

FROM EU PROPOSAL TO GOVERNMENT AGENCY REGULATION

– achieving simple and effective rules

**TILLVÄXT
VERKET**

Regel|rådet



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PREFACE

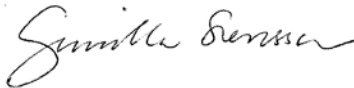
The publication is aimed in particular at individuals working with EU legislation at government agencies. The Government wishes to adopt a simpler regulatory framework to achieve a noticeable positive change in the day-to-day running of businesses. In order for a real change to take place, the rules decided at EU level will also have to become as simple as possible. This publication is the result of collaboration between the Swedish Better Regulation Council (SBRC) and the Swedish Agency for Economic and Regional Growth (SAERG), who both hold special mandates in the Government's work to simplify the rules for businesses.

In 2010, the SBRC produced a report on how the Government Offices could improve its work on simplifying rules in conjunction with EU legislation. The SBRC and the SAERG have now taken this a step further and looked at how the corresponding work at government agencies can be driven forward. We have interviewed a number of representatives from various government agencies in order to learn about their experiences of simplifying rules in conjunction with the work with EU legislation. We would particularly like to thank those representatives of government agencies who have shared their valuable experiences in the interviews.

We now encourage all government agencies to read and be inspired by the examples, conclusions and proposals that we present here. This will help to find new ways of influencing the regulatory framework being worked out in the EU. Whilst much work remains, it is encouraging to see the willingness to make simplifying rules a natural part of the agencies work with EU legislation. Please take inspiration and increase the opportunities for successful work on simplifying rules!



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WORKING TO ACHIEVE SIMPLE AND EFFECTIVE RULES IN THE EU AND NATIONALLY – A BACKGROUND

Nearly half of all new or amended rules in Sweden derive from the EU.¹ Just over 50 per cent of businesses' administrative costs during the period 2006–2010 can be attributed to legislation based on EU law.² Once an EU legal document has been adopted and is to be incorporated into Swedish law, it is often too late for government agencies to do anything to simplify the rules. It is therefore of great importance that government agencies work to achieve simple and effective rules in the processes that lead up to a final legal document.

Every day, Swedish companies must comply with a whole raft of rules, which can often be perceived as burdensome. In order to enable businesses to spend more time and resources on their core business, the rules that exist must be simple to follow, easy to understand and control exactly the thing the rules are intended for. This is an important prerequisite to enable businesses to grow, employ people and contribute to increased welfare.

If rules create high costs for businesses, this impacts on entrepreneurship and competition, which can lead to lower economic growth in society.³ Simple and effective rules are therefore important also from a macro-economic perspective. This creates prerequisites for a better business climate and reinforces Sweden's competitiveness from an international perspective.

Better regulation in Sweden and the EU

Both the Swedish Government and the EU Commission have programmes for how the work with simplifying rules shall be carried out. Many EU member states are working in a corresponding way to simplify rules. In order to reduce administrative costs for businesses within the EU, the EU Commission has an action programme for the work on simplifying rules. All member states have also set quantitative objectives for reducing the administrative costs for businesses.

In Sweden, work on simplifying rules is carried out to reach the Government's objective of achieving a noticeable positive change in the day-to-day running of businesses by means of a simpler regulatory framework. This is a long-term project with high priority, involving both ministries and government agencies. For the period 2011–2013, the Government has produced a programme for broadening, developing and deepening the work further. Here, the Government emphasises that an

¹ The Government's action plan for work on better regulation 2009/10, p. 10.

² Swedish Agency for Economic and Regional Growth, *Utveckling av företagens administrativa kost [Development of administrative costs for businesses] 2006–2010*, p. 12.

³ Growth Policy Analysis *Regelbördans ekonomiska effekter – En teoretisk och empirisk analys, [The Economic Effects of Imposing Rules - A Theoretical and Empirical Analysis] 2010:14*, p. 65.



important factor for achieving success in the national work on simplifying rules is that simplification measures must also be taken at EU level.

