

## Reducing regulatory burden through high-quality legislative drafting

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### Towards a realistic representation of regulatory burden (summary)

Regulatory burden often refers to such impacts of legislation that burden the subjects of regulation in terms of finances, taking up their time or causing inconvenience or annoyance. The research project "Evaluating and reducing regulatory burdens" (2016–2018), funded by the Finnish Government, strove towards drafting a **general overview** that would be as comprehensive, realistic and versatile as possible of regulatory burden caused to companies and citizens in Finland. Producing a precise, quantitative overall assessment of regulatory burden proved to be impossible, however. Even though other OECD and EU countries have presented numerical estimates, the reliability of these figures has been questioned in various evaluations.

Regulatory burden does not mean that regulation in itself is a burden. Accordingly, identifying the **central sources of unnecessary burden** was a specific goal. Unnecessary burden is generated by the following factors, for example: unclear regulations that are prone to changing quickly, contradictory and overlapping requirements, excessively burdensome procedures in terms of interacting with the authorities, and incoherent implementation of regulation.

The various forms of regulatory burden have been analysed using various sets of materials, methods and interpretative frameworks. The analyses offer a multifaceted image of the dimensions of regulatory burden on a general level. The analyses also explain why it is difficult to provide a numerical overall estimate of regulatory burden, and why such endeavours may not be very sensible. According to the key results, **1) regulatory burden is a vague concept but multifaceted as a phenomenon, 2) it is difficult to measure regulatory burden, 3) insufficient understanding and managing of regulation, and problems with implementation, make up a core section of regulatory burden, 4) target parties' experiences of regulatory burden are varied.** The project puts forth 15 development proposals. They focus on the targeting of measures to reduce regulatory burden, the quality of legislative drafting and the development of implementation procedures.

This Policy Brief presents the general results of the project. Three other Policy Briefs also exist based on the project. They concern regulatory burden on companies, on civic activity and on individuals, as well as the "one-in, one-out principle" in more detail.

## Striving for an overview of regulatory burden in Finland

The costs incurred by legislation to those subjected to it, have taken centre stage in many OECD and EU member states in the past few years. The discussion has mostly focused on administrative burdens, i.e. the costs generated by regulatory requirements to compile, organise, store and report information to the authorities or third parties. Calculating regulatory burden also contains calculating the cost of compliance. The discussion on regulatory burden has mainly focused on the burden to businesses but public organisations, civic activities and individuals are also affected.

Many countries have started to require that any new legislation due to cause increased costs to those affected, must be compensated with eliminated regulation to decrease costs. Finland also strives towards this development, where applicable. In addition, there are efforts to restrict the costs of legislation by renewing regulation comprehensively, such as in Australia, or in select areas as in the EU REFIT programme. The goals of Prime Minister Sipilä's government to streamline regulation are connected to this international background.

A more general problem is, however, that information on regulatory burden is uncertain and unreliable, and the production of data is opaque. Moreover, calculating costs is a very limited way of approaching the issue of regulatory burden. During the project, we also found that even providing an approximate, reliable numerical overall estimate without comprehensive reservations is impossible. Some OECD and EU countries have provided numerical assessments but their reliability has been questioned. Indeed, we need better data on the sources and forms of regulatory burden, its allocation and underlying causes as basis for measures to restrict the costs and other burdens caused by legislation.

### The unreliability of information on regulatory burden and the opacity of data production present a general problem

The goal of the project 'Evaluating and reducing regulatory burden' (2016–2018) was to produce a general *overview* of regulatory burden in Finland. We aimed at an overview that is as comprehensive, realistic and multifaceted as possible. The project focused on the following themes: the assessment of regulatory burden in relation to other forms of regulatory policy, regulatory burden as a concept and a phenomenon, the management strategies of regulatory burden, assessment methods, the relationship between regulatory burden and the positive impacts of regulation and international requirements as well as the various forms of regulatory burden on companies and citizens. A special emphasis was placed on identifying the core sources of unnecessary burden.

