Towards better environmental regulation

Streamlining and removing outdated and unnecessary regulation is important. However, improving regulation is more than mere deregulation; it should serve ambitious targets. Ideally, good regulation can create the preconditions for innovation. Identifying the functioning solutions and effective means require experiments and trials. Regulation can also be eased through organised transition from permits to general provisions.

Almost all regulation entails at least indirect impacts on the environment. Removing Finland's old public transport regulation has forced operators to increase their efficiency. This change in regulation may boost the popularity of public transport and thereby reduce the amount of traffic as well as the resulting emissions.[1] The application and interpretation of the "in-house unit rule" included in the new Act on Public Contracts, which is currently under preparation in Finland, may have a significant effect on the organisation and availability of waste management, and the life-cycle of waste.[2]

In recent decades, environmental regulation in Finland and elsewhere has become complex and hard to manage; in particular because it is in constant flux. All of the current regulatory structures cannot be seen as appropriate or justified from the perspective of citizens, companies or even the environment. Of late, attention has been paid to improving the ease and efficiency of procedures and reducing the administrative burden. A recent example of streamlining in Finland is the consolidation of environmental and soil extraction permits.

However, streamlining regulation and removing unnecessary norms constitute only a part of the overall process of regulatory improvement. **Good regulation represents also good innovation and industrial policy.** Regulation can be directed at generating a predictable operating and investing environment, which encourages and, if needed, enforces **the development and implementation of new technological solutions and systems.** For example, aiming for the breakthrough of the circular economy[3], the focus should not be limited to the elimination of regulatory "bottlenecks". Instead, also the ways in which **regulation can create markets for new products and services representing circular economy should be assessed.**

Experiments and trials to identify the best solutions and most effective methods

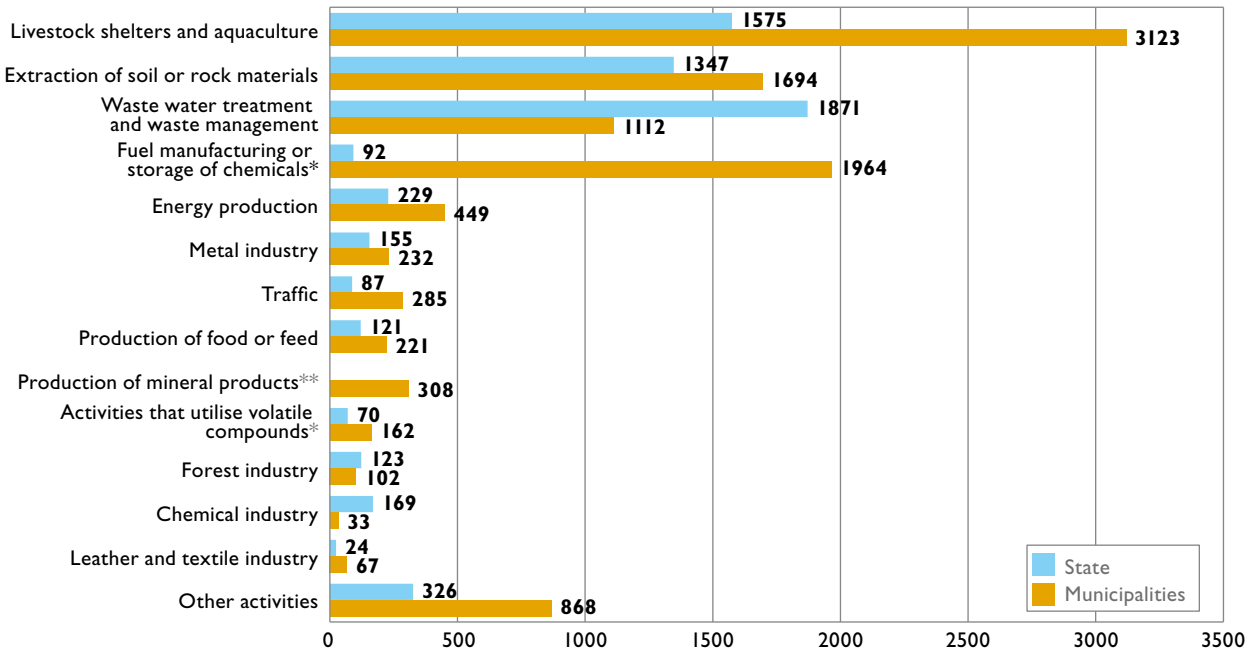
Flexible regulation allows experimenting with a range of practices and technologies. For instance, with certain conditions, the Finnish Environmental Protection Act allows testing a new technology or method with a mere notification, instead of going through the entire permit procedure.

