



Regelrådet
Swedish Better Regulation Council

Annual Report
2010

It takes time to change course



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Preface


This is the second Annual Report of Regelrådet, the Swedish Better Regulation Council.

In 2010, the Council issued 171 opinions on referred cases. Approximately 44 percent of proposed legislation was objected to, and 61 percent of the impact assessments were considered deficient. The percentage of objections and deficient impact assessments is therefore by and large the same as during 2009.

Better regulation must be viewed from a long-term perspective. Not infrequently, it is a matter of changing the regulators' cultural and organisational structures. These structures can be compared to a supertanker – it takes time to change course. This inertia is something that characterises not only Swedish improved regulation; it is an international phenomenon, which became clear at the final summary of the OECD conference on 'smart regulation' in November 2010 in Paris.

The Council noticed an increased interest among regulators in better regulation and impact assessments. Many regulators say that they respect the Council's viewpoints; if not in the current case, then at least prior to drafting the next legislation. The number of referred proposals that lacked impact assessments was also considerably smaller in 2010 than in 2009. This is a step in the right direction but more is needed. To achieve a real change in course, persistent and systematic work is needed on all levels. It should be clear, for example, from Committee Terms of Reference and other tasks concerning the legislative process which requirements should apply on the issue of accounting for the economic consequences of the proposal presented for businesses. Policy makers must, furthermore, see to it that sufficient resources and competencies are available for legislative process work, and require supplements if impact assessments that have been established are lacking in quality. Special attention should also be paid to Swedish participation in EU legislation.

The government's ambition is to reduce the administrative costs of businesses by 25 percent by 2012. The Council, which is a cog in the great regulatory machine, will do its best to fulfil this ambition.



Stig von Bahr, *Chair*

Summary

In 2010, 421 cases were referred to the Council. Of these, 171 brought about an opinion from the Council, while 250 were answered by the Secretariat (a Secretariat response). In approximately 44 percent of the opinions, the Council objected to the proposal, and in 61 percent the impact assessments were considered deficient.

The statistics do not differ appreciably from 2009. The improvements that can be made out are small. Further efforts are necessary to increase the quality of proposed legislation and impact assessments.

An overwhelming majority of objections, as last year, were owing to deficient impact assessments, which were not clear in the administrative effects of the proposal. Deficiencies in the description of alternate solutions have, in many cases, also made it difficult to see whether a less complicated solution for the business would be possible.

Only new or amended regulations are referred to the Council. The existing stock of regulations, consequently, lies outside of the Council's mandate. When older regulations are transferred to a new statute, however, these are formally regarded as new. To reduce the number of regulations that have never been preceded by an impact assessment, the Council has repeatedly insisted that all economic effects must be described when the referred proposal relates to a new statute. It is thus not acceptable that impact assessments in these cases aim only at what appears new in relation to previous regulations. Unfortunately, there are several government agencies that have not yet adapted themselves to the Council's view on this matter.

It is important that the work with impact assessments is submitted early in the legislative process. It may therefore be suitable for the government to concretely indicate, in Committee Terms of Reference, which requirements should be laid down on the contents of the impact assessment.

The Council found in its review that the regulator very seldom refers to impact assessments done at the EU level. A Swedish regulator who incorporates the directives should provide information on existing impact assessments at the EU level, and indicate where they can be obtained.

More than half of all administrative costs today are a consequence of European Community legislation. The Council, in a letter to the government, has proposed improvements in the guidelines for how Swedish representatives should influence EU legislation.

The Council conducted questionnaire and interview inquiries to see what influence opinions have had on the lawmaking process. The inquiries show that several government agencies supplemented their impact assessments after the Council's critical review. Seldom, however, have the Council's opinions brought about a change in the proposed legislation in question.



Annual Report 2010

1 Introduction

The Council's mission

From 2006 to 2010, the administrative costs of businesses decreased by approximately 5 percent.¹ The government's goal of reducing these costs by 25 percent by the end of 2010 has thus not been achieved. The government therefore intends, according to Government letter 2009/10:226, to broaden, develop, and deepen the work from 2011 to 2014 in order to simplify the daily operations of businesses for the purpose of achieving the 25% goal in 2012. In connection with this, the Council's mission was extended until the end of 2014. No change in the direction of the mission has been made (see Supplementary Terms of Reference 2010:96).

The task of the Council is thus to constantly take a position on whether new or amended statutes are formulated in such a manner as to achieve their purpose as simply as possible for the business concerned and at relatively low administrative cost to the business. The Council must also assess the quality of the impact assessments. The applicable regulations are described in detail in the Council's annual report for 2009.

Organisation

Stig von Bahr was chair in 2010. Lennart Palm was vice chair, and Christina Ramberg and Leif Melin were Council members. The four substitute members were Carl Gustav Fernlund, Claes Norberg, Kristina Ståhl and Maud Spencer. The structure was thus unchanged. The Council held 23 meetings throughout the year.

In contrast to most other Government committees of inquiry, the Council is not tasked with delivering a committee report, but has operations of a government agency type. The Council is independent of the Government Offices. There is thus much that indicates that the Council should be organised as a government agency instead of a committee. The Council has initiated a discussion with the government on a change in its organisational form.

The Secretariat

At year's end, the Secretariat consisted of Director Christina Fors, four Case Officers, and an Assistant Secretary. The Secretariat will be strengthened during 2011. The primary task of the Secretariat is to prepare the proposals submitted to the Council and present them at Council meetings. The task of supporting the committees of inquiry in their work with impact assessments is performed primarily by the Secretariat and increased in scope during 2010.

The Secretariat also follows national and international developments in work on better regulation and provides information and advice promoting cost-conscious and efficient lawmaking.