What are Swedish government agencies doing?

Through their regulations, Swedish government agencies create many rules that affect businesses. In their regulatory work, the agencies must often keep to what has been decided in the EU. Thus the room for action to influence the formulation of Swedish regulations is often very limited. The experiences of the SBRC and SAERG is that the agencies feel it is difficult to simplify the EU rules that are to be incorporated into Swedish law. With this publication, we therefore want to highlight the issue of how government agencies can work on simplifying rules at the stage before an EU legal document is ready to be incorporated into Swedish law.

With a few examples from five government agencies interviewed, we show how successful simplification work can be carried out in practice. In order to provide an overall illustration, the examples are presented together with an overview of the work of Swedish government agencies in the EU's regulatory process. This is followed by the conclusions and proposals from the SBRC and the SAERG. The publication is aimed particularly at persons working with EU legislation at government agencies. The ambition of the SBRC and the SAERG in this publication is to provide inspiration in the work on EU legislation. It aims to create a starting point for discussion within and between agencies on how simplifying rules as part of the work on EU regulation can be done. The prime objective is for simplification of rules to become a natural part of the work leading up to a final EU legal document.

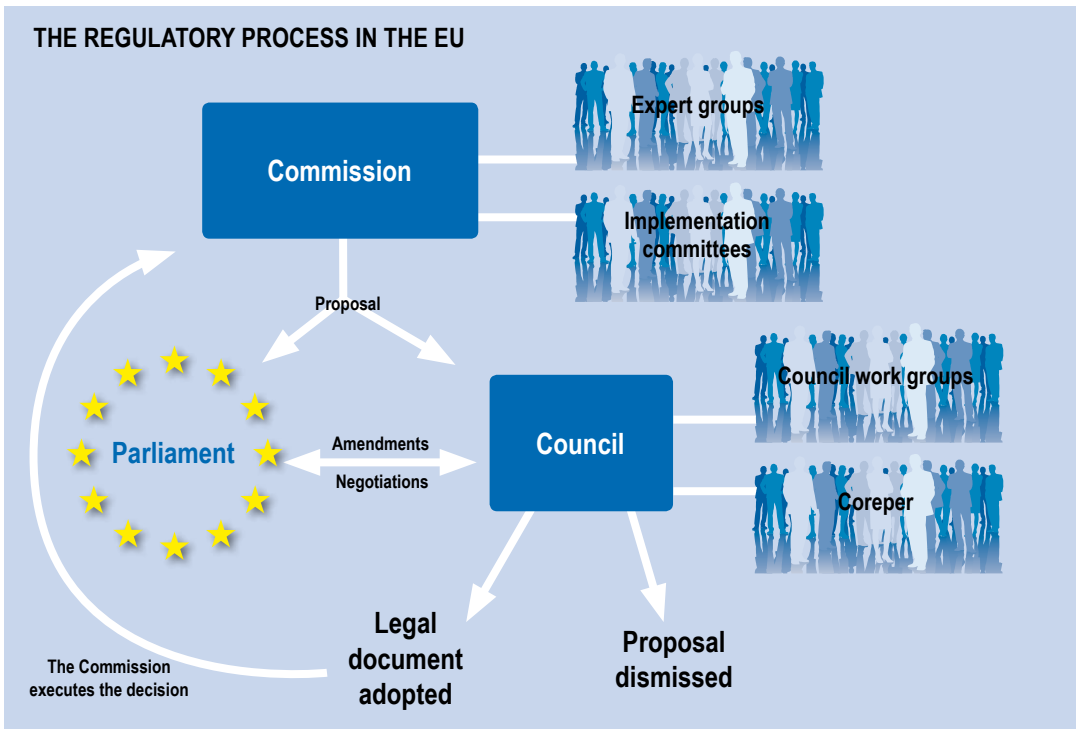
SWEDISH GOVERNMENT AGENCIES IN THE EU'S REGULATORY PROCESS

Officials from government agencies often represent Sweden in the EU's regulatory processes. The representation is often carried out in cooperation with the ministries, but is sometimes carried out by the agency alone. Within most policy areas at EU level, the so-called ordinary legislation procedure is used, where the EU Commission as well as the Council of Ministers and the European Parliament take part. Where is it then possible for Swedish agencies to influence and work towards making the regulatory frameworks simple and effective?

