



Regel|rådet
Swedish Better Regulation Council

Annual report **2011**



Is the better regulation effort ready for take-off?



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Annual Report 2011

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Preface

This is the third annual report of the Swedish Better Regulation Council (Regelrådet).

The Government has set a target of reducing the administrative costs of businesses by 25 per cent in 2006-2012. Whether the target will be met or not is unclear at this point. As this report indicates, however, signs suggest that the quality of lawmaking has improved. Hopefully future evaluations of the regulatory burden will reflect this progress.

Many of the difficulties that businesses encounter are still due to lawmaking at the EU level. The Council has expanded its collaboration with sister organisations in Germany, the Netherlands and the UK in an effort to minimise such difficulties. One result of the initiative has been a joint letter to EU regulators (the Commission, Council and Parliament). The letter stresses the importance of ensuring that the Commission's action programme for reducing the administrative costs of businesses not terminate in 2012 and that all EU lawmaking be preceded by acceptable impact assessments and reviewed by an independent body (watchdog). An optimistic assessment is that the letter will garner support, at least in the long run. Cognizant of the importance of independent review, EU Member States are increasingly setting up watchdogs.

Efforts to minimise needless complications for businesses are under way on several fronts. My hope is that future evaluations will demonstrate that such initiatives are bearing fruit. It is important to keep in mind, however, that changes in the regulatory burden are very hard to quantify. For instance, the effects of new regulations when implemented in the real world may differ from those projected by the impact assessment. Thus, there may be good reason for launching a project that takes a look at the reliability of impact assessments and considers measures for narrowing any gap between forecasts and outcomes that it discovers.

Another question for future consideration concerns the amount of information that individuals must submit in connection with taxation, social benefits, building permits and other regulatory activities. Our sister organisations also review regulations to which private citizens are subject. My sense is that a systematic professional review would benefit this type of lawmaking in Sweden as well.



Stig von Bahr
Chair

Summary

The Council received 461 submissions of proposed statutes in 2011. A total of 174 submissions elicited an opinion by the Council, while the Secretariat responded to 287 (Secretariat responses). Seventy-three per cent of the Council's opinions approved of the proposals, and the impact assessments were regarded as acceptable in 42 per cent of the cases. The percentage of approvals was considerably higher than the year before. The percentage of acceptable impact assessment increased only marginally and remained too low. All in all, however, 2011 represented definite progress and the Council hopes that the better regulation effort will continue to advance and lead to sustainable improvements in Swedish lawmaking.

A number of different factors explain the low percentage of acceptable impact assessments. The most common factor appears to be that the regulator has not given sufficient priority to the assessment. A field survey conducted by the Council found that both supervisors and policy makers must be committed if impact assessments are to produce satisfactory results. Other key prerequisites are clear internal routines and sufficient time. The Council sometimes encounters the misconception that the requirements for an impact assessment are more lenient when the regulation is to conform with EU law or other international agreements. The Council is of the firm belief that the expected financial consequences of a proposed statute should be analysed in the same way whether or not it is bound by such agreements.

The Council has received Supplementary Terms of Reference calling on it to prioritise support for the impact assessment efforts of committees of inquiry within the framework of its advisory function. Upon request, the Council is also to advise regulators about what they should include in an impact assessment when adopting a position vis-à-vis EU proposals that are deemed likely to significantly affect Swedish businesses. There is every reason to assume that such advisory measures will improve the quality of the assessments.

The Council has also launched several projects aimed at making it less complicated to do business. One such project, "From EU Proposal to Government Agency Regulation," is being conducted in collaboration with the Swedish Agency for Economic and Regional Growth. The project proceeds from the conviction that participation in EU lawmaking at an early stage improves the prospects of avoiding unnecessary costs for Swedish companies.

One of the Council's general responsibilities is to promote efficient, cost-effective lawmaking. As an aid in carrying out that responsibility, the Council has met with representatives of ministries, government agencies and the business community. The Council has participated in a number of conferences and seminars on better regulation. The Council has also collaborated extensively with sister organisations in other European countries. One result of the initiative has been a joint letter to the European Commission, Council and Parliament. The letter stressed the importance of ensuring that the Commission's action programme for reducing the administrative costs of businesses not terminate in 2012 and that all EU lawmaking be preceded by an acceptable impact assessment and an independent review.



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Introduction

Tasks of the Council

One task of the Council is to adopt a position on whether new or amended regulations are formulated in such a manner as to achieve their purpose at the lowest possible administrative costs for businesses concerned. Another task is to evaluate the quality of impact assessments. During 2010, the Council's mandate was extended until the end of 2014. The extension is part of the Government's expanded effort to simplify daily business operations with an eye toward meeting its 25 per cent target.¹ Moreover, the Government issued Supplementary Terms of Reference² on 25 August 2011 expanding the Council's sphere of responsibility and providing it with additional options to influence impact assessments at an early stage. The Terms of Reference also direct the Council to focus more on supporting and training committees of inquiry. Upon request, the Council is also to assist regulators by reviewing impact assessments performed at the EU level and determining whether they sufficiently identify the expected consequences for Swedish businesses. Chapter 3 contains more information about the Supplementary Terms of Reference.

The activities of the Council differ from those of most other committees of inquiry. The Council is not tasked with submitting an official report but acts more as an agency independent of the Government Offices. It serves in a consultative capacity in the sense that its opinions are not binding, as well as the fact that it provides advice and support to regulators in connection with impact assessments and lawmaking.

Organisation

Stig von Bahr was Chair of the Council in 2011. Lennart Palm was Deputy Chair, while Leif Melin and Christina Ramberg were members. The four deputies were Carl Gustav Fernlund, Claes Norberg, Kristina Ståhl and Maud Spencer.

The Council met 22 times during the year.

Secretariat

The Secretariat, which expanded in 2011, consisted of an administrative director, nine case officers and two assistant secretaries at the end of the year. The primary task of the Secretariat is to process the proposals that the Council receives and report on them at its meetings. The Secretariat has primary responsibility for carrying out the Council's task, which has grown by virtue of the Supplementary Terms of Reference, of supporting committees of inquiry in preparing impact assessments.

The Secretariat also tracks national and international better regulation efforts and collaborates with sister organisations abroad.

¹ The Government's target of reducing administrative costs for businesses by 25 per cent by the end of 2012, Government Communication 2009/10:226

² Supplementary Terms of Reference 2011:71 of 25 August 2011



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



Christina Fors

Director | MScBa

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Operations by the numbers

Introduction

Essentially all proposed statutes that have consequences for businesses are to be submitted to the Council. An impact assessment must be appended to each proposal. The Council received 461 submissions of proposed statutes in 2011. A total of 174 submissions led to Council opinions and 287 to Secretariat responses.

