

Committee terms of reference

Supplementary terms of reference
(N 2008:05)

**ToR
2011:71**

Decision at a government meeting on 25 August 2011

Summary

The Swedish Better Regulation Council is an advisory body to the Government and administrative agencies charged with examining impact assessments. Under its terms of reference, the Council was to operate until 31 December 2010 (ToR 2008:57). By means of supplementary terms of reference (ToR 2010:96), the Council's remit has been extended until 31 December 2014. The advisory role of the Swedish Better Regulation Council needs to be developed further.

The Swedish Better Regulation Council will therefore, with a clarification of its remit,

- delimit its examination of proposals and impact assessments more clearly, with reference to the purpose of the proposed regulation,
- where appropriate in its opinions provide the regulator with clear guidance on how the impact assessments should be supplemented,
- in its advisory role prioritise support to committees making impact assessments.

The Swedish Better Regulation Council will additionally

- on request assist regulators in examining impact assessments regarding proposals from the European Union (EU) which are judged to have a considerable influence on businesses in Sweden, and give advice on what a Swedish impact assessment should contain,
- compile a collection of examples, to be made available on the Council's website, of how impacts can be described in a meaningful way, and

- collect and analyse statistics with the aim of contributing to the development of how impact assessments are carried out.

Background

On 15 May 2006 the Government decided to establish an independent advisory body to the Government and administrative agencies, a better regulation council. This Swedish Better Regulation Council is made up of four members assisted by a secretariat. The Swedish Better Regulation Council will

- examine the formulation of proposals for new and amended regulations that may have effects on the working conditions of businesses, their competitiveness or other conditions affecting them,
- form a view of whether the regulators have carried out the statutory impact assessments,
- assess whether the new and amended regulations have been formulated so as to achieve their purpose in a simple way and at a relatively low administrative cost to businesses,
- assess other qualitative aspects of the impact assessments, and
- follow developments in the area of better regulation and provide information and advice that can promote cost-conscious and effective regulation.

The Swedish Better Regulation Council's examination is to cover the legislative proposal and the impact assessments included in its decision guidance document. The examination is to be based on the Government's objective of reducing the administrative costs of businesses attributable to government regulations. The examination is further to take the purpose of the proposed regulation into account.

The Swedish Better Regulation Council will be given the opportunity of examining, as consultation body or in some similar way, proposals for such acts, ordinances and government agency regulations that may have significant effects on the working conditions of businesses, their competitiveness or other conditions affecting them.

As of February 2009 the Swedish Better Regulation Council meets twice a month. As of the end of 2010, 832 referrals had been received by the Council. It has issued opinions on 393 of these referrals, while the remaining 439 have been the subject of secretariat replies. Secretariat replies are given when the proposal is judged not to have significant effects on the working conditions of businesses, their competitiveness or other conditions affecting them. Secretariat replies imply that the members of the Swedish Better Regulation Council do not give an opinion on the referral. The Council has approved 221 proposals, i.e. assessed that they served the administrative interests of businesses in the best way, and rejected 170 proposals. Impact assessments have been regarded as deficient in 217 cases and acceptable in 154 cases. However,

it is the Swedish Better Regulation Council's view that there has been no noticeable improvement in impact assessments between 2009 and 2010.

International comparisons

Equivalents of the Swedish Better Regulation Council in other EU member states include Nationaler Normenkontrollrat in Germany, Adviescollege Toetsing Administratieve Lasten (Actal) in the Netherlands, and the Regulatory Policy Committee (RPC) in Britain. What these three actors have in common is that they are advisory bodies and that they are brought in at an early stage of the drafting process, even as impact assessments are being carried out. By contrast, the Swedish Better Regulation Council usually examines impact assessments only in connection with the proposal's release for consideration, i.e. significantly later in the drafting process than its European counterparts do. As a rule, the foreign actors do not issue opinions on the final impact assessment or legislative proposal, again in contrast with the Swedish Better Regulation Council, whose task it is to consider the same legislative proposal and impact assessment as other consultation bodies.

The EU Commission's Impact Assessment Board (IAB), which is also an advisory body, also becomes involved in the impact assessment at an early stage of the process and only issues opinions on proposals which are not final.

Remit

Simplifying the day-to-day conditions for Sweden's entrepreneurs and businesses has been one of the Government's most important actions for the creation of jobs and increased welfare. An appropriate regulatory framework that does not imply disproportionate or unnecessary costs for businesses is important in order for Sweden to maintain and increase its competitiveness. It is of great importance that consequences for businesses be thoroughly analysed and that regulations affecting businesses are formulated in an administratively simple way. Against this background there is reason to review the terms of reference that govern the activities of the Swedish Better Regulation Council. Such a review was announced in the budget proposal for 2011 (Prop. 2010/11:1, publ. area 24).

The Swedish Better Regulation Council is to develop its advisory role

During its approximately two and a half years of activity, the Swedish Better Regulation Council has built up a knowledge base regarding ways in which regulations can be formulated so that their administration by businesses becomes simple, as well as how the various components of an impact assessment can be described in a meaningful way. It is important that this knowledge is made available to the regulator in the individual legislation matter. The Council's role as advisory body should therefore be clarified. In connection with opinions where the Council has rejected a regulation or deemed an impact assessment deficient, the Council is to provide suggestions for how the deficiencies in the impact assessment can be corrected and, if it is judged to be possible, also provide suggestions for how the regulation should be formulated. It must be possible for these opinions to be used as a basis for improvements of legislative proposals, and for improvements and additions to impact assessments. The Swedish Better Regulation Council is further to develop its advisory role such that it can provide advice and support as early as possible, if this is requested when an impact assessment is being carried out.

