

Effectively implemented and applied EU law

– critical to Swedish competitiveness



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Christina Fors

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Andrea Femrell, President and legally responsible editor

Christina Fors, Senior Advisor and author of the report

Scantech Strategy Advisors, production and layout

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Summary

If the internal market is to function fully and not distort competition, it is essential that the regulations determined jointly by the EU Member States are fit for purpose and cost-effective and that EU directives are implemented similarly in different EU Member States. The application of EU legislation must also be uniform.

The Board of Swedish Industry and Commerce for Better Regulation (NNR) has long emphasised the problem of over-implementation of EU directives and ineffective implementation of EU legislation in Sweden. More restrictive Swedish interpretations may distort competition by subjecting Swedish companies to more severe regulatory requirements and higher costs, thus reducing the competitiveness of Swedish companies.

The Swedish version of the report comprises 13 examples of over-implementation and ineffective application of EU legislation, showing that this remains an issue that must be addressed. A more detailed account in Swedish of these examples is available as an appendix to the Swedish version of the report.¹ A list of examples is presented at the end of this English version of the report.

The production of new EU legislation has increased heavily in recent years. This means that regulatory costs have increased for companies from an already high level, reducing European companies' competitiveness. Many of these new EU regulations are now to be implemented by the Member States. To avoid barriers in the internal market and adverse effects on businesses' competitiveness and willingness to invest, Member States must ensure a uniform implementation. For Sweden, it is vital to ensure that the implementation does not entail additional costs and competitive disadvantages for Swedish businesses.

In the Swedish business community's experience, Sweden must become better at acting at an early stage of the EU process to strengthen Swedish competitiveness and reduce the regulatory burden and costs due to EU regulations. This is imperative to safeguard Swedish interests in the European Union and contribute to effective EU rules with effective implementation and application. Measures must be taken to avoid over-implementation and ineffective application and address existing problems. We therefore welcome the establishment of an Implementation Council and a Simplification Council, which are intended to handle these issues.

If correctly handled by the Swedish Government, and if given the right conditions, the work of these Councils may be of great importance if the Government is to achieve its expressed ambition to re-

1 <https://nnr.se/wp-content/uploads/Effektivt-implementerad-och-tillampad-EU-ratt.pdf>

duce businesses' regulatory burden, administrative costs and other implementation costs due to applicable regulation and counteract unjustified regulatory burdens resulting from the transposition of EU regulations into Swedish law.

NNR provides several recommendations for measures required to achieve a successful result of the Implementation Council's work and overarching conditions needed for the Implementation Council's and Simplification Council's work to have effect. To emphasise the significance of the new duties of the Implementation Council, we also present certain issues that are particularly important and significant in coming EU legislation where an implementation council could have played, or may play, a significant role.

We also list several examples of over-implementation and ineffective application that may serve as input to the Simplification Council.

To create a common approach and starting points, overarching quality principles and criteria must be adopted to guide the work. This includes ensuring that implementation and application do not result in competitive disadvantages for Swedish businesses compared with their European competitors. Consequently, the starting point for Swedish implementation must be the minimum level in the EU directive in question. In cases where the minimum level will be exceeded, the impact assessment must contain a justification of the reasons for doing so, a description of the proposed implementing measures and an assessment of their impact on businesses. Less far-reaching alternative solutions must also be investigated and considered.

To obtain input on more effective solutions and to avoid competitive disadvantages and higher costs for Swedish businesses compared with their competitors, comparisons must be made with Nordic countries and a selection of other comparable EU Member States regarding their planned implementation or interpretation of EU law.

For the Implementation Council's and the Simplification Council's work to be truly effective, a solid and effective recipient function in the Government Offices must be created. The Government must also undertake to comply with any recommendations provided by the Councils or, if they choose not to comply with a recommendation, they must explain clearly why they have decided not to. Corresponding undertakings must be required of public authorities.

If the Implementation Council's recommendations are to be safeguarded and have effect, the Implementation Council must enter the process early on and be given the opportunity to provide input on implementation and application at all stages of the process. Focus on the work on existing over-implementation and ineffective application must also be ensured. Consequently, we recommend that the Simplification Council make this a focus area.

Other recommendations involve ensuring the creation of a mechanism aimed at bringing before the Implementation Council issues of particular importance for businesses in any upcoming EU legislation that requires the Government's specific attention and action. We also note a need for a website for better regulation efforts, and we believe that it would be desirable if the Council could act as a facilitator and resource for ministries and public authorities in their work on implementing, applying and interpreting EU law.

NNR is of the view that the current approach will require close cooperation and cohesive work between both Councils, and we, therefore, recommend that the Government considers gathering all these issues into a single council in the next better regulation package.

1. Background and introduction

The Board of Swedish Industry and Commerce for Better Regulation (NNR) has long emphasised the problem of over-implementation of EU directives and ineffective implementation of EU legislation in Sweden. In various reports, NNR has analysed and addressed this issue and aimed recommendations to the Government regarding the improvements needed. To visualise that this remains a significant problem, we have also, on several occasions, collected examples of over-implementation and ineffective application from our members.

In 2012, the Swedish Better Regulation Council and NNR issued a joint report that included several criteria for how gold-plating (over-implementation), i.e. implementation that goes beyond the minimum level of an EU directive, can be assessed and visualised and proposed how better information on which to base decisions can be obtained. A request in this respect has also been made to the Parliamentary Committee on Industry and Trade (2015).

NNR also provided recommendations in a later report (2019) regarding the process for how the Swedish work on EU legislation can be improved. In this report, we request a process and a forum for discussions and advice to the Government on how to achieve a business-friendly and effective Swedish implementation and interpretation of EU legislation, as well as how existing over-implementation and ineffective application can be addressed and remedied.

Accordingly, NNR welcomes the fact that the Government is now addressing the issue of over-implementation and ineffective application and establishing new councils to handle these issues.

The Implementation Council will be given an essential role in strengthening the competitiveness of Swedish businesses by providing recommendations on how to avoid over-implementation and ineffective application of new and amended EU legislation and reduce administrative costs and other implementation costs associated with the transposition of EU regulations into Swedish law.² It is our hope that the fact that the Council will alert the Government at an early stage regarding issues of particular interest and significance for Swedish companies in forthcoming EU legislation will lead to earlier and more influential advocacy regarding future EU regulatory proposals.