Regulators at all levels – ministries, government agencies and committees of inquiry – submit proposals. Most submissions are proposals by government agencies for new or amended regulations. The Government Offices prepare some proposals on their own in the form of memoranda by ministries, referrals to the Council on Legislation and the like, whereas committee reports and other documents arrive from elsewhere. Some proposals submitted by the Government Offices come originally from a government agency that has performed an inquiry on behalf of a ministry.

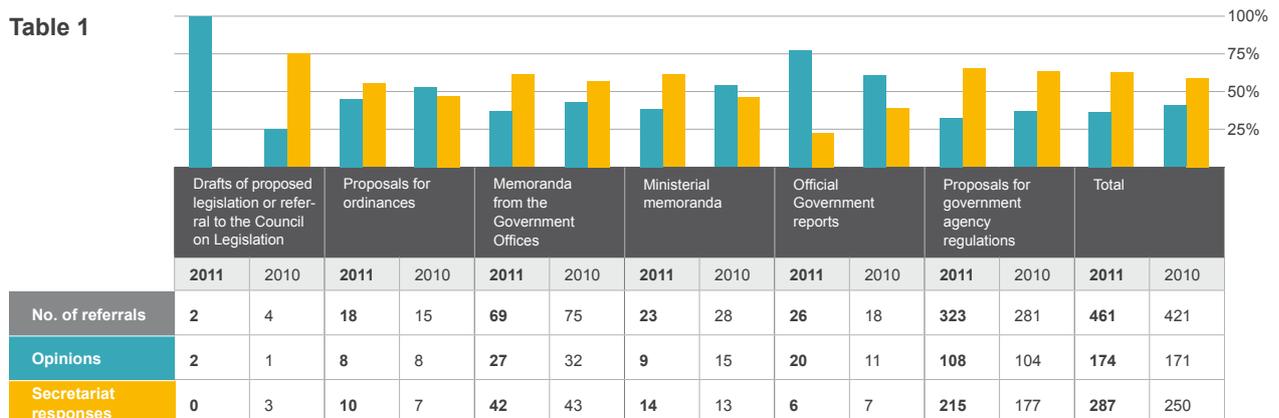
Regulators vary considerably with regard to the number of proposals they submit to the Council. Some regulators submit only an occasional proposal or none at all. The Ministry of Enterprise, Energy, and Communications, Ministry of Agriculture, the Swedish Board of Agriculture, the Swedish Transport Agency and others have submitted many more proposals.

Opinion or Secretariat response?

The Secretariat records and reviews each submission received by the Council. Based on a proposal by one of the case officers, the administrative director and chair decide whether the Council will issue an opinion. Any opinion is based on the proposed statute and the accompanying impact assessment. The opinion first examines whether the proposal is the most suitable approach to accomplishing the stated purpose from an administrative point of view. If so, the proposal is approved. If the Council is not convinced that the least complicated approach has been chosen, it objects to the proposal. The Council then evaluates the impact assessment based on the criteria specified in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment (Swedish Code of Statutes 2007:1244). The review leads to a determination of whether the assessment is acceptable or not. To be regarded as acceptable, an assessment must normally include a discussion of alternative approaches and a projection of the proposal's financial consequences for businesses concerned.

The Council does not issue an opinion about every submission it receives. Proposals deemed to have limited consequences businesses (a classic example is a new speed limit on a particular stretch of road) are

Table 1



dealt with by means of a Secretariat response. The Council may refrain from issuing an opinion for other reasons as well. A Secretariat response is also prepared if the proposal cannot be processed by the specified deadline. The Council does not issue opinions on proposals that concern general guidelines or do not contain any Swedish legal text. A total of 287 (250) Secretariat responses and 174 (171) opinions were issued in 2011. Thus, 62 per cent (59) of all submissions led to a Secretariat response.

Table 1 breaks down the opinions and Secretariat responses for 2010 and 2011 by type of submission. The table shows that 215 out of 323 (67 per cent) Secretariat responses were to regulations proposed by government agencies.

Approval or objection

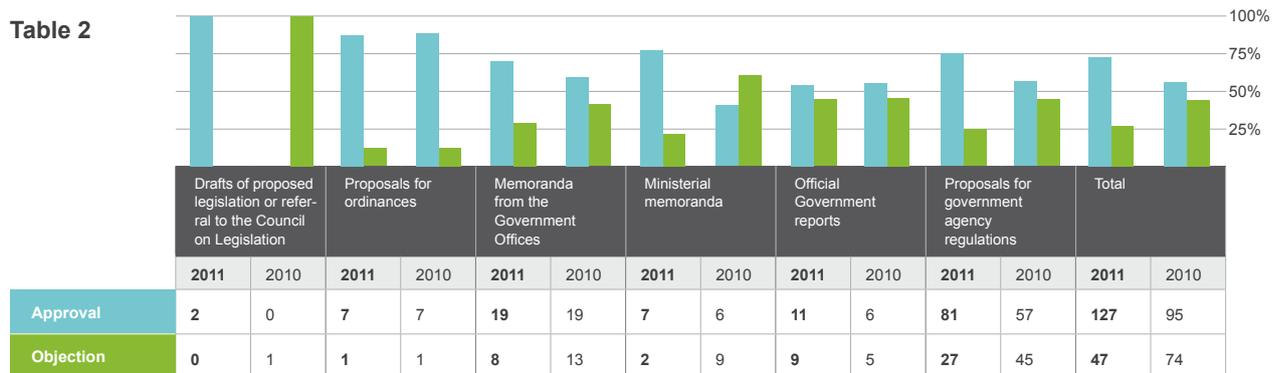
A Council opinion evaluates whether the proposed statute is to be approved, as well as whether the impact assessment is acceptable. The evaluation considers the expected administrative consequences of the proposed statute for businesses. The Council looks at the stated purpose of the proposal when performing its evaluation.

The regulation should be designed such that it achieves its purpose simply and at a relatively low administrative cost for businesses concerned. The Council may approve a proposal that is radical from an administrative point of view, but only if the regulator can prove that the approach follows inevitably from the intended purpose – as is often the case when conformity with EU law or other international agreements is required.

Table 2 shows that 127 of the Council’s 174 opinions in 2011 were approvals and 47 were objections. Thus, 73 per cent of submissions were approved, a pronounced increase from 56 per cent in 2010.

An objection is almost always due to the fact that the projected administrative consequences of the proposal have not been described in sufficient detail. In other words, the best approach may have been chosen even though the impact assessment fails to corroborate it. On occasion, however, the Council objects to a well-presented proposal on the grounds that the approach selected is needlessly complicated.

