of draft proposals were deficient in categorisation of impact areas.

Figure 5: Points for improvement in the draft government proposals broken down by aspect analysed.⁷



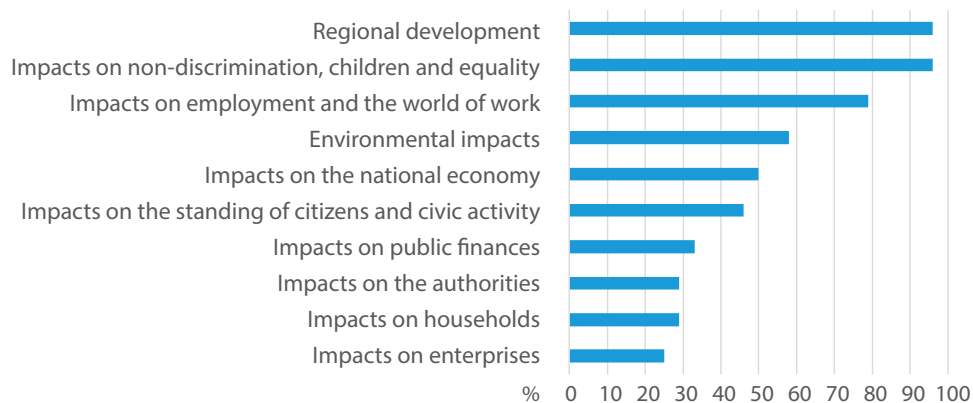
The draft government proposals on occasion left the reader in the dark as to how the impact assessments had been arrived at and which uncertainty factors needed to be taken into account upon interpretation of the assessments. Some draft proposals nonetheless made considerably greater reference to studies and reports, and also described the impact mechanisms, which was a positive development. Then again, some of the draft proposals failed to indicate to a sufficient extent the basis for the impact assessments. A further recurring finding in the Council's statements is the deficiency or total lack of describing

⁷ The changes from one year to the next are not fully comparable, as there are slight differences in the contents of the categories in different years. Several categories have been amalgamated into one area of improvement (uncertainty, description of risks and issues) in order to gain a better overall picture.

the options for implementation of the draft proposals. The draft proposals seldom indicate the rationale for why the proposed regulation is the best way to achieve the objective. While indirect impacts may often be difficult to assess, they may nonetheless be so essential in nature as to warrant at least a rough assessment that takes uncertainty factors into account as well.

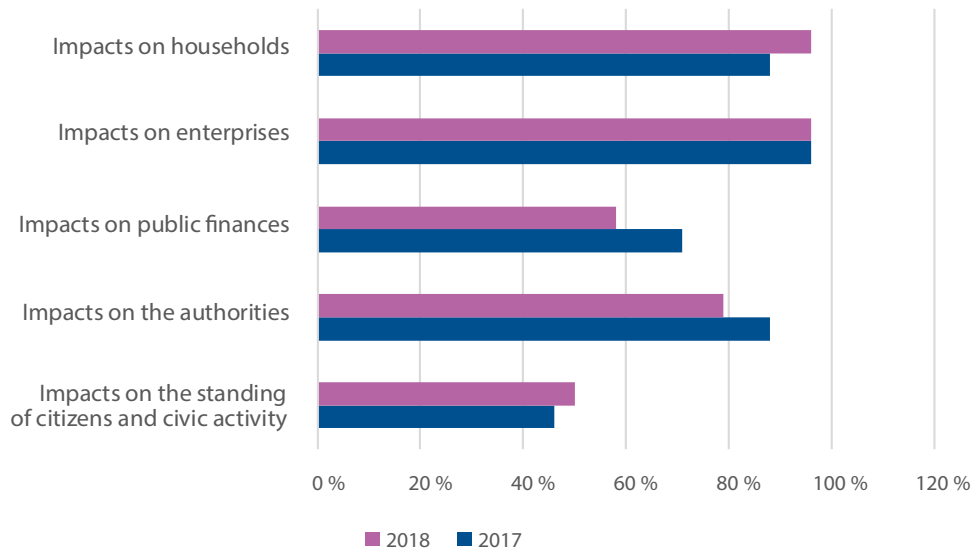
Based on the Council's statements, the greatest deficiencies continued to be seen in the assessments of impacts on households and enterprises (Figure 6). Nearly all draft proposals had room for improvement with regard to both, although there were degrees of difference between proposals. The various aspects of economic impacts (households, enterprises, public finances and the national economy) in general tended to be deficiently described in the impact assessments. The draft proposals for the most part identified the impacts on the authorities on a general level but occasionally failed in i.a. estimating the changes in person-years worked. The assessments of impacts on the position of citizens and civic activity were found to be deficient in roughly every other draft proposal. All told, the draft proposals differed fairly considerably in terms of the degree of severity of the deficiencies in impact assessments.

