

Annual Report 2009





*The worst thing is that the regulators
don't understand the complications
their proposals cause*

HELP



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Preface

This is the first annual report issued by the Swedish Better Regulation Council and it describes what the Council has accomplished in the year 2009.

The task of the Swedish Better Regulation Council includes reviewing all new and amended legislation that has financial consequences. No systematic reviews along these lines have ever previously been conducted. The systematic evaluation of the impact assessments created in connection with lawmaking is another new activity. The Swedish Better Regulation Council is carrying out pioneering work in these areas.

In 2009, the Council opposed around 40 per cent of the submissions it received and on which it issued Opinions on, as well as finding over half of the impact assessments to be deficient. This somewhat dismal result is not an effect of the Swedish Better Regulation Council having posed far too stringent requirements of the regulators, but appears primarily to be related to the difficulties they themselves have encountered in adapting to the new arrangement. At the same time it is quite possible to turn these in lawmaking shortcomings into something positive. Room for improvement is undeniably large!

The effects of the Council's work to date are uncertain. The signals that have reached us are, however, that the regulators have been influenced by our responses to their submissions. Even if our Opinions have only rarely caused the specific proposal submitted to be reworked, there is much to indicate that the quality level of later submissions has improved.

We will continue to contribute to a better standard of legislation and impact assessment and thus to a reduction in administrative costs for business.

A handwritten signature in black ink that reads "Stig - Bahr". The signature is written in a cursive, slightly informal style.

Stig von Bahr
Chair

Summary

The task of the Swedish Better Regulation Council is to issue Opinions on whether new or amended legislation is formulated in such a manner that it achieves its purpose simply and at the lowest possible administrative cost. The Council has now been in operation for a full year. After the end of its first year, the Council is able to assess that the regulators do not completely understand the complications their proposals cause for the businesses they impact.

Regulators are obligated to obtain the Council's Opinion in connection with lawmaking as concerns business. Nevertheless, in a large number of instances regulators have refrained from submitting relevant proposed legislations. The large numbers involved trigger the suspicion that a lack of submission in many cases occurs without any acceptable reason.

In 2009, a total of 411 submissions with proposed legislation were received by the Council. Of these, the Council has issued Opinions on 222. In 43 per cent of these cases, the Council has objected to the proposal.

The Council has also assessed the quality of the attached impact assessments and in 54 per cent of these cases found them to be deficient. In 7 per cent of the cases, an impact assessment was not attached at all. One common shortcoming in these impact assessments – which, has caused the Council to object the proposal in many cases – is that the administrative costs that it may be presumed to cause are poorly described. In other words, there are defects in the regulatory practices. In spite of this, the opposition of the Swedish Better Regulation Council seldom causes proposed legislation to be reworked. This shows that training efforts are sorely needed in order to help change regulators' attitudes and the manner in which they perform their work. It can, however, be said that the Council believes it has seen the quality of proposed legislation and impact assessments improve during the latter part of the year.

More than half of the administrative costs borne by businesses have their origin in European Community legislation. Consequently, it is quite important that the impact assessments be performed as early as possible in the legislative process. Everyone who participates in this process at the EU level should thus be imposing requirements that proposed legislation be based on acceptable impact assessments. Together with other independent review entities in other member states, the Council has emphasised the importance of establishing an independent Watchdog at the EU level as well.

The business community has significant expectations as concerns the Council's activities. In the long run, the Council's work can be presumed to increase the quality of legislation as well as of the impact assessments carried out.



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1 Introduction

The Council's mission

On 15 May 2008, the Government decided on the establishment of the Swedish Better Regulation Council with the aim of reviewing all new and amended legislation affecting the regulatory burden borne by businesses.

The Swedish Better Regulation Council is an independent committee of inquiry and is advisory in relation to the regulators. The tasks of the Council are stated in the Committee Terms of Reference 2008:57 and Supplementary Terms of Reference 2008:142.

The Terms of Reference state that the Council must express an Opinion on whether new or amended statutes are formulated in such a manner as to achieve their purpose as simply as possible and at relatively low administrative costs to businesses. The Council must also assess the quality of the relevant impact assessments.

Another task the Council is charged with is to follow developments in the area of better regulation and provide information and advice promoting cost-conscious and efficient lawmaking. The Council must also support committees of inquiry as much as possible in their work with impact assessments. The formation of the Swedish Better Regulation Council comprises one element in the Government's plan to reduce the administrative costs for businesses caused by state legislation by 25 per cent before the end of the year 2010.

The Council meets every other week. Opinions on proposed legislation are issued within the specified official period for submitting comments on a proposal or within two weeks of its submission to the Council. The Council itself decides how the practical aspects of its work are to be carried out.

According to its Terms of Reference, the Swedish Better Regulation Council will conduct its activities up to and including 31 December 2010. The Council will by 31 January the following year at the latest, submit a written report to the Government concerning its work over the previous year.

The Council's organisation

The Swedish Better Regulation Council consists of a Chair, a Deputy Chair, two Members and four Substitute Members. The Council has a quorum when the Chair or Deputy Chair as well as two additional Members are present. When voting results in a tie, the Chair has the casting vote. Any possible dissenting opinion appears in the Council's decision. The members of Council come from different professional backgrounds and possess specialised experience on issues that concern the effects of regulation on business.

The Council's Chair, Stig von Bahr, was appointed in December 2008. The Deputy Chair, Lennart Palm, and Member Christina Ramberg were appointed at the end of January 2009. The fourth Member, Leif Melin, was appointed in February 2009. The four Substitute Members are Carl Gustav Fernlund, Claes Norberg, Kristina Ståhl and Maud Spencer. The Council held its inaugural meeting on 3 February 2009, and its first decision-making meeting on 11 February 2009. The Council met a total of 23 times during the course of 2009.