1. In Government letter 2009/10:226 to the Riksdag regarding work on better regulation for 2006-2010, it is indicated that the reduction could amount to a further percentage point or two (-7.3%) if the larger changes that the government decided upon after 15 February 2010 are also included.



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

2 Operations by the numbers

All proposed legislation concerning business must be submitted to the Council. An impact assessment must be appended to the proposal. In 2010, 421 cases were referred to the Council. The Council has expressed opinions on 171 referrals, which is less than the 222 cases it expressed opinions on during the previous year. The number of Secretariat Responses increased from 189 to 250, which can partly explain the reduction in the number of opinions.

Proposals are submitted to the Council at different stages of the lawmaking process. The most common submissions are proposals from government agencies for new or amended regulations. The Government Offices submit proposed legislation, of which some – for example, memoranda from ministries and referrals to the Council on Legislation – are drawn up within the Government Offices, and others – such as Official Government reports – are drawn up outside the Government Offices. The Government Offices can also submit memoranda with proposed legislation drawn up by a government agency on commission from a ministry.

Many regulators only submitted one or a few cases that gave rise to an opinion. This limited basis made it impossible to draw any far-reaching conclusions in these cases.

Opinion or Secretariat response

The Council does not issue opinions on all cases it receives. An opinion is normally not given if the proposal is judged to have limited effects on businesses. This assessment is made on a case-by-case basis and observes both absolute and relative effects on the business concerned. The Council does not issue opinions on general advice or proposals that do not contain any statute text. In these cases, the Council submits a Secretariat response.

Table 1 shows opinions and Secretariat responses for 2009 and 2010, divided by referral type. The statistics indicate an increase in the portion of Secretariat responses from 46 percent in the previous business year to 59 percent in 2010.

Secretariat responses were submitted in 177 cases relating to referrals from government agencies and in 73 cases relating to referrals from the Government Offices. The high number of Secretariat responses issued on referrals from government agencies is due to such factors as a high number of referrals relating to proposals for road traffic speed regulations. Such proposals were judged to have limited effects on the finances of the businesses.

Table 1

	Drafts of proposed legislation or referral to the Council on Legislation		Proposals for ordinances		Memoranda from the Government Offices		Ministerial memoranda		Official Government reports		Proposals for government agency regulations		Total	
	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010	2009
No. of referrals	4	12	15	26	75	47	28	27	18	46	281	253	421	411
Opinions	1	6	8	9	32	32	15	17	11	35	104	123	171	222
Secretariat responses	3	6	7	17	43	15	13	10	7	11	177	130	250	189

Approval/Objection

The question of whether the Council will approve or object to a proposal is connected to the administrative effects of the proposal on businesses. For approval, the Council must be convinced that the regulator has chosen the most suitable solutions from an administrative point of view.

In two cases, the Council expressed opinions on an impact assessment without appurtenant regulation proposals. It concerned a reworked analysis that was only included in statistics on impact assessments.

Table 2 shows that of a total of 169 opinions on proposed legislation, 95 (56 percent) were approved and 74 (44 percent) were objected to. The share of approvals and objections are consequently roughly the same as the previous year and are divided equally between referrals from the Government Offices and referrals from government agencies. That the share of approvals did not increase does not necessarily mean that the quality of the lawmaking process still lies at the same level, but could be connected to the increased share of Secretariat responses. It is of course possible that many of the relatively uncomplicated referrals that gave rise to Secretariat responses would have been approved had the Council chosen to submit an opinion.

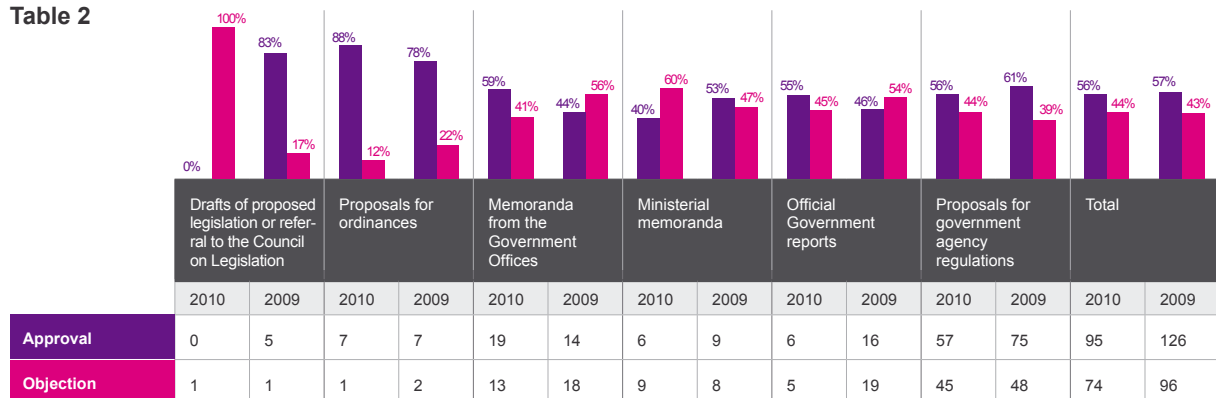
An overwhelming majority of objections, as in the previous year, were due to the Council, in light of

the appurtenant impact assessment, not being able to decide whether the most suitable solutions from an administrative point of view had been chosen. An objection may therefore be due to the impact assessment having been inadequate and does not rule out that the proposed legislation would have been approved if it had been described in more detail in the impact assessment.

It must be emphasized that the circumstance of the proposed statute leading to an increase in administrative costs does not automatically result in an objection. The Council will approve if the increase is judged to be an unavoidable consequence of the goal the regulator wishes to achieve. To achieve the goal there must therefore be no better solution. In accordance with this, the Council has, for example, approved fifteen cases with the justification that the proposed legislation and the administrative costs associated with it constituted a direct consequence of EU legislation.

