

Comments of the National Audit Office

Implementation of EU legislation

As a Member State of the European Union, Finland is obligated to promptly introduce EU Directives to Finnish legislation. Unsuccessful implementation may lead to an infringement procedure initiated by the Commission against a Member State, and the Member State may be ordered to pay major financial sanctions as a result of this procedure. Unsuccessful implementation may also lead to damages to be paid by the Member State to private parties and cause legal uncertainty.

The purpose of this audit was to investigate which internal administrative matters and matters due to the operating environment provide the necessary prerequisites for efficient implementation of EU legislation.

Investments in prompt implementation must be continued

The development of prompt implementation in Finland was positive between 2012 and 2015, during which time the number of infringement proceedings raised against Finland decreased. The number of proceedings increased again in 2016. In the past few years, the ratio of infringement proceedings to implemented directives has been increasing. Stopping the increasing trend of the relative number of infringement proceedings is important in order to avoid any legal uncertainty and minimise the risk of financial sanctions related to implementation.

Relatively few of the infringement proceedings regarding delays that were raised against Finland proceeded to the second stage, i.e. a reasoned opinion. Even though more proceedings than before have lately proceeded to the reasoned opinion stage, they have not led to the imposition of sanctions on Finland. In many cases during the past few years, completion of the infringement proceedings has taken several months, which means that there is room for improvement in this respect.

In 2010–2015, relatively few infringement proceedings on substantially incorrect implementation were raised against Finland when compared to reference countries determined by the Commission. The number of infringement proceedings suggests that implementation in Finland has been relatively successful in terms of substance. Finland has also done well in comparison with the mean value of all EU Member States.

Application of national margin of manoeuvre has not always been clearly determined in Government proposals

Several recent Government proposals only indirectly indicate the scope and applications of the national margin of manoeuvre offered by the directive. The national margin of manoeuvre offered by directives is not clearly described in all Government proposals, nor it is always described in the manner laid down in recommendations on the drafting of legislation. Furthermore, the Government proposals do not sufficiently clearly state which national provisions are based on obligations required by EU law and which are based on purely national needs. This is problematic in terms of the openness of law drafting. Some of the Government pro-

posals offer detailed explanations of the scope of the margin of manoeuvre, however.

In terms of the national margin of manoeuvre, clearly stating the effects of the application of the margin of manoeuvre in the Government proposal is important. An assessment of the effects of the national margin of manoeuvre had not been done in the case of all of the Government proposals, not even those where additional national regulation was proposed. This is problematic because, for example, an assessment of the effects could be used as justification for the application of the national margin of manoeuvre. Furthermore, changes made on the basis of consultations are not sufficiently clearly determined in the Government proposals.

Different types of legislative solutions require assessment of national economy risks

Legislative reforms where changes based on national needs are implemented together with the implementation of EU legislation are often realised in Finland. This can also be necessary in order to keep legislation as a whole consistent and clear. Implementing EU legislation and Finnish legislation as separate reforms may lead to unclarity of the existing legal state, which would be harmful to private persons, companies and Government officials.

However, integrating the reform of another law to the implementation of EU legislation may slow down the legislative process and cause the risk of delayed implementation. The risk of financial sanctions due to delays has increased, because the Commission currently more systematically requires that the Court of Justice of the European Union impose financial sanctions on Member States. Therefore, when considering a more extensive legislative reform, the risks of delayed implementation on the national economy must be taken into account. A factor that has sometimes influenced the delayed implementation of EU legislation is the fact that domestic law drafting projects have been given priority over the implementation of EU legislation.

Uncertainties in the determination of responsibilities in projects involving cooperation across administrative boundaries

There have been problems with the determination of implementation responsibilities in projects involving cooperation across administrative boundaries. For example, the ministry in charge of implementation has not been clearly named in all cases, which has slowed down the implementation.

The aim in implementation projects across administrative boundaries should be functional coordination and clear determination of responsibilities. Functional cooperation is also important because based on the Commission's operating policies, the legislative policy of the Union focuses more and more on extensive legislative projects.

Centralised monitoring of implementation has been developed

Almost all of the Member States monitor the implementation of EU legislation in a centralised manner. Finland has implemented centralised monitoring since August 2016, led by the Government Secretariat for EU Affairs, which is a positive development in the minimisation of the risk of financial sanctions and other risks caused by delays in implementation. Another benefit offered by centralised monitoring is the oppor-

tunity to specify and correct monitoring data. The monitoring of implementation has been arranged in a manner that does not unreasonably consume the resources of the ministries.

Most ministries have created practices for the monitoring of the implementation of EU legislation. A positive issue is that the ministries which regularly handle the largest amount of EU legislation implementation duties also regularly monitor implementation matters.

Recommendations of the National Audit Office

1. Government proposals must openly describe the national margin of manoeuvre offered by the directive and the margin of manoeuvre that has been used, as well as which national provisions are based on obligations required by EU law and which are based on purely national needs. Furthermore, Government proposals must assess the effects of the applied national margin of manoeuvre and clearly indicate changes made on the basis of consultations.
2. When considering a variety of implementation-related legislative solutions, ministries should consider the risks caused by potential delays for the national economy. This is important when realising comprehensive reforms that also involve legislative reforms based on national needs.
3. Development of the centralised monitoring of implementation by the Government must be continued in order to minimise the risks to the national economy and other risks. This is important because the Commission currently more systematically requires that the Court of Justice of the European Union impose financial sanctions on Member States in case of delays.