Furthermore, regulation itself can be experimental. This can involve testing various regulatory solutions and assessing their effects in a particular sector or area. Ideally, the knowledge and experience yielded through trials can be used to shape existing regulation or to develop new ideas for achieving societal goals and reducing harmful side effects. For example, broadening the application of self-regulation could be developed through trials, either as a part of, or instead of, legal regulation. The tools developed for impact assessment provide a good foundation for learning and development for better regulation.[4]

Lighter regulatory burden through removing case-specific consideration

One way of trying out new arrangements is to remove parts of the permit system. In practice, this would entail easing the permit requirements of certain activities and, instead, implementing the regulation via general provisions, which are normally set forth in Government Decrees in Finland. Although this type of a change results in an increased number of norms, the purpose is to streamline regulation and especially lighten the administrative burden of implementation.[5]

Regulations are assumed to work best when they target a wide range of comparable operations with similar environmental impacts and they entail limited uncertainties. For example, a large share of livestock shelters represents this kind of activity. In contrast, case-specific ex ante assessment, which is applied in current permit procedures, is considered appropriate when the activity is unique or distinct, it generates significant environmental impacts and it involves uncertainties and risks. Mines and large industrial facilities represent this type of activity.



On May 1, 2015, the total number of environmental permit holders in Finland stood at approx. 16,800, out of which approx. 6,200 under the authority of the state and 10,600 municipalities. The number of livestock shelters includes the approx. 3,300 shelters no longer required to have a permit and the approx. 800 shelters whose permit considerations have been transferred from the Regional State Administrative Agencies to the municipalities following the recent amendments to Finland's Environmental Protection Act. (SYKE)

* The number covered by state authority is approximate
** The number covered by state authority is included in "other activities"

So far, the understanding of the benefits and limitations of provisions is based on case-specific investigations.[6] Since an essential goal of developing general provisions is to increase the efficiency of regulation, it is important to realistically assess their regulatory costs (costs to private parties and the public administration) in comparison to the permit system. Attention should be paid to how much time and resources are spent on the preparation and implementation of the decrees, and whether, and to what extent, the regulatory costs of permit preparation will actually be transferred to the ex-post control of the operations.

When developing general provisions, regulatory efficiency is associated with a number of aspects including the precision of the regulation and the flexibility of the regulatory mechanisms. The more interpretation the requirements allow and the more deviations are allowed, the higher the implementation and monitoring costs. Furthermore, we should keep in mind that in most cases the EU regulation necessitates at least a notification or registration procedure to replace the permit, which can easily end up resembling the current Finnish permit procedure.

It is also worth noting that a general norm can affect different operators in different ways, for example by increasing the requirement and cost levels for only a fraction of the companies. Finally, general provisions entail the question of whether stakeholders and citizens accept the fact that they will not be heard before the decision, as the opportunity to voice views is transferred to the time after the initiation of the operations ("ex-post control").

The noise and dust emissions from peat production are similar regardless of the production location. The permit provisions could be replaced with general provisions for, e.g., minimum distance from areas subject to disturbance. On the other hand, the impacts of production on nature values are specific to location. The impacts on water systems depend on the characteristics of the affected water bodies, which is why the evaluation of general provisions should consider the types of general requirements for water treatment and emissions. Complaints regarding permits granted to peat production are submitted frequently, also by the operators themselves, which is why it is important to discern the types of general provisions and possible notification procedures that could ensure acceptable regulation in the Finnish context.

