



PRIME MINISTER'S OFFICE
FINLAND



Finnish Council of Regulatory Impact Analysis Annual Review 2016

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Preamble

The key project entitled ‘Legal provisions will be improved’ in Prime Minister Juha Sipilä’s Government Programme seeks to enable, deregulate and reduce the administrative burden with the aim of easing the everyday lives of citizens, boosting competitiveness, and promoting market access and digitalisation. It was decided that one of the steps in implementing this key project would be the establishment of a body tasked with ensuring the high-quality impact assessment of legislation.

The need for such a body had already been raised by the Audit Committee of Parliament in its 2014 Annual Report. The Audit Committee outlined the three fundamental requirements for impact assessment: the assessment body had to be independent of political decision-making and administrative law drafting, it had to possess expertise of sufficient breadth and depth, and it had to have the backing and commitment of political decision-makers if it was to be successful in its endeavours.

The Government Decree on the Finnish Council for Regulatory Impact Analysis entered into force on 1 February 2016. Section 1 of the Decree summarises the mandate and standing of the Council: “An independent and autonomous Finnish Council of Regulatory Impact Analysis operates within the Prime Minister’s Office for the purpose of analysing regulatory impact assessments.” In carrying out its mandate the Council is thus independent vis-à-vis political actors and the special interests of the various administrative sectors and stakeholders in society.

With access only to limited resources at its inception, the Council is required to prioritise its ambit. Besides analysing the economic impacts of draft government proposals, the Council has also paid attention to non-discrimination impacts and other societal impacts throughout its term.

In its first year of operations, the Council has built up its internal working methods, the analysis process and methodology, collaboration with law-drafters and the ministries, and interaction with other stakeholders. Promoting awareness of the Council and the significance of impact assessment in sound law-drafting has also been a priority.

Work to further develop the above is ongoing. An assessment of the Council’s effectiveness will also be launched in 2017.

Helsinki, 31 March 2017

Leila Kostiainen
Chairperson

1. Finnish Council of Regulatory Impact Analysis

The Decree on the Finnish Council of Regulatory Impact Analysis was issued in December 2015. 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 Government Decree on the Finnish Council of Regulatory Impact Analysis (1735/2015)¹, the Council has the following duties:

1. to issue statements on the impact assessments included in draft government proposals,
2. to issue statements also on the impact assessments of other draft legislation,
3. to submit initiatives towards improving the quality of law drafting and in particular the quality and performance of impact assessments,
4. to benchmark the impacts of legislation against assessments,
5. to monitor the development of the quality of impact assessments and to assess the effectiveness of its own operations, and
6. 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 Government 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 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 Kostainen, 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 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 Antti Moisio and Meri Virolainen.

¹ The Decree entered into force on 1 February 2016.

2. Activities

2.1. Statements

A key duty of the Finnish Council of Regulatory Impact Analysis is to prepare and issue statements on draft government proposals. The Prime Minister's Office set the Council the performance target of taking at least 20 government proposals under consideration in 2016 while the target for 2017 is 35.

During 2016, the Council took a total of 21 draft government proposals under consideration and prepared 12 statements² by the end of the year. The Council gave preliminary consideration³ to a further nine draft government proposals in 2016. Of these nine, either revised drafts could not be made available by the ministry concerned during 2016 or were made available very late in the year, which caused the issue of statements to be pushed forward to 2017.

The draft government proposals taken under consideration are selected independently by the Council, which in this work makes use of e.g. the Government's legislative plans and the 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.

Government proposals are issued to the Prime Minister's Office in Finnish and concurrently circulated for consultation. In the same context, the Council is also informed of the official in charge of the drafting and the beginning and end of the consultation period, as well as the date when the proposal is to be submitted to Parliament.

The relevant ministry is immediately informed of the Council's decision to take a certain government proposal under consideration 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). After the government proposal has been received by the Registry, the Council will have about four weeks for preparing its analysis. The Council issues its statement once it has been adopted and signed.

The Council's analysis takes place towards the end of the law drafting process and the Council does not take part in the drafting. Nor does the Council weigh in on the constitutionality of the draft proposals, as in Finland other bodies are tasked with assessing compliance with the Constitution.

The statements prepared by the Council in 2016 concerned draft proposals prepared by seven different ministries and included proposals of both broad and more limited scope. The median consideration period for statements was well under two weeks (five working days when holidays are excluded (Table 1). While the Council's focus at the outset was on analysing the economic impacts of the draft government proposals, it also extended its analysis to other areas of impact.

