

NNR's recommendations for an improved decision-making process for delegated acts and other downstream legislation

Introduction

To create a competitive and sustainable Europe, regulation must only be used when necessary; it is paramount that any rules adopted jointly by the EU Member States are fit for purpose, effective and competitive. It is also important that EU directives are implemented in a similar manner in all Member States and that the application of EU law is uniform. Over-implementation (also known as gold-plating) or a more restrictive Swedish interpretation may distort competition by subjecting Swedish companies to more severe regulatory requirements and higher costs, thus reducing the competitiveness of Swedish companies.

In previous better regulation efforts, it has been established that more than half of the regulatory burden posed on Swedish companies is a result of EU law. The new wave of EU regulation that has been introduced lately, or will be introduced in the near future, to meet challenges related to the climate, energy and security and other issues means that companies must meet a great many new regulatory requirements, which increases the regulatory burden as well as costs. This will occur in a situation when other costs have also increased due to Russia's war against Ukraine, the pandemic, etc. We also see a tendency for increased requirements and regulation that are compensated with state aid, which affects the economy and functionality of the market in question.

NNR and other organisations have repeatedly drawn attention to shortcomings in the Swedish process for work on EU legislation and highlighted the fact that the need for improvements is significant.¹ Areas to which we seek to draw particular attention include the lack of a process and procedures that allow transparency and participation, such as early and recurring consultations with the business community for the duration of the work on EU legislation, and the fact that no national impact assessments are conducted. Also, Swedish advocacy occurs at too late a stage.

In NNR's experience, there are also shortcomings at the EU level with regard to impact assessments of EU proposals and the possibility for transparency and business community participation in the EU decision-making process.

¹ <https://nnr.se/wp-content/uploads/improved-competitiveness-via-more-efficient-implementation-and-application-of-EU-legislation.pdf>

Problems associated with delegated acts

An issue that has been brought up by NNR's members as particularly problematic is the increased delegation of powers from the Council and the Parliament to the Commission, empowering the Commission to prepare technical details in the form of delegated acts that supplement or amend framework legislation. The increased use of delegated acts is also confirmed by a new academic study.²

Many representatives of the business community perceive that they are not provided with sufficient opportunities to gain insights and participate in the development of delegated acts and other downstream legislation. This experience is also confirmed by the results of the above-mentioned study.

In NNR's experience, delegated acts are increasingly given "political" content rather than mainly "non-essential technical details", which is the purpose for and the requirement on such acts. Consequently, such acts are increasingly likely to have significant consequences for the business community. Due to the lack of transparency and the business community's limited opportunities for participation, there is a major risk that the regulations developed do not meet their purpose or do not meet their purpose in the most effective manner. Also, regulations may cause disproportionate costs and overlap with other regulations, and companies may not be able to apply them.

According to NNR, there is a reason for the increased "politicisation" of delegated acts, and consequently, the increased use of such acts: when Member States find it difficult to agree, they refer the details to the Commission. It is also an expression of the fact that the Commission has high ambitions of its own, likes to make its own extensive proposals and seeks to move the process along (such as with regard to the climate and the environment). In both cases, it may also be that the Commission is seeking to speed up the process.

Another challenge identified by the European business community is the Commission's use of the powers delegated to them by the Council and the Parliament.³

² <https://www.cfe.lu.se/en/activities/publications/viewpoint-europe/stakeholder-participation-eu-executive-lawmaking>

³ https://www.businesseurope.eu/sites/buseur/files/media/position_papers/internal_market/2022-10-06_pp_delegated_acts.pdf

NNR's recommendations

NNR presents its recommendations for an improved decision-making process for delegated acts and other downstream legislation, particularly as regards transparency, the business community's opportunity to influence, and the importance of impact assessments. These recommendations are addressed to the Council and the Parliament, as they delegate powers to the Commission to prepare and adopt delegated acts, as well as to the Commission. Recommendations for improvements to the Swedish efforts will also be submitted to the Swedish government.

The recommendations supplement the requirements and proposals for improvements expressed by NNR in previous documents and written communications on the Swedish and European processes and the EU and legislative process.

European Union

The Council and the Parliament

- » Avoid delegating issues of a political nature.
- » A meticulous analysis should be made before the power to prepare and adopt delegated acts is granted to the Commission, to avoid the delegation of issues that are of a political nature and may have significant effects on the business community.
- » The scope and conditions of the delegation to the Commission of powers to prepare and adopt delegated acts should be better defined in the basic acts. The Commission can be empowered to propose clarifications to the basic acts, but it should not be allowed to propose or adopt legislation that deviates from or increases the scope of the basic acts.
- » When delegated acts (and other downstream legislation) are to be prepared following the adoption of a basic act, it should be ensured that the implementation periods are realistic.
- » The Council should also verify that the proposals for delegated or implementing acts that are adopted by the European Commission are consistent with the Commission's powers.

The Commission

- » Transparency for stakeholders and the opportunities for stakeholders to participate in and provide feedback on early texts/drafts of delegated acts or technical standards (or recommendations) from the Commission or European agencies should be increased, such as by lifting the confidentiality requirements on discussion materials in reference groups to European agencies and with Member State representatives and advisory groups to the Commission for the work on delegated acts.

- » The four-week consultation period for proposals for delegated acts should be extended to give stakeholders, including trade associations and companies, sufficient time to consult with various parts of the organisation, perform analyses, make calculations and draft responses regarding the proposed delegated acts.
- » Uniform scopes and criteria for how expert groups are intended to function should be created with the aim of increasing transparency and making it easier for representatives of the effected business community to participate in the Commission's expert groups and directed consultations for delegated acts and other downstream legislation. The Commission must ensure that there is a good balance between and good representativity of different interests in consultations and expert groups.
- » Impact assessments should be made of all downstream legislation that may have significant effects, which is not the case today. The Commission should always make impact assessments unless the Commission can show that the omission does not have significant effects.
- » The impact assessment of a basic act should also contain an analysis of the choice of downstream legislation and balance different forms of regulation.
- » The issue with short implementation periods due to late decisions by the Commission and/or European agencies on delegated acts or technical standards (or recommendations that are strongly related to a legislative act) must be addressed. We therefore propose that the Commission consider the possibility to provide European (and Member States) supervisory authorities with a mechanism similar to the no action letters (or grace periods) that are used by certain non-EU financial authorities, such as in the US.

SWEDEN

Government Offices

- » As an EU Member State, Sweden should draw attention to and analyse any proposed delegation of powers to the Commission to prepare delegated acts. Sweden should also strive to ensure that the above recommendations to the Council and the Commission are dealt with.
- » It should be ensured that Swedish experts are included in expert groups and committees that are of major importance to the Swedish business community. Swedish experts in ministries and authorities should be required to obtain the opinion of the affected Swedish business community on early proposals for directives, regulations and downstream legislation. The confidentiality of documents must not prevent dialogues.
- » The government appoints experts to expert groups. The Government Offices must therefore ensure that experts are provided with a prepared position and instruction that the Government Offices is in charge of. Swedish experts should focus on making Sweden competitive.
- » There must be transparency regarding the Swedish experts from ministries and authorities that are members of committees and expert groups.

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

Members

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 Aggregates Producers Association (SBMI)

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