Suggestions for improving regulation in the near future

1. **The consolidation of permit and assessment procedures should aim to merge all processes so that they are accessible at a "one stop shop", and to unify substantive legislation.** Digital tools should be developed to provide guidance and allow access to various information systems, improve the quality of permit applications and shorten processing times.
2. **The streamlining of the permit and assessment procedure should secure sufficient resources for the relevant authorities and avoid shifting responsibility from the permit applicants to the authorities.**[8] Since the duration of the permit process is often dependent on the quality and timely delivery of the application documents by the applicants instead of the processing by the authorities, new obligations and deadlines will be most effective if they steer the applicants towards ensuring high quality in their part of the procedure.
3. **The means to streamline regulation should be investigated with an open mind.** In some cases, an unambiguous legislation based on prohibition can reduce the amount of unnecessary work required from operators and authorities, and increase legal certainty. For instance, prohibiting activities that entail obvious groundwater risks in valuable groundwater areas would eliminate unnecessary permit and appeal processes when a new permit is applied by appealing to new technical solutions in emission risk reduction.
4. **The possibility of streamlining regulation through various forms of self-regulation should also be investigated and assessed with experiments or trials.** For example, when promoting the utilisation of materials categorised as waste, standards could provide an alternative for general provisions issued in decrees.
5. **When changing the regulation concerning the organisation of community waste management, the tasks and load of the municipality should be cut and the division of responsibilities clarified.** Finland's current Waste Act includes decision-making structures that significantly increase regulatory costs and limit legal certainty.

The need for regulatory improvement follows societal values and trends but some generally accepted and established characteristics can be attributed to good regulation. **Effective** regulation reaches the set goals, while **efficient** regulation keeps the associated costs as low as possible. Regulation must also be **accepted** as widely as possible. In environmental regulation these conditions are met when a high level of environmental protection is achieved with relatively low regulatory costs and with means acceptable to both the operators and affected stakeholders.[7]

1 By virtue of the new Public Transport Act based on the EU regulation 1370/2007, the Finnish bus traffic markets will be freed up in a phased manner. In the new act, the old route traffic permits of bus companies have been changed into traffic agreements for the transition period, which will expire in phases by the year 2019.

2 Report of the preparatory group for the total reformation of the Act on Public Contracts. Publications of the Ministry of Employment and the Economy. Competitiveness 37/2015. http://www.tem.fi/files/42893/TEMjul_37_2015_web_13052015.pdf

3 Negotiation result regarding the strategic Government Programme 27 May 2015.

4 Jääskeläinen, Tiina - Kautto, Petrus - Similä, Jukka: Menetelmiä ja tietolähteitä politiikkatoimien vaikutusten arviointiin (Methods and information sources for assessing the impacts of political measures). Reports of the Ministry of the Environment 16/2013.

5 General provisions have been used in Finland to expedite permit procedures and harmonise permit provisions (rock quarrying and crushing, Government Decree 800/2010) as well as entirely replace permit procedures (small combustion plants Government Decree 750/2013, liquid fuel distribution stations Government Decree 444/2010 and asphalt plants Government Decree 846/2012).

6 Eränkö, Leena: Rekisteröintimenettelyjen ja ympäristönsuojeluvaatimusten toimivuus (Functionality of registration procedures and environmental protection requirements). Reports of the Ministry of the Environment 4/2013.

7 COM (2015) 215 final and guidelines of the European Commission: http://ec.europa.eu/smart-regulation/index_en.htm. The study of regulation highlights many characteristics of good regulation, but there is sufficiently comprehensive unanimity with regard to its effectiveness, efficiency and acceptability. More general coverage of the topic Baldwin, Robert – Cave, Martin – Lodge, Martin: Understanding Regulation – Theory, Strategy, and Practice. Oxford University Press 2011, p. 25–39. Specifically in the context of environmental regulation Gunningham, Neil – Grabosky, Peter: Smart Regulation. Designing Environmental Policy. Oxford University Press 1998, p. 25–29.

8 A more effective obligation to provide advice or deadlines imposed on permit processing would increasingly shift responsibility to the authorities. Ministry of the Environment 10 March 2015 and Ekroos – Warsta 2014.

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