² A total of 12 statements were completed in 2016, but the ministry responsible for the proposal on basic income submitted it to Parliament before the Council could issue its statement and the statement was therefore withdrawn.

³ Consideration refers to the secretariat having presented to the Council the contents of the government proposal, as well as preliminary observations and points to be raised in the statements and the Council having commented on these and instructed the secretariat on the preparation of the statement.

Table 1. Summary of statements issued in 2016

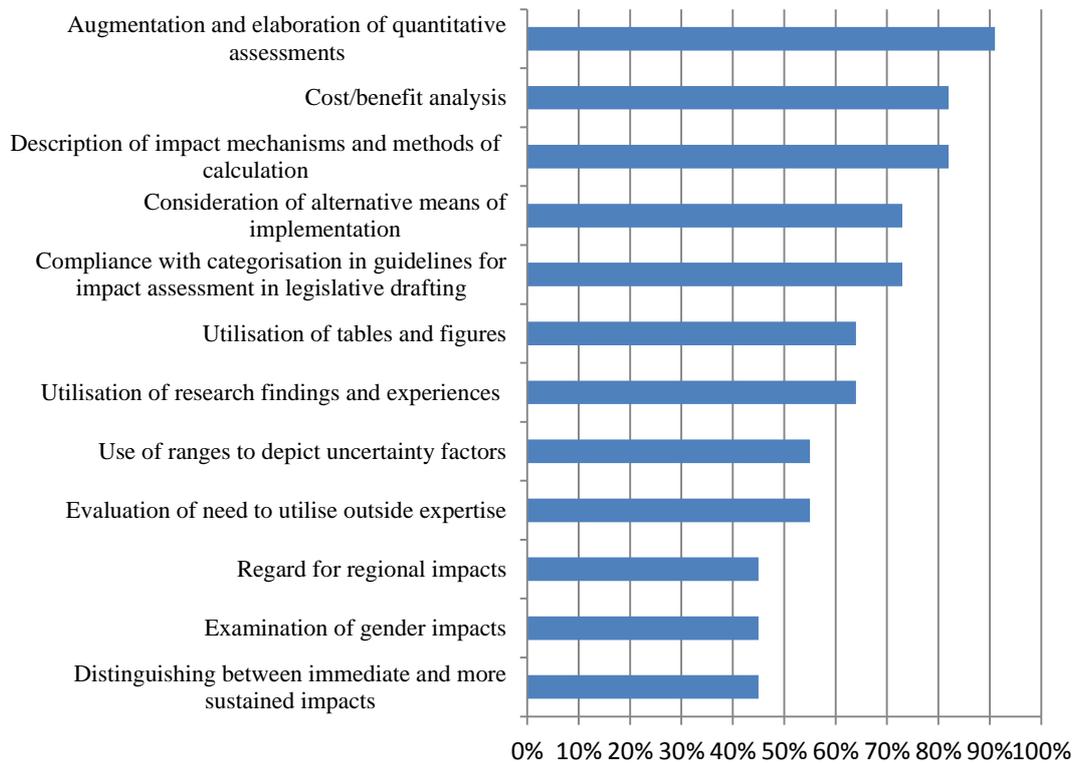
	Draft government proposal	Ministry responsible for preparation	Statement adopted, date	Amended draft government proposal received, date	Duration of consideration by Council, working days since receipt of amended draft proposal	Government proposal submitted to Parliament, date	Time elapsed from issue of statement to submission to Parliament, calendar days	Proposal type** (Broad = more than 20 sections; narrow = 1–20 sections)	Number of pages in government proposal
1	Transport Code	Transport and Communications	17/06/16	13/06/16	4	22/09/16	97	Broad	195
2	Income Tax Act amendment (forest asset gift deduction)	Finance	12/08/16	01/07/16	30	23/09/16	42	Narrow	32
3	Proposal on unemployment security	Economic Affairs and Employment	22/08/16	23/06/16	41	20/10/16	59	Narrow	55
4	Proposal on money-laundering	Finance	02/09/16	03/07/16	45	03/11/16	62	Broad	286
5	Proposal on basic education	Education and Culture	12/09/16	30/08/16	9	06/10/16	24	Narrow	34
6	Proposal on deduction for self-employed persons	Finance	12/09/16	06/09/16	4	06/10/16	24	Narrow	18
7	Proposal on reimbursements of costs of medication*	Social Affairs and Health	15/09/16	25/08/16	15	06/10/16	21	Broad	62
8	Proposal on health care and social welfare	Social Affairs and Health	23/09/16	16/09/16	5	27/10/16	34	Narrow	97
9	Proposal on Land Use and Building Act	Environment	14/10/16	10/10/16	4	24/11/16	41	Broad	47
10	Government's corporate holdings	Prime Minister's Office	20/10/16	13/10/16	5	10/11/16	21	Narrow	18
11	Proposal on the Environmental Protection Act	Environment	22/12/16	13/12/16	7	yet to be submitted		Narrow	75

