



BETTER-INFORMED DECISIONS FOR BETTER REGULATION

Measures for improved impact assessments

September 2017

Author: Christina Fors

NR

BOARD OF SWEDISH
INDUSTRY AND COMMERCE
FOR BETTER REGULATION
– CUTTING RED TAPE FOR BUSINESS –

Näringslivets Regelnämnd NNR AB, Stockholm, 2017

Andrea Femrell, President and legally responsible for the compilation

Christina Fors, Senior Advisor and compilation author

Scantech Strategy Advisors, production and layout

Summary

The importance of impact assessments for the design and adoption of rules for businesses and citizens should not be underestimated. For Swedish businesses to be competitive and increase their growth in the internationalised market, rules and regulations must be cost efficient and capable of achieving their purpose. This is what impact assessments are intended to prove. Substandard impact assessments mean that the members of the Riksdag (the Swedish parliament) and other decision-makers must base their decisions on insufficient information, which may lead to inefficient and unnecessarily costly regulations.

The quality of the impact assessments has long been substandard. Certain measures have been implemented in recent years to achieve an improvement, such as the introduction of a more uniform regulatory framework for all regulators, the establishment of a Swedish Better Regulation Council to review the quality of the impact assessments for business regulations, and certain educational efforts. Nevertheless, statistics from the Swedish Better Regulation Council show that current impact assessments remain substandard. Only half of the impact assessments on which the Swedish Better Regulation Council provided an opinion in 2016 met the requirements set in the applicable regulations. The results are even worse for government inquiries and ministries.

The main explanation is that there are no real opportunities to ensure compliance with the regulations for impact assessments and that the demand for impact assessments has been weak so far. The most important measure to change this would be the introduction of a requirement to supplement and resubmit substandard impact assessments to the Swedish Better Regulation Council. Moreover, the current Swedish Better Regulation Council should be reinforced and turned into a separate authority with its own secretariat and appropriations.

The Board of Swedish Industry and Commerce for Better Regulation (NNR) instructed professor Anders Hultqvist of Karlstad University to investigate whether there are any constitutional impediments to the introduction of a requirement to supplement and resubmit substandard impact assessments to a better regulation council function and establish how the Swedish Better Regulation Council can be reinforced (see the appendix). It is clear from the review that there are no such impediments. The review also shows that there are clear advantages in turning the Swedish Better Regulation Council into a separate authority with its own appropriations and secretariat. This would place the Council in an adequate and independent position and provide it with better opportunities to gather and make use of the experiences from the review.

The introduction of a requirement to supplement and resubmit substandard impact assessments requires changes to the regulatory process itself. For example, it should be mandatory for the Government Offices to submit proposals to the Swedish Better Regulation Council. At the same time, a strengthened process for the Swedish work on EU rules must be established, one that includes making "Swedish" impact assessments of proposals for EU legislation and ensuring that gold-plating of EU directives is avoided and highlighted. The Swedish Better Regulation Council should be allowed to review the impact assessments of government inquiries at an earlier stage than today.

NNR further proposes that the Government should be required to report to the Riksdag every year on the benefits and costs of any adopted regulations. The report should include an account of the impact of the regulations on businesses. That way, the Riksdag can request, steer and monitor the work on impact assessments and the impact of regulations.

Poor quality impact assessments made by ministries and committees of inquiry are particularly problematic, as proposals made at this stage often constitute the start of the regulatory process and set the scope for the ensuing regulations. NNR has therefore made an inventory of the needs with particular focus on the impact assessment work performed by committees of inquiry and ministries. It clearly shows that conditions must improve and be strengthened.

Committees of inquiry appointed by the Government must be provided with sufficient resources to engage external experts on socio-economic analyses or hire such skills for the inquiries. The budget of an inquiry should contain a specific provision for impact assessments. Also, it would be advantageous if the Government Offices could enter into framework agreements with experts on socio-economic analyses in various areas, allowing committees and ministries to place all-off orders. The Committee Service should be given a special role with regard to information to committees regarding framework agreements with experts on socio-economic analyses and have specific expertise to support the committees in this respect.

Committees of inquiry that may submit proposals with major socio-economic impact for the business community should, however, have the expertise required for socio-economic analyses. This would allow them to conduct analyses or order and make use of the results from such analyses. Also, the training in socio-economic analyses and impact assessments that is currently arranged by Committee Services should become mandatory for everyone involved in an inquiry, thus increasing the knowledge related to impact assessments and their significance.

A trend in recent years is that committees of inquiry have been given less time to present their reports. This also has a negative impact on their impact assessment work. It takes time to make an impact assessment, and the work must begin early. Consequently, the time for an inquiry must be sufficiently long to accommodate this.