On the one hand, the formation of regulatory burden and related assessments were reviewed from the point of view of public authorities that carry out regulation and its implementation, i.e. "top down". This refers to the efforts of the authorities to assess and manage regulatory burden. It also refers to the structures that support the formation of "unnecessary" regulatory burden. This perspective is completed by the "bottom up" approach. It aims at mapping the experiences of regulatory burden, as well as of positive impacts of regulation, of representatives from various kinds of companies, civil society actors and segments of the population. In addition, a phenomenon-based approach refers to the operating conditions of companies, environmental protection, and the opportunities for citizens to participate in society, as well as aspects of their deprivation in relation to regulatory burden.

## Material and methods

The project utilised administrative material and research literature concerning regulatory burden and its assessment. Empirical analyses were made to sharpen the image of the core sources and generation mechanisms of regulatory burden concerning companies, civic activities and individuals. The analyses were both quantitative and qualitative. Some focused on regulation in effect, and some on regulation in the preparatory phase.

The assessment of regulatory burden concerning companies was based on *interviews* with representatives from interest groups, and a *workshop* and an *online survey* organised for representatives of companies, as well as *government proposals* from 2013 and 2017. In addition, the sources of regulatory burden in the field of environmental protection were analysed. This comprehensive *case study* was partly based on previous research, documents and regulations, partly on interviews conducted for this project (with representatives from companies, citizens and the authorities implementing the laws). Representatives of civic activities also participated in a *workshop*, and the experiences of citizens dealing with authorities were researched through analysing *online discussions*. *Government proposals* (from 2013 and 2017) were analysed also for their assessments of regulatory burden concerning civic activities and individuals.

**Figure 1. Research material**



## Results and conclusions

### Regulatory burden: vague concept, multifaceted phenomenon

There is no unambiguous, established definition for regulatory burden. Neither is all regulatory burden unnecessary nor damaging if the burden is viewed in proportion to the goals of the regulation and subsequent positive impacts (such as ensuring health and safety, environmental protection and rectifying market disturbances). Indeed, the content of regulatory burden can be clarified by separating its various meanings, such as administrative burden, other costs arising from regulation, inconvenience and annoyance, poor understanding of regulation and dealing with the authorities, as well as other forms of dysfunctional implementation. The burden can also be non-recurring or permanent. It is also important to divide the burden into direct and indirect aspects, of which the latter often manifest through a multi-part mechanism involving various actors. Regulatory burden is also caused by occasional ambiguity of regulation, repeated changes and contradictory and overlapping requirements, and regulatory burden can

change over time. Digitalisation, for example, creates opportunities for rationalising administrative reporting and developing services for citizens. Individual legal reforms may also involve restrictions, alleviations and clarifications at the same time.

## **Only some of regulatory burden is unnecessary in relation to the goals of regulation**

In our case study of environmental regulation, we aimed at identifying common factors that lead to regulatory structures causing burden. These factors include the institutionalisation of regulation and path dependency, regulatory illusions, and the effect of special interests to increase or maintain regulation as well as the regulating method of the EU. Regulatory structures that seem problematic in terms of unnecessary regulatory burden include the multi-level structure of environmental protection, the excessive cover of general norms, the extensive use of permit procedures and case-specific discretion, and the broad concept of participation and participation practices as well as obligations to produce information. On the other hand, many structures that cause regulatory burden (the multi-level nature of regulation, flexible norms and the broad concept of participation) also act as instruments for reducing regulatory burden. Identifying the factors described above may help those drafting regulations to avoid regulatory structures causing unnecessary burden.

The burden caused by regulation is, thus, versatile to start with. It is also case-specific and requires an in-depth knowledge of specific regulatory fields, and the realities of those regulated. Dividing regulatory burden into smaller aspects can help find ways of decreasing it. A highly categorical, simplified approach may, in turn, cause added costs if regulatory burden is not viewed in proportion with the positive impacts of regulation. It is indeed important to view regulatory burden and its assessment as part of a comprehensive law drafting process, which refers to broad-based assessments of the impacts focusing on the economic, social and environmental as well as positive and negative impacts. In addition, it is essential to guarantee the equal participation of interest groups in discussions on regulation as well as the openness and quality of data used for drafting regulation. If regulation is drafted solely as based on the assessment of regulatory burden, we risk creating regulation that is not suitable as a whole, generating even more regulatory burden. The varied perception of the concepts of regulation and regulatory burden in different countries should also be acknowledged when introducing approaches used in international arenas to Finnish regulatory policy. The vagueness of the concept of regulatory burden does not, however, mean that the aspects of it, as described above, should not be assessed and targeted for reduction when it is justified.