The Commission takes the initiative and makes proposals

When the Commission takes the initiative and makes a proposal in selected cases, the economic and social, as well as environmental, consequences are analysed in an impact assessment. Thereafter a comprehensive consultancy process is started, which can vary slightly in format depending on the issue in question.

During this phase, when the national policy stance is worked out, there are good prospects for Swedish government agencies to influence the formulation of the future regulatory frameworks to make them simpler. This can be done in consultation with the business sector through cooperation with other agencies and through documentation of the consequences the proposal might cause for businesses in Sweden, for example. The



agencies can then share their overall views in the Commission-led public consultations, and when the Commission enlists the help of the agencies' experts. Viewpoints can also be shared through informal consultation with representatives of the Commission and other member states.

Once the initiative has resulted in a concrete proposal, it is submitted to the Council and thus to the governments of the member states. In most cases, the proposal is also submitted to the Parliament.

The Council negotiates and decides on a common policy stance

In the Council, the member states try to agree on a common policy stance or view on the proposal. Each country works out a national policy stance. After this, negotiations begin to get closer to a common policy stance in one of the working groups of the Council. The negotiations then continue involving a higher level of officials in Coreper, where the prerequisites for the Council being able to make a decision are worked out. Before the Council makes the decision whether to accept the proposal or not, the views of the Parliament are also considered. If the Council and the Parliament disagree, they must negotiate with each other; if they cannot reach an agreement, the proposal is dismissed.

After the Commission has submitted its proposal to the Council and the Parliament, there are good opportunities for influencing the proposals. This can be done through informal consultations with representatives of the Parliament and the Council, as well as through the advisory role often played by agencies at this stage. The latter may be about assisting the ministry with writing policy stance memoranda before Council work meetings, or otherwise acting as support in the Council work and in Coreper.

The Commission and the committees execute the decision

The Swedish representatives on the committees helping the Commission to execute the adopted legal documents are often officials from government agencies. Once the adopted proposal has reached the committee stage, there are great opportunities for the agencies to be active. The tasks generally consist of helping the Commission with advice, control, evaluation and updates, and preparing implementation instructions for the legal documents to be implemented in the different member states.

There is therefore room for the agencies to contribute to the purpose of the regulation being achieved – and at the lowest possible cost for businesses in Sweden. In order to achieve this, it is important that the processes leading up to the adopted regulation use the needs and prerequisites for businesses as the starting point.

Five examples

There are various ways and methods for Swedish government agencies to increase the prerequisites for a better lawmaking process both in the EU and in Sweden. These are, among others, working strategically based on an overall view towards better regulation as part of the EU work, prioritising various types of businesses, or having broad collaboration with ministries and other agencies. Some examples illustrating this are presented on the following pages.



Swedish Environmental Protection Agency

AN OVERALL VIEW AND BROAD COLLABORATION WITH BUSINESS

In order for the EU work to result in simple and effective regulatory frameworks, an overall view is needed as well as strategic work on the part of the agency.

“For the Swedish Environmental Protection Agency, this means, in addition to considerable work with planning, analysis and evaluation of the EU work, that the prerequisites of business shall be considered at an early stage,” says Leif Bernergård, Administrator at the EU Unit.