In eight cases, the Council found that the proposed legislation had not been formulated in a sufficiently straightforward manner; that is, there were editorial and formal deficiencies in the proposal. Frequently, the statute's headings, introduction, interim regulations, and provisions for coming into effect were misleading or even entirely absent. In two of the cases, the deficiencies of this type caused the Council to object to the proposal.

Table 2



Approved/rejected cases by ministry and government agency

Table 3 shows the number of cases from the Government Offices approved and objected to. The Council differentiated between cases drawn up within the Government Offices and cases drawn up outside the Government offices. In the former category are proposals for memoranda drawn up

within the Government Offices, ordinances, and referrals to the Council on Legislation and drafts of proposed legislation. In the latter category are committee reports published in the Official Government Reports (SOU) series or in the Ministerial Memorandum (DS) series, as well as memoranda and other proposals drawn up outside the Government Offices.

Table 3

Ministry	Inside the Government Offices		Outside the Government Offices		Total
	Approval	Objection	Approval	Objection	
The Ministry of Employment	0	0	0	2	2
The Ministry of Finance	6	3	1	4	14
The Ministry of Integration and Gender Equality	0	0	1	2	3
The Ministry of Agriculture	1	1	0	0	2
The Ministry of Justice	2	3	4	2	11
The Ministry of the Environment	3	3	0	1	7
The Ministry of Enterprise, Energy, and Communications	9	2	4	2	17
The Ministry of Health and Social Affairs	3	2	2	0	7
The Ministry of Education	2	1	0	1	3
Total	26	15	12	14	67

The table shows that the share of approvals is higher in the proposals from the Government Offices that were also drawn up there (26 of 41; that is, 63 percent) than in proposals drawn up externally (12 of 26; that is, 46 percent). The Ministry of Enterprise, Energy, and Communications increased its share of approvals from 38 percent in 2009 (6 of 16) to 76 percent in 2010 (13 of 17).

Table 4

Government agency	Approval	Objection	In total
The Swedish Work Environment Authority	1	3	4
The Swedish Public Employment Service	0	1	1
The Swedish National Board of Housing, Building, and Planning	4	0	4
The Swedish National Electrical Safety Board	1	0	1
The Swedish Energy Markets Inspectorate	3	3	6
The Swedish Energy Agency	1	1	2
The Swedish Financial Supervisory Authority	3	3	6
The Swedish Board of Fisheries	1	1	2
The Swedish National Institute of Public Health	3	1	4
The Swedish Board of Agriculture	10	6	16
The Swedish Chemicals Agency	1	0	1
The Swedish Competition Authority	0	1	1
The Swedish National Food Administration	1	1	2
The Swedish Medical Products Agency	2	1	3
The Swedish Civil Contingencies Agency	0	3	3
The Swedish Environmental Protection Agency	2	1	3
The Swedish Post and Telecom Agency	3	0	3
The Swedish Radio and TV Agency	1	0	1
The Swedish National Police Board	0	1	1
The Swedish Maritime Administration	2	1	3
The Swedish National Board of Forestry	1	1	2
The Swedish Education Administration	1	0	1
The Swedish ESF Council	0	1	1
Swedac	2	1	3
The Swedish Radiation Safety Authority	1	1	2
The Swedish Dental and Pharmaceutical Benefits Agency	1	1	2
The Swedish Agency for Economic and Regional Growth	0	1	1
The Swedish Transportation Administration	0	1	1
The Swedish Transport Agency	12	9	21
The Swedish National Road Administration	0	1	1
	57	45	102

Table 4 shows the outcome of the 102 referrals with regulation proposals that were referred from government agencies during the year, and which the Council expressed opinions on. The share of approvals amounts to 56 percent (57 of 102) but, as can be seen, the variation is great. The Swedish Post and Telecom Agency and The Swedish National Board of Housing, Building, and Planning are the only government agencies with several cases that had all proposals approved.

The impact assessments

Table 5



The table shows that 39 percent (66 of 171) of the impact assessments the Council expressed an opinion on during 2010 were regarded as acceptable. The corresponding figure for the previous year was 40 percent. It is difficult to state the reason for no statistical improvement taking place with any great certainty. An explanation may be that the Council has broadened and deepened its review. For example, the Council has questioned information, analyses, and conclusions in impact assessments in several cases, and has also performed its own analyses of the surrounding regulations. Another explanation may be – similar to what applies to the share of objections – that many referrals with acceptable impact assessments were treated as Secretariat responses. It should also be

emphasized that the Council generally rejects impact assessments that do not treat the statute in its entirety when it is a question of new statutes (see more details on this in the ‘General issues’ section).

Acceptable/deficient impact assessments by ministry and government agency

Table 6 shows the division of acceptable/deficient impact assessments in the cases referred from the Government Offices during the year. As previously,

the Council differentiated between the impact assessments drawn up within and those drawn up outside the Government Offices. Impact assessments were missing in five cases. These are counted as deficient impact assessments in the table.

Table 6

Ministry	Inside the Government Offices		Outside the Government Offices		In total
	Acceptable	Deficient	Acceptable	Deficient	
The Ministry of Employment	0	0	0	2	2
The Ministry of Finance	4	4	1	5	14
The Ministry of Integration and Gender Equality	0	0	0	3	3
The Ministry of Agriculture	1	0	0	1	2
The Ministry of Justice	1	3	0	7	11
The Ministry of the Environment	1	2	0	4	7
The Ministry of Enterprise, Energy, and Communications	4	1	6	6	17
The Ministry of Health and Social Affairs	1	2	4	0	7
The Ministry of Education	2	1	0	1	4
	14	13	11	29	67

From the table, it can be seen that only 37 percent (25 of 67) of all impact assessments referred from the Government Offices were regarded as acceptable. The share is the same as in 2009. It can further be noted that the impact assessments drawn up within the Government Offices were regarded as acceptable to a much greater degree than those drawn up outside the Government Offices.