Prior to the establishment of councils on these matters, NNR and a number of its members³ prepared several recommendations on important issues and conditions that must be addressed if the future work is to have the effect that we present in this report. We also provide some examples of issues of particular importance and significance for businesses where an Implementation Council could have played, or may play, a significant role.

2 [Ett implementeringsråd för genomförande av EU-rättsakter med konsekvenser för företag i Sverige – Regeringen.se](#)

3 The Employers' Organisation for the Swedish Service Sector, the Swedish Bankers' Association, the Federation of Swedish Farmers, the Swedish Food Federation, the Confederation of Swedish Enterprise, the Swedish Association of Chemical Products Suppliers, the Swedish Securities Markets Association, the Swedish Confederation of Transport Enterprises, the Swedish Investment Fund Association, the Swedish Property Federation, Technology Industries of Sweden, the Swedish Federation of Business Owners, Drivkraft Sverige

As the Government has established a special council, the Simplification Council, to simplify existing legislation, issues related to implementation and application are not addressed by a single council but divided into two. For this reason, our discussions in this report have been divided by Council in separate chapters. As it is also crucial that existing over-implementation and ineffective application are addressed and remedied, we also include concrete examples of existing over-implementation and ineffective application provided by our members. These are aimed at the Simplification Council as input for its future work.

The overarching conditions that we believe are required for future work to be truly effective apply to both Councils and are presented in a subsequent chapter. The report concludes with a summary of our recommendations, divided per recipient.

Please note that the issues and recommendations presented in our report that relate to the Implementation Council affect its entire mission, while those presented that relate to the work of the Simplification Council chiefly affect its work on addressing and remedying existing over-implementation and ineffective application.

2. Why are over-implementation and ineffective application such important issues that must be addressed?

Basic framework conditions for businesses constitute a central factor in creating long-term conditions for a competitive business community. Globalisation and digitisation have made the design and application of various regulatory frameworks more significant, as more or less all companies meet increasing competition from the external world. The fact that national regulatory frameworks are subject to competition from corresponding requirements in competing countries is usually referred to as ‘institutional competition.’ For this reason, conditions in Sweden cannot deviate long-term from the corresponding conditions in the world around us.

In recent years, we have noted much-increased speed in the development of new EU legislation, not least due to the COVID pandemic, the war in Ukraine, technological developments, geopolitical challenges and the climate situation. These needs must, of course, be addressed by the EU. Still, the lack of a simultaneous focus on and discussions of the effects of current regulations on competitiveness and growth and the lack of ambitious efforts to reduce regulatory costs have inevitably resulted in higher costs for European companies – costs that keep rising despite already high regulatory costs.

One problem is that European businesses perceive that they find themselves in a situation characterised by a greater number of regulatory requirements – often on a detailed level – and regulatory costs compared with third-country competitors. This may worsen the competitive situation and cause businesses to invest outside the EU.

Many of the new EU regulations adopted are now to be implemented and applied by the Member States. Consequently, Member States have the vital task of implementing and applying EU legislation in a uniform manner that does not create barriers in the internal market nor adversely affect businesses’ willingness to invest in the EU and their competitiveness. The implementation of new legislation must consider existing legislation. From a Swedish perspective, it is also essential to ensure that the imple-

mentation of EU directives and the application of EU regulations are performed proportionately and effectively in a way that does not impose additional costs and negative impacts on the competitiveness of or conditions for Swedish businesses compared with companies in other Member States.

Ineffective Swedish implementations and applications that have already been implemented must also be identified and addressed. The Simplification Council has an important role to play in this respect.

To achieve EU regulations that are fit for purpose and effective and to ensure effective implementation and application, it is vital to discuss in detail various aspects of EU legislative proposals, including their implementation and application, at an early stage of the negotiations. In the business community's experience, we must become better at acting early in the EU to safeguard Swedish interests.

The business community has considerable knowledge and experience regarding various areas affected by EU legislation. This includes a good understanding of how an idea, and later a proposal, by the European Commission may impact businesses' conditions and reality when it is time for implementation and application. The business community often has ideas of less far-reaching alternative solutions that may achieve the purpose of the regulation at a lower cost.

Consequently, it is in the interest of Swedish politicians and civil servants to absorb this knowledge and experience, allowing them to safeguard Swedish interests actively at an early stage at the EU level. This is to ensure that the design of EU legislation also considers Swedish conditions and needs to the greatest possible extent so that the legislation can be implemented and applied effectively and at the lowest cost to businesses in Sweden. Comparisons with other countries may also provide input on how the purpose can be met at the lowest cost to businesses without imposing requirements and obligations beyond those imposed on businesses in other countries.

EU regulations, which must be applied directly in EU Member States without prior implementation through national law and regulations, generally provide some scope for individual Member States to design rules for sanctions and other compliance mechanisms and appoint relevant national authorities. NNR notes that it has become more common for regulations to leave a certain national scope of action, which may result in over-implementation. It is also possible to make different interpretations, such as of terms and definitions. Translations may also cause differences in application.

Even though regulations are to be applied directly and uniformly throughout the Member States, there is still some scope for different interpretations, which means that the application of an EU regulation may differ between Member States. Accordingly, the way the Swedish Government and Swedish authorities interpret and apply regulations may significantly impact businesses' costs and ability to compete on the same terms as their foreign competitors within the EU.

In addition to its task of notifying the Government of issues of particular interest from a business perspective in future legislation on the EU level, the new Implementation Council has a key role as the expert body for the Swedish implementation of EU legislative acts. Considering the significance of Swedish implementation for the competitiveness of Swedish businesses, the Council should also provide recommendations on the Swedish handling and application of EU regulations.

It should be noted that the process for applying EU regulations differs from the process for making decisions regarding the Swedish implementation of EU directives, as a regulation constitutes law with direct effect and does not require any Swedish legislative process.

