

Abstract

Assessment of cross-sectoral impacts of statutes

The report focused on the assessment of statutes' cross-sectoral impacts as part of statute drafting. Its aim is to support the development of ex ante impact assessment. The report indicates that the starting point of sustainable development is developing all life cycle phases of impact information in a balanced manner, extending from the production of information to its collection, integration, assessment and utilisation. When assessing cross-sectoral impacts, it is particularly important to improve the ability of assessments to utilise stakeholders and existing information better than today.

Impact assessment lacks transparent basic premises

The regulations and guidelines on statute drafting and impact assessment fail to provide clear-cut and unambiguous answers to the following fundamental questions:

- How can we ultimately justify the manner in which the impacts of a certain statute within the remit of an administrative branch are interpreted as “essential” or “strategic” in accordance to definitions given in impact assessment instructions – or as insignificant?
- To what extent and how should impacts that have been anticipated and assessed to cross sectoral boundaries influence the contents of the statute and the choices made in it?
- Who, in the chain of responsibility related to statute drafting, carries the final practical responsibility for ensuring that the impacts crossing the limits of administrative branches, functions, branches of law, budget titles and other sectoral boundaries are recognised, assessed and accounted for?
- How are the positive and negative impacts of a statute within an administrative branch and across sectoral boundaries weighed and balanced?
- What is the ultimate aim of assessing impacts that are of different types and incommensurable?

The report found that the assessment of cross-sectoral impacts of statutes lacks a clear functional identity and system of accountabilities at the level of policy and steering instruments and the operative practice alike. The position of assessment guidelines, instructions for drafting government bills and other documents relevant to the development of impact assessment within the wider field of steering instruments (Government Programme, spending limits etc.) is partly unclear.

The report indicates that in the case of cross-sectoral impacts, in particular, policy steering does not necessarily support impact assessment. The policy steering of a particular ministry may actually prevent cross-sectoral impact assessment or create pressures and dependencies for it that are difficult to recognise and evade. The problem is exacerbated by the fact that the basic premises of impact assessment as a whole are not particularly transparent.

In order to manage the impacts of legislation, the following basic starting points of sustainable development activities should be taken into consideration:

- the societal phenomena and problems that are the object of regulation and their interdependencies should be known
- public administration (including statute drafting) should be organised in a manner that is compatible with the character of the society and its problems rather than by sectors
- the policy should set clear and transparent objectives for regulation and the management of problems
- the unlearning of thinking, regulation and governance based on separate sectors should be supported by diverse means in all of the aforementioned dimensions, and also evaluated systematically.

Assessment procedures fail to ensure transparent stakeholder inclusion

Recommendations based on development projects trace an indicative link between impact assessment and other processes of statute drafting. While instructions have been provided for consulting stakeholders, in practice impact assessments continue too often to be carried out under time pressure and as part of official duties towards the final phases of statute drafting. The stakeholders' possibilities of influencing the assessment arrangements (including delimitation, focus and definition of the impacts to be assessed) and thus possibly also choices made when drafting statutes are thus very limited or totally lacking in practice.

Problems with the planning, competence resources and practices of statute drafting undermine the credibility of cross-sectoral impact assessment

The ministries lack detailed policies on assessment procedures, and the planning of assessments is not systematic, transparent or of high quality. The regulations and instructions that apply to statute drafting at the most general level are primarily complied with in the procedures.

Statute drafting has for decades been dominated by the legal profession and assessment discourse. In this environment, impact assessment has not yet been transparently separated from other phases of statute drafting to form a dedicated, systematically planned and implemented assessment procedure and operating culture. The assessment of cross-sectoral impacts of statutes is even less distinguishable from other phases of statute drafting and impact assessment as a procedure that requires special expertise and dedicated practices.

Competence needs related to statute drafting are building up constantly, for example because legal regulation is becoming more complex and expanding at the policy level. Additionally, driven by the more prominent integration of local, regional and global levels, societal problems are interlinked in more complex ways.

The real world of statute drafting in the ministries is characterised by increasing time pressures and meagre resources accompanied by policy agendas with a wider scope and faster cycles. The report indicates that, as a consequence of the development described above, statute drafting and the standards concerning the preparation and other phases of impact assessment risk to become more and more of a façade, while the real world behind it remains vague and unrecognised.

Both new research and efficient management of statute drafting are needed to improve impact assessment

The approach to issuing instructions for impact assessment of statutes and developing assessment has been piecemeal and lacking in any examination of information life cycle (production, gathering, integration, communication, utilisation and assessment of information) as a dynamic and systemic whole. The problems of this approach are particularly evident in connection with the cross-sectoral impact assessment of statutes.

The ministries have not made significant changes in the structures and processes that determine and direct the information life cycle in recent years.