* The Ministry failed to provide the Council with the amended draft proposal and the statement was thus issued on the version of the proposal circulated for comments.

** Classification as in the list of Government Bills in the autumn session 2016

While a considerable proportion of the draft government proposals analysed have been fairly deficient in terms of impact assessment, some individual proposals have featured quite solid impact assessments. Figure 1 shows the areas for development most frequently addressed in the statements.

Figure 1. Most common deficiencies in impact assessments in draft government proposals (relative frequency in Council statements, n=11)



A recurring deficiency in the draft proposals’ impact assessments has to do with the quantitative assessment of impacts. Impact assessments are often presented only in qualitative terms, leaving the most relevant costs and benefits unclear, and the draft proposals often fail clearly to indicate whether the benefits of the law will outweigh the ensuing costs. Summaries of economic impacts are seldom prepared. Even in the case of quantitative impact assessment, the associated uncertainty is seldom addressed. Research data, reports and international experiences are under-utilised and references to data sources employed are often deficient.

An important shortcoming in several draft government proposals has been the failure to justify the measures put forward and to use alternative implementation methods to assess impacts. Comparisons between the various options should be used in draft government proposals to establish why the measures put forward constitute the best means of achieving the desired objectives.

Some of the deficiencies in the draft proposals could have been remedied e.g. through better adherence to the guidelines for impact assessment in legislative drafting prepared by the Ministry of Justice and adopted by Government resolution in 2007. However, it would seem that ministries do not always have adequate access to the specialised economic expertise often required for a cost/benefit analysis. In this case, the relevant ministry is advised to consult e.g. economic research institutes or universities for outside support, whether in the form of broader analysis performance or more limited consultation.

2.2. Meetings

The Council of Regulatory Impact Analysis held a total of 12 meetings in 2016 (29 April, 13 May, 20 May, 3 June, 17 June, 10 August, 2 September, 23 September, 14 October, 4 November, 25 November and 16 December). The meeting attendance rate among Council members was 85%. The Council also held a few meetings by means of written procedure to adopt statements considered earlier.

The Council heard from several visiting experts at its meetings in 2016:

- Roope Uusitalo, Professor of Economics at the University of Jyväskylä, gave a presentation on the work of the Economic Policy Council (20 May 2016)
- Asko Vähimaa, Permanent Secretary, and Sami Manninen, Director General of the Law Drafting Department, of the Ministry of Justice, gave a presentation on the views of the permanent secretaries and the Ministry of Justice regarding the work of the Finnish Council of Regulatory Impact Analysis (3 June 2016)
- Susanna Metsälampi, Iida Huhtanen, Kirsi Miettinen, Joel Karjalainen and Maija Ahokas, public officials involved in the drafting of the Transport Code at the Ministry of Transport and Communications, gave a presentation on the economic impacts of the government proposal on the Code (3 June 2016)
- Jari Partanen, State Secretary, gave a presentation on the efforts to improve legal provisions (17 June 2016)
- Päivi Sillanaukee, Permanent Secretary of the Ministry of Social Affairs and Health, gave a presentation on the current phase of the health and social services reform (23 September 2016)
- Pekka Järvinen, Ministerial Counsellor, gave a presentation on the health and social services reform (25 November 2016)
- Tuomas Pöysti, Permanent Under-Secretary at the Ministry of Social Affairs and Health, gave a presentation on the health and social services reform (25 November 2016)
- Professor Matti Liski and Project Manager Oskari Nokso-Koivisto of Aalto University, gave a presentation on the memorandum related to the health and social services reform (16 December 2016)

2.3. Communications and media presence

The statements of the Finnish Council of Regulatory Impact Analysis are public and posted on the website of the Prime Minister's Office (vnk.fi/arviointineuvosto). The publication of each statement is announced by a press release, and also on Twitter. A list of the draft government proposals selected for analysis is also posted on the website.