Figure 6: Most common areas for improvement in impact assessments in draft government proposals broken down by area of impact.



Compared to the year before, no significant changes had taken place in the most common areas for improvement when broken down by impact area. Just about all draft proposals in the previous year as well were found to be deficient in describing impacts on enterprises, while assessments of impacts on households were somewhat more frequently deficient in the review year.

Figure 7. Points for improvement in the draft government proposals broken down by area of impacts.



While some of the deficiencies in the draft proposals could have been remedied with fairly little effort through better adherence to the guidelines for impact assessment in legislative drafting prepared by the Ministry of Justice (Ministry of Justice 2007), the Council's findings also concerned deficiencies that would prove more arduous to remedy. Determining options for implementation or conducting quantitative impact assessments may prove laborious and time-consuming. In the preparation of impact assessments, the ministries would likely benefit from greater economic or societal expertise. When such expertise was unavailable within the ministry, they would be well advised to consult e.g. research institutes or universities for outside support. However, this is conditional upon adequate resourcing and early action in order to locate the appropriate party to which to turn for support.

2.2 Communications and interaction in Finland

The chairperson of the Council has been an active contributor to discussion on impact assessments and legislative drafting. Annex 1 lists the meetings taken, presentations on the Council given and other similar contributions by chairperson Leila Kostianen in the review year.⁸

⁸ The chairperson's international meetings relating to RegWatchEurope have been excluded from Annex 1 and appear instead in Annex 4.

The Council and its secretariat engage with **administration representatives** on a regular basis in meetings, discussions and seminars. The Council has also held one-on-one meetings with the ministries. The secretariat of the Council is moreover in close regular contact with administration on practical issues relating to the Council's statements and has also been invited to lecture at several training events for law drafting officials. Annex 2 describes in greater detail the meetings and discussions attended and the presentations given by the Council's secretariat.

Discussions and meetings with administration representatives typically revolve around the Council's observations on law drafting and impact assessments on the general level. Some feedback on the Council's activities has also been received. On occasion, the technical process of statement issuance has been reviewed. The ministries, in turn, have provided the Council with descriptions of the processes relating to the drafting of government proposals.

The secretariat of the Council regularly attended meetings of the group that aims at more streamlined legislation. In addition, the permanent expert of the Council participated in the working group of the Ministry of Justice. HELO working group was tasked with preparing a new set of bill drafting guidelines.

Besides government representatives, the Council also meets with **other stakeholders**, such as Parliament, experts and representatives of interest groups. These discussions typically include a presentation on the Council's operations and its views on law drafting. Based on the discussions, the Council's activities and statements are of interest to a very broad spectrum of society.

Annex 3 enumerates the stakeholder meetings taken by the Council and the secretariat in 2018. The chairperson's meetings with stakeholders are included in Annex 1.

The Council's secretariat was represented on the steering group for a project on regulatory burdens and their measurement funded from the Government's joint analysis, assessment and research activities (VN TEAS).

2.3 International activities

The Finnish Council of Regulatory Impact Analysis joined RegWatchEurope, an umbrella network of its European sister bodies, immediately on launching operations in summer 2016. In preparation for chairing the organisation in 2019, the Council's chairperson and secretariat became even more actively involved in the organisation and its agenda in 2018, when the work of RegWatchEurope focused above all on EU influence and

cooperation with the OECD. The Council's aims for the Finnish chairmanship are: (i) to enhance the network's methodological cooperation through i.a. workshops, (ii) to continue the network's EU advocacy in relation to i.a. the European Parliament elections, (iii) to outline the further expansion of the network. Steps taken in 2018 in preparation for the chairmanship included the drafting of a priorities paper and preparing a schedule for coordinating the activities and efforts of RegWatchEurope.

The chairperson and secretariat of the Council also attended international RegWatchEurope meetings in 2018 and these are listed in Annex 4.

Collaboration with European colleague bodies has allowed the Council to learn from its peers and also provided invaluable contacts with international experts in better regulation.

3 Performance, effectiveness and risk factors

3.1. Inputs and costs

The Finnish Council of Regulatory Impact Analysis held a total of 15 meetings in 2018 (18 January, 25 January, 15 February, 8 March, 22 March, 12 April, 3 May, 24 May, 19 June, 23 August, 13 September, 29 September, 4 October, 25 October, 15 November and 13 December). The meeting attendance rate among Council members was around 75%. The Council also held some meetings by means of written procedure to adopt statements considered earlier. A considerable portion of the Council's work is done outside meetings, in the form of reviewing draft statements and government proposals. Most of the statement preparation by Council members indeed takes place outside meetings.