However, this does not reduce the need for action by the Implementation Council – rather, the opposite. Different authorities handle the interpretation and application of EU regulations differently and with varying degrees of transparency and opportunities for dialogue with the business community. The application is often governed by the authorities' interpretations and guidelines. In certain areas, these have moved from collected guidelines to web-based guidelines that can be amended quickly without a prior consultation process. In areas with many EU regulations, such as the financial sector, the application is often guided by guidelines issued by the Commission or European authorities or directly via standards. In other areas, Swedish authorities may issue regulations and recommendations. However, the final interpretation of all EU law is made by the Court of Justice of the European Union, which usually takes many years. Hence, it may take a long time before the correct application of a given rule becomes clear. The choices made by an authority may, therefore, have a significant impact on the business community, especially if the Swedish interpretation differs from the interpretations made in other EU Member States. Accordingly, it would be justified and welcome if the Implementation Council's work could also include EU regulations, and it could fill an important function, such as by providing recommendations on the forms of the authorities' work, including their consultation procedures.

3. Tasks of the Implementation Council – what is required for a successful result?

The mandate of the Implementation Council includes notifying the Government of any issues of particular interest from a business perspective in future legislation on the EU level. The Council is also tasked with providing recommendations concerning the implementation of EU legislation in Sweden.

3.1 The Council must be involved at an early stage so that it may provide input on the implementation and application at all stages of the process

As regards the Implementation Council's task of notifying the Government of issues of particular interest from a business perspective, it is vital that this occurs at an early stage of the process. If the Council becomes aware of a new idea being discussed in Brussels that is of particular interest to and significance for Swedish businesses, it should notify the Government of this. This may also be relevant later on, such as when the EU Commission presents its working programme, green paper or white paper. Issues of particular interest may also arise when the Commission presents proposals or when the European Parliament or the European Council propose amendments. It may also be relevant later on when the Commission prepares downstream legislation or makes evaluations.

The Implementation Council must be able to form as complete a picture as possible of issues that may be of particular interest to businesses in Sweden, including to the Swedish implementation, and must be allowed to provide recommendations at a stage where these can be considered and become effective. Accordingly, the Government Offices must share with the Council, at an early stage, any information gained on new ideas and thoughts before and during the preparation of

proposals for new or amended regulations from the Commission and how these evolve during the negotiation process.

In addition to the above, the Council must also be provided with the opportunity to monitor any issues that rose to the attention at an early stage during the EU negotiation process. Consequently, the ministry in charge should be required to report back and enter into a dialogue during the negotiation process, also in connection with the preparation of downstream legislation related to these issues. The report should include the state of the issue, any measures taken due to the Council's recommendations and how these were reflected in the Swedish standpoint.

Danish experiences also indicate the need to be able to monitor upcoming EU legislation that the Council has brought to the Government's attention. In July 2023, an amendment to this effect was made to the Danish Business Regulation Forum's mandate regarding oral reporting and feedback from the ministry in charge of any EU proposals that are particularly relevant to the Forum and on which the Forum has provided recommendations.

The Implementation Council's second task, to provide recommendations on the implementation of EU directives to reduce unjustified regulatory burdens, requires that the Council enters the process at a sufficiently early stage for the Council's recommendations to be considered and have effect.

As a part of this, the Council should be allowed access to supporting documentation from the ministry in charge, ideally before the explanatory memorandum is prepared, to provide the Council with sufficient and easily accessible information on the potential Swedish implementation/application and their effects. Any needs regarding the length of the implementation period should also be discussed. We recommend that the Council prepare a template for this.

In cases where an inquiry is appointed to investigate how the Swedish implementation should be made, the Council must be allowed to read the draft and be given the opportunity to provide input into the inquiry. This should also apply to inquiries regarding Swedish legislation that is supplementary to an EU regulation and regarding application issues.

At a later stage, and of its own accord, the Council should also be allowed to issue an opinion on proposals for new Swedish legislation/ordinances/regulations that impact the implementation of EU legislation affecting businesses. However, the Council should not be a formal consultation body. Please note that there will be a boundary to the Swedish Better Regulation Council's work. For further reading, see Section 3.4.1 Implementation Council and Swedish Better Regulation Council.

3.2 Issues of particular interest and significance from a business perspective in upcoming legislation on the EU level

3.2.1 Mechanism to bring issues of particular importance to businesses in upcoming EU legislation before the Implementation Council

A mechanism to bring before the Implementation Council issues of particular importance for businesses in any upcoming EU legislation that requires the Government's specific attention and action must be established. It must be possible for the Council's members to bring up issues prior to Council meetings.

As there is often a need for fast action, it must also be possible to handle incoming matters of particular interest to businesses in upcoming EU legislation between meetings. As mentioned above, not only the Council's members should be allowed to propose issues that require attention. A function for this purpose should be established, such as via the common website mentioned later in this report. Such proposals may also require fast handling of the Council and submission to the Government.

As many issues that are of particular importance to businesses may be industry-specific, it is essential that the Council, to the greatest possible extent, attempts to support and adopt these and bring them to the attention of the Government.

3.2.2 Examples of issues of particular importance and significance where an Implementation Council could have played, or may play, a significant role

The business community has long requested the opportunity and a forum to raise, at an early stage, issues of particular importance and significance to the business community that may be addressed in upcoming EU legislation and where there is a need for the Government to take early action and measures. The new function offered in the form of the Implementation Council is therefore very welcome.

To emphasise the significance of this function, a few examples of issues of particular importance are provided below. The examples were provided by some of NNR's members. Please note that these are merely examples and do not provide a complete picture of current issues of particular importance.

Due diligence – Examples of future EU legislation that it is particularly important for businesses that the Implementation Council considers include the entire area of due diligence, i.e., various kinds of requirements for prudence related to the supply chain, chiefly associated with impacts on the environment and human rights, but also other conditions related to working conditions – often focusing on countries that export raw materials. We have noted that this area is covered by several different legislative acts under negotiation, and more are likely to follow. The overlap is a problem as such, and there is a risk that the reporting requirements will be very onerous for businesses. The due diligence in the Deforestation Regulation (EUDR) is a clear example of clearly overlapping EU legislation, where several authorities may be involved in the implementation and supervision.

ViDa (VAT in the digital age) – The EU VAT reform, VAT in the digital age (ViDa), is another issue of particular importance for businesses that will affect every single invoice issued by our businesses. There is a risk that it may increase the regulatory costs and reduce competitiveness.

CRMA and NZIA – The Critical Raw Materials Act (CRMA) and the Net-Zero Industry Act (NZIA) are examples of issues of importance for businesses that may constitute issues suitable for the Implementation Council. Both regulations have entered into force.