Table 2



Approvals/objections per ministry and government agency

Table 3 shows the submissions from the Government Offices that were approved. The Council distinguished between submissions prepared by the Government Offices and those prepared elsewhere. The first category includes proposed statutes prepared by the Government Offices as part of memoranda, referrals to the Council on Legislation and bills. The second category includes reports published as part of the Official Government Reports or Ministerial Memoranda series, or memoranda and other proposals submitted by the Government Offices though drawn up elsewhere. The table shows that a large proportion – 28 out of 37, or 76 per cent – of proposals prepared by the Government Offices were approved. The Ministry of Finance (9 out of 10) and the Ministry of Justice (4 out of 4), but not the Ministry of Education (1 out of 3), conformed to that pattern. The proportion of approvals for proposals prepared elsewhere was lower (18 out of 29, or 62 per cent).

Table 4 shows evaluations of regulations proposed by government agencies. A total of 81 out of 108 (75 per cent) submissions were approved, a definite improvement over 2010 (56 per cent). The Swedish Work Environment Authority and the Swedish Board of Agriculture stood out with a high percentage of approvals, while the opposite was true of the Swedish National Agency for Education.

Table 3

Ministry	Inside the Government Offices		Outside the Government Offices		Total
	Approval	Objection	Approval	Objection	
The Ministry of Employment	0	0	2	0	2
The Ministry of Finance	9	1	3	2	15
The Ministry of Agriculture	1	0	0	0	1
The Ministry of Justice	4	0	5	1	10
The Ministry of Culture	0	0	1	0	1
The Ministry of Rural Affairs	1	0	1	1	3
The Ministry of the Environment	2	2	0	1	5
The Ministry of Enterprise, Energy, and Communications	9	4	4	2	19
The Ministry of Health and Social Affairs	1	0	2	1	4
The Ministry of Education	1	2	0	3	6
Total	28	9	18	11	66

Table 4

Government agency	Approvals	Objections	Total
Swedish Work Environment Authority	7	0	7
Swedish National Board of Housing, Building and Planning	1	0	1
National Electrical Safety Board	1	1	2
Energy Markets Inspectorate	2	1	3
Swedish Energy Agency	3	0	3
Swedish Financial Supervisory Authority	6	2	8
Swedish Board of Fisheries	1	0	1
Swedish Board of Agriculture	11	1	12
Swedish Chemicals Agency	1	1	2
Swedish Consumer Agency	0	1	1
Swedish National Food Agency	2	0	2
Swedish Medical Products Agency	2	1	3
Swedish Radio and TV Agency	0	1	1
Swedish Civil Contingencies Agency	2	0	2
Swedish Environmental Protection Agency	1	0	1
Swedish Post and Telecom Agency	1	1	2
Supervisory Board of Public Accountants	1	0	1
Swedish National Debt Agency	1	0	1
Swedish National Police Board	0	1	1
Swedish Maritime Administration	2	0	2
Swedish Tax Agency	1	0	1
Swedish Forest Agency	1	0	1
Swedish National Agency for Education	2	4	6
Swedish National Board of Health and Welfare	0	2	2
Statistics Sweden	4	0	4
Swedish Radiation Safety Authority	2	2	4
SWEDAC	1	1	2
Swedish Dental and Pharmaceutical Benefits Agency	2	1	3
Swedish Transport Agency	21	6	27
Swedish Customs	2	0	2
	81	27	108

Impact assessments

An opinion by the Council includes an evaluation of the quality of the impact assessment. Based on Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment, the evaluation proceeds from the perspective of businesses.

Table 5 (next page) shows that the Council deemed 73 of the impact assessments that it issued an opinion on in 2011 to be acceptable and 97 to be deficient. Four submissions did not include any impact assessment. Thus, only 42 per cent of the proposals were accompanied by acceptable assessments. While the percentage of approved proposals rose substantially, the proportion of acceptable impact assessments was thus essentially the same as previously (39 per cent in 2010). The lack of any significant progress is unacceptable. The quality of impact assessments must be raised if the better regulation effort is to advance.

One problem in this connection is that not all impact assessments are given the same priority. As indicated in the field survey (see Chapter 7), some regulators have the misconception that the requirements to which impact assessments are subject may be less stringent when the purpose of the regulation is conformity with EU law and the latitude for a separate Swedish approach is limited. The Council has addressed this issue in several opinions and concluded that requirements may not be more lenient simply because a proposal is bound by international agreements. The Council will follow up on this question in 2012.

The most frequent deficiency in impact assessments, and the one that occasions the most objections, is an inadequate account of projected financial consequences. Perhaps more serious than the lack of estimates of administrative costs is the need for additional analysis of how the proposal is expected to affect businesses in other respects. Other information that tends to be overlooked is discussion of alternative approaches and the number of businesses likely to be affected by the proposal.

The dreary statistics notwithstanding, some evidence points to an increasing percentage of acceptable impact assessments in the future. As described in more detail below, the Supplementary Terms of Reference stipulate that the Council is no longer to object to an impact assessment of a formally new regulation on the grounds that it examines changes only in relation to previous regulations. The review of a new statute was previously based on the principle that a complete impact assessment should be appended. Given that

criterion, 26 assessments were deemed deficient before September 2011. Some of these assessments would most likely have been regarded as acceptable if the evaluation had been performed in accordance with the Supplementary Terms of Reference. This is particularly true of proposals submitted by the Swedish Transport Agency.

The Supplementary Terms of Reference also stipulate that the Council shall provide additional advisory