The costs arising from the Council consist primarily of the salaries of its secretariat. Other expenditure comprises the fees paid to Council members and other running costs arising from activities, mainly travel expenses related to international contacts.

Members of the Council were paid an annual fee of EUR 4,400, the vice chairpersons EUR 5,500 and the chairperson EUR 8,800 in 2018.

The OECD benchmarking of the activities and resources of the oversight bodies belonging to the RegWatchEurope⁹ network reveals that the Council's sister organisations have at their disposal resources at least four times greater than those of the Council.¹⁰

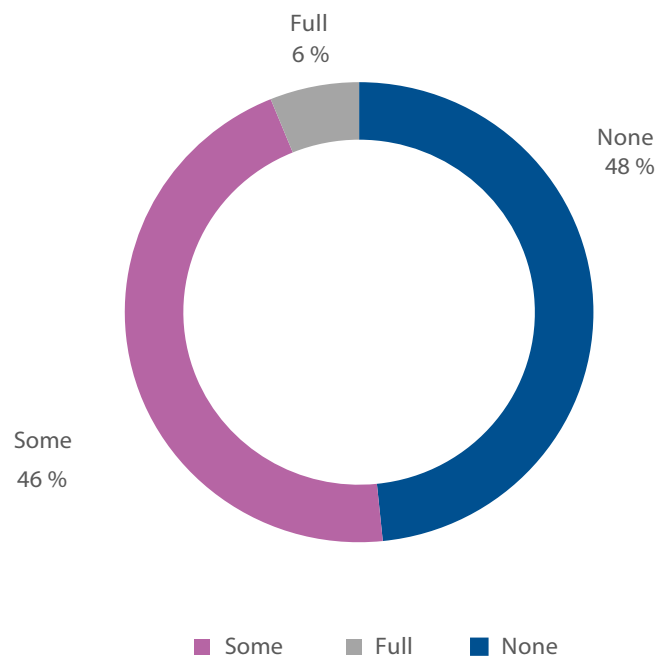
9 OECD (2018), "Case Studies of RegWatchEurope regulatory oversight bodies and of the European Union Regulatory Scrutiny Board", OECD, Paris.

10 Resource comparisons are hampered by the fact that cost items such as rent on premises are varyingly taken into account in oversight body expenditure.

3.2 Own assessment

The Council lacks the resources to monitor in real time whether its recommendations have been implemented in the final government proposals submitted to Parliament, but a rough estimate based on ex post annual monitoring would suggest that in 2018, slightly over half of the deficiencies to which the Council drew attention in its statements would have been remedied at least either partly or in full in the further drafting of the proposals (Figure 6). While this figure was largely unchanged from the previous year, the proportion of recommendations that were implemented in full fell somewhat, from 15% in 2017 to only 6% in 2018.

Figure 8: Degree of compliance



According to the Council's mandate, government proposals shall be submitted to the Council in as finalised form as possible, which is why the Council's period of consideration falls towards the end of the law drafting process.¹¹ Since the purpose of the Council is to conduct independent assessment, it cannot take part in the drafting of proposals and consequently the Council has refrained from consulting to the ministries at the drafting stage; otherwise it might be put in a position where it would be required to assess its

¹¹ The memorandum on the Government Decree on the Finnish Council of Regulatory Impact Analysis states that "the selected government proposal shall be submitted to the Council in as finalised form as possible."

own work. Despite its different duties and purpose, the Economic Policy Council has opted for a similar approach in its activities.¹² The current resources of the Council also do not permit it to consult to the ministries. Nonetheless, the Council has established open lines of communication with administration (see Chapter above), which allows it to voice its views on impact assessments and law drafting in general terms.

The Council may operate on lean resources but it believes it has made active contributions to enhancing the quality of law drafting. The Council has proved its utility: it has pointed out recurring flaws in impact assessments and maintained dialogue on the quality of law drafting. This has been accomplished through active effort on the part of the Council's chairperson, members and secretariat alike in educating themselves on the issues and interacting with key stakeholders. With its scarce human resources, the Council has been and remains vulnerable to disruption. The absence of even one member of the secretariat for whatever reason for even a few weeks could have drastic consequences to the activities of the Council and the chairmanship of RegWatchEurope in 2019.

The resources available to the Council will not permit it to broaden its ambit to any great extent or to consider a higher number of draft proposals. No such increase in the volume of proposals considered may even be necessary, since proposals are chosen for consideration on the basis of their diversity. The opinions expressed in the statements are also designed to be generalised, as they are envisioned to provide teachings applicable also beyond the individual case under consideration.