The examination is to focus on substantial changes

A drafting basis for regulations where changes are being suggested is limited to the changes to be made. An impact assessment only describes the consequences of the suggested changes. Those parts of the regulations which are not affected by the proposal are not dealt with in the impact assessment. Normally, purely linguistic changes are not affected either,

and neither are smaller changes involving the adaptation and updating of legislation or the transfer of regulations from one statute to another without changes. This limitation is to be reflected in the examination by the Swedish Better Regulation Council in the sense that the examination is to focus on the substantial changes proposed. If the Council should judge that there is potential for simplifying the regulations in the referred proposal, its opinion may point this out.

The Swedish Better Regulation Council is to collect examples

The Swedish Better Regulation Council is to set up and maintain a systematic collection of examples of how consequences can be described in a meaningful way. The regulator should be able easily to search this collection and find examples of how consequences have been described in different respects. It would be an advantage if the Council provided, to the extent that it deems suitable, its own comments. The collection of examples is to be available on the Swedish Better Regulation Council website.

The Swedish Better Regulation Council is to give priority to committees in the process of preparing impact assessments

In its 2010 annual report, the Swedish Better Regulation Council underlines the importance of assessments' terms of reference containing concrete requirements for impact assessments. As of June 2008, various steering documents have standardised the preparation of impact assessments for committees¹, the Government Offices², and administrative agencies under the Government³. The same requirements regarding content and quality of impact assessments now apply to all regulators. If an impact assessment fulfils these requirements regarding content and quality already at an early stage of the legislative process, this will facilitate the continued drafting process. The Swedish Better Regulation Council is therefore to prioritise its efforts to assist committees in their preparation of impact assessments.

Impact assessment of proposal for a legal act of the Union

¹ Ordinance (2008:269) amending the committee ordinance (1998:1474).

² Official State Secretary Communication with guidelines for carrying out impact assessments at the Government Offices (N2008/5953/MK).

³ Ordinance (2007:1244) on impact assessments in regulation.

More than half of businesses' administrative costs are traceable to legislation at the EU level. Simplification of regulations was a priority issue during the Swedish presidency of the EU in 2009, and remains so.

In one of its recommendations in the report *Better Regulation in Europe SWEDEN 2010*, the OECD points out the importance of making impact assessments of legislation proposals at the EU level. It further points out that the Swedish Better Regulation Council could play a significant role in this context⁴.

It is clear from the Prime Minister's Office circular 14, *Guidelines for carrying out legal acts of the Union*, that a careful analysis of proposed legal acts of the Union must be made at an early stage of negotiations. The circular further states that an impact assessment should be begun as early as possible and be included in the drafting documentation, in connection with the presentation of new proposals for, or changes to, Union law. If the EU Commission has carried out an impact assessment, that can serve as a basis.

In an official communication of 15 December 2010 entitled *Views on the Government's efforts with EU legislation*, the Swedish Better Regulation Council pointed out the importance of highlighting the consequences for Swedish companies in the negotiations at the EU level.

The Swedish Better Regulation Council should be able to play a role by assisting, when requested, in examining the impact assessment done at the EU level if the proposal is judged to have a considerable effect on Swedish businesses. Further, the Council is to be able to suggest to what extent a supplementary Swedish impact assessment should be carried out, and provide advice and support to this end. In that connection, the Prime Minister's Office circular 14, *Guidelines for carrying out legal acts of the Union*, can also serve as guidance. However, the responsibility for carrying out the impact assessment is not to fall on the Swedish Better Regulation Council.

The Swedish Better Regulation Council's collection and analysis of statistics

One of the tasks of the Swedish Better Regulation Council is to follow developments in the regulation simplification area and provide information and advice that can promote cost-conscious and effective regulation. The Council is also to present in writing the results of its

⁴ Recommendation 7.2 "...Consider whether key ministries and agencies have adequate capacities for effective negotiation. Prioritise efforts on key issues for Sweden and make impact assessments a requirement for draft directives that fall within these priority areas (the Better Regulation Council could play a prominent role here...).

work. In the future the Council is also to analyse the statistics it collects. This analysis is to be applicable as a basis for the development of impact assessments and contribute to making efforts to simplify things for businesses effective. In those cases where administrative costs feature in the impact assessments for which the Swedish Better Regulation Council has issued an opinion, the Council is to report

- with what sums administrative costs have increased or decreased, in those cases where administrative costs have been quantified in monetary terms, and
- if administrative costs have been said to increase or decrease, in those cases where administrative costs have not been quantified in monetary terms.

The Swedish Better Regulation Council is also to analyse, among other things

- those secretariat replies which include an assessment that consequences will have a limited effects for businesses, in order to establish a basis for determining in which cases an impact assessment should not be necessary,
- those impact assessments for which the Council has issued an opinion for the purpose of establishing a basis for determining if a limit/limit value should be introduced in respect of costs for when a complete impact assessment is to be made.

This part of the remit is to be carried out in close dialogue with the Government

(The Ministry of Enterprise, Energy and Communications)