



Exchange of good practices on gender equality

**Gender Impact
Assessment**
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Gender impact assessment in law drafting

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1. Description of the main elements of the good practice

1.1. Background and general policy context in the associated country

Gender impact assessment (GIA) in law drafting has been a key aspect of the gender mainstreaming strategy in the Finnish government administration since the early 2000s. Together with other gender mainstreaming measures, the practice is part of the Finnish gender equality policy. The practice is also part of the normal administrative procedure of drafting laws.

1.1.1. GIA as gender mainstreaming tool

In Finland the efforts to institutionalise gender mainstreaming began in the late 1990s. Today, gender mainstreaming is a significant part of the Finnish gender equality policy, the goals of which are outlined in the Government Gender Equality Action Plans set for each governmental term (MSAH 2008; MSAH 2012). The Finnish approach to gender mainstreaming has a double focus: to ensure that the gender perspective will be taken into account in key processes of government administration (law drafting, budgetary planning, projects and policy programmes, performance management, production of information and statistics) and to create permanent structures for gender mainstreaming in all line ministries.

Gender impact assessment (*suvaus*) is one of the most long-standing and developed gender mainstreaming methods in Finland. Although GIAs are also conducted on projects, policy programmes and budgets, the focus of GIA development and implementation has been in law drafting. The first well-documented GIA was conducted in 2000 in the context of the Act on Employment Contracts. The central gender equality structure, the Government Gender Equality Unit (TASY) located in the Ministry of Social Affairs and Health, conducted the GIA ex-post, with the aim of opening eyes for the unintended gender impacts of laws and demonstrating that a GIA could make a difference. (Elomäki 2013.)

1.1.2. Law drafting process in Finland

In Finland, legislative bills are drafted in the line ministry responsible for the matter in question. The organisation of law drafting varies between ministries. Some have law drafting departments; in others there are civil servants tasked with drafting.

During preliminary preparation, information on the issue is gathered, the need to launch a legislative project is evaluated, and the objectives and implementation of the upcoming project are planned. The preliminary preparation concludes in the launch of the legislative project.

When the legislative project is carried out as part of the ministry's ordinary official duties, the mandate for drafting is given to the preparatory team consisting of civil servants, which examines the matter in more detail and drafts the text of the bill and the rationale for the legislation. The team is responsible for the impact assessment of the proposed legislation, including the gender impact assessment.

Laws with wide significance are prepared in broad-based preparatory bodies that consist of civil servants, representatives from other ministries, stakeholders, experts and political decision-makers. The body is responsible for the impact assessments. The preparatory body, under the leadership of its chairperson, determines the contents of the draft text and the rationale for legislation, and the secretary of the preparatory body (a civil servant) drafts the text.

Before submission to the Parliament, the Government reviews the draft bills.

1.2. The goals and target groups of good practice

1.2.1 Goals

The official definition of the practice is the following: "Gender impact assessment of legislation means that the consequences that the legislation has for women and men are analysed in advance, thus preventing it from directly or indirectly discriminating against either sex. Another objective is good-quality legislative preparation." (MSAH 2007, 6-7.) Gender impact assessment in law drafting has thus a dual goal. On the one hand, it is a means to promote gender equality, on the other hand, it is a way to ensure the quality of the legislative process and promote good governance. As regards to gender equality, the idea is to overcome gender-neutral procedures of law drafting, which may often involve a gender bias. The official definitions present GIA as a means to prevent direct or indirect negative effects, rather than to ensure that all legislation and policies strengthen gender equality.

A procedural goal has been to integrate GIA into ordinary legislative work and make it part of the general impact assessment procedure. The idea is that the actors normally in charge of legislative preparation should carry out gender impact assessments. The Government Gender Equality Unit coordinates and monitors and gives some support if consulted on GIA matters, but it does not conduct GIAs.

1.2.2 Target groups

The main target group of the practice are civil servants in all ministries, in particular those involved in law drafting.

1.3. The legal and financial provisions to implement the good practice

1.3.1. Legal provisions

There is no legal obligation to conduct GIAs in law drafting, but the Act on Equality between Women and Men (1986/609) includes a broad gender-mainstreaming obligation for public officials, which can be interpreted as the legal basis for GIA. GIA has been mainly promoted through political decisions and administrative obligations (see 1.4.1).

1.3.2. Financial provisions

Civil servants conduct GIAs as part of the normal legislative work, and ministries do not usually allocate specific funding for the purpose. The Government Gender Equality Unit, which is in charge of the development, coordination and monitoring of the practice, uses its normal budgetary funds for the purpose. Most tools, structures and trainings have been developed with EU project funding.