The statements issued by the Council have been widely addressed in the media and the chairpersons of the Council have given numerous interviews to the various media about the Council's statements and its work.

2.4. International contacts

The Finnish Council of Regulatory Impact Analysis joined RegWatchEurope, the umbrella organisation of its European sister bodies, immediately on launching operations in summer 2016. The Council's chairpersons and secretariat have regularly attended RegWatchEurope meetings and taken part in the organisation's activities. The Council's vice-chairperson and permanent expert attended the RegWatchEurope board meeting in Berlin on 21 September 2016. A vice-chairperson of the Council also attended a meeting of RegWatchEurope and the European Commission's Regulatory Scrutiny Board on 28 November 2016 in Brussels.

The Council's secretariat attended secretariat-level meetings in The Hague on 30 May and 14 September 2016. A representative of the Council's secretariat and the Council's permanent expert furthermore took part in a round table hosted in Stockholm on 29 June 2016 by the Swedish Better Regulation Council Regelrådet for its Finnish and Norwegian counterparts.

The Council has close ties with both RegWatchEurope and the Regulatory Scrutiny Board and has greatly benefited from its collaboration with its European colleague bodies.

2.5. Other expert activities

The Finnish Council of Regulatory Impact Analysis engaged closely with central government and other stakeholders throughout its first year of operations. The chairperson of the Council met with Ministers and high ministerial officials, Committees of Parliament, and representatives of interest organisations. The secretariat has furthermore given briefings about the Council, primarily to the various ministries.

Council chairperson meetings in 2016:

- Anne Berner, Minister of Transport and Communications (full Council in attendance) (22 April 2016)
- Jari Partanen, State Secretary (3 May 2016)
- Meeting of permanent secretaries (16 May 2016)
- Parliament, Legal Affairs Committee (24 May 2016)
- Parliament, Legal Affairs Committee (7 June 2016)
- Meeting of permanent secretaries (3 June 2016)
- Meeting with Minister Berner (7 July 2016)
- Government strategy session, presentation to the Government on the 'one for one' principle (22 August 2016)
- Jari Partanen, State Secretary (26 August 2016)
- Executive group for key project of improving legal provisions (30 August 2016)
- Ministry of Justice, expert group on consultation (13 September 2016)
- Working group on a more unified Government and committee work reform (27 September 2016)
- Meeting of the Ministry of Finance statute drafting network (11 October 2016)
- Finance Finland FFI, Piia-Noora Kauppi (11 October 2016)
- Ministry of the Environment (27 October 2016)
- Office of the Chancellor of Justice (7 November 2016)

- Consultation with Professor Jukka Pekkarinen on the enhancement of assessment (9 November 2016)
- Jari Partanen, State Secretary, consultation on the ‘one for one’ principle (11 November 2016)
- Meeting on the topic of deregulation with representatives of the parliamentary groups of the governing parties (16 November 2016)
- Ministry of Justice, consultation with working group on bill drafting instructions (HELO) (23 November 2016)
- Association of Justices of the Supreme Courts (24 November 2016)

The secretariat and the chairperson of the Council have regularly attended meetings of the executive group for key project of improving legal provisions chaired by State Secretary Jari Partanen. The secretariat has also taken part in events including the following:

- Prime Minister’s Office, presentation of the work of the Council to Taina Kulmala, head of the Government Policy Analysis Unit (3 May 2016)
- Meeting of the Child Advisory Board, presentation of the work of the Council (18 May 2016)
- Ministry of Transport and Communications, State Secretary Jari Partanen, consultation (24 August 2016)
- Law drafting cooperation group meeting, presentation of the work of the Council (1 June 2016)
- Ministry of Finance, presentation of the work of the Council to the structural working group (22 June 2016)
- Prime Minister’s Office, presentation of the work of the Council to the Secretariat for Government Strategy Work (23 August 2016)
- Ministry of the Environment, presentation of the work of the Council to the steering group for legislation (8 September 2016)
- Prime Minister’s Office, presentation of the work of the Council to the leadership of the Office’s Government Administration Department (27 September 2016)
- Meeting of the Ministry of Finance’s law drafting network (11 October 2016)
- Municipal Guarantee Board seminar, presentation of the work of the Council (3 November 2016)
- Visit by the association of central government auditors (Valtionhallinnon tarkastajat ry) to the Prime Minister’s Office, presentation of the work of the Council (24 November 2016)
- Ministry of Economic Affairs and Employment, law drafting breakfast, presentation of the work of the Council (25 November 2016)
- HAUS Finnish Institute of Public Management Ltd, Valtio-Jova course for senior public officials, presentation of the work of the Council (15 December 2016)
- Other meetings

The Council is represented on the Ministry of Justice HELO working group that is preparing a new set of bill drafting instructions. The term of this working group runs from 1 October 2016 to 31 December 2017.