### **Assessing and measuring regulatory burden is difficult**

The burden regulations to the regulated can be assessed in the drafting phase of laws. After the regulation has taken effect, the impacts and experiences generated by the regulations over time can be evaluated. In addition to individual pieces of legislation, it is possible to assess regulatory configurations of different scopes. Current discussions on regulatory policy stress the important role of the implementation of regulation in the formation of regulatory impacts. At the same time, discussion on regulatory policy has highlighted the need to increase and systemize ex-post evaluation of regulation. A challenge also exists to identify the relationship between regulatory burden and other impacts of regulation, both positive and negative.

There are quantitative indicators for assessing regulatory burden. However, producing calculated data on costs requires special expertise on suitable methods and the identification of their limitations: i.e. what the calculations truly mean, the kind of material they are based on, and the kind of conclusions that can be drawn from them. At the same time, this setting restricts the participation of others (than the analysts) in the discussion on assessing and decreasing regulatory burden. Qualitative methods can be used to assess the requirements and restrictions imposed on the regulated parties, and the experiences of those affected.

Precise assessments of regulatory burden in terms of economical and other impacts has often proved difficult indeed. What is calculated varies by method, and established regulatory impact assessment methods often only focus on the immediate administrative costs of compliance to the regulated parties. In addition, administrative practices have approved many faulty methods, and the low quality of data as well as the problems with applying the methods (lack of expertise, carelessness, the temptation to oversimplify and modify the results gained, and unused results) cause more problems. The international information used as a basis for decreasing regulatory burden is often based on administrative reports, lacking in their reporting on the uncertainties of the assessments.

### **Poor understanding and implementation of regulation as special causes for regulatory burden**

The empirical analyses showed that the understanding of regulation by those affected, and the implementation of regulation cause significant burden on companies, civic activities and individuals. To some degree, these issues are explained by the discretion exercised by the authorities in many fields of legislation. It enables flexibility in decision-making but it also poses the risk of incoherence between decisions by different authorities or authorities in different regions. In government proposals, the issues with implementation are dealt with by attempts to clarify regulation and ease practices when dealing with the authorities.

The most poignant criticism in relation to regulatory burden, presented by representatives from companies, concerned with the interpretative nature of regulation, repeated changes and unclear definitions of policy and instructions, as well as the occasionally incoherent and erratic nature of interpretations made by the authorities. Co-dependency between various regulations, their contradictions and combined impacts also came up as factors causing significant burden, making business operations more difficult. Problematic issues related to civic and volunteer activities concerned implementation, instructions issued by the authorities and communications as well as civil society actors' perceptions of regulation rather than regulation itself. When individuals deal with the authorities, a common challenge involves the understanding of regulation and the ability to manage related, often bureaucratic procedures.

### **The varied experiences of regulatory burden of those affected**

The regulatory burden affecting companies was determined by their size and sector as well as the field of regulation with its specialities. Correspondingly, the regulatory burden affecting civic activities is characterised by the diversity of civic society; large, traditional organisations may have different interests from newer, smaller operators. In terms of individual citizens, regulatory burden affects various segments of the population differently, depending on the area of life affected, and their social position. The processes individual citizens undertake with authorities also include such burdening aspects (e.g. the complexity of the social security system or falling in-between of various social benefits or services), that are not covered by the limited concept of regulatory burden. Regulatory burden affecting individuals was not widely recognised in government proposals.