1.4. The institutional arrangements and procedures for implementation

1.4.1. Institutional arrangements

Gender impact assessment in law drafting enjoys – at least on paper – strong political support, visible in Government Programmes and Government Gender Equality Action Plans. The Government committed to the practice for the first time in 2003 (Government Programme 2003, 14), and the practice has been mentioned in all consequent Government Programmes. This commitment is spelled out in the Government Gender Equality Action Plans, and recent Action Plans request all line ministries to conduct GIAs on legislative initiatives (MSAH 2008, 15; MSAH 2012, 13). Although these political commitments are non-binding, they have helped to institutionalise and promote the practice.

In line with the goal to integrate GIA in the ordinary legislative process, GIA has been included in the guidance concerning legislative drafting. The Bill Drafting Instructions issued by the Ministry of Justice in 2004 state that all new legislative proposals should “contain an account of the impact on the two sexes (gender impact assessment)” (MJ 2004, 17-18). In 2007, GIA was included in the impact assessment guidelines for legislative drafting under the section “other social impacts” (MJ 2007, 35-37). However, in comparison to other impact assessments that are backed up by legislation or Government resolutions (e.g. economic IA, environmental IA), the status of gender impact assessment remains low (Siukola 2006, 27).

In the past years, the implementation of GIA in law drafting has benefited from the efforts to strengthen the institutional structures for gender mainstreaming in government administration. Since 2010, each ministry has an **operational gender equality working group**, which is responsible for coordinating gender mainstreaming efforts within the ministry, and which has access to the ministry’s administrative and political leadership. In some ministries, the working group helps deciding when a GIA should be conducted and provides internal expertise and support (MSAH 2013, 9). Efforts have also been made to ensure **high-level authoritative support** for the practice. GIA and other gender mainstreaming matters are regularly discussed in general high-level ministerial and administrative meetings between ministries. In the beginning of each Government term, all Ministers are briefed on why GIAs in law drafting are important and instructed to request GIAs if they are missing. (Elomäki 2013.)

1.4.2. Theory and methodology

The theory and methodology for GIA in law drafting have been developed by the Government Gender Equality Unit. The approach was outlined for the first time in

2002 (MSAH 2002), and the definition of GIA and the procedures of implementation described in these first guidelines still largely apply.

The aim has been to turn something that sounds complicated into something easy and feasible that resonates with the practical legislative work. The practice has been strategically framed as part of a thorough, everyday work of government officials and as something that does not require much extra time or expertise. This means that the practice is not based on a sophisticated theory of gender and gender relations, but relies on the idea of women's and men's different situations and needs. (Elomäki 2013.) The Finnish approach, which mainly encourages civil servants to make gender visible, thus differs from the Dutch GIA model, which was launched as a more complex analysis of gender relations requiring gender expertise and based on a reflected upon theoretical framework (Roggeband & Verloo 2006).

2.1.3. Procedures for implementation

GIA guidelines issued by the Government Gender Equality Unit (MSAH 2007; MSAH 2009a) describe the ideal procedure as follows:

1. Assess the need for gender impact assessment in the beginning of preparatory work
 - a. Use the following test questions: "Are people's everyday lives affected?" "Are there significant differences between women and men in the area concerned?"
 - b. If the answer is "yes", conduct a GIA
2. Make a plan for conducting the GIA
 - a. Take up the GIA when decisions about the legislative project are made and ensure GIA is part the mandate of the preparatory body.
 - b. Identify available and missing information
3. Assess the gender impact
 - a. Analyse statistics and other available information
 - b. Commission further reports when needed
 - c. Hear experts and stakeholders
4. Take the results of GIA into account when drafting the final proposal
5. Report on the methods and results of the GIA in the preparatory documents and include the results in the rationale of the law proposal
6. Monitor the gender impacts of the law after it has been implemented.

Gender impacts should be assessed on 11 spheres of life, where differences between women and men often occur, including employment, parenthood/care, education, well-being health, public services, leisure and decision-making (MSAH 2009a, 24-25). It is stressed that the gender perspective includes both women and men and that men's needs and perspectives should be taken into account too (*ibid.*, 23).

This procedure described in GIA guidelines is non-binding. These guidelines are a resource for civil servants and do not set an obligatory administrative procedure or define an exact timeline to be followed. Although the guidelines recommend the integration of gender consideration in each step of the law drafting process, in practice GIAs are often quick exercises done at the same time with other impact assessments. The GIA instructions included in the general impact assessment guidelines are shorter and less demanding than the specific GIA guidelines (MJ 2007, 35-37).