3.3 Assessment of Council activities and recommendations

The Prime Minister's Office initiated in 2017 a VN-TEAS¹³ project to assess the effectiveness of the Council. The project was implemented by the University of Eastern Finland under Professor Anssi Keinänen. The final report on the project was yet to be completed at the time of writing of this review but based on the draft report, the Council is given

12 In the economic journal *Kansantaloustieteellinen aikakauskirja*, Economic Policy Council chairperson Roope Uusitalo assesses the work and mandate of the Economic Policy Council as follows, "As a rule, the Council conducts ex post facto assessment of the success of the economic policies pursued and does not strive to prepare proposals of its own. The underlying reason for this approach is the separation of drafting and assessment. Were the Council to make proposals that ultimately were put into practice, the Council could easily face a situation in which it had to assess its own proposals. Nonetheless, it is a fine line to straddle." (Uusitalo: Kokemuksia talouspolitiikan arviointineuvostosta. [Experiences of the Economic Policy Council] *Kansantaloustieteen aikakauskirja* 3/2018.)

13 The Government's joint analysis, assessment and research activities (VN TEAS) coordinated by the Prime Minister's Office, generate information that supports decision-making, management by knowledge and working practices.

fairly positive marks. The report indicates that over its brief existence, the Council has proved its utility in enhancing legislative drafting.

The draft report makes certain recommendations for further improving the Council:

- The Council should adopt a more active advisory role relative to law drafting officials, and
- Engage in more active collaboration with permanent secretaries, high ministerial officials and political decision-makers.
- The Council should more actively take initiatives to enhance the quality of law drafting.
- The mandate of the Council should be re-evaluated relative to the resources available to it.
- The status of the Council should be laid down at the level of law.

The Council is basically amenable to the recommendations arising in the project to promote collaboration with the ministries and to assume a more active role in legislative drafting enhancement. As indicated in the foregoing, the Council engages in active interaction with i.a. administration. The current level of resourcing will not permit the Council to live up to all of its ambitions, however. Chapter 5 of the Annual Review addresses in greater detail the activities of the Council unrelated to the issuance of statements.

The OECD (2018)¹⁴ publication Regulatory Policy Outlook 2018 deals with recent observations and recommendations of the OECD relating to better regulation. With regard to impact assessments, the OECD values a focus on undertakings of societal significance, to which resources should be prioritised. The OECD finds that bodies conducting impact assessments typically tend to focus on economic impacts while paying too little attention to other impacts of equivalent value, such as impacts on society. Assessment of the various options for achieving the desired objective is also considered important. The OECD further emphasises transparency of consultation, open communication and participation that lets stakeholders feel included. With regard to Finland, the OECD draws attention to the meagre resources of the Council.

In its work, the Council has focused on legislative projects of broader than average scope that either fall among the Government's key projects or, in the Council's estimation, are otherwise of significant societal significance. The Council maintains a holistic perspective on analysis in which attention is paid not only to economic impacts but also to impacts on

¹⁴ OECD (2018), OECD Regulatory Policy Outlook 2018, OECD Publishing, Paris, <https://doi.org/10.1787/9789264303072-en>.

the authorities and on the environment as well as to societal impacts, such as due process, gender equality or service availability. The Council has also repeatedly in its statements drawn attention to the deficiencies in describing options and duly taking into account the consultation round. Based on the OECD recommendations, the approach adopted by the Council would appear to be along the right lines.

A recent study indicates that impacts on businesses were assessed to a considerably greater extent in 2017 than four years earlier, in 2013, when all government proposals in the said years were examined. Impacts on people were assessed to a somewhat greater extent in 2017 than in 2013 while the assessment of impacts on household, which is a component of the category, had increased markedly from the findings for 2013.¹⁵ It is possible that regulatory impact assessment has fostered the increase in assessments of impacts on businesses and households. These findings fail to speak to the quality of the assessments, however. This aspect was addressed in the study by means of qualitative methods. The findings of the quality-related aspects of the study¹⁶ cannot be generalised empirically but they do illustrate some typical issues. Uncertainty factors, for example, were recorded poorly, which finding aligns with the observations made by the Council.

15 In the government proposals submitted in 2013, potential impacts on enterprises were identified in 33% of the proposals when the equivalent figure in 2017 was 46%. With regard to assessments of impacts on people, the corresponding percentages are 48 (2017) and 44 (2013), and the percentages concerning the constituent assessments of impacts on households are 30 (2017) and 13 (2013). Source: Rantala, K. ym. (2019) Ihmisiin kohdistuvat vaikutusarviot hallituksen esityksissä: luokittelusta laatuun ja sen puutteisiin. [Assessments of impacts on people in government proposals: from categorisation to quality and deficiencies therein. Publication pending in University of Helsinki Institute of Criminology and Legal Policy research paper series.