Table 5

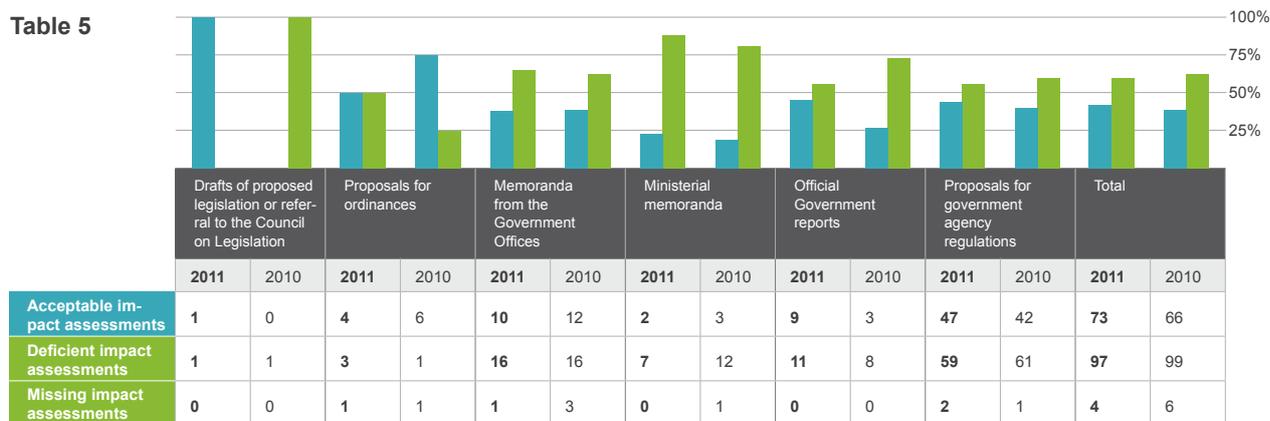


Table 6

Ministry	Inside the Government Offices		Outside the Government Offices		Total
	Acceptable	Deficient	Acceptable	Deficient	
The Ministry of Employment	0	0	0	2	2
The Ministry of Finance	5	5	3	2	15
The Ministry of Agriculture	1	0	0	0	1
The Ministry of Justice	2	2	3	3	10
The Ministry of Culture	0	0	0	1	1
The Ministry of Rural Affairs	0	1	1	1	3
The Ministry of the Environment	1	3	0	1	5
The Ministry of Enterprise, Energy, and Communications	4	9	2	4	19
The Ministry of Health and Social Affairs	1	0	1	2	4
The Ministry of Education	1	2	1	2	6
	15	22	11	18	66

measures to help regulators prepare impact assessments. Hopefully the percentage of acceptable assessments will increase accordingly.

Acceptable/deficient impact assessments per ministry and government agency

Table 6 shows the breakdown between acceptable and deficient impact assessments among submissions received from the Government Offices in 2011. As has been the case earlier, the Council distinguished between impact assessments prepared by the Government Offices and those prepared elsewhere. Two submissions were not accompanied by assessments. The table classifies them as having contained deficient impact assessments. The table shows that 26 out of 66 (39 per cent) impact assessments submitted by the Government Offices were acceptable. The percentage is approximately the same as in 2010. According to the table, few ministries achieved a satisfactory level.

Table 7 shows the breakdown between acceptable and deficient impact assessments appended to submissions received from government agencies in 2011. The table shows that 47 out of 108 (44 per cent) assessments were acceptable. The percentage was somewhat higher than in 2010. Statistics Sweden stood out with 100 per cent acceptable assessments.

Table 7

Government agency	Acceptable	Deficient	Total
Swedish Work Environment Authority	4	3	7
Swedish National Board of Housing, Building and Planning	1	0	1
National Electrical Safety Board	0	2	2
Energy Markets Inspectorate	1	2	3
Swedish Energy Agency	1	2	3
Swedish Financial Supervisory Authority	5	3	8
Swedish Board of Fisheries	0	1	1
Swedish Board of Agriculture	6	6	12
Swedish Chemicals Agency	0	2	2
Swedish Consumer Agency	0	1	1
Swedish National Food Agency	1	1	2
Swedish Medical Products Agency	2	1	3
Swedish Radio and TV Agency	0	1	1
Swedish Civil Contingencies Agency	0	2	2
Swedish Environmental Protection Agency	1	0	1
Swedish Post and Telecom Agency	0	2	2
Supervisory Board of Public Accountants	1	0	1
Swedish National Debt Agency	0	1	1
Swedish National Police Board	0	1	1
Swedish Maritime Administration	1	1	2
Swedish Tax Agency	1	0	1
Swedish Forest Agency	1	0	1
Swedish National Agency for Education	1	5	6
Swedish National Board of Health and Welfare	0	2	2
Statistics Sweden	4	0	4
Swedish Radiation Safety Authority	2	2	4
SWEDAC	0	2	2
Swedish Dental and Pharmaceutical Benefits Agency	2	1	3
Swedish Transport Agency	12	15	27
Swedish Customs	0	2	2
	47	61	108

Reflections

- The number of submissions rose by almost 10 per cent in 2011. The number of opinions increased from 171 to 174 and the number of Secretariat responses from 250 to 287.
- The percentage of approved proposals was up considerably while the percentage of acceptable impact assessments was up only marginally. The fact that more than half of all assessments were still deemed deficient is unacceptable.
- The growing percentage of approved submissions is a hopeful indication that lawmaking is improving on a lasting basis.
- An impact assessment is needed even if a regulation is the direct consequence of an EU decision or other international agreement.



Supplementary Terms of Reference

The Government issued Supplementary Terms of Reference for the Council on 25 August 2011. While somewhat restricting the scope of the Council's reviews, the Terms of Reference focus primarily on expanding its tasks. A fundamental tenet of the Terms of Reference is that the Council be involved in the legislative process at an earlier stage by providing advice and support to regulators.

Changes to Council reviews

A new feature of the Terms of Reference is that a review by the Council is to be restricted to that which is materially new in a proposed statute that borrows parts of older statutes (simultaneously repealed) without essentially changing them. Thus, the consequences of the proposal are not to be fully reviewed in such cases. If the Council finds, however, that the parts that conform with previous regulations have the potential for improvement, its opinion may point that out.

The Supplementary Terms of Reference also address an issue that the Council brought up in a 15 December 2010 letter to the Government. The letter stressed the importance of shedding light on consequences for Swedish businesses starting with negotiations at the EU level. The Terms of Reference state in response that the Council is to review the impact assessment prepared at the EU level if the regulator so requests and the proposal is expected to have major consequences for Swedish businesses. Upon such a request, the Council is to submit a proposal concerning the extent to which a supplementary Swedish impact assessment should be prepared, as well as provide advice and support in doing so. However, the responsibility for performing the assessment does not rest with the Council.

The Ministry of Justice submitted such a request to the Council in December 2011. The matter involves streamlining and harmonising regulations for mandatory audits by large businesses that operate in multiple EU countries.

Expansion of the Council's advisory function

According to the Supplementary Terms of Reference, the Council is to prioritise support for committees of inquiry within the framework of its advisory function. The Terms of Reference emphasise that an impact assessment that meets content and quality criteria at an early stage of the legislative process facilitates the ongoing drafting effort.

The Council's support function previously focused on committees of inquiry only. A new feature of the Terms of Reference is that the Council is also to provide advice and support for a ministry or government agency if it so requests during preparation of an impact assessment. If the Council objects to a regulation or concludes that an impact assessment is deficient, its opinion is to propose a new formulation of the regulation or a correction to the assessment whenever possible.

Analysis of statistics

The Supplementary Terms of Reference state that the Council is to analyse submissions that occasioned a Secretariat response because the proposal was deemed to have limited financial consequences for businesses. The analysis is to form the basis for identifying submissions for which an impact assessment is not needed. The Council is also to analyse the impact assessments appended to submissions that occasioned an opinion on its part. The purpose of the analysis is to provide input into an evaluation of whether a threshold can be adopted to determine when a complete impact assessment should be performed. A complete assessment in this connection refers to one that also contains a description pursuant to Section 7 of the Ordinance on Regulatory Impact Assessment (Swedish Code of Statutes 2007:1244).

Overhaul of the regulations

The Ordinance on Regulatory Impact Assessment contains the basic provisions on impact assessments. The provisions concentrate on binding regulations issued by administrative agencies.