The EU work is a central part of the work of the Agency, and Swedish environmental rules often originate in the work carried out in the EU. The environment is also one of the most EU-dominated areas of policy, with at least 250 common legal documents. As much as 94 per cent of the total administrative costs in the environmental area for businesses arises from regulations that are based on or correspond to EU legal requirements.⁴ It is therefore natural that the Agency puts great focus on its officials taking part in the work and the strategies developed within the EU cooperation.

For some time, the Agency has collaborated strategically with businesses on selected EU-related issues. The purpose is to exchange knowledge and views and to identify any joint input. This might relate to how the work in the various lawmaking processes is to be carried out, or find a common view on the rules that may impact on the competitive terms and prerequisites of businesses. Leif Bernergård explains that broad-based collaboration meetings with business are held twice a year, and that a planning committee has been appointed to plan and decide when these meetings are to be held.

“First we draw up a joint agenda and during the meeting we decide which areas are particularly important for in-depth cooperation. Thereafter we form working groups that continue the work in the areas highlighted. The first areas chosen were the EU’s work on resource efficiency

⁴ Swedish Agency for Economic and Regional Growth, *Näringslivets administrativa kostnader för miljöområdet, Uppdatering 2009 samt prognos under och efter 2010* [Administrative costs of businesses for the environmental area, Update 2009 and forecast for and after 2010], p. 19.



Leif Bernergård

and on socio-economic impact assessments. In the working group on impact assessment, for example, we discuss with businesses the models that should be used to calculate economic effects on Swedish businesses, and how the competitiveness and prerequisites of Swedish businesses differ from what is described in the impact assessments carried out at EU level. We feel that the collaboration groups have worked very well. They help us learn about the prerequisites that apply for businesses, which are then of great benefit when we work in the EU. We intend to deepen the collaboration and appoint more working groups,” Bernergård says.

“Broad-based collaboration meetings help us learn about the prerequisites that apply for businesses, which are then of great benefit when we work in the EU.”





Swedish National Food Agency

THE SMALL BUSINESS PERSPECTIVE AND COOPERATION WITH OTHER MEMBER STATES

“The area of food is largely governed by EU regulations that are directly binding in Sweden. Almost all administrative costs for businesses within the area derive from such regulations or directives adopted nationally.⁵The Swedish National Food Agency has therefore a broad mandate in the EU work, where the Agency’s officials participate in practically all types of groups. The entire food sector also consists mainly of small businesses. It has therefore become even more important to consider the small business perspective in the EU work,” says Gunilla Henrysdotter, Lawyer at the Regulation Development Department.

Better regulation is a natural part of the work of the Agency within the EU.

“All staff members working with rule development have knowledge about rule simplification aspects,” explains Stefan Ernlund, Deputy Manager of the Regulation Development Department. The Agency often receives clear directives about rule simplification from the Ministry, which is an important prerequisite for continued good work on simplifying rules.

Rules are a burden on businesses to varying degrees in relation to turnover or per employee. In order to publish information and find out what the businesses affected think on various issues, the Agency regularly sends out the proposals for comments to various actors and arranges consultation meetings and hearings as required. The Agency considers it an important task to reach out to small businesses, who are often affected by the Agency’s regulations. Gunilla Henrysdotter emphasises that communication on future EU regulations with small businesses is a prerequisite for creating good regulation.

In an interview survey, the Agency gathered that the need for support from the Agency varies with the size of the business.

“This conclusion was probably no surprise, but as small businesses often have small resources and problems learning about issues, per-

⁵ Swedish Agency for Economic and Regional Growth, *Näringslivets administrativa kostnader för miljöområdet, Uppdatering 2009 samt prognos under och efter 2010 [Administrative costs of businesses for the environmental area, Update 2009 and forecast for and after 2010]*, p. 19.



Gunilla Henrysdotter



Stefan Ernlund

sonal contacts with small businesses is important in order to pass on information,” Henrysdotter says.

The Agency also cooperates directly with other EU member states on issues of better regulation. As the Agency’s staff often have a “senior” roll in negotiations, contacts with the Commission and other member states are well established.

