

NNR's proposal for priorities during the Swedish presidency of the EU in 2023



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NNR

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Better regulation for improved competitiveness



To create a competitive and sustainable Europe, both existing and new EU rules and regulations must be efficient and competitive and not deviate from those in other countries in the long term. The Board of Swedish Industry and Commerce for Better Regulation (NNR) therefore believes that the Swedish government should raise the issue of competitiveness and effective rules and regulations when it assumes the presidency of the European Union.

The responsibility for ensuring that EU rules and regulations are effective and competitive is shared between the European Commission, the European Council and the European Parliament. It is therefore of great importance that the European Council and other institutions monitor compliance with EU's overarching principles, such as the principle of proportionality and the principle of subsidiarity, and that the principles for better law-making laid down in the Interinstitutional Agreement on Better Law-Making (IIA)¹ between the three institutions are also applied by the European Council. The European Council must further ensure that the business community's regulatory burden is kept to a minimum.

In light of the above, NNR and its members are of the view that the measures proposed below constitute key conditions for achieving effective and competitive EU rules and regulations. These measures should therefore be included among the forthcoming Swedish presidency's priorities.

1 <https://eur-lex.europa.eu/legal-content/SV/TXT/?uri=CELEX%3A32016Q0512%2801%29>

Impact assessments

1. Conduct impact assessments in relation to substantial amendments to the European Commission's proposed rules and regulations.

An increased practical undertaking from the European Council and the European Parliament is necessary to ensure that substantial amendments by the European Council and the European Parliament to the original European Commission proposals are subject to impact assessments. What is to be considered a 'substantial amendment' must also be defined. Before a regulatory proposal is adopted by the European Parliament and the European Council, it should be accompanied by an evidence-based impact assessment so that the impacts are known before the decision is made.

The Swedish presidency should therefore take the initiative to develop procedures/guidelines for how and when impact assessments in relation to substantial amendments should be made. This should occur in close consultation with the business community. It should further take the initiative to ensure that impact assessments are carried out on selected matters that will be processed during the Swedish presidency.

Impact assessments made by the European Council and the European Parliament should be subject to independent supervision and review. This should occur in a transparent manner vis-à-vis affected stakeholders.

2. Monitor and demand that the European Commission carries out impact assessments on all proposals, including implementing and delegated acts, which may have significant impacts.

High-quality impact assessments give regulators sufficient supporting documentation to determine whether a proposal achieves its purpose in a cost-effective manner. Improvements are required to ensure that impact assessments are actually conducted on all important EU proposals.

3. Urge the European Commission to improve its analysis of the impacts of its proposals on competitiveness and consider such impacts carefully. The European Council should also make such analyses of its proposals for substantial amendments to the European Commission's proposals..

Based on experience, the business community is of the view that there are major deficits in the competitiveness checks and analyses that the European Commission should conduct according to its guidelines for impact assessments related to proposed EU rules and regulations (see tool #23). This is also confirmed by the Regulatory Scrutiny Board (RSB), which reviews the European Commission's impact assessments.² As the European Parliament and the European Council do not generally make impact assessments, the potential impacts of proposed substantial amendments on competitiveness are not analysed, either.

2 https://ec.europa.eu/info/publications/regulatory-scrutiny-board-annual-report-2020_en

A more democratic regulatory process



4. To avoid the delegation of issues that may have significant impacts, the requirement should be introduced in the Treaty on the Functioning of the European Union (TFEU) that a careful analysis should precede the authorisation of the European Commission by the European Council and the European Parliament to develop and adopt delegated or implementing acts. The European Council should also verify whether the proposal for a delegated or implementing act that is about to be adopted by the European Commission is consistent with the European Commission's powers.

Based on Article 290 of the TFEU, the European Council and the European Parliament may delegate the adoption of non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act to the European Commission. The European Commission is only granted the power by the European Parliament and the European Council to propose and adopt delegated acts on non-essential technical issues. However, the Business Community perceives that many of these technical issues, which have often been developed by a European authority and are presented to the European Commission for adoption as a delegated act (or an implementing act), have significant impacts on the Member States' economies and companies.

The Business Community is also of the view that the use of framework legislation, supplemented by delegations to the European Commission to adopt delegated acts that supplement or amend the legislation with details, has increased. This development is worrying, as the requirements on openness and consultation is lower than in the general legislative process. Also, there is no in-depth analysis to avoid making issues with significant impacts on Member State economies and companies subject to delegation.

The European Commission's principles and guidelines for better legislation should also be applied to delegated and implementing acts. This means that impact assessments should be conducted in relation to delegated and implementing acts with significant impacts. However, the business community perceives that such impact assessments are rarely conducted in practice.

5. Increase the transparency of trilogues.

Transparency of trilogues – negotiations between the European Commission, the European Parliament and the European Council – is very limited and must be increased. For example, dates and agendas of trilogue meetings and negotiation positions that have been established for individual negotiation rounds should be made available to the public in an easily accessible manner.

Flexible and technology neutral rules and regulations that promote innovations



6. Avoid micromanagement in legislation, especially in the European standardisation system and in the development of technical regulations in the EU. Instead, regulations should be based on principles and allow for different ways of meeting the goals of the regulation rather than regulating the means.

The design of EU regulations must be flexible and technology neutral. It should also be ensured that both new and existing EU regulations allow for technological innovations and new business models. When new regulations are being considered, a careful analysis should be made of whether they are absolutely necessary. Alternative solutions for solving the problem should also be analysed and considered. Overlaps with other rules and regulations should be identified and avoided. They should also allow for regulatory sandboxes and experimentation clauses.