Sections 14-15 a of the Committees Ordinance (Swedish Code of Statutes 1998:1474) cover impact assessments by committees of inquiry. Section 15 a states that an official government report is to specify the consequences, whether monetary or otherwise, of any new or amended regulations that it proposes. The consequences are to be specified in accordance with the content of impact assessments required under Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment. The same requirements with regard to impact assessments apply when the Government Offices draw up proposals for new and amended regulations (Undersecretary Communication of 13 June 2008 with guidelines for preparing impact assessments at the Government Offices).

Thus, the provisions of Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment are to be applied by all regulators, regardless of whether the proposed statute has been drawn up by a government agency, committee of inquiry or the Government Offices. Sections 6 and 7 do not allow for any exemptions from the obligation to prepare an impact assessment. Section 7, which concerns regulations that may have financial consequences for businesses, nevertheless stipulates the limitation that the impact assessment, above and beyond that which follows from Section 6 “and to the extent possible,” is to describe the conditions specified by the Section.

In connection with lawmaking by government agencies, the provisions of Sections 4 and 5 of the Act are also to be observed. Section 4 states that the financial consequences are to be investigated “to the extent needed in the individual case.” In accordance with Section 5, a government agency can refrain from performing an impact assessment if it deems that “there are no grounds” for doing so.

Together with the Ordinance concerning the Procurement of an Opinion by Authorities from the Swedish Better Regulation Council (Swedish Code of Statutes 2008:530) and corresponding regulations for the Government Offices, the provisions of the Ordinance on Regulatory Impact Assessment and the Committees

Ordinance constitute a complete set of regulations for preparing and reviewing impact assessments. The system subjects essentially all proposals of new or amended statutes that may have financial consequences for businesses to a qualitative review through the Council.

In the view of the Council, the regulatory system described above is for the most part well designed and suited to minimising the complications that businesses face. There are grounds, however, for considering changes to the regulations in several areas. The Council cannot find any justification for differences between the requirements to which impact assessments are subject depending on whether the statute is being proposed by a government agency, committee of inquiry or the Government Offices. Thus, it is difficult to explain why government agencies should apply Sections 4-7 of the Ordinance on Regulatory Impact Assessment in their lawmaking activities, whereas other regulators should apply Sections 6-7 only. All regulators should be subject to the same regulations. Thus, an overhaul of the provision in question is vital. In this connection, a determination should be made as to whether it is appropriate for Chapter 5 of the Ordinance on Regulatory Impact Assessment to contain a general restriction on the content of impact assessments (“to the extent needed in the individual case”) while Section 7 contains a somewhat different restriction (“to the extent possible”).

In accordance with the Supplementary Terms of Reference, the Council’s review of regulations that partially replace previous regulations in the same area is to be restricted to that which is materially new. The Ordinance on Regulatory Impact Assessment does not contain any restrictions that address this situation. To meet the requirements of the Ordinance, impact assessments must cover everything proposed by the new regulations even in these cases.

In other words, the Supplementary Terms of Reference create a gap between that which an impact assessment is to contain in accordance with the Ordinance and that which the Council’s review is to cover. Consideration should be given to amending the Ordinance in this respect as well.

Finally, the Council would like to point out that the option hinted at in the Supplementary Terms of Reference to the effect that an impact assessment may be skipped or restricted in the event that the proposed regulation is deemed to have only minor financial consequences requires amendments to the Ordinance. There is good reason to return to this question later on.

Ongoing projects

Committees of inquiry and impact assessments

The Council launched a project in 2011 for the purpose of improving impact assessment efforts by committees of inquiry. A reference group was appointed and charged with discussing how the committees apply the regulations on impact assessments and considering whether the committee handbook (Ministerial Memoranda 2000:1) needs to be updated.

Better regulation efforts of government agencies during the negotiating phase of EU legal documents

The Government has found that more than half of the regulatory burden on Swedish businesses is a result of EU law. Incorporation of EU directives into Swedish law is central to the activities of many Swedish government agencies. As the party responsible for lawmaking in its area, an agency is also obliged to promote simple and appropriate regulations.

Government agencies have limited latitude for influencing the administrative consequences when an EU legal document is to be incorporated into Swedish law. Thus, they must promote the adoption of simple and appropriate regulations during the preliminary legislative effort at the EU level if unnecessary complications are to be effectively avoided.



With that in mind, the Council and the Swedish Agency for Economic and Regional Growth launched a project in the second half of 2011 in order to highlight ways for government agencies to encourage better regulation when EU legal documents are negotiated. A number of interviews were conducted with agencies in order to understand their working methods and illuminate both the opportunities and challenges they face. The project, which will be presented in early 2012, is intended to generate inter- and intra-agency discussions about how to expand the better regulation effort at the EU level and how to incorporate the effort into negotiations over EU legal documents.

Gold-plating

Approximately half of all the legislation that Swedish businesses must comply with is adopted at the EU level. This is why it is so important that implementation of EU legislation not lead to needless complications or costs. Exceeding the terms of EU directives when implementing them as national law is often referred to as gold-plating. Gold-plating may create competitive disadvantages in relation to other Member States that implement directives more literally.

The European Commission has stated that 32 per cent of administrative costs that businesses bear as the result of EU legislation stem from gold-plating and inefficient implementation. The Commission's definition of gold-plating differs from the one used in the UK and certain other countries. Sweden has not yet adopted an official definition of the term. Thus, there is no generally accepted definition of gold-plating even though the topic is widely discussed at the EU level.

The Board of Swedish Industry and Commerce for Better Regulation and the Council have launched a project to examine the issue of gold-plating. The first stage will explore whether a general definition of the term can be established. The results of the study will be presented in a report during spring 2012. After that, the Council may deal with the issue of how to identify and discuss gold-plating as part of impact assessments.

Statistics Sweden project

In 2011, the Council began to address the issue of information that businesses must submit for statistical purposes and the burden involved. The Council launched a review of the Swedish, Danish and Norwegian regulatory systems with a focus on selection criteria and possible limitations.

Ongoing project concerning thresholds

In accordance with the Supplementary Terms of Reference, the Council is to explore options for adopting a threshold above which a complete impact assessment should be prepared. A complete impact assessment refers to compliance with Section 7 of the Ordinance on Regulatory Impact Assessment as well. The Council and the Jönköping International Business School have entered into a collaborative effort that will carry out an initial analysis of Council opinions and the monetary calculations performed as part of underlying impact assessments. The study will include a comparison with other countries that have adopted various types of thresholds. A threshold does not necessarily have to involve an amount – the number of businesses concerned, time devoted to complying with regulations and other factors may be considered.