In pace with the increase in the number of proposals, the Council has found it necessary to prioritise the matters submitted and to decline to issue an Opinion, for example, if a proposal is considered to exert limited financial impact on business. Different criteria are applied in the selection process. These are explained in the section entitled "Regulations and Reviews".

The Council conducts, in contrast to most of the other state committees, activities of a continuous nature. It is vital for the credibility of the Swedish Better Regulation Council's work that it is clearly evident that the Council is independent of the Government Offices of Sweden. The Council, thus, has its own logotype, its own web site and its own mailbox. The Council's activities more closely resemble how boards or other independent authorities work than the traditional activities of a committee of inquiry.



Stig von Bahr

Chair | LL.D., former Judge of the European Court of Justice and Justice of the Swedish Supreme Administrative Court



Lennart Palm

Deputy Chair | LL.B., former Managing Director of the Board of Swedish Industry and Commerce for Better Regulation



Christina Ramberg

Member | LL.D. and Professor



Leif Melin

Member | Doctor of Economics and Professor

Secretariat

The Swedish Better Regulation Council's Secretariat consists of an Administrative Director, seven Case Officers and two Assistant Secretaries. During the autumn of 2008, the Administrative Director and three Case Officers were appointed. The Secretariat was subsequently supplemented with two Assistant Secretaries and an additional four Case Officers. The primary task of the Secretariat is to prepare proposals that are received by the Council, present them to the Council, and then to process the results after the Council meetings.

The Secretariat is also responsible for managing the requests for comments on proposals if the Council declines to issue an Opinion. The Secretariat follows developments in better regulation and provides information and advice promoting cost-conscious and efficient lawmaking. The task of supporting the committees of inquiry in their work with impact assessments is performed primarily by the Secretariat.

2 Regulations and reviews

Regulations

According to Section 2 of the Ordinance on obtaining an Opinion from the Swedish Better Regulation Council (2008:530), as well as the guidelines¹ of the Government Offices of Sweden for the submission of basic data to the Swedish Better Regulation Council, the Council's Opinion must be procured when legislation is proposed that may have effects on the working conditions of enterprises, their competitiveness or other conditions affecting them.

The obligation to obtain the Council's Opinion in connection with legislation that impacts business applies, in fact to, all government agencies and the Government Offices of Sweden.

According to the Ordinance on Regulatory Impact Assessment (2007:1244) all administrative agencies under the Government must create an impact assessment before adopting regulations and general advice. The ordinance went into effect on 1 January 2008 when the Ordinance on the special impact analysis of rules on small businesses (1998:1820) ceased to apply.

A specification is given of precisely what an impact assessment should contain in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment. These regulations show that the report must, among other things, contain a description of the goals that to be achieved by the proposed legislation, alternative solutions, who will be affected by the regulations,

financial and other impacts of the regulation and the compliance of the regulation with the obligations arising from Sweden's membership in the EU.

If the regulation has effects on the working conditions of enterprises, their competitiveness or other conditions affecting them, then the impact assessment must also contain a more detailed description of precisely which companies are impacted, what the regulation involves for the administrative and other costs of these businesses, the effects of the regulation on competition conditions as well as whether special regard must be shown towards the needs of small businesses in the formulation of the regulations.

In June 2008, a new provision, Section 15 a, was inserted into the Committees Ordinance (1998:1474). If an official government report contains a proposal for a new or amended regulation, then pursuant to this provision the financial and other impacts of the proposal must be specified in the official report. The impacts must be specified in a manner that corresponds to the requirements that are found in Section 6 and 7 of the Ordinance on Regulatory Impact Assessment.

Guidelines² have been put in place on the design of impact assessment established by the Government Offices of Sweden. According to the guidelines, Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment must also serve as guidance in the preparation of impact assessments made by the Government Offices of Sweden.

1. Official letter of State Secretary of 13 June 2008, Guidelines for submission of basic data to the Swedish Better Regulation Council.

2. Official letter of State Secretary of 13 June 2008, Guidelines establishment of impact assessments at the Government Offices of Sweden.

Reviews

Submissions to the Council

As the previous section shows, all proposed legislation that concern business must be submitted to the Swedish Better Regulation Council and an impact assessment must accompany each proposal.

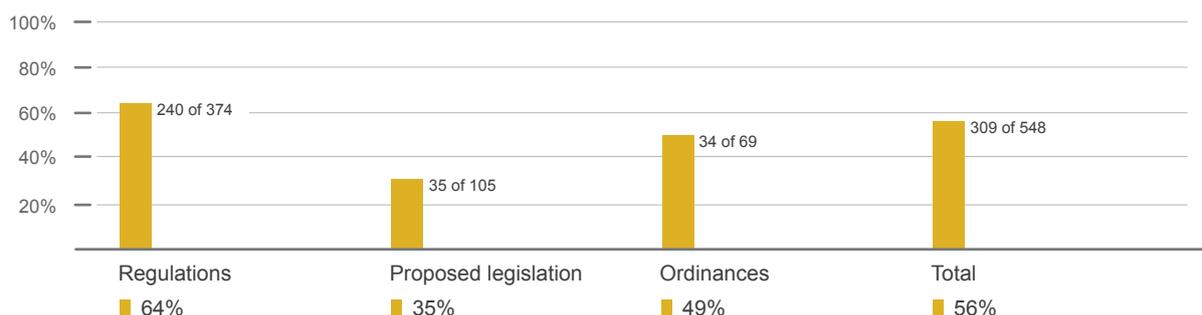
The Council has examined the extent to which proposals for new and amended legislation that may have effects on business are submitted to the Council. This study concerns the period spanning 3 February - 1 December 2009 and encompasses ordinances and regulations that were promulgated as well as proposed legislation that was presented to the Riksdag (the Swedish Parliament) during this period. The study covers the entire Government Offices of Sweden, but not however all government agencies. Around 60 of these were selected for inclusion on the grounds that they prepare statutes of substantial significance to business.