As regards NZIA, the Swedish Agency for Economic and Regional Growth shall analyse how to implement certain parts. The tasks relate to the proposal's sections on regulatory sandboxes (an attempt to test new regulatory frameworks), a selection of strategic projects, and monitoring of value chains. Vinnova will support the Swedish Agency for Economic and Regional Growth with the part that relates to regulatory sandboxes. The issue of how to implement the "single point of contact" (or one-stop shop) requirement for business contacts with the public sector will also be investigated.

The AI Liability Directive (AILD) – In the digital field, the upcoming EU legislation is mainly in the form of regulations. Another issue of particular importance for businesses which would be suitable for the Implementation Council is a directive that was put on pause but is now becoming relevant again, namely the AI Liability Directive (AILD). The recently adopted Product Liability Directive (PLD) has now entered into force and imposes strict liability, which is likely to deter the use of AI. This is not good for competitiveness or productivity.

NIS2 Directive – The NIS2 Directive shall be implemented by the Member States no later than 17 October 2024. However, pursuant to the Swedish inquiry, Sweden will not be able to make the time plan; preliminary, a new Swedish act will enter into force in 2025. Pursuant to the terms of reference for the commission of inquiry, the commission of inquiry was not allowed to go further than the requirements in the Directive, even if there was scope in the Directive for Member States to do so.

However, the commission of inquiry still chose to propose certain stricter requirements without stating the reasons for this or the consequences thereof in detail. Consultation bodies commented on this during the consultation process. However, there is still no actual bill for the implementation of NIS2; there is just a proposal from the commission of inquiry.

Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union – Even if this is a regulation, it only provides a framework for the screening, and the Member States have been able to establish their screening systems in different ways. Sweden chose a way that has proved to be extremely far-reaching and onerous for Swedish businesses, in some cases even impossible to apply, such as for financial companies (Screening of Foreign Direct Investments Act (2023:560)). Unfortunately, the implementation took place without any preparation with the financial actors that were affected hardest by the proposals (Swedish fund companies, alternative investment fund managers, securities firms and insurance companies) and ended up having a significant adverse impact on them when investing in Swedish companies. The EU regulation is currently being updated, which may result in changes to the Swedish act.

Digital product passports (DPP) – Digital product passports are essential tools for traceability in the supply chain in the transfer to a circular economy. The tool is introduced as a requirement in a growing number of legislative acts and affects most companies. In the long term, DPP is likely to have a wider area of application in the EU rules and regulations on products, as it could be used to carry other product information, such as instructions and safety data. As digital product passports are an entirely new system that will eventually affect most products in the EU, it is vital to monitor their preparation and implementation, most notably concerning their effect on SMEs.

Regulatory sandboxes – This is also a horizontal tool that is introduced in an increasing number of legislative acts, often in the form of obligations for the Member States, which must establish them. The aim is to give businesses the opportunity to test and develop new products and services. Consequently, the sandboxes must be designed and established (implemented) in a way that suits the business community and does not distort competition in relation to other Member State structures. The Implementation Council could play an essential role in this respect.

3.3 Provide recommendations on the implementation of new or amended EU legislative acts

3.3.1 The role of the Implementation Council vis-à-vis the Swedish central government administration's EU work

In the discussion about the Implementation Council's work and duties, we identified that the Council, due to the expertise they will establish, may have a special role to play as a facilitator for the Government Offices and authorities in their work on implementation, interpretation and application.

Ministries and authorities currently handle the implementation, application and application of EU law in large parts of their fields of activity (below referred to as application, for reasons of simplification). This takes different forms, from public and internal inquiries by the Government Offices to Government mandates to authorities and independent work in the authorities with regulations and guidelines.

In the terms of reference for the Implementation Council, the Council was instructed to "account for its assessments of how EU legislative acts in general may be implemented in Swedish law" in its final report to the Government Offices at the end of 2027. We provide recommendations below on what such an assessment may include and the role we believe the Council should be given. As it is important to bring order to the Swedish central government administration's EU work as soon as possible, we call on the Council to take on this task sooner rather than later.

It is certainly justified to handle application issues according to different formats depending on their scope, subject area and other circumstances. Nevertheless, the Business Community has identified a great need for a more uniform and structured approach to the principal starting points, both concerning how EU law should be applied in Sweden and how the dialogue with the business community and other stakeholders should be managed during the work.

We believe the Council has an important role to play here, even if it will naturally not have the capacity for involvement in every issue related to the Swedish application of EU legislation. In addition to the specific implementation matters that the Council will actively handle, it would be desirable for the Council to act as a facilitator and resource for ministries and authorities in their work. The Council could develop such a role based in part on their own experiences of concrete matters and in part on experiences and working methods in other EU Member States.

On this basis, the Council could develop a generally applicable working method for the Swedish central government administration. This should include a checklist of considerations that must always be made that contains items such as principles and criteria related to implementation and application, as highlighted below, and steps that should be included in the process for all work related to the implementation and application.

With time, the Council can evolve into a natural sounding board for ministries and authorities that strengthen their ability to apply EU law in the manner best suited for Swedish interests. However, it is vital that the Council be given a mandate that allows for a governing role right from the outset and enables it to intervene in matters where the implementation efforts are moving in the right direction without assuming responsibility from the authority in question.

Good examples of how EU law can be applied by a Swedish authority

In its role vis-à-vis the Swedish central government administration, the Implementation Council could also highlight good examples identified by the Council of work performed by an authority or ministry related to implementation and interpretation/application. Below is a good example of the application of EU legislation, which was highlighted by NNR's member, the Swedish Food Federation.



A couple of years ago, the Swedish Food Agency established standing consultation groups for important areas of EU legislation. This allows more systematic work with input from the industry, both regarding new legislative processes and the application of existing legislation.

Swedish Food Federation

Russia's full-scale invasion of Ukraine in February 2022 led to considerable supply chain disruptions. This has resulted in shortages of certain food ingredients, such as sunflower oil, of which Ukraine is a world-leading exporter. Ever since, food producers have, on short notice, had to substitute raw materials from Ukraine used in their products with other ingredients, as it is not always possible to find other suppliers. Due to such adjustments, the information on the preprinted packaging of the products may be incorrect. For this reason, and after discussions with the industry, the Swedish Food Agency published a position paper in the spring of 2022 stating that businesses are temporarily allowed a certain flexibility in relation to the EU regulation that governs food labelling (lists of ingredients and nutrition declarations) so that it would not be illegal to sell the products. This position applies under certain conditions – the shortage must be directly related to the war, and the substitutes must not entail any risk to consumers, such as due to allergens. Authorities in several other EU countries took similar measures.