Table 7

Government agency	Acceptable	Deficient	In total
The Swedish Work Environment Authority	1	3	4
The Swedish Public Employment Service	0	1	1
The Swedish National Board of Housing, Building, and Planning	3	1	4
The Swedish National Electrical Safety Board	1	0	1
The Swedish Energy Markets Inspectorate	2	4	6
The Swedish Energy Agency	1	1	2
The Swedish Financial Supervisory Authority	1	5	6
The Swedish Board of Fisheries	1	1	2
The Swedish National Institute of Public Health	3	1	4
The Swedish Board of Agriculture	9	7	16
The Swedish Chemicals Agency	0	1	1
The Swedish Competition Authority	0	1	1
The Swedish National Food Administration	1	1	2
The Swedish Medical Products Agency	1	2	3
The Swedish Civil Contingencies Agency	1	2	3
The Swedish Environmental Protection Agency	1	2	3
The Swedish Post and Telecom Agency	3	1	4
The Swedish Radio and TV Agency	1	0	1
The Swedish National Police Board	0	1	1
The Swedish Maritime Administration	1	2	3
The Swedish National Board of Forestry	1	1	2
The Swedish Education Administration	0	1	1
The Swedish ESF Council	0	1	1
Swedac	0	3	3
The Swedish Radiation Safety Authority	1	1	2
The Swedish Dental and Pharmaceutical Benefits Agency	1	1	2
The Swedish Agency for Economic and Regional Growth	0	1	1
The Swedish Transportation Administration	0	1	1
The Swedish Transport Agency	8	14	22
The Swedish National Road Administration	0	1	1
	42	62	104

Table 7 shows the division of acceptable/deficient impact assessments in the cases referred from the government agencies during the year. The impact assessments in 40 percent of the cases (42 of 104) were found acceptable, which is a somewhat smaller share than in 2009. In one case, an impact assessment was absent, and it is counted in the table as deficient. Of the government agencies that received several opinions, The Swedish National Board of Housing, Building, and Planning, The Swedish National Institute of Public Health, and The Swedish Post and Telecom Agency had the most success.



Reflections

- From the Council's opinions it can be seen that several deficiencies in the lawmaking process remain.
- 95 opinions on proposed legislation were approved, and 74 were objected to. The relation between acceptance and objection is roughly the same as the previous year.
- 66 impact assessments were found acceptable and 105 deficient, or missing. The relation between acceptable and other impact assessments is roughly the same as last year, but it should be noted that the number missing shrank from 16 to 6.
- Most of the objections, as in the previous year, were due to the Council not being able to decide whether the most suitable solutions from an administrative point of view were chosen, owing to deficient impact assessments.



3 General issues

New regulations based on earlier regulations

An issue that came up several times during 2010 is which requirements should be laid down on an impact assessment concerning proposals for a new statute when the content thereof agrees to a great extent with what was in force previously. In its annual report from 2009, the Council stated that what formally comprises a new statute should also be handled as such, as concerns impact assessments and assessment of administrative effects. This view has not, however, had a full effect among regulators. Against this background, there is reason to take up this question again.

The regulations on impact assessments aim at giving decision-makers a reliable basis for the lawmaking process. In impact assessments, such things as alternative solutions must be shown, and expected administrative and other economic effects must be described. According to the Council's view, it is not possible to procure support in the regulations – primarily Chapters 4-7 of the Regulatory Impact Assessment (KUF) Ordinance (2007:1244) – much less any reason to generally limit the scope of the impact assessment simply because the new regulations proposed partially agree with an existing regulation. As the Council insists in its opinions, a complete impact assessment is necessary to make a collective overhaul of the statute's economic effects, and it also accommodates the desire to minimize the number of regulations that have not undergone an impact assessment.

The circumstance of the starting point having to be an impact assessment that encompasses everything proposed in a new statute does not hinder (as the Council also emphasizes in its opinions) special considerations being justified when large parts of proposed legislation agree with older regulations. Firstly, impact assessments that were previously drawn up can be used. This also applies to the follow-up of the consequences of issued regulations as carried out by a government agency in accordance with Chapter 8 of the KUF. The Council has, moreover, in applying a

general principle on proportionality, accepted in some cases that an impact assessment was less detailed in the parts where the proposal entailed no material innovations for the businesses concerned. It can be added that the Council, despite the impact assessment being incomplete, assesses the quality of what has actually been described in the inquiry.

In summary, the Council believes the starting point for a regulator must be that the impact assessment covers everything being proposed in a new statute even when it partially corresponds with previous regulations in the field. It is regrettable that this view is not shared by all regulators, but this can probably be explained by the regulations not being crystal clear in all their parts. The condition of a government agency interpreting the obligation of drawing up impact assessments in a more restricted sense than the Council does, however, does not constitute an acceptable reason for the government agency to deviate from the Council's approach in its lawmaking. According to regulations currently in force, it is up to the Council – and not the regulators – to assess which requirements should be laid on an impact assessment. It is urgent for many reasons that these requirements be applied uniformly, as stated in the interview inquiries that were carried out (see Section 4). Regulators that consider the requirements laid down by the Council to be unsuitable should, in other words, follow them, but they naturally have the opportunity to demand of the government that the regulations on impact assessments be changed.

Alternative solutions

In accordance with Chapter 6, Section 2 of the KUF, an impact assessment must contain a description of what alternative solutions exist for what is to be achieved, and what effects will occur if no regulation is brought about. The description of alternative solutions for a proposed regulation constitutes an important basis for the assessment of whether the best administrative solution has been chosen.