In total, 548 of the statutes that the study encompassed were assessed as concerning business and thus should have been submitted to the Swedish Better Regulation Council. While in fact only 56 per cent of them had actually been submitted. Consequently, as much as 44 per cent of the proposed legislation that concerned business was not submitted to the Council. The reason for this situation have not been clearly explained. Nor was there any opportunity to provide a more detailed explanation of this in the study. There is the fact that, with the support of Section 3 of the

Ordinance on obtaining an Opinion from the Swedish Better Regulation Council (2008:530) and the guidelines of the Government Offices of Sweden, the regulators do have the right, in certain exceptional cases, to dispense with the Swedish Better Regulation Council process. It is, however, safe to assume that submission was, in many cases, omitted without an acceptable explanation.

Percentages of proposed legislation that was submitted to the Council

(3 February - 1 December 2009)



The diagram shows the percentages of proposed legislation that was submitted to the Council distributed by regulations, ordinances and proposed legislation. With respect to ordinances and proposed legislation, submissions that occurred earlier in the lawmaking chain have been included. These could be in the form of an official government report (SOU), ministerial memorandum (Ds) or memorandum (PM).

Two-thirds of the ordinances that were assessed as exerting effects on business were not submitted to the Council. This percentage indicates that the ministries responsible applied a generous interpretation of the exception from the obligation to submit.

With respect to the regulations, the diagram reflects an average and does not provide a completely correct picture since the results of the study differ between the various authorities. The Swedish Board of Agriculture, for example, submitted 51 of 53 proposed regulations, whereas Statistics Sweden has not submitted any of its 10 proposed regulations for the period. Proposals are submitted to the Council at different stages of the legislative chain. The most common submissions are proposals for new or amended legislations. Ministries submit proposed legislation in memoranda that are prepared within the Government Offices, proposed legislation in ministerial memoranda (Ds) that are used both inside and outside the Government Offices and official government reports (SOU) that are solely prepared outside the Government Offices.

Ministries also submit proposed legislation in drafts to the Council on Legislation and in exceptional cases drafts for proposed laws. Ministries may also submit reports containing regulation proposals that a governmental authority has prepared.

In general, the Council has longer to issue Opinions on official government reports and ministerial memoranda. With respect to memoranda

from the Government Offices, drafts for Council on Legislation submissions and drafts for regulations are normally given a shorter response time including, on occasion, periods shorter than the prescribed two weeks.

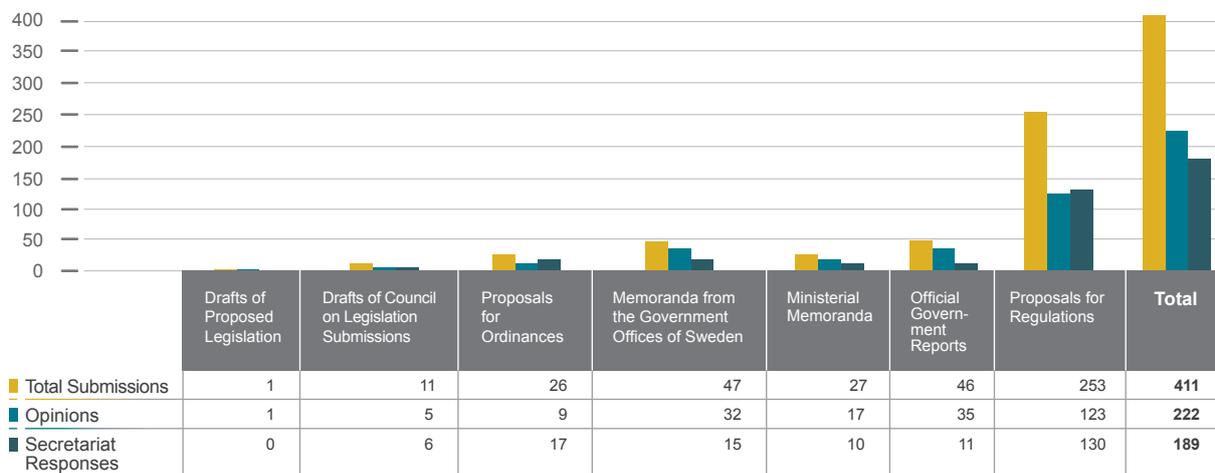
Opinion or Secretariat response

The Swedish Better Regulation Council does not issue Opinions on all cases that it receives, it prioritises. The various circumstances determine whether an Opinion will be issued, circumstances, such as the expected effects of a proposal on business, the specified response time and the Council's current workload. One prerequisite for a case to be reviewed by the Council is naturally that it is encompassed by the Council's terms of reference, it must also have been submitted to the Council. The Council does not issue Opinions on proposals for general advice or proposals that do not contain any statute text. Proposals concerning European Community legislation also lie outside the Council's mandate.

When the Council does not issue an Opinion on a case that has been submitted, a "Secretariat Response" is sent instead. The Administrative Director in consultation with the Council's Chair, determines whether Secretariat Response will be issued.