The understanding of the preconditions and environments in which information can have an impact and other subquestions continues to be inadequate. The preconditions in which assessment information can have an impact comprise a complex field of interdependencies. In recent years, efforts have been made to model this field. Comprehensive analytical models are used little in statute drafting.

Studies, audits and the current report indicate that carrying out assessments meeting the criteria determined in information impact models requires considerable competence, adequate time, centralisation and networking of expert resources, and advanced management and statute drafting procedures.

A concrete expression should be found for standards of good regulation, statute drafting and assessment in different operating environments

The management of impact information is also always built on an understanding of the object to be assessed (legislation). So far, there has been little research on statute drafting, statute planning and the impacts of legal regulation. The operating environment of legislation is continuously becoming more complex. Its implementation modes are also in a constant state of flux. Good regulation and assessment are becoming increasingly difficult to define.

The constant expansion of assessment standards applicable to good regulation and assessment have brought both benefits and problems. The latter have received less attention. The added complexity resulting from more extensive instructions, the difficulty of defining and demarcating the set of standards as a whole in a structured manner, and ambiguities in responsibilities related to these areas reduce the practical significance of instructions and standards.

Instead of, or in addition to, general information models, the information contents transcending sectoral boundaries that can be considered appropriate in each situation (policy relevance of a statute project, level of cost and expenditure, impacts on citizens' lives etc.) should be specified in different operating environments.

The analyses and itemisations of impact information contained in assessment instructions are important, but very general. They may need to be complemented with more detailed itemisations of impacts and criteria for specific sectors and areas of regulation. In particular, practical-level minimum standards are needed to define what type of assessment of cross-sectoral impacts is satisfactory and adequate in different circumstances.

Development measures overlook some significant challenges to assessing the intersectoral impacts of statutes

Until recent years, information management in statute drafting has been approached and developed primarily by clarifying the competence needs and developing the competence of those responsible for drafting statutes. Less attention has traditionally been focused on structures, procedures and operating policies. Based on NAO audits and the current report, however, the ministries that this report concerns have in recent years taken various steps to develop the management structures of statute drafting, an example of which is the introduction of legislative plans in 2016 and the creation of the counsellor of legislation posts.

The establishment of an expert unit for impact assessment in connection with the Prime Minister's Office has been the key development action in recent years. What currently remains unclear is the extent to which the expert unit can address financial and other cross-sectoral impacts of statutes, which often are indirect and related to objectives other than those that have been consciously set.

While the institutional development projects proposed by the Advisory Committee on Local Government Finances and Administration (KUTHANEK) are vital, they do not, however, directly help to solve the key problems discussed in this report that are related to the mobility and deployment of competence and know-how in the assessment of cross-sectoral impacts, with the exception of sectoral boundaries between municipalities and the central government.

The development work has not been underpinned by a clear overall idea of assessment information management as a complex and multi-phase process. The Government and the ministries have striven to integrate impact assessment procedures by different methods (models, dialogues etc.). However, the choices between the methods are not based on an overall consideration of which method would bring the best results in each specific environment.

Many problems relevant to developing impact assessment culminate in the difficulty of finding and maintaining a balance between conflicting requirements placed on cross-sectoral impact assessment. The dependence of the assessment on the current operating environment and the need to coordinate assessment activities are a typical example of a so-called wicked problem. The character of wicked problems and the dynamics typical for them should increasingly be used as the starting point of development work.

Proposals for developing the assessment of cross-sectoral impacts

The beginning of each section of the report contains more detailed development proposals based on key observations. The report makes the following proposals concerning possible short-term development actions:

1. Clarifying the starting points of impact assessment by defining the relevant assessment instructions and recommendations more clearly as part of central government steering policy, governance and the entity of steering instruments. Linking the assessment of statutes' cross-sectoral impacts more closely and comprehensively to the development of the Government's steering instruments and governance.
2. Using existing structures and procedures that can improve the commitment of the management in ministries to preliminary

assessment of statutes (including the Permanent Secretaries' meeting).

3. Including in the instructions for assessing and reporting on government bills the requirement of documenting key information sources and processes of statute drafting following a predefined classification.
4. Creating a procedure for the planning of the impact assessment of legislative projects in ministries where different stakeholders are given a possibility of proactively influencing the targeting and implementation of the assessment.
5. Defining the objectives and perspectives of producing, communicating and utilising assessment information more clearly in the instructions at the level of both individual statutes and more extensive legislative projects.
6. Improving competence in statute drafting and impact assessment in the ministries by networking with universities and research institutes, participating in research consortia active in different sectors, supporting and developing multidisciplinary, and encouraging experts and those responsible for drafting statutes in the ministries in independent networking and development of multidisciplinary competence.
7. Linking impact assessments more closely to the ministries' policy of influencing by information and governance. The ministry or the Government should define a qualitative baseline or minimum level for the assessment of cross-sectoral impacts.
8. Ensuring that the results of research carried out on public funding can be flexibly used in impact assessments.