The Council has frequently found deficiencies in the description of alternative solutions, which in many

cases has made it difficult to see if a less complicated solution for businesses would have been possible. It is seldom, for example, that possible alternatives to binding regulations are described, such as general advice or information efforts. It is also infrequent that the regulator shows alternatives to formulating the regulations.

A particular problem arises in connection with incorporating EU directives. It certainly acts in such a way that Swedish regulations cannot deviate from what has been decided on through the directive. As regards the method for incorporating, there is normally no freedom of choice for the Swedish regulator; the goal to be achieved according to the directive must be clear from the binding regulations on the national level. The Council has, however, found that the circumstances now indicated not infrequently led the regulator to argue that the issue of alternative solutions is answered solely through a statement that incorporation cannot be carried out except through a statute.

The Council here wishes to emphasize that the requirement for an impact assessment to contain a

description of alternative solutions is not met simply through such a statement. In most cases, the statute through which a directive is to be incorporated can be formulated in many different ways. It is therefore important that the assessment of alternative solutions should not put a stop to the choice of the constitutional character of the regulations, but should also cover the material and formal contents of the regulations.

Investigatory work

From Chapter 15a of the Committee Ordinance (1998:1474), it is clear that a committee report must include an impact assessment in accordance with Chapters 6 and 7 of the KUF. In the Council's view, it may therefore be suitable for the government to concretely indicate, in terms of reference for committees of inquiry, which requirements should be laid down on the contents of the impact assessment. It is also important that officials representing ministries or government agencies in a committee of inquiry see that the requirements for the impact assessment are met.



Regulations

The Council has noticed that regulations for impact assessments do not provide clear instructions regarding in which cases an impact assessment must be drawn up and what requirements can be laid on it. It is primarily Chapters 4, 5, and 7 of the KUF and Chapters 14, 15, 15a, and 16 of the Committee Ordinance that are unclear in this regard. The Council therefore intends to take up the question of the need for changes during 2011.

Use of the European Commission's impact assessments

The Swedish Better Regulation Council has found in its review that the regulator very seldom refers to impact assessments done at the EU level in proposals for national incorporation of EU directives.

This general position appears to the Council as somewhat striking. The benefit of using the Commission's impact assessment as a basis when a directive is to be incorporated into Swedish law certainly varies and can be assessed case by case. How much the regulations dealt with by the impact assessment deviate from the ultimately adopted directive, and in which aspects, is of significance. Attention may also need to be paid to the time elapsed since the impact assessment was drawn up, and the deadline when the incorporated provisions should begin to apply. This does not obstruct the Commission's impact assessments from often being able to provide valuable information. Here it should also be emphasized that the Commission, the European Parliament, and the European Council are revising the system to increase the quality and topicality of the impact assessments.

The Swedish Better Regulation Council recommends that a Swedish regulator who incorporates the directives should provide information on existing impact assessments at the EU level and either indicate where they can be obtained or attach them. If the Commission's Impact Assessment Board has issued an opinion, the same routine should apply. Information on impact assessments at the EU level and opinions from

the Impact Assessment Board should be submitted under a separate header in the Swedish regulator's impact assessment.

To what extent can the government influence EU legislation that has not yet been decided?

Swedish regulators often miss the opportunity to drop administratively burdensome solutions, when they are a consequence of Union legislation. In its annual report from 2009, the Council stated, "More than half of all administrative costs for businesses are a consequence of Community legislation". The Council then stressed the significance of member states actively working to influence the legislative process in the EU for the better. With this in mind, the Council has carried out a study of Government Offices routines for influencing the formation of new EU regulations, for the purpose of identifying opportunities for improvement.

The Swedish government has several opportunities to influence both the formation of proposals for new EU legal documents and impact assessments. The Council has judged that the formation of EU legislation can be influenced mainly in the following situations:

- when the legislative proposal is drawn up in the Commission;
- when the proposal is drawn up as part of the committee procedure (also called comitology); and
- when the proposal is dealt with in the European Council.

The Government Offices have drawn up guidelines for how EU work is to be managed in these different situations. The guidelines can, in the Council's opinion, be improved without the current organisation being changed. In the Council's opinion, it is desirable that the participation of Swedish experts in the Committee's expert groups and implementation committees be more effectively used. There is also reason to carry out analyses of proposals for new EU legislation earlier than occurs at present. The Council, in a letter to the government, proposed the following measures to strengthen the government's routines in connection with EU legislation.

Proposals for measures

Proposal 1. It should be indicated in the guidelines that the government, at the moment it submits positions in connection with a public consultation led by an EU committee, remark on the proposal's administrative effects as well as on other economic consequences for Swedish businesses.

Proposal 2. It should be indicated in the guidelines that Swedish experts participating in work groups under the Commission, officials representing the government in informal contacts, and officials representing the government in the so-called implementation committees push for the circumstances for Swedish businesses being noted as far as possible in the Commission's impact assessments, and for the proposal being formed so that the goal is achieved at the lowest possible administrative cost.

Proposal 3. It should be indicated in the guidelines that a policy stance memorandum be drawn up in every case that concerns proposals for new EU legal documents and not just for 'more important' cases. In connection with the drawing up of a policy stance memorandum, the effects of the proposal on Swedish businesses should be elucidated, in which the requirements that apply in accordance with the Regulatory Impact Assessment Ordinance (2007:1244) can be a guide. The position in a policy stance memorandum should be built on avoiding unnecessary administrative costs for Swedish businesses.