Distribution Opinions/Secretariat Responses

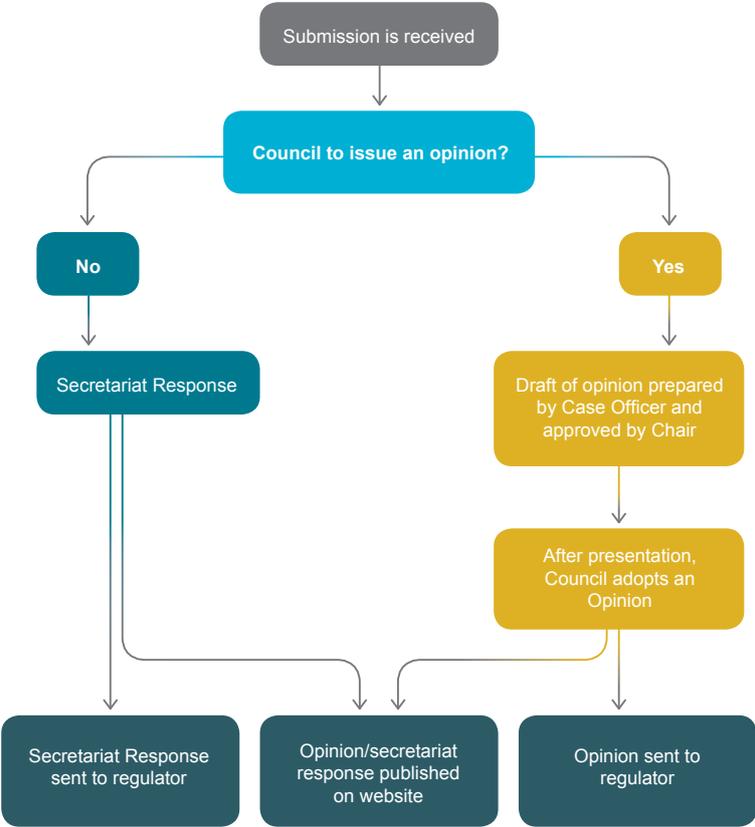
(3 February - 31 December 2009)



The diagram shows Secretariat Responses and Opinions that were issued during the period 3 February - 31 December 2009 distributed by the type of submission.

The fact that Secretariat Responses were sent concerning proposed regulation in 130 cases, i.e. in more than half, indicates that a number of proposals were not encompassed by the Council's terms of reference. It is also relevant here that the Council is generally allocated only brief period of time to issue Opinions on submissions from government agencies.

The review process



Some general issues

The Swedish Better Regulation Council divides its reviews into two parts. In the first, a position is adopted on whether the proposed legislation is formulated in such a way that it achieves its purpose in a simple manner and at the lowest administrative cost to businesses. This assessment is normally performed with the guidance of the attached impact assessment. A good impact assessment provides the Council with sufficient data with which to base a position. In contrast, a poor impact assessment makes it difficult for the Council to assess, from an administrative viewpoint, whether the most suitable solution has really been selected.

The second part of the review task concerns more general quality of the impact assessment and encompasses not only the administrative costs for business, but also material and financial costs. One important question that has arisen during the Council's first year of operation is the meaning of the concept of new or amended legislation. From certain quarters, it has been maintained that a proposed statute is only new if its material content differs from what has previously been the case in the area concerned. Consequently if a formally new statute is in accordance with prior statutes it thus is not to be regarded as new. On the basis of this perception, the impact assessments created and the assessment of the administrative effects have not encompassed everything that is proposed in the new statute only what has materially involved new items in relationship to previous regulations.

The Council has in its reviews distanced itself from the perception described above. According to the view of the Council, a number of strong reasons argue in favour of what formally comprises a new statute also having to be processed, including all its component parts, as concerns impact assessments and administrative effects. In this context, it must be emphasised that one difficulty faced in order to achieve the Government's goal of a reduction in administrative costs of regulation to businesses by 25 per cent by the end of the year 2010 is that the

simplification work is aimed only at those parts of the current system of regulation that are the object of amendments. The difficulties that are caused by the extensive stock of existing legislation are not actually covered. Extending this statute "immunity" attribute, to new statutes replacing existing regulations, leads to the quantity of regulation systems that are not affected by the simplification measures becoming still greater. Such an arrangement is viewed by the Council as being extremely unfortunate.

The regulators, have asserted that the requirement that a new statute be treated as new, even in parts that are in accordance with previous regulations, demands considerable resources and thereby hinders the implementation of pressing technical improvements to statutes.

The first objection in response of this view is that simplification activities ought not to be viewed as a necessary evil but rather as a natural part of a regulator's on-going work. The Council has thus maintained that each proposal concerning the adoption of a new legislation must be combined with an unbiased assessment of the proposal's expected financial effects. In this, previously performed impact assessments may of course be utilised for the parts of the proposal that correspond to older legislations in the field. In assessing the requirements that should be imposed, the proportionality principle also applies, which, among other things, means that the scope of the impact assessments must be related to the circumstances in the individual instance. In summary, the Council assesses that it is unable to accept that regulators without support in the relevant code of statutes, assign the concept of a new statute such a very narrow definition.

It is not unusual that an administrative cost is not inevitable but is connected to a benefit that a business may choose to apply for or not. It has, on occasion, been stated by regulators that such costs do not need to be regarded in the same manner, i.e. as not having the same weight, as costs that a company cannot avoid.

This perception, described above, has met with little sympathy from the Swedish Better Regulation Council. The Council's principal position is that administrative and other costs ought to be assessed in the same manner regardless of whether they are connected a compulsory or voluntary system. This is linked to the fact that systems that formally appear to be voluntary - for example the opportunity for a farmer to receive farm subsidies within the framework of the EU Common Agricultural Policy - may in reality be a necessary precondition if they are not to be pressed in to an untenable situation in comparison with other farmers. Only in exceptional cases, such as the proposal involving businesses being offered the use

of a new technical method in their provision of information, is the element voluntary considered to be of relevance.

Finally, when reading this report, it should be borne in mind that one submission to the Council often contains several pieces of proposed legislation. For a recommendation from the Council, it is required in principle that all proposals fulfil the requirement for the least possible administrative inconvenience. Consequently the fact that the Council objects to the execution of the proposal submitted in the Opinion it issues, does not mean that all the proposals in the submission lead to unnecessary administrative costs.