1.4.4. Tools and training

The procedures for conducting GIAs in law drafting are outlined in **guidance materials** produced by the Government Gender Equality Unit. In addition to a manual dedicated to GIA in law drafting (MSAH 2007) and a general gender mainstreaming handbook (MSAH 2009a, also available in English), civil servants have at their disposal simple tools, such as a check-list and a list of GIA questions. Most of the material currently at use was developed in 2008-2009 during two PROGRESS-funded Gender Glasses projects.

Civil servants receive some **training** in gender impact assessment. Over the past few years, GIA has been discussed in general impact assessment trainings (MSAH 2013, 10). Also specific training in GIA and in gender mainstreaming has been organised, but the trainings have not been systematic. During the Gender Glasses projects, gender mainstreaming training (including GIA) was organised in all ministries for top management (130 persons reached) and for civil servants (220 persons reached (MSAH 2009b, 17-21). Since then, the main responsibility for providing gender training has been on the ministries, which have been requested to integrate gender issues in their basic training (e.g. orientation courses) (MSAH 2012, 15).

In 2013 the project "Training for Gender Impact Assessment in Law Drafting" improved the bleak training situation. The half-day trainings for civil servants were prepared in cooperation with the ministries and specifically tailored for each administrative sector. In each of the 12 ministries, the training included an introduction to GIA and related basic concepts, process and instruments of GIA, information needs and sources concerning GIA, and group work on actual law drafting cases. Ministers and senior management were integrated in the project through briefings.

1.4.5. Monitoring

The Government Gender Equality Unit (TASY) monitors the implementation of the practice across the whole government administration. The data is included in the annual monitoring reports on gender mainstreaming, which rate the performance of ministries as regards to all gender mainstreaming measures mentioned in Gender Equality Action Plans (e.g. GIAs in budget preparation, integration of gender perspective in major projects, gender statistics, creation of structures for GM). These reports, which are discussed at high administrative level, function as tools for naming-and-shaming and recognition-based motivation. Gender impact assessment in law drafting is also discussed in the monitoring reports of Gender Equality Action Plans (mid-term and final). These reports are discussed by the Government and give Ministers the possibility to see how their ministries perform in comparison to others.

At the moment, the monitoring is mainly quantitative (% of draft laws that mention gender impacts in each ministry). The quality of the GIAs is lightly monitored, but they are not properly evaluated. Their effect on the law proposals and the gender impacts of the adopted laws are seldom assessed. TASY recognises the need for qualitative monitoring, but does not have the resources for it. (Elomäki 2013.)

2. Results of the good practice and its impact on achieving gender equality

2.1. Key results in relation to the baseline situation and the goals and target groups

2.1.1 Frequency of GIAs increases, but slowly and unevenly

In 2012, 28 legal proposals out of 199 (14,1%) referred to gender impacts (MSAH 2013, 9). The number of GIAs is increasing, but slowly. In 2007-2009 around 10% of legal proposals considered gender impacts (MSAH 2010, 87). It is estimated that before the practice was introduced, only 2% of legislative proposals discussed gender impacts (MSAH 2007, 7). The frequency of GIAs can still be considered disappointing.

The differences between ministries remain significant. The highest frequency of GIAs in 2012 was in the Ministry of Social Affairs and Health (34,5% of draft laws). In the ministries of Education and Culture, Defence, Employment and Economy, and Foreign Affairs, more than 20% of law proposals discussed gender impacts. (MSAH 2013, 9.) Nearly every ministry has dealt with gender impact in at least one law proposal over the past five years.

2.1.2 Adaption of legislation

There are no studies as regard to whether and how legislative proposals have been adapted thanks to gender impact assessments. There are some cases, where gender considerations during preparation have had an impact on the proposed law, but the number of GIAs with such transformative effect appears to be limited. The most well known example of a GIA with a transformative impact was the amended Occupational Work Safety and Health Act in 2002. The new Act expanded the old idea of occupational safety from the safety risks in male-majority fields (e.g. occupational accidents and deaths) to the kinds of risk typical among women workers or female-majority fields (e.g. harassment and exhaustion). (MSAH 2010, 86.)

2.1.3. GIA as part of everyday administration

GIAs in law drafting have, to some extent, become part of everyday administrative work. The requirement to conduct GIA has been included in general law drafting instructions, and GIA is part of the general impact assessment guidelines. In many Ministries GIAs in legal drafting are already considered as a routine, or as something obligatory.