16 This part of the study examined five government proposals, each from a different administrative branch. The findings suggest that quantitative impact assessments were presented on much of an outcome basis without sufficiently explaining the assessment processes and the uncertainty factors, while the qualitative assessments were very superficial. The study found numerous deficiencies in the assessments' manner of presentation.

4 Observations for improved drafting

In its previous Annual Review, the Finnish Council of Regulatory Impact Assessment already drew attention to the poor resourcing of impact assessment. In the view of the Council, the resourcing of legislative drafting in the ministries, i.e. strengthening the economic and social expertise available, remains a topical issue. A recent study confirms that fairly few economists work in central government.¹⁷ The calculations indicate that at present, central government has in its employ 37 economists whose inputs could be drawn upon in preparing impact assessments. The Tax Department at the Ministry of Finance, which according to the study is relatively successful in assessing economic impacts, employed seven economists in spring 2018, and each of them thus dealt with around three government proposals in the year.

The statements of the Council largely echo the same themes, such as determination of options, assessment of the magnitude of costs and benefits, and gaining an overall understanding of the impacts. That being said, some of the government proposals considered by the Council have included quite good impact assessments. While in the view of the Council, the calibre of impact assessments in draft proposals has improved somewhat in the past three years, a more detailed analysis would be required in order to draw definite conclusions.

The Council believes that the guidelines for impact assessment in legislative drafting provide fairly little guidance as to the preparation of the assessments. It may well be that further direction would be needed in applying the guidelines; assessments involve empirical methods and the understanding of impact relationships, which in turn call for know-how. Hiring more economists and social scientists into administration could help improve the quality of impact assessments. The Council considers that while administration is growing increasingly aware of the importance of impact assessments, a lack of time and

¹⁷ Tuulia Hakola-Uusitalo et al. have prepared calculations on the number of economists involved in drafting economic policy based on anonymised data obtained from the Finnish Government Shared Services Centre for Finance and HR (Palkeet). Hakola- Uusitalo, T. & Björk A.: Ekonomistit ja talouspolitiikan valmistelu [Economists and economic policy drafting]. Kansantaloustieteen aikakauskirja 4/2018.

resources still hampers the drafting of government proposals. Attention should therefore also be paid to the management of legislative drafting.

Strong political guidance tend to undermine the quality of impact assessments, and this has long been known¹⁸. As indicated in the Preamble, the Council has had to draw attention to the separation of policy making from law drafting. When political actors assume control over matters that fall within the domain of law drafting, i.e. decide on the tools instead of the aims, they hamstring drafting to an extent that undermines the capacity for subjecting options for implementation and their impacts to any well-rounded assessment.

The OECD (2018) holds that laws and regulation are essential tools for the promotion of wellbeing and economic growth. Regulatory policy may be a factor in fostering investment, economic growth and innovation. While regulation is designed to deliver benefits to society, it also comes at a cost, which is why the OECD underscores the importance of good regulatory practices and stability in laws and regulation. The Council holds that Finland, too, should closely observe the recommendations of the OECD on good regulatory practices.

The Prime Minister's Office has appointed a preparatory group tasked with drawing up proposals to enhance the consolidation and systematic nature of law drafting in government and to enhance its quality.¹⁹ The proposals shall pursue the following aims:

- to safeguard sustained legislative planning which enhances strategic management in the Government (legislative plans for the term of the Government and for each parliamentary session)
- to strengthen resources in governmental legislative drafting in support of the key reforms in the Government programme (joint governmental legislative drafting resource)
- to strengthen the provision of basic, advanced and specialised training to enhance expertise in legislative drafting (legislative drafting training provision arrangement model)
- to develop a digital platform to increase the efficiency of legislative drafting and to automate the availability of knowledge resources for drafting (digital desktop for legislative drafting)

¹⁸ The effect of political policy inputs on impact assessment has been analysed in i.a. the following publications: Rantala K. (2011) Lainvalmistelun laatu hallituksen kärkihankkeissa. [Quality of legislative drafting in Government key projects] Helsinki: National Research Institute of Legal Policy studies 255, e.g. p. 187; Slant ym. (2013) Vaikuttavaa vaikutusarviointia? [Effective assessment of impacts] Helsinki: National Research Institute of Legal Policy research bulletins 125, p. 23–29.

¹⁹ For more information, in Finnish, please see the Government website: https://valtioneuvosto.fi/artikkeli/-/asset_publisher/10616/valmisteluryhma-lainsaadantotyön-kehittämiseksi-asetettu.