Assessment of the administrative effects

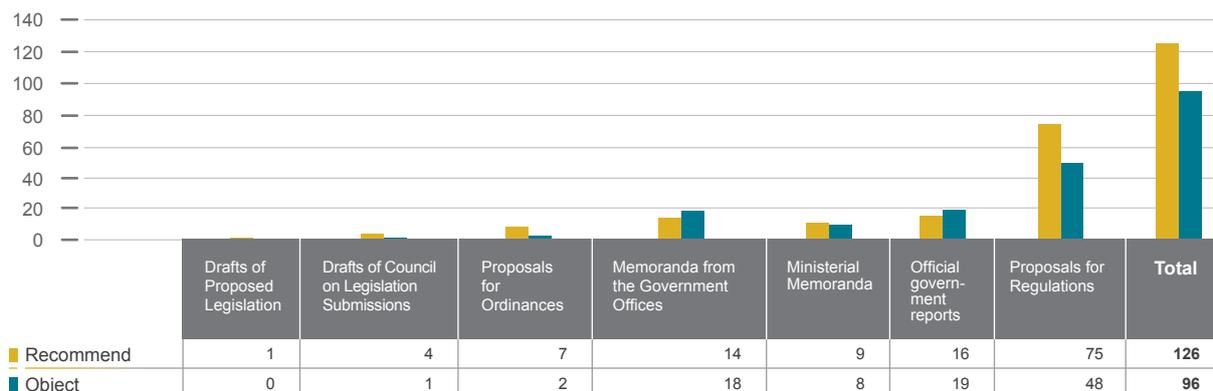
As pointed out earlier, the Council's Opinion contains a recommendation or objection concerning the proposal's suitability in administrative terms, as well as an assessment of the impact assessment. With respect to the administrative assessment, the Council makes use of three different formulations, namely: The Council recommends the proposal, The Council recommends the proposal with certain reservations and the Council objects to the proposal.

In order for the Council to recommend a proposal it is normally required that the impact assessment shows that the proposed statute leads, from an administrative viewpoint, to the most suitable solution. This may be the case even when the administrative costs are presumed to increase. The Council may, in exceptional instances, issue a recommendation despite the impact assessment being weak or missing if it is also obvious that the best solution from an administrative viewpoint has been selected.

The Council will on occasion issue a recommendation with certain reservations. This has occurred when the proposal is good in the overall but where parts of the proposal could have been formulated in a better manner or when the regulators could have gone further in their simplification ambitions. One example of when this formulation is used is the Opinion on the official government report concerning simpler holiday regulations (SOU 2008:95).

As a rule the Council objects to proposals when the impact assessment is defective or not attached. The effects of the administrative costs are then uncertain and it is not possible to determine whether the most suitable solution from an administrative viewpoint has been selected. Objections are also issued when the impact assessment can be approved but the Council assesses, for some reason, that the regulator has not chosen the most suitable solution from an administrative viewpoint. The Council has, in other words, found that the proposal leads to unnecessary inconvenience.

Opinions - Recommendations or Objections



During the period 3 February – 31 December 2009, the Council issued Opinions in 222 matters. The Council has recommended approximately 60 per cent of the submissions from government agencies. As regards the remaining cases, i.e. those that were submitted from the Government Offices, the Council has recommended approximately half of them. In general, it can be said that the majority of the Council's objections concern a deficient description of the administrative costs of the impact assessment.

These deficiencies may, as far as submissions from the Government Offices are concerned, in part be explained by some being attributable to the period before Section 15a of the Committees Ordinance (1998:1474), and the Government Offices guidelines for working with impact assessments, went into effect. In the absence of impact assessments, the Council is unable to assess whether the most suitable solution has been selected from an administrative viewpoint.

In total, 22 of 96 objections involved the regulators determining that the impact assessment and assessment of the administrative costs could be limited to proposed changes in the legal position even when the proposal was included in a completely new statute. As is pointed out above, the Council deems that what formally comprises a new statute must also be treated as a new statute. If an impact assessment with complete coverage and the assessment of the administrative effects are lacking, then, as has been mentioned earlier, the normal basis on which the Council may recommend the proposal is absent.

The number of objections undeniably makes a dismal reading. At the same time though, it can be maintained that the room for improvement is substantial. In this context it should also be emphasised that the

difference between different ministries and government agencies is significant. Certain ministries and governmental agencies maintain thoroughly high standards, while others do not seem to have fully attended to their obligations in the area.

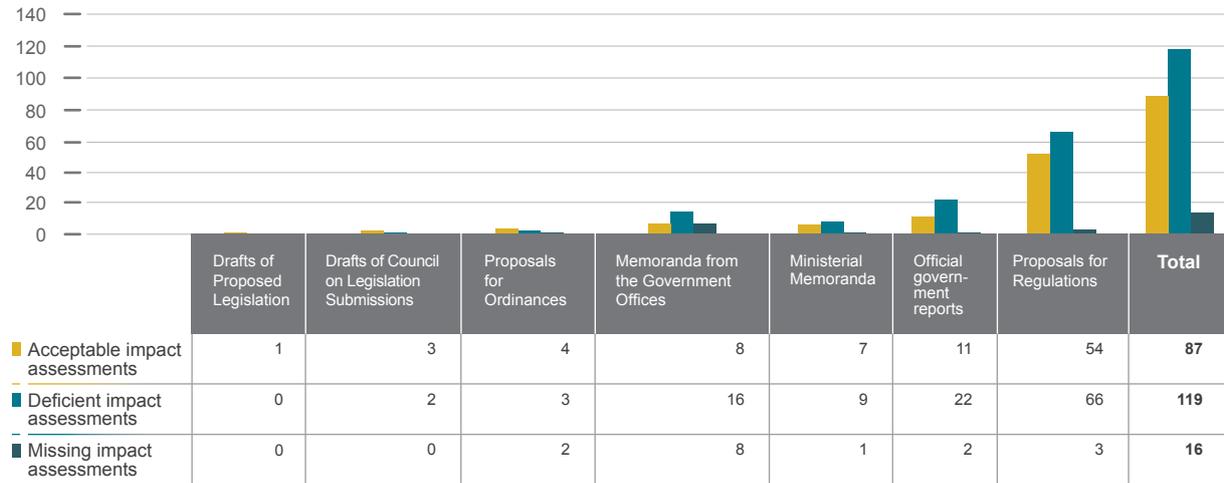
Assessment of impact assessment

What is crucial for the Council in adopting a position on an impact assessment is whether it fulfils the requirements in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment. In general, the Council's assessment concerns only conditions for business. This means that consequences for governmental agencies and individuals are not encompassed by the review.