2.1.4. GIA as an eye-opener

GIAs in law drafting can produce indirect results in the sense that they open eyes and change the culture within administration. Civil servant who has once been engaged with a GIA is likely to look at other legislative projects through gender glasses as well. A GIA that reveals new, relevant information on the impacts of a law might also have a snowball effect in the Ministry/Department in question and encourage further GIAs.

2.2. Challenges, obstacles and constraints encountered

The number of gender impact assessments remains low despite the strong political support and the inclusion of GIA in the official law drafting and impact assessment guidelines. The challenges and obstacles encountered in implementation are mainly related to insufficient skills and reinforcement and the conditions in line ministries.

- **Lack of skills and training.** Not all civil servants have knowledge and interest in gender issues or analytical skills. For example, civil servants may not be able to see the patterns of inequality behind gender-disaggregated statistics, or discern indirect gender impacts. Gender training included in the basic trainings of ministries and the GIA guidance given during impact assessment trainings does not give enough knowledge and skills to conduct good quality GIAs. The specific GIA and GM trainings have been voluntary and have only reached a small part of civil servants. The targeted GIA trainings organised in 2013 have addressed this problem, but do not provide a long-term solution.
- **No mechanisms for peer support and learning.** Civil servants in charge of conducting GIAs may feel isolated and might not have ways to share their experiences or benefit from the experiences of others.
- **Almost no reinforcement.** Each line ministry is responsible for implementing the practice in its own area of work. There is no governmental body with interest and powers to send draft laws back if GIAs have not been conducted or if they are insufficient. Government Gender Equality Unit (TASY) in charge of development and coordination of gender mainstreaming does not have the authority to give orders to line ministries and their civil servants, and its recommendations are not necessarily taken on board. Apart from naming-and-shaming through monitoring reports, there are no consequences for ministries that perform badly in GIA implementation. Line ministries have not been obliged to set up their own reinforcement procedures. It seems that in most ministries civil servants are rarely held accountable for failing to conduct GIAs.
- **Lack of top-level pressure and support.** Management and the chairs of the preparatory bodies are not necessary reinforcing and encouraging the implementation of the practice. For example, managers and chairs of preparatory bodies might not oblige civil servants to conduct GIAs; managers and chairs of law preparatory bodies might not encourage gender-aware civil servants to use time and resources for a good quality GIAs; the results of GIAs might not be seriously discussed in preparatory bodies.
- **Tight schedules for law drafting.** Even when there is will, there is not always enough time to consult external gender experts and acquire and analyse data.
- **GIAs are often conducted too late in the preparation process.** If gender considerations are not part of the preliminary preparation during which the objectives and implementation of the legislative project are planned, they are unlikely to influence the draft law. Often gender impact assessment remains a tick-the-box exercise, which is done together with other impact assessments after the key aspects of the draft law are already decided upon.

- **Lack of human and financial resources for development, coordination and monitoring.** TASY has few human and financial resources to use for development, coordination and monitoring. TASY has successfully addressed some challenges encountered with the limited resources at hand. In particular the creation of permanent gender mainstreaming structures in each line ministry has improved the conditions for GIA implementation and for gender mainstreaming in general. However, TASY does not have resources for a proper qualitative monitoring of GIAs, fine-tuning the practice, development of new materials and tools, or running an extensive training scheme.

3. Assessment of the strengths and weaknesses of the good practice

The strengths of the Finnish practice of gender impact assessment in law drafting are related to the simple and practice-oriented approach. However, the valuable objective to integrate GIA into the everyday administrative work is aspired at the expense of the robustness of gender analysis and the quality of GIAs.

3.1. Strengths

3.1.1 Accessible for civil servants

The theory and the methodology are simple enough for civil servants to understand and implement. Although conducting a good-quality GIA requires analytical skills and awareness of gender issues, one does not need to be a gender expert in order to implement the practice in a simple way. Easy-to-use manuals and tools help with implementation, and the targeted trainings, which adapted to the field of expertise of each ministry, increase awareness and skills. The framing of the practice as good administration and efficient law making, not only as a way to promote gender equality, makes it relatively easy to sell to civil servants.

3.1.2. Feasible with little resources, facilitated by supporting structures

The practice is not demanding in terms of costs, time or expertise. This has made its implementation across the whole government administration possible, although there are only few human and financial resources available for the overall development and coordination and almost none for implementation in line ministries. However, in the de-centralised situation, where line ministries are responsible for ensuring the practice is implemented in their area of work, some form of support structures in each ministry are necessary. The implementation of the practice has, therefore, benefited from the recent creation of permanent gender mainstreaming structures in each line ministry.