Examples of clear descriptions

In an attempt to improve impact assessments, the Supplementary Terms of Reference call for a systematic set of examples that clearly describe the expected financial consequences of proposed statutes. Such a set of examples will be available on the Council's website in spring 2012.

Handbook for preparing impact assessments

The Council and the Swedish Agency for Economic and Regional Growth recently launched a project to put together a handbook for those who prepare impact assessments. Although handbooks have been compiled previously, regulators have indicated that they are in need of an updated version. The project is still at the starting gate and is slated to take off in earnest during spring 2012.

Reflections

- Ministries can request support in preparing impact assessments.
- The regulations for impact assessments need to be overhauled.
- Participation in the EU lawmaking process at an early stage reduces needless complications.
- A set of examples and a handbook are in the works.



Training for better lawmaking

Training and support for regulators

In 2009, the Council began to support committees of inquiry whose task was to propose regulations for businesses. The support consisted primarily of general informational and training efforts. In addition, individual advice and support was occasionally provided for specific committees. The Council adopted clearer routines in 2010 and 2011 for offering such training and support. In accordance with the routines, the Council actively reaches out to the committees, offering them advice and support in preparing impact assessments. The Supplementary Terms of Reference call on the Council to prioritise support for regulators. The import of the requirement is that the Council devote additional resources to these activities and that both ministries and government agencies can obtain its support as well.

Training efforts

The Council collaborates with Committee Service and the Swedish Agency for Economic and Regional Growth in providing impact assessment training. In 2011, the Council served as a trainer for seven courses arranged by Committee Service and four arranged by the Agency. The Council informed course participants about impact assessments that focus on businesses, the details of the requirements in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment, and its interpretation of the requirements.

Based on the reviews that the Council had performed, the trainers described deficiencies that are common to impact assessments. Examples were presented about ways of resolving various difficulties, i.e., where suitable data to project and quantify the financial



consequences of a proposal can be found and how various conditions can be accounted for. The course evaluations that the Council has received indicate that participants experienced the training as relevant and useful.

Support for individual committees of inquiry

Individual support is provided informally on the basis of the committee's preferences, the task of the inquiry and the time that is available. Consultation proceeds from the provisions of the Committees Ordinance (Swedish Code of Statutes 1998:1474), particularly Section 15 a, which refers to Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment. The recommendation is that the committees structure impact assessments pursuant to Sections 6 and 7 such that answers are easy to locate and, when applicable, clearly refer to sections that examine the expected consequences of the proposal in greater detail.

The Council notifies all newly appointed committees that they can obtain support in preparing impact assessments. In addition, the Council actively contacts committees whose terms of reference include tasks that may have consequences for businesses.

In accordance with the Supplementary Terms of Reference, the Council is expanding its individual support for committees that are to develop regulations that apply to businesses. Among the implications of the new procedures are that committees with longer periods of inquiry are invited to more than one personal meeting and that the Council arranges a get together twice a year.

More committees are now aware of the Council's task of providing individual support and have taken the initiative to request it. Committees have told the Council that they regard the assistance as valuable and have recommended that other committees avail themselves of the opportunity. The effort to expand support for ministries and government agencies is continuing.

Follow-up of the Council's support for committees of inquiry

The Council issued eight opinions in 2011 on official government reports put together by committees of inquiry that had been supported by the Secretariat in preparing an impact assessment. Five of the proposals were approved and two were objected to. A Secretariat response was issued for one of the submissions. Four of the impact assessments reviewed were deemed to be acceptable and three to be deficient.

Due to the limited number of submissions, no reliable conclusions about the effects of the support can be drawn. However, the outcome suggests that support measures do not automatically produce good results, albeit the percentage of acceptable impact assessments was somewhat greater than is generally the case.

Reflections

- The Council is prioritising its advisory function.
- Regulators have expressed their appreciation for the advice they receive.
- Effective training produces better results.
- Expanded training efforts are leading to greater competence.
- A committee's own priorities ultimately determine whether it takes advantage of training opportunities.



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Contact and communication

Visits to regulators

One of the Council's general tasks is to promote efficient, cost-conscious lawmaking. In fulfilling that obligation, the Council meets with representatives of ministries and government agencies to discuss lawmaking and the preparation of impact assessments. Meetings have been held with the Ministry of Finance, Swedish Transport Agency, Swedish Forest Agency and others. As far as the Council can tell, these meetings are regarded as valuable and have raised awareness about the need for impact assessments and its evaluations of them.

Business/industry contacts

The ultimate purpose of the Council's activities is to make life easier for businesses. In that sense, it has the same objective as business organisations. With this in mind, information about the business world and its experience of administrative requirements is central to the Council's activities. To establish a productive dialogue with industry and promote better lawmaking at various levels, the Council visits various business organisations for information sharing.

In addition to regular exchange of information with the Board of Swedish Industry and Commerce for Better Regulation, the Council met with the following organisations in 2011:

- Swedish Federation of Small Businesses
- Swedish Federation of Business Owners
- Näringspunkten
- Swedish Construction Federation
- Svensk Handel
- Teknikföretagen

The purpose of each meeting was to discuss better regulation. The Council shared general information about its activities, particularly its reviews of proposed statutes and impact assessments. Matters of particular interest to the organisation concerned were highlighted and the Council's positions were explained. The trade organisations offered information about their activities, their efforts in the area of better regulation, and the opinions of their members about proposed legislation

currently under consideration. Discussions concerned ways of creating a favourable climate for businesses and the need for collaboration to make it happen.

International contacts

The European Commission set up an action programme in 2006 to reduce administrative costs for businesses. The programme expires at the end of 2012.

The Council had regular contact in 2011 with its counterparts in other EU Member States – Adviescollege toetsing administratieve lasten (ACTAL) in the Netherlands, Nationaler Normenkontrollrat (NKR) in Germany and the Regulatory Policy Committee (RPC) in the UK. They are all independent organisations with the task of reviewing proposed statutes and advising their governments concerning better regulation and reduction of costs for businesses.

The Council met with NKR, ACTAL and RPC in Brussels in September to discuss better regulation and reduction of administrative costs at the European level. A key item on the agenda was what will happen once the Commission's action programme expires at the end of 2012. The meeting produced a joint letter to the Commission, Council and Parliament recommending ways of reducing administrative costs within the EU in both the short and long run. The letter, which was submitted to the chair of each institution, contained the following recommendations for the better regulation effort:

- a new better regulation programme is needed when the current one expires
- a net target for lightening the regulatory burden on businesses should be adopted
- new and amended regulations that affect businesses should be subject to independent review
- stakeholders must be involved in the process
- all institutions must be subject to requirements for acceptable impact assessments

One matter to which the four independent organisations will devote time and resources going forward is

collaboration with counterparts that may be established in other Member States.