“The Agency in collaboration with the Government has often contributed to stopping proposals for EU regulations that would have entailed more red tape. The agencies can make a difference here by collaborating with other countries with an agenda for better regulation similar to that of Sweden,” Ernlund argues. According to the Agency, the opportunities that exist to achieve simplification consist of both reviewing the implementation and interpretation of EU law, and working towards simpler rules in EU negotiations on future legislation, and also of utilising the opportunities for exemptions and simplification for small businesses that exist in the EU regulations.

“Communication on future EU regulations with small businesses and cooperation with other countries with an agenda for better regulation agenda similar to that of Sweden is a prerequisite for creating good regulation.”





National Electrical Safety Board

COLLABORATION BETWEEN GOVERNMENT AGENCIES FAVOURS BUSINESSES

“The area of responsibility of the National Electrical Safety Board is regulated by Swedish legislation and ordinances, which in some cases are based on EU directives. The Board does not have any particular EU mandate, but is responsible for two specific EU directives within its area. In the operation of the Board, EU work is only carried out in the form of participation in the Commission’s working groups. As the EU directives have mainly technical content, officials who participate in the working groups have mainly been technicians,” says Carina Larsson, Lawyer at the Board.

When it comes to the focus of the working group, simplifying rules is not a priority area.

“There seems to be high tolerance to regulation among those who work with a regulatory framework with a primarily technical content,” Larsson explains. “However, this view is beginning to change, and the better regulation perspective is increasingly considered when drafting EU legal documents with a mainly technical content,” she continues. “This means that the continued work in the working groups will have a broader content. The Board welcomes this, and is now broadening the perspective towards also covering legal and other issues associated with the regulation work.”

Better regulation is at the same time a priority issue at the Board. The fact that the Board does not participate in negotiations at EU level where many other agencies are active means that it can be difficult for the Board to affect EU regulations governing the Board’s area of responsibility from a rule simplification point of view. However, the Board considers that an awareness of any opportunities for simplification and various alternative procedures can sometimes go a long way if the Board wishes to achieve an improvement in the area. As a step towards



Carina Larsson

improving the day-to-day operation of businesses and in order to build a common foundation for routine coordination between agencies, the Board has run collaboration projects focusing on business issues in conjunction with the Swedish Energy Markets Inspectorate, the public utility Svenska Kraftnät (the Swedish National Grid) and the Swedish Energy Agency.

Larsson believes in collaboration and thinks that it is important to communicate with other agencies at an early stage.

“Through early contacts with the other agencies handling associated directives, where the same business is often forced to comply with documentation requirements and other set requirements, coordination can be discussed and duplicate regulation be avoided,” Larsson concludes.

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Swedish Energy Agency

CLEAR PRIORITIES FROM THE MINISTRY ARE IMPORTANT

A large part of the work of the Energy Agency is linked to work carried out in international circumstances. Staff from the Agency participate in groups within EU and within several organisations at Nordic, European and global level. The EU work is a central part of the work of the Agency, and Swedish environmental rules often originate in the work carried out in the EU. The Agency usually works on the basis of instructions from the Ministry in negotiations.

“Through clear and concrete directives from the Ministry to all the agencies involved, the work carried out within the area of eco-design, for example, has been particularly successful,” says Fredrik Selander, Lawyer at the Agency.

When it comes to better regulation as a natural part of the EU work, the Agency has developed collaboration forms within the framework for eco-design work with businesses, other agencies and ministries affected. The Agency holds regular synchronisation meetings with those involved ahead of negotiation meetings in Brussels, where the consequences of the proposal are discussed in detail.