Better implementation

7. Introduce realistic implementation periods.

Realistic implementation periods are a key factor to help achieve an effective and efficient implementation with legal certainty. Implementation periods that are too short cause onerous and high costs for the affected businesses. This issue may be particularly problematic in the financial area, for example, where overarching requirements and the times of entry into force are specified in the framework legislation, while technical details and so forth are determined later at various underlying institutional levels.

NNR therefore recommends that realistic implementation periods be introduced, not least where the regulatory process involves several institutional levels or where the European Council and the European Parliament delegates to the European Commission to develop and adopt a delegated or implementing act.

Based on the experiences of NNR's members, the European Commission and European supervisory authorities are often late in their development and adoption of delegated acts and technical

standards (and recommendations). To solve problems associated with short implementation periods due to late decisions by the European Commission and/or European authorities on delegated acts or technical standards (or recommendations that are strongly related to an act), we propose that it is considered whether European supervisory authorities (and Member States) may adopt a mechanism similar to no-action letters (or grace periods). The latter are used by certain financial supervisory authorities outside the EU, such as by US authorities. Such an option may allow the industry and financial markets in the EU a certain flexibility, which is needed when they face the challenge of not being able to comply with the regulations on the application date.

8. Introduce transparent reporting to the European Commission regarding the implementation of common EU regulations and any over-implementation (gold-plating) thereof.

When considering new or amended common EU regulations, the Member States and the European Commission should jointly ensure that they are fit for purpose, cost-effective and can be transposed to national legislation in a manner that supports the internal market. The implementation must be performed in a manner that does not fragment the internal market, prevent competitiveness or give rise to unnecessary costs or burdens.

Member States have the right to determine how an EU Directive should be implemented in the individual Member State, which in turn requires Member States to be transparent when doing so.

When an EU Directive is transposed to national law, Member States often go beyond what is required at the minimum level agreed by the EU (over-implementation or gold-plating). This may pose significant burdens on companies, especially small and medium-sized enterprises (SMEs). Member States must therefore be required to become more transparent and explain, justify and describe the impact of any over-implementation. They should also report to the European Commission, based on joint criteria (developed in cooperation with the business community), when the minimum level of the Directive is exceeded. This should include:

- Adding regulatory requirements beyond what is required by the Directive.
- Extending the scope of the Directive.
- Not taking (full) advantage of any derogations when this may cause barriers in the internal market.
- 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.
- Applying stricter sanctions or other enforcement mechanisms than are necessary to implement the legislation correctly.

The above criteria correspond to the criteria for over-implementation that were jointly developed by NNR and the Swedish Better Regulation Council³, which criteria were also summarised in NNR's request to the Committee on Industry and Trade in October 2015. These criteria are also largely consistent with those developed by the organisation BusinessEurope.⁴

3 https://nnr.se/wp-content/uploads/gold-plating_regelradet_nnr.pdf

4 <https://www.besnesseurope.eu/sites/buseur/files/media/imported/2013-00641-E.pdf>,
<https://www.besnesseurope.eu/publications/transparent-transposition-besnesseurope-strategy-paper>

Follow-up and evaluation



9. Develop the review clauses provided at the end of legislative proposals to ensure greater consistency.

Review clauses play an important role in ensuring that legislation remains fit for purpose, effective and competitive after a certain period of time. In the IIA on Better Law-Making, it is stated that the three institutions agree to systematically consider the use of review clauses in legislation.

The wording of review clauses must generally be adapted based on the regulatory framework in question, but greater consistency could be achieved with regard to the use of definitions, methods, etc. Recommendations by the European Court of Auditors should be considered to achieve this. The European Council could also accept the European Commission's invitation to cooperate (with the European Commission and the European Parliament), as expressed in the European Commission's better regulation communication, in the work towards consistent 'review clauses' and 'practicable monitoring clauses'.

The European Council must also monitor that evaluations/follow-ups are conducted in a transparent and independent manner. Most importantly, any weaknesses in the facts presented and the conclusions based upon them must be reported in a transparent manner. Increased transparency is also required in assignments related to follow-up/evaluations.

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

Drivkraft Sverige

IKEM, Innovation and Chemical Industries in Sweden

Kontakta

KTF – Kemisk Tekniska Företagen

The Employers' Organisation for the Swedish Service Sector (Almega)

The Swedish Property Federation (Fastighetsägarna Sverige)

The Association of Swedish Finance Houses (Finansbolagens Förening)

The Swedish Investment Fund Association (Fondbolagens Förening)

The Swedish Federation of Business Owners (Företagarna)

The Federation of Swedish Farmers (Lantbrukarnas Riksförbund)

The Swedish Food Federation (Livsmedelsföretagen)

The Small Business Association (Småföretagarnas Riksförbund)

The Stockholm Chamber of Commerce (Stockholms Handelskammare)

Swedish Private Equity & Venture Capital Association, SVCA (SVCA)

The Swedish Food Retailers Federation (Svensk Dagligvaruhandel)

Swedish Trade Federation (Svensk Handel)

The Swedish Industry Association (Svensk Industriförening)

The Swedish Securities Dealers Association (Svensk Värdepappersmarknad)

The Swedish Bankers' Association (Svenska Bankföreningen)

The Confederation of Swedish Enterprise (Svenskt Näringsliv)

The Swedish Construction Federation (Byggföretagen)

The Association of Swedish Engineering Industries (Teknikföretagen)

The Swedish Confederation of Transport Enterprises (Transportföretagen)

The Swedish Federation of Wood and Furniture Industry (Trä- och Möbelföretagen)

Visita – The Swedish Hospitality Industry

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 25 Swedish business organisations and trade associations that represent approximately 300,000 companies. More information on NNR is available at www.nnr.se.