2.6. Finances

The budget proposal for 2016 included for the first time an appropriation increase of EUR 250,000 to the Prime Minister's Office to be applied towards regulatory impact analysis. The appropriation increase is also included in the spending limits for coming years. The costs arising from the Finnish Council of Regulatory Impact Analysis consist primarily of the salaries of the Council's secretariat. The appropriation is also applied towards the fees paid to Council members and other running costs such as travel expenses related to international contacts.

3. Overall efficiency and effectiveness of operations

The Finnish Council of Regulatory Impact Analysis launched operations as planned in spring 2016. During the course of the year, the Council took 21 draft government proposals under consideration and issued 12 statements. The Council has gained visibility in the media and recognition among the Government. It has also been favourably received by Parliament. The feedback to the Council has been positive for the most part.

The follow-ups conducted by the Council indicate that while responsiveness to the Council's statements varies from one draft proposal to the next, a rough estimate shows that just under two thirds of the improvements suggested in the statements have been taken into account. The lapse in time between the issue of the Council's statement and the submission of the final government proposal varied from three to fourteen weeks among the ministries, which suggests that they had no significant amount of time to rework the draft proposals. A study by Keinänen⁴ drew attention to the fact that government proposals are relatively silent on the manner in which the Council's statements were taken into account when finalising the proposals.

The impact of the Council's statements on draft government proposals that are still in the pipeline is also an important consideration. A targeted study might provide at least some estimation of this indirect impact.

The Council's chairpersons, members and secretariat have been active participants in the ministries' seminars, discussions and working groups aiming to improve the quality of government proposal impact assessments and the culture of law drafting more generally.

Going ahead, the Council will monitor and evaluate the effectiveness of its operations and report the findings in its annual review. Monitoring effectiveness involves two key aspects: the effect on the draft proposals analysed by the Council and the effect on the quality of law drafting in general. At the level of individual government proposals, a systematic review will be undertaken to determine if the information content of the draft proposals has been amended in response to the points raised in the Council's statement. The review will examine i.a. whether the contents of the draft proposal are better aligned with the impact assessment guidelines of the Ministry of Justice, whether the proposal contains a sufficient volume of qualitative assessments, and whether options are used to justify the measures proposed. The impact assessment sections in different draft proposals will also be examined for consistency.

In the effectiveness monitoring implemented on a more general level it will be important to examine the impacts of the operations of the Council on the course and approaches of law drafting processes in general. Questions to be looked at here include the following: (i) has the quality of the impact assessments improved (ii) does impact assessment guide law drafting from a sufficiently early stage and with adequate force (iii) has impact assessment improved the opportunities of stakeholders and other third parties to participate in law drafting by making available to them information to which they could not independently gain access (iv) have there been instances of

⁴ Keinänen Anssi and Halonen Miia (2017), *Mikä vaivaa vaikutusten arviointia? – Vaikutusten arvioinnin puutteet lainsäädännön arviointineuvoston havaitsemana ja lausuntojen huomioiminen hallituksen esityksissä*. [What ails impact assessment? – Deficiencies in impact assessment as observed by the Council of Regulatory Impact Analysis and responsiveness of government proposals to the Council's statements]. Edilex 2017/4, www.edilex.fi/artikkelit/17378

deficient knowledge/expertise encountered in the impact assessments, and has this resulted in the utilisation of external expertise (research institutes, individual experts) and (v) has a heightened focus on impact assessment increased the duration or costs of law drafting?

It is of course obvious that the Council's monitoring of the quality of law drafting will have to be complemented by ongoing law-drafting quality assessment and development also by other parties such as the ministries, other experts and the research community, and Parliament. The Government has two projects underway with linkages to improved law drafting: the reform of the bill drafting instructions and a project to improve financial impact assessments, which project also involves e.g. research institutes. These represent steps in the right direction.