Proposal 4. It should be indicated in the guidelines that those participating in Council negotiations at different levels on behalf of the Swedish government should, as far as it is possible, demand that there be an acceptable basis for the effects of the proposal on businesses. For example, this could mean that the Swedish representative must request that the Commission or Council draw up a new impact assessment. Those participating in the Council negotiations at different levels should further push for the proposal being formed so that the goal is achieved at the lowest possible administrative cost.

Proposal 5. It should be indicated in the guidelines that consultation take place with the business sector and that the scope of the consultation be documented in memoranda of facts, policy stance memoranda, and similar preparatory material.

Reflections

- In general, the Council rejected impact assessments that did not deal with a new statute in its entirety, even if the statute was partially built on older regulations.
- The requirement for an impact assessment to contain a description of alternative solutions is not met simply through a statement that no other opportunity than the issuance of a statute exists. The Council requires, among other things, that alternative methods for forming the regulations should be considered.
- Swedish regulators that incorporate directives must, in their impact assessments, provide information on existing impact assessments at the EU level, and indicate where they can be obtained.
- Sweden, like other member states, should work more actively to improve the quality of the EU legislative process. This can occur through a more efficient use of Swedish experts in the Commission's expert groups and through Government Offices analyses of proposals for new EU legislation being made earlier in the process.
- Concrete requirements in committee terms of reference increase the chances of the forthcoming committee report containing a high-quality impact assessment.
- Regulation for impact assessments should be clearer.



LOST

CONFUSED

UNSURE

UNCLEAR

PERPLEXED

DISORIENTED

BEWILDERED

4 Follow-up

It is of great importance that the Council be given notice of what effects its opinions have on the work of the legislative process. The Council has therefore followed up on the legislative process based on material available on the Government Offices homepage. The Council has further conducted a questionnaire survey directed at government agencies, and also interviewed representatives from ministries, government agencies, and professional organisations that work in the legislative process and in improved regulation.

Follow-up on referrals from the Government Offices

This inquiry is based on information available through the Government Offices homepage and covers cases that gave rise to opinions from the Council between 3 February 2009 and 30 June 2010. Keeping the purpose of the inquiry in mind, it was limited to those cases where the Council objected to a proposal and also stated that the impact assessment was deficient.

During the period in question, the Council handled 70 cases of the type just named. During the Council's follow-up, which lasted from July to mid-August 2010, the legislative process was completed in 40 of them. That the remaining 30 cases did not give rise to a legislative process can obviously be due in part to the inquiry being carried out shortly after the end of the period reviewed. In 63 percent of the 40 completed cases, a new impact assessment was drawn up, or the existing one was completed. In practically all the cases, this work took place as a consequence of the criticism from the Council. On the other hand, the proposed legislation was changed only in a few individual cases.

The questionnaire survey

The questionnaire was sent to the 23 government agencies that received opinions from the Council between 1 January and 30 June 2010. The purpose of the questionnaire survey was to investigate which

effects the Council's opinions had on the legislative process of the government agencies. The questionnaire was answered by seventeen agencies. Of the seven government agencies that received objections from the Council, three reported that they changed their proposal as a consequence of the objection. When the government agencies did not change their regulation proposals, the reason could have been that the objection had its basis in the impact assessment being deficient. The existence of such a deficiency does not prevent – as indicated above – the government agency from showing that the solution chosen was the best, on the basis of further analysis. In this context, it can also be mentioned that two of the five government agencies criticized for deficient impact assessments referred completed assessments to the Council. From the questionnaire responses, it is clear that the most common reason for impact assessments not being completed is that the government agency could not heed the criticism because of time or resources.

The interview inquiry

To further investigate the effects of the Council's opinions, an interview inquiry was conducted with fifteen people. Those participating in the survey were, as just mentioned, representatives from the ministries, government agencies, and professional organisations responsible for the legislative process and improved regulation.

From the inquiry, it emerged that all interview subjects consider the Council to be an important partner, and that the Council's role as a 'watchdog' is perceived as contributing to a gradual increase in the quality of the impact assessments. Several regulators reported that the lack of time resulted in the Council's opinion rarely making a difference in an individual case. The opinion rather led to a gradual building up of awareness and a desire to do better at the impact assessment the next time. Therefore, it is important that it be clear in the Council's opinions what should be changed and how.

Representatives from the business world insist that the Council has entirely too weak a mandate, as regulators can choose to ignore the opinions. Many indicated that the Council's work has effects on the impact assessments but not on the legislative process as a whole. That is to say, it is partly owing to the Council's judgement of whether a proposal could be objected to being limited to the proposal's effect on the administrative costs of the businesses. The regulators emphasized that it is irritating that various opinions exist on what an impact assessment should contain when it is a question of new regulations that partially agree with older regulations. As regards this issue, representatives from professional organisations reported that they stand behind

and applaud the Council's position on requirements for complete impact assessments as the only possibility to get at existing regulations that had not previously had their impacts assessed. Representatives from professional organisations also mean to say that the Council's opinion on the issue is completely justifiable since material changes in parts of the set of regulations often mean that the application of the entire set of regulations changes. Some regulators said that it is certainly a laudable principle that the impact assessment should, without exception, cover everything proposed when it is an issue of new regulations but that in the current situation it could be an unrealistic requirement with a view to available time and resources.



Reflections

- The Council's operations are regarded as raising the quality of the legislative process in the long run.
- Representatives of the business world, the Government Offices, and government agencies say that the Council is an important partner that is contributing to raising the quality of impact assessments.
- The Government Offices and certain government agencies have, in a number of cases, completed their impact assessments after criticism from the Council.
- Representatives from the business world share the Council's opinion that an impact assessment should always be complete when it is a question of new regulations and see it as the only possibility of getting at existing rules, and regret that there is no unity on the issue.
- Some government agencies have as of late referred a completed impact assessment for new evaluation.
- A lack of time and resources means that it is difficult for government agencies to generally live up to the Council's requirements and improve their proposals in individual cases.