“The Energy Agency is very proactive in this intensive work. We have a group at administrator level where the factual issues are discussed and a group at managerial level where more strategic issues are dealt with,” Selander says. The purpose of the synchronisation meetings is also to avoid duplicate regulation at national level as early as possible, and also duplicate regulation among EU directives. Here, the rule simplification perspective is an important strand in the Agency’s work, where early dialogue with the other agencies involved is an important tool when it comes to facilitating the everyday work of businesses.



Fredrik Selander

The Agency produces impact assessments at an early stage of the effects on Swedish businesses of any implementation of EU proposals on the eco-design area. The Agency recognises that a completed Swedish impact assessment provides an opportunity to influence Sweden's policy stance on future EU regulations from a business perspective. In order to quickly collect as many viewpoints as possible from the sector, surveys are sent by email to the businesses involved.

"In general, it is the Ministry that sets the agenda also when it comes to rule simplification. As the Agency's staff often is directed by the Ministry's instructions, it is important that the Ministry is clear in its simplification ambitions in its instructions to the Agency," Selander states.

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GETTING HELP FROM THE EU'S IMPACT ASSESSMENTS

The EU work is one of the corner stones of the work of the Swedish Post and Telecom Agency. The Agency's staff participate in most of the processes leading up to a final EU legal document, which often concerns harmonisation of the market for electronic services. Among other areas, the Agency is active within EU on simplifying matters for manufacturers, operators and consumers.

The Agency, along with 52 other agencies, has worked on the Government's mandate to review what the Agency can do to simplify the day-to-day running of businesses. The Agency has put a lot of effort into identifying and simplifying various regulatory frameworks within the Agency's area of responsibility. When it comes to rule simplification as a part of the EU work, Ola Bergström, International Coordination Manager at the Agency, see great challenges. "There are two aspects in particular that are important in order for the work to develop and where we can improve. To begin with, as a government agency we need to get better at working strategically with rule simplification within the EU work; additionally, we need clear mandates from the Ministry in order to take this work further. We need to maintain a close dialogue with the Ministry in order for the rule simplification aspect to become a natural part of the EU work we largely carry out together. As things are today, we are successful in some cases, while the rule simplification aspects is perhaps not highlighted enough in other cases."

"When we participate in the regulatory processes in the EU, we feel there are great opportunities for us to exercise influence," says Bergström. "The regulatory framework we work with requires a great deal of in-depth technical knowledge, which means that the Agency, as representative of Sweden, often has great opportunities to exercise influence. Something that helps us in the work with EU legal documents



Ola Bergström

is reading the impact assessments carried out at EU level. The Commission investigates possible consequences of a proposal within a number of selected areas, and this then helps us in the work of analysing the consequences for the businesses affected in Sweden. The impact assessments are published on the Commission's website, and our ambition is to check throughout if an assessment has been produced.

"Also," Bergström adds, "we have a feature on our website where businesses can submit proposals for how regulations being drafted can be more simply formulated. This is a relatively simple measure which, in addition to the consultation we carry out within the framework for the work on EU regulations, can help us to learn how businesses regard the rules emanating from the EU. We would like businesses to use this feature to a greater extent in order to share their viewpoints."

"Something that helps us in the work with EU legal documents is reading the impact assessments carried out at the EU level."



CONCLUSIONS AND PROPOSALS FROM THE SWEDISH BETTER REGULATION COUNCIL AND THE SWEDISH AGENCY FOR ECONOMIC AND REGIONAL GROWTH

There are many factors that influence the opportunities for rule simplification to become a natural part of the work on EU legislation. This is shown not least by the interviews on the previous pages. There are plenty of ambitions, ideas, knowledge and experiences to share with other regulators. By hearing and learning from how others work, the opportunities can increase for the agencies' work with EU legislation resulting in simpler and more effective regulatory frameworks.