3.3.2 Neighbour checks – comparisons with other countries

Comparisons with other EU Member States may provide input to Sweden on how to achieve effective Swedish implementation or application. Through comparisons, unnecessary regulatory differences may also be avoided. It is both about making comparisons with Nordic countries and a selection of other comparable EU Member States regarding their intended implementation of an EU directive or how they plan for it to be interpreted or applied. Comparisons should also be made of already implemented EU regulations and interpretations to see whether there are more effective solutions. This is information that might be useful to the new Simplification Council.

As a principle, ministries and authorities hardly ever make comparisons with other countries, which is a problem. Several of NNR's members have on different occasions asked the responsible authority or ministry in their area whether a comparison has been made with other countries in a specific matter, and they several times received the response that there is not enough time to make such a comparison.⁴

4 [Improved-competitiveness-via-more-efficient-implementation-and-application-of-EU-legislation \(nnr.se\)](https://www.nnr.se/Improved-competitiveness-via-more-efficient-implementation-and-application-of-EU-legislation)

NNR is of the view that the Implementation Council has an important role to play; prior to the Swedish implementation of an EU directive or the application of an EU regulation, it can issue a recommendation to the Government Offices or the responsible authority regarding the comparisons they should make with other comparable EU Member States. This should involve both how other countries are preparing for the legislation and the measures they are planning to take. The Simplification Council can do the same concerning existing implementation/application. The Government must 'comply or explain' and report back on the results in this respect as well, as stated below.

Ultimately, it should also be considered how comparisons with other countries can be integrated into existing processes and supporting documentation for decisions on regulations. The possibility of closer Nordic cooperation should also be investigated regarding the implementation and application of EU legislation or the work on new or amended EU legislation that is of common interest.

3.4 Tasks of the Implementation Council in relation to the Swedish Better Regulation Council and commissions of inquiry

3.4.1 The Implementation Council and the Swedish Better Regulation Council

We foresee that there may be boundary issues regarding the Implementation Council's role of providing recommendations on the implementation of EU directives and the Swedish Better Regulation Council's review of impact assessments related to Swedish statutory or regulatory proposals associated with the implementation of EU directives or supplements to EU regulations. This may involve the Swedish Better Regulation Council's assessment of impact assessments related to proposals for regulations that may entail Swedish over-implementation or its review of EU impact assessments. We assume that there will be a close dialogue between the Councils to avoid problematic boundary issues.

3.4.2 The role of the Implementation Council vis-à-vis commissions of inquiry

It is commonplace that a commission of inquiry is appointed to investigate how an EU directive should be implemented in Sweden. It may also involve an inquiry regarding Swedish legislation that will supplement an EU regulation.

As mentioned initially, the Implementation Council must be given the ability to review drafts and provide input to any inquiries regarding implementation or application that may have an impact on businesses.

3.5 The Implementation Council's work in relation to other Swedish work on EU legislation

An Implementation Council alone cannot affect the design of EU rules and regulations or the resulting regulatory burden. However, it is a vital piece of the puzzle that provides suitable conditions for early and proactive Swedish advocacy in Brussels, which may strengthen Swedish influence in negotiations for EU rules and regulations and thereby counteract disproportionate regulatory burdens and strengthen Swedish competitiveness.

For maximum and effective use of the Implementation Council's recommendations, we believe the Council's work must slot properly into and be safeguarded in the rest of the Swedish EU preparatory process. As we have stated before, in prior communications, we see the need for additional reinforcements of the Swedish work on EU legislation.

This involves achieving early and ongoing consultations with the affected business community during the entire EU process. The Implementation Council and the initiative for EU working groups that was announced by the Minister for EU Affairs to strengthen the dialogue with the business community on issues of particular importance for the business community are welcome first steps to achieve an improvement. Nonetheless, more needs to be done in this respect.

Sweden should also, at as early a stage as possible, develop national impact assessments of EU proposals that are of material importance from a Swedish perspective. In most cases, the current position memoranda do not provide proper guidance on potential effects in Sweden, and there is a risk that this leads to a weaker negotiating position, weakening the Swedish influence. These impact assessments should be prepared in close dialogue with the business community and be discussed during recurring consultation meetings.

As the work should begin at an early stage, the analyses made initially are likely to be more overarching. However, we are of the opinion that the work on impact assessments must continue and be refined during the negotiations so that the effects of any compromises presented can be evaluated and weighed. That way, red lines can be identified, and they can provide invaluable input for the design of alternative compromises.

To obtain information on whether implemented EU directives and interpretations of EU legislation remain fit for purpose and effective, Swedish follow-ups and evaluations must be made. There is otherwise a risk that ineffective rules and interpretations are retained, resulting in continued costs and competitive disadvantages for Swedish businesses. The business community can provide valuable input to such evaluations and should be involved at an early stage. The Simplification Council can also provide meaningful input on these efforts.

It is also possible to make reinforcements on the EU level. In its "The 2024 Annual Single Market and Competitiveness Report,"⁵ the Commission states that the avoidance of gold-plating should be included in the efforts to improve and simplify the implementation of agreed rules. NNR is of the view that Sweden may push the European Commission to do more to make Member States avoid gold-plating (over-regulation), such as by cooperating with the business community to prepare a common template for transparent reporting on implementation and any over-implementation, making requirements in this respect. The Commission may also arrange "transposition workshops" to allow reconciliations and comparisons of Member States' planned implementation.

5 [The 2024 Annual Single Market and Competitiveness Report – European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/2024-annual-single-market-and-competitiveness-report)

4. The Simplification Council's work on existing Swedish over-implementation or ineffective application of EU regulations

As described above, the Implementation Council will be part of the process before and during the implementation of new or amended EU legislation. On the other hand, the work on addressing and submitting proposals for measures regarding existing Swedish over-implementation and ineffective application is included in the Simplification Council's duty to submit proposals to the Government on simplification measures for existing rules to reduce the regulatory burden and costs for businesses or make it easier for companies to comply with the rules.