GOOD

BEST

BETTER

5 The Council's other tasks

Advice and information

A general task for the Council is promoting cost-conscious and efficient lawmaking. As part of this, the Council met with representatives from ministries and government agencies to discuss the legislative process and the work with impact assessments. The Council has held meetings with the legal secretariats in the Ministry of Justice and the Ministry of the Environment, as well as the Norrbotten county administrative board, the Swedish Board of Agriculture, the Swedish Financial Supervisory Authority, and the Swedish National Board of Forestry. The Council's opinion is that these meetings are appreciated and increase the understanding of the Council's operations. Further meetings are planned for 2011.

The Council's offices work with the education on impact assessments that the Swedish Agency for Economic and Regional Growth organises for regulatory government agencies.

The Council took part in the Swedish Agency for Growth Policy Analysis reference group regarding the 'Effects of rules on enterprises' project. The project concluded in a report, 'The Economic Effects of Regulatory Burden - A Theoretical and Empirical Analysis', which was submitted to the government on 22 December 2010.

Tips and advice on what a government agency should observe in its work on the legislative process are published on the Council's homepage. Opinions and Secretariat responses are also continuously published on the homepage, along with the referred proposals. The homepage also contains information on what's being written in the media on improved regulation, and there are also useful links to the homepages of other partners in the field of improved regulation. During 2010, the homepage had 3,200 unique visitors, and the website's pages were shown on 27,300 occasions. On average, the website has 17 visitors per day, which clearly exceeds the frequency of visits from

last year. The Council is also on Twitter, which is something new for 2010. It is also possible to contact the Council through Twitter, get informed about the Council's opinions, and find articles and links of interest on improved regulation.

Support for committees

The Council's tasks include assisting committees of inquiry in forming impact assessments. This work was instituted in 2009. Committee support that year chiefly consisted of general informational and educational efforts.

Occasionally direct support was rendered to individual committees upon inquiry. Bearing in mind that only 11 of the 35 committee reports referred during 2009 contained acceptable impact assessments, a need for an increased effort in education appeared. Therefore, the Council had a more active approach towards the committees in 2010. The new set-up means that the Council is seeking out every new committee and offering advice and support in impact assessments. Committee support has naturally been aimed at the parts of an impact assessment that are interesting from a business perspective, such as market structures, alternative solutions, and the administrative and other costs that carrying out a proposal can give rise to.

In this context it can be mentioned that several committees of inquiry have moved to the Garnisonen section of Östermalm in Stockholm, where the Council has its offices.

A questionnaire was sent to 16 committees that had personal meetings with the Council during 2010. From the questionnaire, it is evident that more committees than previously are aware of the Council's task of assisting with committee support. Almost all of the committees have reported that the support rendered during the meetings was useful for their work with impact assessments, and they recommend such support to other committees.



Business contacts, etc.

During 2010, the Council has been in continual contact with the Board of Swedish Industry and Commerce for Better Regulation (NNR). The Council also participated in the NNR annual meeting and in the Board's seminars around topical issues in improved regulation.

The Council also met with the Swedish Federation of Business Owners; the Swedish Trade Federation; Almega; the Federation of Swedish Farmers; the Association of Swedish Engineering Industries; the Swedish Transport Group; the Confederation of Swedish Enterprise and its Norwegian counterpart, the Confederation of Norwegian Enterprise; and participated in seminars during Almedalen Week in Visby.

Additionally, the Council participated in regional meetings with the Confederation of Swedish Enterprise in Luleå and Jönköping, which were aimed at the exchange of information and dialogue around improved regulation. At these meetings, the Council submitted general information about its review of proposed legislation and impact assessments. Representatives of the business world informed the Council of the regulations that business experienced as problems.

An international view and collaboration with other councils and partners

During 2010, the European Commission adopted a new simplification and action programme to strengthen activities aimed at improved regulation. The programme will be in effect until 2020. The Commission has chosen to name the new programme, a continuation of the Commission's earlier 'Better Regulation' simplification and action programme, 'Smart Regulation'. This programme involves simplifying current legislation, and raising the quality

and increasing the use of impact assessments when new legislation is prepared, thereby minimising the administrative burden for European businesses. As part of Smart Regulation, the Commission also intends to develop a method for systematic evaluation of legislation after it has gone through.

During 2010, the Council's counterparts in the other EU countries were the Adviescollege toetsing administratieve lasten (ACTAL) in the Netherlands, the Nationaler Normenkontrollrat (NKR) in Germany, and the Regulatory Policy Committee (RPC) in Great Britain. They are all independent organisations tasked with reviewing and giving advice to the governments of their respective countries as regards improved regulation and reducing administrative costs. The Council has had ongoing contact with these organisations during 2010 and met with them several times. In January 2010, RPC held a meeting in London; in May, the Council met with NKR in Berlin in connection with a seminar on compliance costs.

Various partners in the field of improved regulation were consulted in connection with the inauguration of the Committee's 'Smart Regulation' action programme. The Council, together with Actal, NKR, and RPC, repeated their previous opinion in their joint response to the Commission that the quality of impact assessments and the calculation of the administrative costs would be improved if the review was made by a stand-alone body, a so-called watchdog. The opinion that a stand-alone, independent review body contributes to raising the quality of proposed legislation and impact assessments is also presented by the OECD in their report 'Regulatory Policy and the Road to Sustainable Growth' published on 15 October 2010.

In June 2010, the Council was invited to report on its operations at a Nordic meeting on better regulation in Vaxholm.