Many national rules that impact businesses have their origin in EU regulations. Therefore, the Swedish Better Regulation Council (SBRC) and the Swedish Agency for Economic and Regional Growth (SAERG) consider that the work on achieving simple and effective rules must be intensified, both at national and at EU level. In order for the rule simplification aspect to become a long-lasting and successful part of the work of all government agencies on EU legislation, the SBRC and the SAERG wish to emphasise some important prerequisites. In their work with rule simplification and EU legislation, government agencies should put special focus on three main areas:

Internal guidelines and mandates from ministries

- State that rule simplification shall be part of the negotiating work in the documented internal guidelines and procedures for EU work.
- Ensure that competence gained in rule simplification is retained within the agency by creating and documenting procedures for knowledge/competence transfer within EU work.
- Ensure that the agency works with the ministry responsible so that the mandates for the EU work are clearly focused on rule simplification.

Impact assessments

- Use impact assessments produced at EU level in the work of investigating the impact on the businesses involved in Sweden.
- Produce an impact assessment of future EU legal documents as early as possible. This is in order to assess how the proposal may affect businesses in Sweden, and to evaluate alternative solutions for achieving the purpose of the proposed regulation.
- Use the impact assessment produced as the basis for influencing Sweden's policy stance on future EU regulations from a simplification perspective.

Consultation and collaboration

- Consult with businesses and note especially the economic effects a proposed EU legal document may have on different categories of businesses.
- Collaborate with other agencies to avoid duplicate regulation and to coordinate the work on proposals that extend across several subject areas.
- Work to ensure the economic effects of the proposal in question on businesses in Sweden are an important factor when the agency:
 - participates in Commission-led public consultations
 - participates with its own experts in the Commission's consultations
 - consults informally with the Commission, the Council and the Parliament
 - participates in Council working groups and the work in Coreper
 - works together with ministries to develop a policy stance memorandum
 - works together with ministries to write instructions ahead of committee meetings
 - participates in committee work
- Collaborate with other member states that have clear rule simplification ambitions in order to influence the formulation of EU legal documents as far as possible.

Other actors than government agencies must drive the work forward

There are many pieces in the puzzle that must fall into place in order for rule simplification to become a natural and integrated part of the agencies' EU work. The SBRC and SAERG have identified other factors that may drive the agencies' work forward on this issue. For example, it is good if internal competence development on rule simplification and impact assessments is provided and the work on impact assessments is coordinated internally, so that the correct competences are brought to the work.

While much can be done internally, the opportunities of achieving long-lasting results is dependent on factors outside the control of the agency. Successful rule simplification work is often allied to corresponding work carried out in businesses and ministries. The SBRC and SAERG therefore wish to emphasise the importance of ministries in all respects striving to word the mandates to government agencies as clearly as possible, and that businesses are active in their consultations with agencies. Both businesses and ministries should be proactive in terms of rule simplification, and drive the rule simplification issue both in relation to government agencies and the EU. In this way, positive synergy effects can be created, and the opportunities for rule simplification as a natural part of agencies' EU work can increase.

The mandate of the Swedish Better Regulation Council

New or amended regulations should not have to cause unnecessary costs to businesses. This is the starting point for the work of the Swedish Better Regulation Council. The Swedish Better Regulation Council is a government-appointed committee of inquiry and advisory in relation to regulators. We examine the formulation of proposals for new and amended regulations that may have financial consequences for businesses. The Council assesses whether regulations have been formulated in such a way as to achieve their purpose simply and at the lowest administrative cost to businesses, but may not comment on the political purpose of proposals. The Council also assesses the quality of the impact assessments and provides support to government committees of inquiry and other regulators in their work on impact assessment.

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The work of the Swedish Agency for Economic and Regional Growth on simplifying the rules for businesses

Starting and running a business must be simple. Simpler rules mean lower costs, and creates room for businesses to run their operations. Simpler rules create more business opportunities for businesses, and lead to a better business climate and greater competitiveness for Sweden.

The role of the Swedish Agency for Economic and Regional Growth is to drive and develop the work of simplification in collaboration with government ministries, agencies, municipalities and businesses.

Please contact us should you have any questions!
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