3.1.3 Integration to law drafting and impact assessment procedures

Gender impact assessment in law drafting is presented as part of the core legislative work, rather than a procedure additional to it. The integration of GIA in the general law drafting and impact assessment guidelines has given the practice authority and visibility. All legal drafters might not read the GIA or gender mainstreaming manuals written by the Gender Equality Unit, but they are obliged to take the general

guidelines into account in their work. The downside of the integrated approach is that GIA may disappear in the midst of the large number of other required impact assessments, many of which have stronger regulatory basis than GIA. Furthermore, GIAs conducted within the impact assessment framework without a strong gender equality rationale are unlikely to be transformative. However, the integrated approach has been a strategic choice rather than a goal in itself. The practice has an identity also beyond the impact assessment framework, and the option to conduct in-depth GIAs alongside the routine impact assessments, with the explicit goal to promote gender equality, remains.

3.2. Weaknesses

3.2.1. Simplistic understanding of gender and gender relations

The Finnish GIA model and methodology are based on a simplistic understanding of gender and gender relations. GIA guidelines represent gender as an attribute of a person and women and men as internally homogenous categories of people. Differences within these categories are recognised but not much discussed in the guidelines, and the methodology does not provide tools for analysing intersecting differences. Furthermore, the feminist questions about power and inequality often disappear from view, when attention is paid almost solely to differences between women and men.

3.2.2. Reliance on individual civil servants, insufficient involvement of experts

The practice relies too much on individual law drafters and does not provide enough room for the involvement of internal and external experts and stakeholders with gender expertise and critical perspective. When the responsibility for assessing gender impacts lies on one civil servant, her knowledge about and interest in gender issues have a too big influence on results. Furthermore, law drafters themselves may not be the best critics of the gender biases of their own proposals. Although the GIA guidelines advise to consult experts and stakeholders, they do not provide a clear procedure for their involvement, and in practice such consultations seem to be scarce.

3.2.3. Undetermined responsibilities in line ministries

The responsibilities of actors and bodies in line ministries as regards to the planning, coordinating, reinforcing, and monitoring GIA implementation remain undetermined. Because each ministry is responsible for implementation in its own area of work, ministries take care of these tasks in different ways, if at all. For example, in some ministries the operational gender equality working groups support GIA implementation, but there are no general rules that would determine the role of these groups. Nor are there procedural rules on how GIAs should be handled in bodies higher up in the hierarchy of ministries or in the committees in charge of law drafting.

3.2.4. No quality standards and little qualitative monitoring

There are no agreed upon standards regarding the quality of GIAs. This means that civil servants are not able to check their performance against a common criteria, and that the quality of GIAs is not sufficiently monitored. The Gender Equality Unit has begun to develop a qualitative monitoring tool, which was tested for the first time in

spring 2014. However, the tested criteria left important issues, such as the accuracy of the analysis and conclusions, unaddressed.

3.2.5. Administrative approach limits transformative potential

The Finnish GIA practice is designed by civil servants for civil servants, and it is not well known to actors outside the government administration. For example, some women's rights organisations find the practice distant and difficult to understand (Elomäki 2013). There is little evidence that stakeholders use the results of GIAs to press for changes in draft laws in the Parliament. The administrative approach thus limits the transformative potential of the practice.

4. Main questions and issues for debate at the seminar

- Is turning complex gender issues into easy administrative tasks feasible, are the benefits bigger than drawbacks?
- Which is better for promoting gender equality: gender visible in a large number of legal proposals, or an in-depth gender analysis of the most important projects?
- What are the preconditions (e.g. commitment of top management, monitoring, sufficient training, legal obligation, gender-awareness as a ground for hiring) for gender impact assessment becoming part of everyday legislative work?
- Can gender impact assessment be successfully integrated in the general impact assessment procedure? What are the risks?
- Are gender impact assessments conducted in-house critical enough? When and how should external gender experts and stakeholders be involved in the process?
- What kind of mechanisms of peer support and learning could be created to ensure that civil servants in charge of gender impact assessments are not left alone with them and that it is possible to learn from the experiences of others?
- Should the qualitative aspects of GIAs (i.e. GIAs' effect on legal texts, and gender impacts of actual laws) be assessed in order to properly monitor the outcomes of GIAs?

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