The chairperson of the preparatory group is Permanent Secretary Pekka Timonen of the Ministry of Justice and its deputy chair is Permanent Under-Secretary Timo Lankinen of the Prime Minister's Office. The goal is to have implementable measures in place at the start of the new Government term.

The Council considers the aforementioned project and the updating of the bill drafting instructions to be positive steps towards better legislative drafting at the level of the Government, and in particular welcomes the envisioned stronger resourcing of key reforms and greater training provision.

The following Chapter reviews the action taken by the Council to enhance legislative drafting in 2019. The areas of development addressed in this context are ex post evaluation of legislation, the bill drafting instructions and plans for an EU pilot.

5 Events taking place after the review year (2019)

According to the observations of the OECD, systematic procedures for assessing the effectiveness of legislation and regulation are lacking in the OECD member States, i.e. there are no structures and processes in place for ex post assessment at the level of government. After legislation enters into force, it remains often unclear whether the laws and regulation actually achieved their objectives.

In March 2019, the Finnish Council of Regulatory Impact Analysis submitted an initiative for the construction of an ex post assessment system at the level of the Government. The aim of the initiative was to draw attention to the problem also raised by the OECD, the lack of systematic follow-up. This was also the first instance of the Council when it launched an initiative to enhance law drafting. However, the Council believes that the steps to be taken in the development of the ex post assessment system should be considered carefully. The necessary expertise and resources should be secured in order to ensure that the system would allow lessons to be drawn from the outcomes of past regulatory projects.

In January 2019, the Council issued an opinion on the draft bill drafting instructions. In this opinion, the Council raised i.a. the point that the instructions in certain aspects remained fairly generalised. The opinion also noted that the draft instructions in many instances addressed impact assessments as something that could be determined with certainty. This despite the instructions also highlighting the significance of bringing to light the uncertainties associated with assessment. The future is unknowable and therefore in law drafting, the aim in particular is to assess the potential impacts of the proposed regulation. Formulations that treat impacts as certainties may lead to inappropriate and qualitatively compromised assessments.

In its opinion on the draft bill drafting instructions, a further point raised by the Council was the overly generalised approach in paying attention to implementation. Any issues relating to implementation should be reviewed in concrete terms in law drafting and all key findings should be included in the government proposals. This approach is not only about

planning support measures for the regulation being drafted but also about acknowledging the realities of implementation already at the drafting stage so as to avoid the regulation causing any undue regulatory burden or regulation that is unrealistic relative to existing practices²⁰.

EU-based regulation accounts for a considerable share of Finnish legislation. More and more attention should therefore be paid to the assessment of the impacts of EU-based regulation. A widely held belief is that law drafting officials have a very narrow window for informing Parliament when the EU Commission issues its legislative proposals. Unless the impact assessments have been taken under initial deliberation prior to this time, they may fail to reach beyond the most general of levels. As negotiations progress, impact assessments can of course be supplemented in follow-up Union Communications.

The negotiating process in EU regulation may deliver unexpected outcomes, which presents a great challenge to the preparation of impact assessments. Instead of an assessment of an individual decision, the impacts need to be assessed on a very broad scale, depending on outcome. In the experience of the Council, government proposals occasionally fail to explain whether the proposal leaves any national latitude in implementation, or to describe the use of such national latitude. The proposals sometimes also neglect to propose regulation that surpasses the minimum level under EU regulation. Details of the envisioned implementation and practices in other Member States would also be of interest, yet such information is not always available.

The Council has drawn attention to the need to allocate sufficient time at the national level to assess the impacts of EU-based regulation. The topic has also been raised by the Council within RegWatchEurope and in meetings with EU institutions, and will remain at the forefront of the agenda throughout Finland's chairmanship of RegWatchEurope in 2019. In addition, the Council is planning to pilot a new EU legislative project when the new Commission takes office. The aim of the pilot project will be to subject national impact

20 According to a business survey, representatives of enterprises found the varying and unforeseeable enforcement practices of the authorities often to constitute a greater burden than new regulation, provided that such new regulation had clarity. (Source: Uusikylä P. ym. (2018) Yritysten näkemyksiä sääntelytaakasta: kyselyn tuloksia. [Perceptions of regulatory burden among enterprises: survey findings]. In the book K. Rantala et al. (Ed.) Sääntelytaakan arviointi ja vähentäminen. [Evaluating and reducing regulatory burdens]. Publications of the Government's analysis, assessment and research activities 27/2018. Page 134 of the said publication contains recommendations for paying attention to implementation. Ex post assessments of legislation have found major shortcomings in the implementation of regulation relating to e.g. information systems and administration cultures; these issues have undermined the capacity of the legislation to have the appropriate effects, although problems have also been found with the substance of regulation relative to reality. (E.g. Rantala K. ym. (2008) Kaltevalla pinnalla – perheen sisäisen lähestymiskiellon arviointitutkimus. [Slippery slope – assessment study on intra-family restraining orders]. Helsinki: National Research Institute of Legal Policy studies 239; Liimatainen A. ym. (2017) Porkkanaa ja keppiä – Rangaistusajan suunnitelmat osana vankeusrangaistuksen täytäntöönpanoa. [Carrot and stick – sentence plans as part of enforcement of prison sentences] University of Helsinki: Institute of Criminology and Legal Policy studies 14/2017.