To reinforce and clarify the demand for impact assessments, the terms of reference should include express requirements for impact assessments. It is often stated that the terms of reference are the main document that guides the work in the committees. The Cabinet Office should also update the committee handbook, as it has turned out to be obsolete in parts and contains incorrect information.

To strengthen the ministries' work on impact assessments, mandatory training on impact assessments for the ministries' contacts for committees, managers and others who work on regulations and design terms of reference and other inquiry assignments is required. That way, a common understanding can be reached for the need of impact assessments, and sufficient time and resources can be allocated to this work.

The Government Offices must also establish its own impact assessment expertise and offer more extensive training on socio-economic analyses for this purpose.

Given the poor outcome in the Swedish Better Regulation Council's statistics on the ministries' impact assessments, NNR is of the opinion that a review of how the ministries and their directors-general for administrative affairs and directors-general for legal affairs live up to their responsibilities for impact assessments according to the guidelines for the work on impact assessments in the Government Offices is needed. NNR also notes that there is a need to include a section on impact assessments in the instructions and document templates for government bills and memoranda.

NNR's conclusions and recommendations

The demand for good impact assessments must increase and the process for preparing them must be altered. NNR's conclusion is that powerful measures are required to improve the quality of the impact assessments. This applies to both control functions and the organisation involved in the impact assessment work, such as the allocated resources and the training of those working on impact assessments. For this purpose, a strengthened better regulation council function is required, in the form of a separate authority with an increased mandate to request the supplementation and resubmission of substandard impact assessments from all regulators. To improve the impact assessments, the committees of inquiry and ministries must also undergo training on impact assessments, and external or internal expertise must be available during the preparation of impact assessments.

The external legal review commissioned by NNR shows that the proposed measures can be implemented without any conflict with the Swedish constitution or the Swedish public administration model. To achieve a true improvement of the impact assessments, NNR submits the following recommendations:

Recommendations to the Riksdag and the Government

Introduce a requirement to supplement and resubmit substandard impact assessments to the Swedish Better Regulation Council

The requirement should apply to all regulators, committees of inquiry and others that propose regulations with impact on businesses. In connection with the above, the mandate of the Swedish Better Regulation Council should be amended, empowering the Council to request the supplementation and resubmission of impact assessments.

Turn the Swedish Better Regulation Council into a separate authority and review its mandate and long-term conditions

The review process of the Swedish Better Regulation Council should be extended and altered. The Council should also be provided with the long-term conditions to establish and retain expertise and be given the opportunity to contribute information and advice that may promote the work for better regulations. To do so, the Council requires a secretariat and an appropriation of its own.

Strengthen the conditions for committees of inquiry and ministries to make and work on impact assessments

Committees of inquiry and ministries need sufficient resources for the work on impact assessments. Managers, investigators, etc. need training, and expertise on impact assessments should be made available through framework agreements or recruitment. Ministries must also build up expertise. More explicit instructions on impact assessments should be included in terms of reference, handbooks and document templates, thereby providing a clearer image of the need for impact assessments and how they should be carried out.

Impact assessments should be proportionate to the scope and complexity of the regulations

The requirement on the scope of impact assessment work should be guided by the extent of the impact and scope that it is believed that a regulatory proposal will have. That way, efficiency gains are possible.

Introduce annual reporting by the Government to the Riksdag on socio-economic costs and benefits

Annually recurring reporting would allow the Riksdag to request, steer and monitor the work on impact assessments and the impact of regulations. The report should include an account of the regulations' impact on businesses.

Strengthen the process for the Swedish work on EU legislation

The process for the Swedish work on EU legislation should be strengthened to increase Swedish influence on proposed EU legislation, thereby contributing to improved consideration of the conditions for businesses. Swedish impact assessments of proposals for EU legislation must always be carried out and any gold-plating of EU directives must be reported.

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The Board of Swedish Industry and Commerce for Better Regulation, NNR, was formed in 1982 and is a politically independent non-profit organisation wholly financed by its members, which include 18 Swedish business organisations and trade associations together representing just over 300.000 companies. This means that NNR speaks for all active companies in Sweden with one or more employees; companies in every industry and of every size. NNR's task is to advocate and work to achieve more effective and less costly regulations and a reduction in the extent to which companies are required to report information in Sweden and the EU. NNR coordinates the business sector's review of impact assessments of proposals for new or amended regulations as well as the business sector's regulatory improvement work at national and EU level. This focused area of activity makes NNR unique among business organisations in Europe. More information on NNR is available at www.nnr.se.