In each case the Council assesses the weight that must be assigned to the points in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment. It should be noted in this regard that according to Section 4 of the Ordinance on Regulatory Impact Assessment, and the guidelines of the Government Offices of Sweden, the cost-related and other consequences of the proposed regulations must be analysed to the extent which is necessary for the individual case. This means that the proportionality principle applies when impact assessment are drafted.

When adopting a position, the following formulations are used: The impact assessment is acceptable, The impact assessment is deficient or The impact assessment is missing.

Impact assessment



The diagram above shows the Council's Opinions on the quality of the impact assessments for the period 3 February - 31 December 2009.

During the period 3 February - 31 December 2009 the Council has issued Opinions on a round 200 impact assessments. As the diagram shows, more than half of the impact assessments submitted were defective. This can be explained in part by the fact that these impact assessments were created prior to the date when the current regulations on impact assessments entered into effect. Moreover, the statistics are influenced by the regulators, in 22 cases, not having made complete impact assessments when new statutes based on previous regulations. It is important to point out that the statistics for the ministries are, to a significant degree, attributable to official government reports and other proposals that were not prepared within the Government Offices.

The most frequently occurring problem in the impact assessments - which also caused a large number of objections - has been the description of the administrative costs. After this, it is the description of other financial effects on businesses, alternative solutions, the number of businesses affected and the effect of the proposal on the conditions of competition for businesses. The Council has, however, noticed an improvement on the part of the regulators in their submissions during the latter part of 2009.

Reflections

- After the 222 submissions of proposed statutes, it can be stated that substantial defects exist in the preparation of legislation.
- Clear and fully comprehensive impact assessments provide a good basis for the regulator, and in the opposite case, poor impact assessments make it difficult to assess whether the most suitable solution, from an administrative viewpoint, has actually been selected. A strong connection exists in fact between defective impact assessments and poor lawmaking.
- In order for the Government's 25 per cent target to be fulfilled, it is vital that impact assessments encompass everything that is proposed in new legislation.
- In a large number of cases, the regulator has refrained from submitting the proposed legislation to the Council. This leads to the suspicion that in many cases submission has been omitted without any acceptable explanation.



Regelrådet

3 Other tasks of the Swedish Better Regulation Council

Introduction

The Swedish Better Regulation Council is tasked to follow developments in the area of better regulation and to provide information and advice that promotes the cost-conscious and efficient lawmaking. The Council must also support the state committees of inquiry in their work with impact assessments. In 2008 and 2009, within the framework of this task, the Council participated in conferences where better regulation issues were discussed. For example, the Council participated in Small Business Days in the spring of 2009 and in a conference day, arranged by the Swedish Agency for Economic and Regional Growth, in October 2009 for all government agencies in Sweden who work with better regulation.

Support for committees

In 2009, the Council contacted all committees of inquiry and other public commissions and offered support for their work with the formulation of impact assessments. Information and advice has also been provided as an element of on-going activities and in the form of special training inputs. The Council has also informed the committees, etc. concerning its work by inviting them to two "Committee Coffee Breaks".

Over the course of the year 2009, the Council arranged a training day for public committees. The Swedish Agency for Economic and Regional Growth was invited to this event, with the purpose of explaining how the measurements and "Malin" database can be used in the work with impact assessments. Ten people participated in this training input. The Council is planning a similar training to be held in the first half of 2010.

The Government Offices arrange periodic training inputs for state committees of inquiry. Representatives of the Council have participated during the year as lecturers in Committee Service training in four instances.

Within Committee Service, enhancing coordinated planning of the different factors that concern impact assessments is under discussion for training inputs in 2010.

Advice and information

For purposes of promoting cost-consciousness and efficient lawmaking, the Council has conducted individual meetings with certain regulators. The purpose of these meetings has been to discuss how the lawmaking and the work with impact assessments may be improved in 2009. The Council's Chair and Administrative Director have also met with the Director-General for Legal Affairs at the Government Offices and also with a number of the legal affairs secretariats with the Government Offices. Close dialogue with government agencies and ministries produces good quality results, but is extremely time-consuming.

The Council has participated in a number of head of unit and department meetings at the Ministry of Energy, Enterprise and Communications in order to provide information about the Council's activities. The Council has furthermore, at the invitation of Statistics Sweden informed all of the statistical authorities about the Council's activities. During a visit to the Swedish Environmental Protection Agency, the Council informed the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) of its activities.

The Council has participated in the Swedish Companies Registration Office's reference group for the establishment of a common information provider register for the coordination of the reporting of information by businesses. The Communications Plan for the Council has been updated and significant resources have been devoted to producing a functioning website and sufficient informational material. Suggestions and advice have been posted to the Council's website concerning the Council's reviews and what a government agency should bear in mind when working with lawmaking. The Council's Opinions, Secretariat Responses and the underlying proposals are published on the website. Visitors to the site can follow the reporting on better regulation in the media as well as find useful links to the websites of other actors in the area of better regulation.

The Council's website is also available in an English version. The website was launched on 4 May 2009 and during the period of 4 May - 18 December 2009 has attracted 3,264 visitors, and the website pages have been viewed in 16,441 occasions. On average, the website has more than 14 visitors per day.

Business contacts, etc.

