

## The Government's legislative plan

Shortcomings in the drafting of legislation have repeatedly come to light. These have included gaps in the information base, tight timetables and inadequate resources. This has led to problems in applying legislation, unexpected impacts when legislation is implemented and an increasing amount of regulation as well as extra costs resulting from regulation. Efforts have been made to improve legislative reform procedures in numerous development projects, which have been worthwhile in themselves. The results of these projects have been modest, however. One reason is the basic solution regarding the organisation of legislative drafting and responsibility for quality, which is prescribed in legislation and is based on political policies. In Finland primary responsibility for the quality of legislation is in the hands of individual ministries and their management. There are no mandatory regulations or provisions concerning drafting procedures and quality.

In 2007 the Government introduced a legislative plan covering the parliamentary term. This is the first government-level plan concerning legislative policy in the present century that is based directly on the Government Programme. The plan contains principles and measures (objectives) to develop regulation. The Government's key legislative projects were also included in the plan, and good legislative drafting practices were meant to be followed in these projects. A second legislative plan was approved in 2011 as part of the strategic plan for the implementation of the Government Programme.

The audit sought to determine whether legislative plans have been properly prepared, whether the objectives and means in legislative plans have been clear and essential from the viewpoint of legislative policy, whether legislative projects have been key for the Government Programme and how well the implementation of the 2007 legislative plan has succeeded. The audit also examined the administration and monitoring of the Government's legislative plans as well as their content. With regard to the 2007 legislative plan the

audit evaluated the implementation of the plan and its impacts on ministries' legislative drafting practices, mainly at the Ministry of Finance, the Ministry of Education and Culture and the Ministry of Transport and Communications.

The audit observed shortcomings and development needs in the legislative plans' information base, resources, administration, implementation and monitoring. According to the audit the 2007 legislative plan did not yet offer ministries clear starting points to prioritise legislative policy development focuses. The legislative policy measures in the legislative plan remained to some extent abstract, fragmented and open to interpretation in practice.

Up-to-date information regarding the correspondence between legislative development needs, resources available for legislative drafting, regulatory wholes and ministries' organisation of legislative drafting has not been compiled as a basis for preparing legislative plans. Legislative drafting has been organised and drafting resources have been allocated by ministries and within each ministry by departments and units. As a result of social development, increasingly legislative development needs nevertheless concern matters that cross lines between ministries and their departments. In this case development needs and the current organisation of legislative reform tasks and allocation of resources do not necessarily match. In a similar way the legislative system often needs to be reevaluated.

The audit found it problematic that both legislative plans have mainly followed the line in earlier legislative drafting development projects and therefore have not reformed different actors' authority, tasks and responsibilities to ensure the quality of regulation. Ministries' internal control practices have not been able to ensure the uniform achievement of objectives in different departments and units, however, much less the harmonisation of practices throughout state administration. The audit only observed minor reforms in ministries' steering, management, control and monitoring procedures.

The timetable for the legislative projects included in the 2007 legislative plan has not been met. There have also been technical shortcomings in legislative proposals that have had to be corrected during committee handling. The National Audit Office emphasises that committees should be able to focus on making changes based on Parliament's own decisions and should not have to serve as a

second stage in the checking of legislation. The audit also found that corrective measures were not taken, even though many problems in implementing the plan were recognised. In using legislative plans in future, emphasis should also be placed on the control and monitoring of their implementation.

On the basis of the audit, policy integration was not accomplished in the 2007 legislative plan. The Government's strategy document (2007) does not make it clear how the projects in the legislative plan are connected to the cross-sectoral policy programmes agreed in the Government Programme and particularly its key areas. The 2011 legislative plan is a positive step forward in this respect, since the legislative projects in the plan have been selected from all three of the priorities in the Government Programme.

The National Audit Office considers that in future attention should be paid to the applicability of recommended procedures and the reasons for which quality requirements have not been met. In future greater attention should be paid to the special features of different areas of regulation and objectives' suitability in the cross-sectoral steering environment of the reform of regulation. Since regulation's instrumental nature to recognise and manage different social risks has been emphasised, there should be adequate and competent research and evaluation information on factors influencing the state of social processes and their impact connections. Evaluation information should also be produced concerning how administrative structures (centralisation, decentralisation) and tools (such as information systems) support the effective utilisation of information in legislative reforms, and on this basis concrete objectives should also be set at the group level for structures and tools. The necessary political commitment must also be ensured.

In several connections the National Audit Office has stressed the significance of a priori and a posteriori evaluation particularly in major legislative projects. A priori evaluations of major legislative projects are extremely important. In addition the National Audit Office considers it good that the justifications in a legislative proposal should outline how a posteriori monitoring will be organised and implemented in practice. The National Audit Office considers that a posteriori monitoring should be organised especially in case of new types of legislation. Different viewpoints concerning the

impacts of legislative reforms are also a strong argument for arranging monitoring.

In the opinion of the National Audit Office, the development of group-level regulation should focus on areas in which success cannot satisfactorily be achieved through ministries' internal development measures. In preparing the content of the legislative plan a distinction should be made between developing legislative drafting and legislative management.

The point of departure in developing all legislative drafting and a natural part of the legislative plan could be legislative policy principles and regulatory policies. Legislative policy principles describe the content and procedural bases of the development of the legal order and its different sectors as values. They also describe how legislation will be used as a tool in developing the legal order and its different sectors. In practice legislative policy principles could include the principles of better regulation that were in the 2007 legislative plan and the Better Regulation Programme mentioned in the Government Programme as well as the Government's policies concerning how these principles will be given emphasis.

Regulatory policies, on the other hand, describe how regulation (including alternative forms) will be used and developed as a means of implementing social policies in relation to other steering means. Regulatory policies determine, among other things, how the Government intends to use other forms of steering besides legislation.

From the perspective of legislative management, the content of a group-level legislative plan could be the prioritisation of the projects specified in the Government Programme on the basis of impacts in order to achieve policy objectives. Evaluations concerning legislative reforms, including follow-ups, resources and timetables, could also be included in legislative management.

The National Audit Office considers it problematic from the viewpoint of harmonising different ministries' procedures that in developing regulation there is no independent actor in state administration whose expertise, tasks, resources, authority and responsibilities correspond to one another and are adequate and specified. The National Audit Office considers that such an actor should also have the task of ensuring the technical correctness and uniform quality of legislative proposals.

Internationally in reforming regulation centralisation has been used to improve the quality of regulation. Practical procedures have included offering expert support in evaluating impacts and evaluation boards with different mandates. Controlling and monitoring the coverage and correctness of the content of legislative proposals has been arranged centrally in many countries. In the opinion of the National Audit Office, a centralised procedure would have many benefits that cannot be achieved with individual ministries' measures. Consequently attention should be paid at the group level to administrative structures in reforming regulation from a sufficiently broad perspective while taking into account the resources needed to manage different tasks. The National Audit Office considers it important that efforts to centralise legislative drafting are consistent and that the effects of development are monitored and evaluated.

Finally the National Audit Office emphasises that many critical findings and conclusions in the audit are due to the fact that in Finland legislative drafting follows a decentralised model. The only centralised functions are translation and legal checking. Primary responsibility for the quality of legislation and its development is in the hands of individual ministries and their management. The criticism presented in the audit that is due to the decentralised model does not concern drafters or individual ministries or their management.