assessments and the entire assessment process to broad scrutiny; to gain an understanding of how the Council, in general terms, could be supportive of a better understanding being obtained of the national impacts of EU regulation. Work on planning the pilot project started in spring 2019.

Appendix 1 Meetings taken by and presentations given by chairperson Leila Kostainen

Date	Name	Organisation	
9.1.2018	Director Meeri Haataja	OP bank	Other
23.1.2018	Specialists	Bank of Finland	Authority
26.1.2018	Board member Nils Björkstén	Regulatory Scrutiny Board, RSB	Other
29.1.2018	Director Lauri Korkea-aho	Attendo	Interest group
30.1.2018	Directors Markus Sovala and Timo Aronkyrö	Helsinki-Uusimaa Regional Council	Other
15.2.2018	State Secretary Jari Partanen	Ministry of Transport and Communications	Ministry
19.2.2018	Director Antti Kivelä	Sitra	Other
21.2.2018	MP Jaana Laitinen-Pesola	Parliament	Other
8.3.2017	Senior Adviser for Language Affairs Corinna Tammenmaa, Senior Specialists Vava Lunabba and Maria Soinen	Ministry of Justice	Ministry
12.3.2018	Director Annika Rönni-Sällinen	Central Organisation of Finnish Trade Unions SAK	Interest group
13.3.2018	Chancellor of Justice Tuomas Pöysti, Department head Maija Salo	Office of the Chancellor of Justice	Authority
20.3.2018	Special Adviser Anssi Kujala	Ministry of Finance	Ministry
26.3.2018	Presentation of Council activities	European Commission Representation in Finland	Other
27.3.2018	Presentation of Council activities to delegation from Lithuania	Prime Minister's Office	Ministry
28.3.2018	Director General Kirsi Varhila	Ministry of Social Affairs and Health	Ministry
11.4.2018	Presentation of Council activities	Ministry of Social Affairs and Health	Ministry
20.4.2018	Deputy Speaker Tuula Haatainen	Parliament	
23.4.2018	Director Kirsi Sillanpää	Tehy - The Union of Health and Social Care Professionals in Finland	Interest group
26.4.2018	Director Tuire Santamäki-Vuori	National Institute for Health and Welfare	Authority
2.5.2018	Minister Anne Berner	Ministry of Transport and Communications	Ministry

Date	Name	Organisation	
4.5.2018	State Secretary Samuli Virtanen	Prime Minister's Office	Ministry
8.5.2018	Presentation of statement to the Finance Committee of Parliament	Parliament	
9.5.2018	Chairperson Mikkel Näkkäläjärvi	Social Democratic Youth	Other
15.5.2018	Director Eija Hietanen	Central Organisation of Finnish Trade Unions SAK	Interest group
15.5.2018	Permanent Secretary Martti Hetemäki	Ministry of Finance	Ministry
23.5.2018	State Secretary Paula Lehtomäki	Prime Minister's Office	Ministry
6.6.2018	Performance Audit Counsellor Matti Mattila	National Audit Office	Authority
12.-13.6.2018	Attendance at event Naantali24		Other
26.6.2018	Permanent Secretary Pekka Timonen	Ministry of Justice	Ministry
3.7.2018	Presentation of Council activities to delegation from Romania	Prime Minister's Office	Ministry
6.7.2018	Director Hannu Jouhki	Central Organisation of Finnish Trade Unions SAK	Interest group
20.8.2018	Presentation of Council activities at meeting of permanent secretaries	Prime Minister's Office	Ministry
21.8.2018	Chief Specialist Kaisa Lähteenmäki-Smith, researcher Petri Uusikylä	Sitra	Other
22.8.2018	Deputy Chairperson Heli Puura	Industrial Union	Interest group
18.9.2018	Senior officials	Ministry of Justice	Ministry
19.9.2018	Special Adviser Anssi Kujala	Ministry of Finance	Ministry
24.9.2018	Presentation of Council activities	Finnish Lawyers' Association	Interest group
9.10.2018	Chancellor of Justice Tuomas Pöysti, Deputy Chancellor of Justice Mikko Puumalainen, Department Head Maija Salo	Office of the Chancellor of Justice	Authority
15.10.2018	Presentation of Council activities to delegation from Jordania	Parliament	
	STTK palveluryhmä	STTK	Interest group
18.10.2018	MEP Heidi Hautala	European Parliament	
	Deputy General Secretary Katja Lehto-Komulainen	ETUC	Interest group
31.10.2018	Presentation of Council activities at World Bank event	Romania	Other