NNR has long and repeatedly brought attention to the problem perceived by businesses regarding Swedish over-implementation and ineffective application and the fact that efforts are needed to address this problem. To visualise the need for such efforts, we have also, on several occasions, collected examples of over-implementation and ineffective application from our members. Several current examples are provided below that may constitute input for the Simplification Council's work.

As regards the Simplification Council's work, time, the right expertise and resources must be ensured so that it can address and submit proposals for measures regarding over-implementation and ineffective application. To ensure that these issues are given high priority, we recommend that the Council makes over-implementation and ineffective application a focus area.

4.1 Examples of over-implementation of EU directives or ineffective application of EU regulations

In an appendix to the Swedish version of this report⁶, NNR lists 13 current examples of over-implementation and ineffective application. Of the 13 examples, ten are examples of over-implementation, and three are examples of ineffective application. These examples constitute an update of previously collected examples from NNR's members and new examples that have been obtained. The presented examples are a selection and do not constitute an exhaustive list of cases of over-implementation and ineffective application experienced by NNR's members. A list of these examples is provided the end of this English version of the report, as well as an example that has been resolved but where major costs remain.

Previously collected examples

Four of the examples previously collected by NNR are still considered to be of current interest.

The examples that are not considered to be as relevant anymore are either considered a thing of the past, have been replaced by other rules and regulations, have been remedied or have been removed for some other reason. We would like to emphasise that in one of the remedied examples (the transposition of the first railway package), the process took as long as 18 years, and significant effects remain. We therefore describe this example in its entirety in Appendix 2 (bilaga 2) to the Swedish version of this report.

6 [Effektivt-implementerad-och-tillampad-EU-ratt.pdf](#)



The example shows the importance of avoiding over-implementation, as it may have unimagined consequences in the long term.

Swedish Confederation of Transport Enterprises

New examples

In addition to the ten examples that remain from the previous collection, we have received nine new examples from our members, seven of which refer to over-implementation and two of which refer to ineffective application.

A brief analysis of the ten current examples of over-implementation currently presented shows that these involve adding regulatory requirements beyond what is required by the directive, applying stricter sanctions or other enforcement mechanisms than necessary for correct implementation of the legislation, extending the scope of the directive, retaining national regulatory requirements that are more comprehensive than is required by the directive in question, or not taking (full) advantage of any derogations where this would result in Single Market barriers..

The three examples of ineffective application chiefly refer to the interpretation of the relevant Swedish authority in each respective case or disproportionate sanctions being used instead of more proportionate enforcement mechanisms.

4.2 The Simplification Council's tasks in relation to the Implementation Council's tasks

To achieve true simplifications and effective and competitive Swedish implementation and application, cohesive efforts by the Implementation Council and the Simplification Council are required. This requires close cooperation between the two Councils. Their secretariats could ideally cooperate on an ongoing basis. We also recommend that the Councils' chairpersons make comparisons and share experiences to avoid differences between the Councils as regards their approaches and positions on over-implementation and ineffective application.

We would also draw attention to the fact that the Government, in the next better regulation package, should try to gather all issues into a single council. We refer to the Danish experiences, where they went from two separate councils to a single council. This was partly to avoid problematic boundary issues and to make more effective use of the skills and resources of the participating players.

5. Overarching conditions that are required to give effect to the Councils' work

Implementation and application of EU legislation are essential issues that must be included in the discussions at an early stage and during the entire regulatory process, from the idea for EU legislation to Swedish legislation and its application. As mentioned, the Swedish implementation and application must also be followed up and evaluated. Ineffective implementation or application must also be addressed and remedied.

To avoid adverse effects on the competitiveness of Swedish businesses and to avoid creating new Single Market barriers, the starting point for Swedish implementation should be at the minimum level of the relevant EU directive. The application of EU legislation must also be uniform. More restrictive Swedish interpretations may distort competition by subjecting Swedish companies to more severe regulatory requirements and higher costs, thus reducing the competitiveness of Swedish companies.

Below, we present some important overarching conditions required for the Implementation Council's and the Simplification Council's work to have effect. This involves establishing and adopting overarching quality principles for the work on implementation and application. The Government Offices must also have a solid and effective recipient function and a clear commitment to comply with the recommendations provided by the new Councils or explain any instances of non-compliance publicly. We would finally highlight the importance of transparency and a common website.

5.1 Principles and criteria for the Councils' work

To achieve a joint approach and common starting points for the work, overarching quality principles for the implementation and application of EU law in Sweden must be established and adopted by the Government. These principles should serve as guidance for the work of the Government, the Government Offices, the inquiry system and the administrative authorities, as well as the Implementation Council, the Simplification Council and the Swedish Better Regulation Council.

Denmark (and, in the past, the United Kingdom) has based its work on such principles, which are missing in Sweden. The principles should also include criteria stating what constitutes over-implementation to which the Government, the authorities, the Implementation Council, the Simplification Council and the Swedish Better Regulation Council must adhere. The criteria stating what constitutes over-implementation, prepared by NNR in cooperation with the Swedish Better Regulation Council⁷, should be used.

These principles should include ensuring that:

- » implementation and application must not result in competitive disadvantages for Swedish businesses compared with their European competitors. Consequently, the implementation must not be more onerous than the expected implementation in similar EU Member States or more burdensome than EU rules already implemented in these countries. Also, the application should not be more restrictive. To obtain information on this, comparisons should be made with the implementation and application in comparable EU Member States,
- » To the extent possible, EU rules in Sweden should be implemented by using alternatives to rules,
- » Onerous EU regulations should enter into force as late as possible,

7 Board of Swedish Industry and Commerce for Better Regulation: Clarifying Gold-Plating– Better Implementation of EU Legislation ([Clarifying gold plating november 2012.pdf](#)) (2012) and Improved competitiveness via more efficient implementation and application of EU legislation ([improved-competitiveness-via-more-efficient-implementation-and-application-of-EU-legislation.pdf \(nnr.se\)](#)) (2019)

- » As a starting point, the Swedish implementation of EU directives should not exceed the minimum level stated in the relevant EU directive.