When it began its activities, the Council's Secretariat created a Communications Plan in which prioritised target groups were identified and efforts to increase awareness - both nationally and internationally - of the Council's tasks were planned. During the year, the Council has carried out the following activities/events within this area.

On 16 March 2009 the Council invited a large number of representatives from the business community, politicians, ministerial civil servants and government agencies to its inauguration ceremony.

During the course of 2009 the Council has been in contact with the Board of Swedish Industry and Commerce for Better Regulation (NNR) and the Swedish Agency for Economic and Regional Growth. The Council has also participated in the NNR's annual meeting as well as the Swedish Agency for Economic and Regional Growth's meetings for the contact people in the government agencies with respect to the work on impact assessments.

Contacts with the business community during the year have consisted of direct contacts with business organisations in conjunction with the preparation of individual cases as well as of meetings with, among others, the NNR, the Swedish Federation of Business Owners, the Federation of Swedish Farmers and Business Point Sweden. Furthermore, the Council has had several informal contacts with business organisations occasioned by Opinions it has issued.

The year has also seen, the Council participating in seminars concerning relevant better regulation issues and in the processing of the submission of proposals for legislation when such are presented at hearings and to the businesses and organisations involved.



Better regulation and impact assessments within the EU

According to the Swedish Agency for Economic and Regional Growth³ a total of 50.2 per cent of administrative costs affecting business have their origin in European Community legislation. There is no doubt that the work of bringing about better regulation is more complicated when it concerns harmonisation at the EU level than when simplification can be carried out solely through national decisions.

Within the EU, different initiatives have been taken, aimed in part at simplifying and modernising regulations already in effect and in part at improving the lawmaking process. The Commission has produced a simplification and action programme in order to strengthen activities aimed at better regulation. This programme involves simplifying the current legislation, increasing the quality and increasing the use of impact assessments when new legislation is prepared, as well as minimising the administrative burden for European businesses. The Commission has undertaken measurements in thirteen different areas of the administrative costs caused by European Community legislation is causing. These areas are estimated to be responsible for around 80 per cent of the administrative costs for businesses.

The Commission has set up a goal that the administrative burdens within these areas must be reduced by 25 per cent by 2012.

However it may be stated here that the Commission's goal is a gross-measurement target. The Commission has an Impact Assessment Board, which reviews the impact assessments that the Commission carries out and that provides advice and recommendations on issues concerning the quality of these impact assessments. Most of the proposals that are submitted by the Commission are legislative proposals that require the approval of the European Parliament and the Council of Ministers.

³ The Swedish Agency for Economic and Regional Growth's report 0023, The Business Community's Administrative Costs.

Cooperation with European organisations

Adviescollege Toetsing Administratieve Lasten (ACTAL) is an independent Dutch board that works to reduce the administrative burdens on businesses. ACTAL was founded in 2000 and since then its mission has been expanded. ACTAL has a time-limited mandate and in its current situation it has taken the first steps towards handing its tasks over to the Dutch government.

Nationaler Normenkontrollrat (NKR) is an independent council in Germany that has the task of monitoring and giving advice to the German government in issues that concern better regulation and reduction of the administrative burden. The NKR's mandate is not limited in time and has recently been expanded.

During the autumn of 2009 an independent committee was organised in the UK, The Regulatory Policy Committee (RPC). The RPC has a consultative function in relation to the British government. Its task is, among other things, to issue Opinions on whether a proposed piece of legislation is cost-effective and whether the benefits of the proposal outweigh its costs.

The Council has participated in a meeting arranged by the European Court of Auditors in Luxembourg in July 2009. The meeting's theme was: Is the Commission's impact assessment system effective in leading to "Better Regulation"? The Council also took part in, in the International Regulatory Reform Conference (IRRC) in 2008 and in 2009.

During the conference in 2009 in Stockholm, the Council participated in a workshop together with ACTAL, NKR and RPC. In connection with this conference, Edmund Stoiber, the Chair of the Commission's high-level group of Independent Stakeholders on Administrative Burdens (the Stoiber Group), was invited to an informal meeting with the Swedish Better Regulation Council, ACTAL, NKR and RPC. Furthermore, the Swedish Better Regulation Council was invited to participate in one of the Stoiber Group meetings.

In December 2008, the Swedish Better Regulation Council visited ACTAL in The Hague. In connection with the inauguration of the Council in March 2009, a meeting was held with ACTAL and NKR. Here the groundwork was laid for cooperation between these organisations.

On 11 May 2009, the Council, NKR and ACTAL met in Berlin in order to discuss better regulation and the reduction of administrative costs on a national as well as a European level. The meeting resulted in a joint letter of recommendations to the Commission on how the work with reducing the administrative costs within the EU should be conducted. RPC has also subsequently signed the letter. In November 2009, it was sent to the European Commission. The recommendations contained in the letter are listed on the next page.

- The Commission ought to carry out a full baseline measurement of the effects of all European Community legislation on the administrative costs.
- The Commission should establish a net target concerning the reduction of administrative costs within the EU.
- The Commission should to a greater extent consider the reduction proposals initiated and approved by the Stoiber Group.
- The Commission ought to carry out ex-ante measurements of administrative burden of all new initiatives by the Commission.
- An independent and external review body should be organised within the EU in order to review proposed legislation and the quality of the impact assessments.

The letter has been met with criticism from some member states and its reception from the Commission has, to date, been cool.

At a meeting in Stockholm in November 2009, the four organisations emphasised the importance of the simplification work at the EU level being continued despite the lack of enthusiasm on the part of the Commission. One possible next step could be for the governments of each organisations to endorse the text in the letter and to convince the Commission of the urgency of following the recommendations and, among other things, actually organising an independent Watchdog at the EU level. An additional issue that the four independent organisations will be working with in the future is the desirability of greater transparency in the lawmaking process.