## Companies, civil society actors and the population also have internally differing experiences of regulatory burden

### Development proposals

The following development proposals for the core objects and methods of reducing regulatory burden are based on the analyses of the project. The proposals also address the issue of creating functional structures for assessing and reducing regulatory burden. They mainly concern the allocation of regulatory burden, law-drafting processes, and the implementation of regulation. The proposals below are a summary of the proposals given in the report.

### General viewpoints on the reduction of unnecessary regulatory burden

- 1. Exercising discretion in the use of the concept of regulatory burden.** Regulatory burden with its various dimensions offers useful viewpoints to comprehend regulation and its functionality, but as an umbrella term it is vague. When discussing the disadvantages of regulation, it would often be clearer to talk about administrative burden, other costs generated by regulation, the occasional unclarity of regulations, the inconvenience and difficulties caused to those regulated, the ability to manage regulation and the related procedures, as well as issues related to implementation and dealing with the authorities.
- 2. Focusing on central "unnecessary" burdens.** Assessing unnecessary regulatory burden requires knowledge of the field of regulation in question. In addition, measures for reducing regulation should focus on core issues in terms of the target groups, considering that the specific needs may be different in various sectors of activity and fields of regulation. Tackling regulatory burden should also be based on sufficient information on whether the regulation in question is outdated, overlapping with other pieces regulation or unsuitable in terms of the set goals. What is also important, is how the measures are proportioned to the level of health and safety and environmental protection that is considered necessary and acceptable in terms of regulatory policy. It should also be acknowledged that reducing burdens concerning one target group may increase burden for another group, and these issues should be discussed openly.
- 3. Developing permitting systems.** The so-called one-stop-shop principle can be considered a good alternative when reducing regulatory burden but we have very little proof of its actual impacts thus far. This means that the impacts of implementing this principle must be monitored and assessed carefully. Even though electronic services are being developed, sufficient resources should be reserved to streamline permitting procedures and to monitor licensed operations as well as for authorities issuing and monitoring permits. If EU legislation allows, we should continue to assess critically when regulation through permits is appropriate, and when it would be suitable to implement registering and reporting procedures. Discretion should be instructed so that permitting would avoid overly detailed orders, and especially those that closely repeat legislation.
- 4. Avoiding burdensome reporting procedures.** In the production and compilation of information, electronic systems help to avoid overlapping. At the same time, we must critically assess the demands to compile data if the data is underused or there are no resources for



the review of the data collected. Information based management should support and complement norm based management. The requirements for compiling and reporting information should not be used to repair problems caused by weak or unclear regulation.

### Quality and assessment of legislation

5. **Sufficiently resourced, quality law drafting.** The understanding and managing of regulation, procedures that are inappropriate for the purpose of legislation, overlapping legislation, contradictory requirements and incoherent implementation cause undue burden to those regulated. Therefore, the most effective way to reduce such burden is through quality law drafting. It creates appropriate regulation in relation to the goals, and is clear in its expression. It also takes into account the actual, practical implementation with its restrictions, and sees that support procedures will be planned for the implementation (such as communications and instructions).
6. **Clarifying regulation.** Clarifying regulation that is contradictory, obscure, complicated and subject to interpretation is already a generally applied procedure in legislative drafting, and these procedures should be continued. Consistent and suitably targeted regulation can increase the commensurability of the interpretations of regulation and the coherence of implementation (see proposal 5).
7. **Assessing regulatory burden as part of a broad assessment of impacts.** The attempt to assess regulatory burden comprises a limited way of looking into the disadvantages of regulation, or its impacts in general. An overall review of regulatory impacts should, therefore, also take into account other impacts on companies, individuals and the environment, both positive and negative. It is important to give core interest groups an equal voice, or if it is not possible, the realities of those affected by regulation must be investigated in other ways. Regardless of the method of assessment, it is important to form a picture of how the impacts are generated, and highlight the factors restricting the reliability of the assessment.
8. **Observing the diversity of the parties being regulated.** In assessing regulatory burden to companies, we must observe the different ways in which various types of burdens affect different sectors and companies of different sizes. Similarly, in assessing the regulation of and regulatory burden to civic and volunteer activity, it is crucial to notice the diversity of civic society in all its forms, as well as the varied interests of organisations of different sizes. In terms of regulatory burden to citizens, we must acknowledge the fact that regulation or the related procedures burden different segments of the population differently at various stages of their lives. One way to develop the assessment of regulatory burden to citizens in terms of dealing with the authorities is to analyse it by area of life, as in the French model. The French model focuses the review on one website from the point of view of people's everyday lives, not branches of administration.
9. **Discretion in using special assessment methods.** The methods for the specification and assessment of various dimensions of regulatory burden in different countries have thus far been problematic. The methods only target a limited section of costs arising from regulation. The quality problems of the material – i.e. the shortcomings of the input data – lead to unreliable results. These problems do not mean, however, that the methods should be discarded altogether, but rather that they should be used with caution whilst recognizing their limitations. One way to increase the quality of assessment information concerning regulatory burden is to employ complimentary methods, such as surveys and interviews, restricted reviews, such as sector-specific reviews, and mandatory sector-specific panels of experts to validate the calculations.