For this reason, the impact assessment should include a description of the minimum level of the EU directive and an evaluation of whether it will be exceeded. The following should be accounted for:

- » Adding regulatory requirements beyond what is required by the directive;
- » Extending the scope of the directive;
- » Not taking (full) advantage of any derogations where this would result in Single Market barriers;
- » Retaining national regulatory requirements that are more comprehensive than is required by the directive in question;
- » Implementing the requirements of the Directive earlier than the date specified in the directive; and
- » Applying stricter sanctions or other enforcement mechanisms than necessary for the correct implementation of the legislation.

In cases where the minimum level is exceeded, the impact assessment must contain a justification of the reasons for it, a description of the proposed implementing measures and an assessment of their impact on businesses. Less far-reaching alternative solutions must also be analysed and considered.

The Government Offices and the authorities must be required to report on the above. Similar requirements must be made on committees, which are often appointed to investigate how to make the Swedish implementation.

5.1.1 Clarify in the guidelines for the new Ordinance on Regulatory Impact Assessment how over-implementation should be analysed and reported

Section 10 of the new Ordinance on Regulatory Impact Assessment (2024:183) contains certain clarifications requiring that the reasons be stated if the intended proposal means that the implementation of an EU directive into national law exceeds the minimum level of the directive.

Like in the previous impact assessment ordinance, Section 9 provides that an assessment shall be made of whether the proposal or decision is consistent with or goes beyond the obligations due to Sweden's accession to the EU.

However, according to NNR, the Ordinance remains ambiguous with respect to the examination of proposals that deviate from the minimum level. It is unclear how the reporting and the analysis shall be made for such proposals to meet Sections 6 and 7 of the Ordinance, which – in addition to Sections 9 and 10 – are also significant when investigating proposals for the implementation of EU directives. Hence, NNR is of the view that this must be clarified in the guidance that the Swedish National Financial Management Authority must prepare pursuant to the Ordinance.

That way, those who make a proposal must analyse and consider various alternative solutions and examine the consequences of a deviation for Swedish businesses and their competitiveness, whether the proposed provisions are truly necessary, and whether they are the most effective way of implementing the EU directive at hand.

5.2 Recipient function in the Government Offices, and 'comply or explain'

If the Implementation Council's and the Simplification Council's work is to be truly effective and lead to the established goal of reducing the regulatory burden for companies, it is key that a solid and effective recipient function is created in the Government Offices and the Government, and that the Councils' recommendations are indeed ensured and transformed into concrete actions by the Government and the authorities.

Like in the Danish case, the Government must also undertake to comply with the recommendations and proposals made by the Councils or – if they choose not to comply with a recommendation or proposal – they must explain clearly and publicly why they have decided not to.

A corresponding undertaking must be included in the appropriation directions to the authorities.

In each case, feedback should also be provided in writing by the ministry (or authority) in charge directly to the Councils. According to the experiences in Denmark, precise time schedules must be required for the Government's (and the authorities') feedback and implementation of the Councils' recommendations and proposals.

5.3 Transparency and a common website

The Government has chosen to establish an Implementation Council consisting of a chairperson and no more than eight members. As relatively few business community and company representatives will be directly involved in the Council's work and decisions, we expect that the Council's work will be highly transparent. Others than those directly involved in the Council must be given the opportunity to submit proposals for issues in upcoming EU legislation that are of particular interest or regarding current implementation or application. The same opportunity should be given for proposals regarding over-implementation/ineffective implementation or application that are addressed to the Simplification Council.

To allow for more extensive efforts in various areas, the Implementation Council and the Simplification Council may need to establish various working groups. NNR recommends that these be made up of organisations in addition to those already represented on the Councils.

The terms of reference of the Implementation Council refer in several places to the "Implementation Council website", which we interpret to mean that the Council shall establish a website of its own.

To allow high transparency and participation, which are also conditions for strong confidence in the Councils as well as the Government's better regulation efforts, a common website should be created for the work of both Councils. Any feedback from and work by the Government (and the authorities) based on the Councils' recommendations should be reported there.

NNR has long sought to make the Government aware of the need for a common website for all better regulation efforts. By using the opportunities offered by digitalisation, the transparency of and participation in Swedish and European law-making and better regulation efforts can be improved. The need for a common website becomes even more obvious in light of the establishment of the two new Councils. Nevertheless, it must be emphasised that a website and digital technology cannot replace physical meetings and dialogues/consultations; rather, they should be regarded as supplementary.

This issue was also highlighted by the OECD in its analysis and recommendations to Sweden in its most recent review reports (Regulatory Policy Outlook) from the OECD on good governance and law-making policy.⁸

An oral promise to establish such a website for all better regulation efforts was made by the minister of business and industry of a former government in connection with NNR's seminar on the Swedish result in the OECD Regulatory Policy Outlook 2018 in Stockholm.⁹ However, this promise never led to any action, so the need remains.

8 [OECD Regulatory Policy Outlook 2021 | OECD](#)

9 [Svenskt regelförbättringsarbete i ett internationellt perspektiv – OECD Regulatory Policy Outlook 2018 – Näringslivets Regelnämnd NNR](#) (recording 3.)

6. Recommendations

The Implementation Council is being established to assist the Government in its work on strengthening the competitiveness of Swedish businesses by avoiding implementation that exceeds minimum levels, counteracting unjustified regulatory burdens and reducing administrative costs and other implementation costs when implementing EU rules and regulations in Swedish law.

The Simplification Council was established to reduce businesses' regulatory burdens and the costs of existing rules, including existing over-implementation and ineffective application.

To ensure that the Council's work truly becomes effective and truly contributes to meeting the Government's goals, we present the following recommendations:

Government

» **Adopt principles and criteria for the implementation and application of EU legislation**

To create a joint approach and shared starting points, overarching quality principles must be established and adopted by the Government. These principles can guide the Government, the inquiry system, the administrative authorities and the various Councils.

The principles should also include criteria stating what constitutes over-implementation, which should be adhered to. The criteria stating what constitutes over-implementation, prepared by NNR in cooperation with the Swedish Better Regulation Council¹⁰, as mentioned in Section 5.1 of this report, should be used.