During 2010, the Council participated in several seminars on issues in improved regulation. In June in Madrid, the Council participated in the International Regulatory Reform Meeting, and in October in the OECD conference on better regulation in Paris. In December, the Council participated in the Smart Regulation and Smart Communication conference in Brussels. The Council was also invited to and participated as an observer in two meetings of the European Commission's High Level Group on administrative burdens, known as the Stoiber Group.

In March 2010, the Council's secretariat undertook a fact-finding tour to Brussels. During the trip, meetings took place with representatives from the Commission,

including the Impact Assessment Board, the European Council, and the European Parliament. One purpose of the trip was to provide a briefing on the Council's operations and to exchange experiences on the work with better regulation and impact assessments. The head of the Council's secretariat undertook a fact-finding tour to Canada and the US in November 2010 with representatives from the Ministry of Enterprise, Energy, and Communications, NNR, the Swedish Agency for Growth Policy Analysis, and the Swedish Agency for Economic and Regional Growth to acquaint themselves with those countries' work on impact assessments and the review thereof, as well as economic calculations. During the trip, the delegation met with cabinet officials from both countries.



Reflections

- There is still a need to educate regulators as regards formulating statutes and impact assessments. The Council is actively working on this.
- A stand-alone, independent review body (watchdog) contributes to increasing the quality of proposed legislation and impact assessments. Such a body should therefore be established within the EU.



6 Conclusions and recommendations

Conclusions

The Council has, for nearly two years, systematically reviewed new and amended regulations that affect the administration and finances of businesses. After the first year, it was established that the need for review is great, and that there are deficiencies in the legislative process. After having issued 171 opinions during 2010, it can be pointed out that many inadequacies remain.

An overwhelming majority of objections, as in the previous year, were due to deficient impact assessments. The Council, in the majority of these cases, was unable to decide whether the most suitable solutions from an administrative point of view had been chosen.

Certain regulators, for example the Ministry of Enterprise, Energy, and Communications and the Swedish National Board of Housing, Building, and Planning, have clearly improved their legislative process and the quality of their impact assessments, while others are mostly characterised by a great potential for improvement. The yearly statistics, unfortunately, show no general improvement in the quality of the impact assessments.

It is difficult to assess the extent to which the Council has contributed to reducing the inconvenience to business and industry. Expectations of the Council are, however, still great. Representatives from the business world, the Government Offices, and government agencies have stated that the Council is an important partner that can raise the quality of impact assessments. It is also the Council's impression that the review of their advice has the effect of improving regulators' competence concerning work on impact assessments. For example, an impact assessment was not often as entirely absent in contrast to the preceding year.

As regards the legislative process, it is rare that an objection leads to the referred proposal being

reworked. The government agencies have stated that a shortage of time and resources means it is difficult for them to live up in general to the Council's requirements and improve their proposals in individual cases. In the long run, it is still maintained that the Council's operations increase the quality of the legislative process.

From certain quarters, the wish that the Council's opinions could be clearer has been brought forward. The Council has tried, within the limits of its resources, to accommodate this through gradually developing its motivations. Greater demands for thoroughness, however, occur at the expense of the number of opinions. If the Council devotes greater resources to more thorough opinions, the number of Secretariat responses will increase.

A general problem with achieving the 25 percent goal is that the work on improved regulation aims at new and amended regulations, and not at the existing stock of regulations. Thus only new or amended regulations are referred to the Council. If the impact assessments generally cover everything proposed in new statutes, the opportunity arises to review older regulations that were not preceded by an impact assessment when these are moved over to a new statute. It is against this background that the Council has so strongly emphasised that, when it is a question of new regulations, the starting point should always be that the impact assessments cover everything proposed. This opinion is also supported by representatives from the business sector.

It is clear from various inquiries that businesses have not noticed any relief in the burden of regulations. The Council therefore wishes to emphasise the urgency in regulators continuously reviewing the regulations that cause the most problems for businesses in terms of administration. There is such an obligation for government agencies (Chapter 8, KUF).

More than half of all administrative costs today are a consequence of European Community legislation. Sweden, like the other member states, should therefore work more actively to improve the quality of the EU legislative process. This can occur through a more efficient use of Swedish experts in the Commission's expert groups and through Government Offices analyses of proposals for new EU legislation being made earlier in the process. A stand-alone, independent review body contributes to increasing the quality of proposed legislation and impact assessments. Such a body should therefore be established within the EU.

It is important that the work with impact assessments is submitted early in the legislative process. For this, clear terms of reference for committees of inquiry and

others who submit proposals for the legislative process are needed. There is still a need to educate regulators as regards formulating statutes and impact assessments. The Council is actively working on this and is setting aside more and more resources for this task.

The Council's conclusion is that it will take time to achieve changes in behaviour among the regulators. The Council looks forward to continuing the important work of raising the quality of lawmaking and the impact assessments, thereby reducing the inconvenience for companies affected.



Photo: Holger Staffansson



Photo: Pawel Flato

Recommendations to regulators and the Government Offices

See to it that:

- sufficient time and resources are set aside for work with impact assessments;
- investments are made in continuous training in how to write good statutes and impact assessments;
- the Council's opinions are observed in the work of the legislative process;
- terms of reference for investigatory work contain concrete requirements for impact assessments;
- all EU legislation is built to the greatest extent possible on acceptable impact assessments;
- Swedish experts are used more effectively in European Commission expert groups and Government Offices analyses of proposals for new EU legislation are made earlier in the process;
- The EU establishes an independent review body (watchdog) to assess the legislative process and the quality of impact assessments.



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The Swedish Better Regulation Council is a Government committee of inquiry. The Council is an advisory body to the regulators and reviews the formulation of proposals for new and amended legislation that may have financial effects on businesses. The 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, but must not take a position on the political purpose of the proposal. The Council also assesses the quality of the impact assessment.

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