Appendix 2 Participation of Council secretariat in presentations of activities to administration and discussions and meetings with administration (also jointly with the chairs of the Council)

- Presentation of Council activities at a meeting of the legislative drafting development group 23 January 2018.
- Presentation of Council activities and observations on legislative drafting at the legislative drafting course at HAUS Finnish Institute of Public Management Ltd 2 February 2018.
- Discussion on the Council with specialists at the Ministry of the Interior 9 February 2018.
- Meeting with legislative drafting officials of the Ministry of Social Affairs and Health together with the chairperson of the Council 11 April 2018
- Meeting with Senior Specialist Erno Mähönen and Development Manager Henriikki Oravainen of the Ministry of Economic Affairs and Employment 20 April 2018
- Presentation of the Council's Annual Review 2017 at a legislative drafting officials' breakfast meeting 20 June 2018
- Presentation of the Council activities and observations on legislative drafting at the legislative drafting academy 27 August 2018
- Presentation of Council activities and observations on legislative drafting at the legislative drafting course at HAUS Finnish Institute of Public Management Ltd 13 September 2018
- Discussion with leading officials at the Ministry of Justice together with the chairperson of the Council 18 September 2018
- Presentation of the Council's observations on impact assessment in leadership coaching JOVA education 7 November 2018.
- Discussion with Secretary General Annika Lindblom and Senior Specialist Sami Rinne on sustainable development and impact assessments 26 November 2018.
- Discussion with project team headed by Project Manager Liisa Heinämäki on the social security reform project 19 December 2018.
- Discussion and information-sharing on better regulation at the EU level with ministry specialists in better regulation 20 December 2018.

Appendix 3 Meetings and discussions of Council secretariat with stakeholders (also jointly with the Council)

- Interview contribution in University of Eastern Finland research project to assess activities of Finnish Council of Regulatory Impact Analysis 22 March 2018
- Attendance at symposium on high-quality EU legislation. European Commission representation in Finland 26 March 2018.
- Symposium with delegation from Lithuania on Council activities 27 March 2018 together with Council chairperson
- Expert consultation before Constitutional Law Committee of Parliament in relation to freedom of choice in social services and health care reform
- Discussion with Sitra representatives (Chief Specialist Kaisa Lähteenmäki-Smith, Senior Adviser Jouni Backman and Project Director Petri Virtanen) on Government reform, on initiative of Sitra 24 April 2018
- Meeting with specialists of the Finnish Competition and Consumer Authority 4 May 2018
- Discussion with senior officials at Office of the Chancellor of Justice, chairs and secretariat of Council in attendance 9 October 2018
- Attendance at Better Regulation Network seminar in Helsinki 12 October 2018
- Attendance in invitational seminar on Council activities 23 November 2018

Appendix 4 International meetings of the Council and the secretariat relating to RegWatchEurope activities

- Council secretariat representative in attendance at the Cost synopsis seminar arranged by the German Normenkontrollrat in Berlin 12 March 2018
- Council chairperson and secretariat in attendance at OECD/RPC meeting in Paris 9–10 April 2018
- Council chairs, secretariat and permanent expert on study visit to the OECD 17–18 May 2018
- Council chairperson and secretariat representative in attendance at RegWatchEurope board meeting in Stockholm 4–5 June 2018
- Council chairperson and secretariat representative in attendance at Regulatory Scrutiny Board conference 15 June 2018
- Nordic secretariats meeting hosted in Helsinki by Council secretariat 28 August 2018
- Council secretariat in attendance at RegWatchEurope secretariats meeting in Stockholm 31 August 2018
- Council chairperson and secretariat representative in attendance at OECD/RPC meeting in Paris 28–29 November 2018
- Council chairperson and secretariat in attendance at RegWatchEurope board meeting in Stockholm 4 December 2018
- Neuvoston puheenjohtaja tapasi yhdessä RegWatchEuropen puheenjohtajien kanssa Itävallan Coreper I edustajan 10.12.2018. Council chairperson together with RegWatchEurope chairs in meeting with Austria's Coreper I representative 10 December 2018



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