The Council participated in a number of seminars concerning better regulation issues in 2011. It attended the OECD conference in Amsterdam in spring 2011. In September it participated in a conference arranged by NKR. Two case officers and the administrative director visited RPC in September for information sharing. Together with NNR, the Council also visited the Department for Business, Innovation and Skills and its Better Regulation Executive (BRE) – as well as the National Audit Office and a business organisation – in the UK. The Council attended a better regulation seminar in Warsaw arranged by the Polish government in November and participated in a meeting for Directors of Better Regulation in Copenhagen in December. The Council was invited and took part as an observer at six meetings of the European Commission’s High Level Group on Administrative Burdens. In addition, it was visited by a Romanian and a Norwegian delegation.

Information and collaboration on better regulation

The Council met with the Swedish Trade Procedures Council (SWEPRO) and the National Electrical Safety Board during the year to share information about its activities. It participated in the Swedish Agency for Growth Policy Analysis reference group, which was established to develop tools for estimating income and expenses in impact assessments. The Council also attended a meeting with the Swedish Companies Registration Office and collaborated with the Swedish Agency for Economic and Regional Growth on better regulation and impact assessments.

Finally the Council attended seminars on better regulation in Almedalen, Sweden, and the “Better Regulation Day” arranged by the Ministry of Enterprise, Energy, and Communications.

Communication and the Internet

The Council published an electronic newsletter entitled *Regelrätt* (According to the Rules) for the first time in 2011; the purpose was to make its opinions more available and report on current developments in the area of better regulation.

An additional objective was to spark debate about better regulation. Every issue contains an interview with a public official or moulder of public opinion in the area. The newsletter, which comes out at the end of the month, is sent to people involved with law-making at ministries and government agencies, representatives of business organisations, expert journalists, Riksdag members and other policy makers who are interested in better regulation issues. The newsletter has more than 400 subscribers.

People who are interested in better regulation can also follow and contact the Council on Twitter. The Council’s opinions and newsletters, as well as relevant links about better regulation, are available on Twitter.

The Council’s website (www.regelradet.se) regularly publishes opinions and Secretariat responses, along with the submissions it receives. The website also offers tips and advice about what a government agency should keep in mind as part of its lawmaking efforts. The website contains information about media coverage of better regulation, as well as useful links to the sites of other organisations in the area. The website had 3,111 unique visitors in 2011 and its pages were viewed on 28,813 occasions. The average of 18 visitors per day was somewhat higher than 2010.

Reflections

- The European Commission's programme for better regulation must be renewed.
- EU lawmaking must be reviewed by an independent body (watchdog).
- The responsibility to prepare acceptable impact assessments must rest with all EU regulators (Commission, Council, Parliament).
- The Council is expanding the volume of information it provides about its activities.
- Contacts with regulators and the business community improve the lawmaking process.



General remarks about follow-up

It is important that the Council's activities be followed up. The follow-ups of previous years have focused on communication, such as familiarity with the Council and the expectations that regulators and representatives of the private sector have of it. The Council has now been in existence for several years and is well-known in its area. As a result, this year's follow-up had a more practical focus. The purpose was to ascertain what happens after the Council issues an opinion and to gain some insight into impact assessment efforts in general. To address these issues, the Council followed up various submissions on the basis of material that was available at the Government Offices website. A random sampling had previously been performed of several submissions from government agencies. To gain a more in-depth understanding, the Council also conducted a field survey with 15 people from various ministries and government agencies that are involved in lawmaking.

Follow-up of submissions from the Government Offices

Follow-up was a two-step process. To start off with, the Council reviewed anew some of the submissions that it had followed up prior to the previous annual report. These were the submissions for which the lawmaking process had not yet been completed. Now that more time has passed, the submissions were reviewed once again. The review, which was carried out in October and November 2011, covered 23 submissions that had occasioned opinions by the Council from 3 February 2009 to 30 June 2010. In each case, the Council had objected to the proposal and deemed the impact assessment to be deficient. It turned out that the lawmaking process had been completed for nine of the submissions. A new or supplementary impact assessment, three of which contained fresh information in response to the Council's criticism, had been prepared in six of those submissions. No further lawmaking effort had been reported for the other 14 submissions.

The Council also reviewed a sampling of the submissions that had occasioned opinions from July 2010 to June 2011. The study was limited to submissions for

which the Council had either objected to the proposal or deemed the impact assessment to be deficient. To proceed as in previous years and follow up only cases for which both the proposal had been objected to and the assessment had been deemed deficient would have left too small a sample. A total of 39 submissions, including 15 for which the lawmaking process had been completed or the inquiry had continued in another manner, were reviewed. A new or supplementary impact assessment, 6 of which had been changed as a result of the Council's criticism, had been prepared for 8 of the 15 submissions.

Given the time constraints under which regulators frequently operate, they have difficulty performing supplementary impact assessments or reworking proposed regulations. In light of such considerations, a reasonable conclusion is that the Council's opinions are being taken seriously.

Random sampling at government agencies

The Council also selected a few submissions from several government agencies in order to follow up on whether the proposed regulation had led to a decision and whether the impact assessment had been supplemented in any way as a result of the Council's opinion. The selection was performed among the submissions that had occasioned opinions by the Council from July 2010 to June 2011 and for which the impact assessment had been deemed deficient. The government agencies that participated in the above-mentioned field survey were exempted. Four agencies were questioned about a total of 15 submissions. The Council received responses about 13 submissions. Regulations had been issued in ten cases, two of which had been accompanied by a supplementary impact assessment based on the Council's criticism. No regulation had yet been issued for three submissions.

Field survey

Four ministries and four government agencies were chosen to participate in the survey. Undersecretaries and directors-general for legal affairs were interviewed at the ministries, whereas directors-general and chief legal officers were interviewed at the agencies. Directors-

general for legal affairs and chief legal officers were of interest because they are in charge of daily impact assessment efforts. Undersecretaries and directors-general do not normally participate in day-to-day activities. They are important, however, given that they have the ultimate responsibility for how regulations are formulated.

The survey revealed that the Council is generally perceived to be an important organisation in the area of better regulation. The interviewees stressed the importance of having a third party with a specialised perspective that can examine impact assessments and thereby ensure uniform evaluations. The existence of the Council and the formal requirement for impact assessments serve as a blowtorch and send a signal to civil servants to prioritise the effort. Undersecretaries and directors-general have more trouble talking about the significance of the Council in practice, presumably because they are not directly involved in preparing impact assessments. One of the directors-general declined to participate on the grounds of insufficient knowledge about impact assessment efforts at the agency.

Ministries and agencies differ with respect to the importance they ascribe to impact assessments. A couple of agencies have internal regulations and strategy documents that give special priority to the assessments. The regulations contain explicit requirements that an assessment is to be supplemented if the Council deems it to be deficient.