Reflections

- The percentage of proposed legislation and deficient impact assessments that were objected to shows that there is a great need for training input.
- The Council's review of lawmaking is pioneering work. In this work, it is imperative to have direct contact and a close dialogue with government agencies and ministries. Such working routines are, however, very timeconsuming.
- The website statistics show that there is an interest in the Council's Opinions and that the visitors to the website increase after conferences and media coverage of the Council.
- Direct contact with representatives of the business community is necessary in order to gain a perception of what is causing businesses the most inconvenience.
- More than half of all administrative costs originate from Community legislation.
- An independent Watchdog is needed within the EU in order to assess the quality of the legislation and the impact assessments.



4 Surveys

In December 2009, the Swedish Better Regulation Council carried out a survey with the purpose of finding out how the Council's Opinions were perceived. The studies were also aimed at determining the effects the Council was having on lawmaking and impact assessments in 2009 and precisely what the expectations were of the Council over the next few years.

The surveys were, in part, directed towards the government agencies and ministries that work with legislation, and in part towards representatives of the business community. Questionnaires were sent to 67 government agencies, of which 40 responded. Of these, 22 specified that they had submitted proposed legislation to the Council in 2009. A total of 21 of these received Opinions from the Council during the year. Of these, 15 considered the Opinions to be clearly stated. Only 3 of the 21 government agencies stated that they, in the majority or a preponderance of the cases, changed the proposed legislation after the Council had objected to it. To the question on whether an impact assessment has ever been completed when the Council has assessed it to be deficient, a total of 13 of 21 agencies responded that this had never occurred. Some 76 per cent of the 40 agencies who answered the questions in the survey find the Council's mission to be clear.

These studies show that the expectations of the Council on the part of the government agencies are high. A general perception of the Council is that it plays a major role concerning counteracting

unnecessary bureaucracy as well as playing a supporting role in the work of improving the legislative activities of the agencies and formulating good quality impact assessments.

It has not been possible to carry out a study within the Government Offices of Sweden. With respect to the effects of the Council's Opinions, it has emerged, however, that proposed legislation and impact assessments have only in individual cases been altered or completed as a consequence of the Opinion issued by the Council.

33 members of the business community responded to the survey that was directed towards them. A total of 25 of them indicated that they were aware of the Council and 22 considered the Council's mission to be clearly stated. Some 15 representatives of the business community state that they on occasion read the Council's Opinions and 9 of these said that the Opinions are clearly stated. Of the 15 representatives of the business community who are familiar with the Council's Opinions, a total of 11 state that the Council's activities have, to a certain extent, contributed to reducing the administrative costs of the business community. A total of 22 of 24 business community representatives believe that the Council's activities, to a great or a certain extent, will contribute to reducing the administrative costs of businesses in the future.



Reflections

- The government agencies consider the Council's Opinions to be clearly stated.
- An objection from the Council has seldom caused a proposal to be reworked.
- There are significant expectations as concerns the activities of the Council among the business community.
- The Council's work may be presumed in the long run to improve the quality of lawmaking and impact assessments, and thereby contribute to the fulfillment of the 25 per cent goal.



5 Conclusions and recommendations

Conclusions

Systematic reviews of new or amended legislation that may exert a financial effect on the business community has never before occurred as a state-sponsored task. The Council is performing pioneering work in this area. The Council's perception is that the need for review is extensive and that these reviews will, in the long run, bring about better lawmaking.

The Council's review of the quality of the impact assessments is also something new. The fact that the regulators now are obligated to submit proposals and impact assessments is causing impact assessments to be created. The Council's perception is that the quality of the impact assessments has gradually improved, but that it is difficult at the present time to report on the degree of improvement. It is important that the work with impact assessments is submitted early in the lawmaking process and in order for this to occur, increased information is required for, among others, committees of inquiry and government agencies.

The surveys carried out show that the Council's Opinions were perceived as being clearly stated. In spite of this, an objection from the Council only led to the submitted proposal being reworked in a marginal number of cases. A continuous dialogue with the Government and other regulators can be an effective tool with respect to the importance of awareness of better lawmaking.

It is too early to assess how much the Council has contributed to reducing the inconveniences to business. It is, however, clear that the business community has great expectations of the Council's activities.

More than half of all administrative costs are a consequence of European Community legislation. It is consequently important that impact assessments are performed from the very beginning. If this is to occur, everyone who participates in the lawmaking process at the EU level – the Commission, the European Council and the European Parliament – must impose requirements as concerns acceptable impact assessments.

An independent review body is also needed at the EU level. The review body requires competence in order to review both the formulation of proposed legislation and impact assessments. Since the interest in such an independent Watchdog has, to date, been rather lukewarm on the part of the Commission, it is important that the member states take the initiative on their own in order to bring about an improvement in the methods for better regulation within the EU.

The Council looks forward to continuing the important work of improving the quality of lawmaking and the attendant impact assessments and thus reducing the inconveniences for companies affected.



Recommendations to regulators

See to that:

- The Council's Opinions be observed in the work of establishing legislation,
- proposed legislation that affects businesses is to be sent to the Council,
- sufficient time is set aside to carry out impact assessments,
- the regulators receive training in how to write good regulations and good quality impact assessments,
- the EU establishes an independent Watchdog that will assess lawmaking and the quality of impact assessments,
- all EU legislation that affects businesses is based on acceptable impact assessments. Cooperate with other member states.







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The Swedish Better Regulation Council is a state committee of inquiry. It is advisory in relation to the regulators and reviews the formulation of proposals for new and amended legislation that may have financial effects on businesses. The Swedish Better Regulation Council adopts a position on whether legislation has been formulated in such a manner that it achieves its purpose simply and at the lowest possible administrative cost to businesses, however the Council takes no position on the political purpose of the proposal. The Swedish Better Regulation Council also assesses the quality of the attendant impact assessments.

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