» **Require comparisons (neighbour checks) with other Nordic countries and EU Member States**

To avoid competitive disadvantages and higher costs for Swedish businesses compared with their competitors, comparisons should be made with Nordic countries and a selection of other comparable EU Member States regarding their planned implementation or interpretation of EU law. These comparisons aim to examine whether there are more effective alternatives that can also be used in Sweden. Commissions of inquiry, the Government Offices and authorities must be obliged to make such comparisons.

» **Ensure that the Implementation Council is involved at an early stage so that it may provide input on the implementation and application at all stages of the process**

To ensure that the Implementation Council's highlighting of issues of particular interest and significance for businesses in upcoming EU legislative acts and the Council's recommendations for the implementation and application of EU legislation are properly safeguarded and effective, the Council must enter the process at an early stage.

10 Board of Swedish Industry and Commerce for Better Regulation: Clarifying Gold-Plating– Better Implementation of EU Legislation ([Clarifying gold plating november 2012.pdf](#)) (2012) and Improved competitiveness via more efficient implementation and application of EU legislation ([improved-competitiveness-via-more-efficient-implementation-and-application-of-EU-legislation.pdf \(nnr.se\)](#)) (2019)

The Council must also be able to monitor matters that it has brought to the attention of the Government and provide input later in the process to committees of inquiry and on proposals for new laws/ordinances/regulations that involve the implementation of EU legislation with significance for companies.

» **A recipient function should be created in the Government Offices, and ‘comply or explain’**

If the Implementation Council’s and the Simplification Council’s work is to be truly effective and lead to the established goal of reducing the regulatory burden for companies, it is key that a solid and effective recipient function is created in the Government Offices and the Government, so that the Councils’ recommendations are indeed ensured and transformed into concrete actions by the Government and the authorities.

Consequently, the Government must make an explicit undertaking to comply with any recommendations provided by the Councils or, if they choose not to comply with a recommendation, they must explain clearly and publicly why they have decided not to. A corresponding undertaking must be included in the appropriation directions to the authorities.

» **Transparency and a common website**

NNR has long sought to make the Government aware of the need for a common website for all better regulation efforts. By using the opportunities offered by digitalisation, the transparency of and participation in Swedish and European law-making and better regulation efforts can be improved.

The need for a common website becomes even more evident in light of the establishment of the two new Councils, the Implementation Council and the Simplification Council.

» **Give the Implementation Council the mandate to act as a facilitator and resource for ministries and public authorities in their work on implementing, applying and interpreting EU law.**

The Business Community has identified a great need for a more uniform and structured approach to the principal starting points, both concerning how EU law should be applied in Sweden and how the dialogue with the business community and other stakeholders should be managed during the work.

It would be desirable for the Implementation Council to act as a facilitator and a resource for ministries and authorities in their work.

» **In the future, consider gathering these issues in a single council**

In the next better regulation package, the Government should try to gather all issues into a single council. We refer to the Danish experiences, where they went from two separate councils to a single council. This was partly to avoid problematic boundary issues and to make more effective use of the skills and resources of the Council and the participating players.

The Implementation Council and the Simplification Council

- » **Achieve a mechanism to bring issues/subject areas that require specific attention before the Implementation Council**

A mechanism aimed at bringing before the Implementation Council issues of particular importance for businesses in any upcoming EU legislation that requires the Government's specific attention and action must be established. It must be possible for issues to be brought to the Council by its members, but also by external players, prior to or between meetings. People other than the Council's members must be given the opportunity to propose issues that need attention.
- » **Introduce structured and close cooperation between both Councils**

To achieve true simplifications and effective and competitive Swedish implementation and application, cohesive efforts by both Councils are required. This requires their close cooperation.
- » **Ensure that existing over-implementation of EU directives and ineffective application of EU regulations becomes a focus area for the Simplification Council**

As regards the Simplification Council's work, time, the right expertise and resources must be ensured so that it can address and submit proposals for simplification measures regarding over-implementation and ineffective application. To ensure that these issues are given high priority, we recommend that the Council makes over-implementation and ineffective application a focus area.

Swedish National Financial Management Authority

- » **Clarify in the guidelines for the new Ordinance on Regulatory Impact Assessments how over-implementation should be analysed and reported**

The Swedish National Financial Management Authority's guidelines for the new Ordinance on Regulatory Impact Assessments must be clarified according to the above on how to analyse and report over-implementation. This applies to Sections 6, 7, 9 and 10 of the Ordinance.

List of examples of over-implementation and ineffective application of EU legislation

Examples of over-implementation

- » Habitats Directive – derogation from protection
- » Waste Framework Directive (2008/98/EC)
- » Prospectus Regulation (EU) 2017/1129
- » Birds Directive
- » Deposit Guarantee Directive and the Crisis Management Directive
- » VAT Directive
- » REACH and CLP
- » Accounting Directive
- » Anti-Tax Avoidance Directive (ATAD) (EU) 2016/1164
- » Procurement Directive – terms of employment

Examples of ineffective application

- » Regulation on pesticide residues in food and animal feed
- » GDPR and the Money Laundering and Terrorist Financing (Prevention) Act
- » Regulation on driving and resting times

Examples of over-implementation that have been remedied but where significant costs remain

- » The transposition of the first railway package

A more detailed account, in Swedish, of the examples above is available in Appendices 1 and 2 (bilaga 1 and bilaga 2) of the Swedish version of this report.¹¹

¹¹ [Effektivt-implementerad-och-tillampad-EU-ratt.pdf](#)

The Board of Swedish Industry and Commerce for Better Regulation, NNR

The Board of Swedish Industry and Commerce for Better Regulation represents the business community on issues related to better regulation. Our tasks include advocating and promoting more effective and less costly rules and regulations, reduced regulatory costs, relevant disclosure of information and a reduced disclosure burden for companies.

NNR organises and coordinates the business community's better regulation efforts on the national, European and international levels. NNR takes the initiative to dialogues with the Swedish Parliament, the Government and EU level representatives and carries out development projects for more effective rules and an effective application of regulations. This focused area of activity makes NNR unique among business organisations in Europe.

The Board of Swedish Industry and Commerce for Better Regulation (NNR) was formed in 1982 and is a politically independent non-profit organisation that is wholly financed by its members. Our members include 27 Swedish business organisations and trade associations that represent approximately 300,000 companies. More information on NNR is available at www.nnr.se.

Members of the Board of Swedish Industry and Commerce for Better Regulation, NNR, 2024

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