10. **Reinforcing the Council of Regulatory Impact Analysis.** The operational preconditions of the Council of Regulatory Impact Analysis should be strengthened to enable the council to produce assessment reviews regarding companies and people on a large enough scale, including regulatory burden. The third important focus area of assessment reviews involves impacts on the environment. The focus areas of the council reflect their societal valuation, which speaks for the equal inclusion of different affected parties.
11. **Broad reviews of policy areas.** Quality drafting and assessment of individual policy operations are not always enough to prevent the cumulation of regulation and the related unnecessary burden. Thus, a broader assessment of regulation in specific policy areas is sometimes needed to identify overlapping and even contradictory regulations or policy instruments.

### Implementation of regulation

12. **Ensuring suitable implementation.** We must focus on the coherence of procedures and interpretations of regulations by the authorities. Comprehensive projects of legislative drafting should include a separate action plan that includes, for example, instructions on interpreting regulations and good practices.
13. **Communicating clearly about regulation to target groups.** We must communicate openly and clearly about regulation and any changes to it to those affected by regulation, so that they understand regulation and the related responsibilities and scopes for action from their own point of view. In terms of actions taken by the authorities, it is crucial to focus on proper communication with the customer.
14. **Increasing guidance from the authorities.** The authorities should be further encouraged and instructed to conduct advance guidance in administrative permitting and monitoring processes. The workshop with companies highlighted a need for integrating active guidance services into the implementation and planning of any new regulation, taken into account already in the law drafting phase. This could reduce the amount of incomplete permit applications or any costs incurred to citizens and companies, due to incorrect interpretations of the law. According to the representatives from companies, developing electronic services are a good thing in general but in part, the services could benefit from better usability. The chat service offered by Centres for Economic Development, Transport and the Environment (ELY Centres) was brought up as a positive example of digital guidance services. In terms of regulation affecting individuals, it is important to ensure that those segments of the population that have difficulty with realising their rights and who do not have the ability or opportunity to utilise digital services, receive help and support.
15. **Developing ex-post evaluation systematically.** Not all impacts of regulation can be identified and assessed in advance, which means that there is a need for ex-post evaluation. It should be developed into a more planned and systemic direction than before. The responsibility for this general development lies with the key party of responsibility in matters related to regulation, i.e. the government. Ex-post evaluation should not, however, be planned for the sole purpose of assessing regulatory burden, but it is also important to analyse the realisation of the goals and functionality of regulation in general, both from the point of view of the enforcers and the central target groups. Because in-depth evaluation is laborious, we must draft criteria for what kinds of projects demand comprehensive evaluation and for what kinds an alleviated assessment is sufficient.



## Further reading

### Project report:

Rantala Kati, Ahonen Pertti, Alasuutari Noora, Kauppila Jussi, Kautto Petrus, Röpötti Essi, Saarenpää Karolina, Tala Jyrki & Uusikylä Petri (2018). Evaluating and reducing regulatory burdens. Article Series of Government's analysis, assessment and research activities 27/2018. <http://tietokayttoon.fi/julkaisut>

### Other Policy Briefs of the project:

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## Additional information:

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