Several of the interviewees maintained that their ability to influence lawmaking and its consequences is highly limited because they generally work in areas that are constrained by EU law. Thus, they would like to see a more lenient evaluation framework for impact assessments that are based on EU regulations.

The interviews indicate that one of the biggest challenges posed by impact assessment efforts is to quantify the possible monetary consequences of a regulation. A number of the interviewees thought it was difficult to find reasonable cost estimate models or to obtain

sufficient data for performing relevant analyses. They also cited the lack of time to devote to impact assessments. The lack of time is due primarily to flawed routines that do not bring in impact assessments until a late stage. Some of the interviewees mentioned that civil servants do not always have sufficient competence to prepare impact assessments. They may have difficulty establishing the right level – how detailed should an assessment be, how should it define a problem and how should it be incorporated into the lawmaking process?⁹ A number of interviewees asked for examples of good impact assessments and for skills development in certain areas.

The survey indicates that the Supplementary Terms of Reference are viewed in a positive light and that they will hopefully strengthen the Council's role. A number of interviewees requested that the Council's opinions be formulated more clearly in a manner that leaves no doubt about the deficiencies of the impact assessment and how to correct them. The Council should regard itself as an adviser throughout the process instead of an examiner that gives its stamp of approval or rejection at the very end. Finally, some of the directors-general and undersecretaries felt that the Council should market its activities more, both in the press and in general public forums.

In the view of the Council, the survey underscores the importance of participation by managers and directors in the lawmaking process. Prioritising impact assessments increases the percentage of approvals by the Council. A director-general may refrain from participating in the Council's survey about the impact assessment effort due to special circumstances, but may also be regarded as signalling to other civil servants that it does not have a particularly high priority. The Council would like to emphasise once again how important it is that ministries and government agencies carry on an internal dialogue and that policy makers proactively seek to raise the quality of impact assessments.

Reflections

- Both civil servants and policy makers must be involved if impact assessment efforts are to produce satisfactory results. Clear internal routines and sufficient time are important success factors.
- Ministries and government agencies that prioritise impact assessments and skills development generate a larger number of acceptable impact assessments.
- Regulators are favourably disposed to the idea of the Council participating in the process at an early stage.
- Not enough impact assessments are supplemented following criticism by the Council – the excuse is often lack of time.



Conclusions and recommendations

Conclusions

For almost three years, the Council has reviewed new and amended regulations that affect the finances of businesses. A review is not an end in itself but a means of eliminating needless complications and thereby improving the prospects of businesses for conducting their activities successfully. The Council issued 174 opinions in 2011. The proportion of approvals (73 per cent) rose substantially from the previous year (56 per cent), whereas the proportion of acceptable impact assessments increased only marginally (from 39 to 42 per cent).

The trend with respect to approvals appears to be a sign of a general improvement in the lawmaking process. The figures also corroborate the Government's estimate that administrative costs for businesses declined by more than 7 per cent in 2006-2010¹. A survey² conducted by the Board of Swedish Industry and Commerce for Better Regulation points in the same direction. Nevertheless, the Council deems more than half of the impact assessments it reviews to be deficient. This is unacceptable. The quality of assessments must be raised. Regulators have stated that the greatest challenge they face when preparing an impact assessment is estimating the financial consequences of the proposal. They say that it is difficult to find reasonable models for performing cost estimates or to obtain sufficient data for carrying out relevant analyses. Some regulators harbour the notion that the requirement for impact assessments may be more lenient when the regulation must conform to EU law or other international agreements and the latitude for a special Swedish approach is limited.

If the private sector is to see real change, everyone involved in lawmaking must maintain a business

perspective. Thorough inquiries are needed and the consequences of a proposal for businesses must be fully elucidated before a final decision is made. The cultural and organisational structures of regulators need changing. Furthermore, the better regulation effort must be prioritised, while policy makers at ministries and government agencies must be fully committed and demand acceptable impact assessments. The expected consequences of a proposal represent important information for a regulator and other concerned parties, even if its content is bound by international agreements.

In 2011, the Council explored the extent to which we help reduce the complications that businesses encounter. The follow-up of submissions from the Government Offices suggests that our opinions are taken seriously. The field survey with people who are responsible for lawmaking at ministries and government agencies shows that the Council is perceived to be an important organisation in the better regulation area. The survey found, however, that regulators would like to see the Council adopt a number of measures, including clearer opinions, the publication of examples of good impact assessments, and training programmes for civil servants. We are incorporating these viewpoints into our activities and, in accordance with the Supplementary Terms of Reference, increasing our support to regulators in their impact assessment efforts. It is important that work on an impact assessment begin at an early stage of the lawmaking process. Similarly, regulators must examine the financial consequences of a proposal throughout the entire process and not wait until a particular approach has been chosen. The Council hopes that expanded training efforts and dialogue with regulators will lead to better results going forward.

¹ Government Communication 2009/10:226

² Regelbarometern 2011

A large percentage of administrative costs stem from EU law. Like other Member States, Sweden is engaged in a proactive effort to improve the quality of EU lawmaking. Together with sister organisations in the Netherlands, Germany and the UK, we composed a letter and sent it to the various EU regulators (Commission, Council and Parliament). The letter stresses the importance of renewing the Commission's action programme to reduce the administrative costs of businesses and of ensuring that all EU lawmaking is preceded by acceptable impact assessments and reviewed by an independent body (watchdog). We have launched a project in Sweden that emphasises how important it is that those

who participate in negotiations over EU legislation do all they can to ensure that the regulations do not generate unnecessary costs for businesses.

Our overall conclusion is that the better regulation effort is proceeding slowly but surely. If businesses are to see a real difference, a number of changes are needed. Everyone involved in the lawmaking process should regard impact assessments as a vital tool to maintaining high quality. The Government has set a target of reducing the administrative costs of businesses by 25 per cent by the end of 2012. The Council is doing its best to ensure that the target is met.

Recommendations to the Government Offices and other regulators

Make sure that:

- enough time and resources are set aside for the impact assessment effort
- continual training programmes are conducted in writing good statutes and impact assessments
- the support and advice of the Council in preparing impact assessments is utilised
- the Council's opinions are considered during the lawmaking process
- acceptable impact assessments are prepared during the legislative process at the EU level
- the European Commission's action programme to reduce administrative costs for businesses is renewed
- the EU lawmaking process is subject to independent review
- those who participate in the negotiating phase of EU legal documents keep the possible consequences for Swedish businesses in mind



Time for Change

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The Swedish Better Regulation Council is a government committee of inquiry. The Council is an advisory body to regulators that reviews the formulation of proposals for new and amended legislation that may have financial consequences for businesses. The Council adopts a position on whether regulations have been formulated in such a manner as to achieve their purpose simply and at the lowest possible administrative cost to businesses but comment on the political purpose of proposals. The Council also evaluates the quality of impact assessments.