

The background of the entire page is a close-up, textured image of the European Union flag, showing the blue fabric and the yellow stars.

# **PROPOSALS FOR IMPROVEMENT AND SIMPLIFICATION OF EU LEGISLATION**

**April 2021**

**NNR**

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





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### **VAT: REFORM THE EXEMPTIONS FOR THE WELFARE SECTOR (EDUCATION, HEALTH AND SOCIAL CARE)**

#### **Legislation concerned**

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (primarily Article 132 together with Title VIII Chapter 2 Section 3, or Article 169).

#### **Problem description/Burden on business**

Welfare institutions (schools, hospitals, residential/social care, etc.) are undergoing the same structural change and development as the rest of the society. The potential and need of digitization within these sectors have, not the least, been highlighted during the pandemic. However, it is evident that the current rules are not fit for purpose. On the contrary, the VAT exemption for medical care, social care, education etc. hampers well needed investments into these sectors. As a direct consequence of today's rules, less schools and hospitals are being built than demanded, health care institutions neither has the human competence that is needed nor the latest equipment. Furthermore, online services as well as the development of different IT-systems are hampered, negatively affecting both the direct "consumer" as well as closely related persons. These, and other, problems are worsened due to blocked input VAT.

The relevant exemptions in the VAT Directive was enacted in a different time with less need of investments, fewer actors participating in the transactions as well as with lower VAT rates in the EU Member States. Contrary to this, today's reality further increases the problems stemming from blocked input VAT. The current VAT rules regarding the welfare sector is not Fit for Future and need to be reformed.

#### **Simplification proposal/suggested solution**

The VAT Directive needs to be updated in order to support investment and development within the welfare sectors. This should be done by removing the blocked input VAT.

Preferably by introducing a right to deduction in connection with the relevant exemptions (a so called zero rate). Alternatively, the relevant exemptions could be replaced by a super reduced rate "for certain activities in the public interest". Under all circumstances, at least a possibility for the Member States to introduce an option to tax for these actors within the welfare sector should be considered.

#### **Effects of the simplification proposal**

An update of the VAT Directive removing the blocked input VAT would increase investments significantly and increase citizens access to the different welfare services. By removing obstacles to investments within e.g. schools and hospitals, the quality of the supplied services (e.g. education and health care) is likely to increase, entailing long term benefits for the EU.

Furthermore, depending on the chosen solution, compliance costs could be reduced. Today, a significant amount of time and money are spent on avoiding unwanted VAT effects due to an outdated directive.

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## TRANSPORT

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### **ENABLE PROFESSIONAL BUS DRIVERS FROM THE AGE OF 18, HOLDING REQUIRED QUALIFICATIONS, TO CARRY PASSENGERS ON ROUTES EXCEEDING 50 KILOMETRES WHEN DRIVING VEHICLES IN LICENCE CATEGORIES D AND D PLUS E**

#### **Legislation concerned**

Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers.

NB. We are aware that this directive is in the process of codification. Although, our understanding is that the codification is of administrative character and not aimed at revising the actual content and meaning of the legislation and should, therefore, not exclude the simplification proposal from being considered by the platform.

#### **Problem description/Burden on business**

Article 5.3 (a) in Directive 2003/59/EC prevents that drivers from the age of 18 and up to 20, holding a licence for categories D and D plus E as well as a Certificate of Professional Competence (CPC) – as referred to in articles 6(1) and 6(2) and as required depending on age of driver - may drive vehicles intended for the carriage of passengers on regular services on routes exceeding 50 kilometres with passengers on board the vehicle, within the territory of a Member State.

A great number of bus routes in Sweden exceed 50 kilometres. It is inefficient for public service operators (henceforth operators), providing public passenger transport services, not to be able to assign all employed drivers to all routes. The rule also causes complicated scheduling routines when some drivers can only be employed on certain routes.

In addition, this limit makes it more difficult for operators to recruit new drivers as it also has the side-effect of making the profession less attractive to young people between the ages of 18 and 20; this because they are not allowed to fully use their skills as drivers. This is per se a concern for the operators as they are already finding it challenging to recruit new personnel to replace retiring drivers – in Sweden every fourth driver is above 60 years of age.

The Corona-pandemic has put even more pressure on companies to retain and recruit drivers as many older drivers have refrained from driving out of fear of infection, and they are not expected to return to the profession once pandemic-related restrictions are lifted.

All-in-all the age-restrictions on driving vehicles on routes longer than 50 kilometres pose a threat to the ability of companies and the public sector to retain desired levels of public transport.

#### **Simplification proposal/suggested solution**

Our proposed solution to the problems listed above is that article 5.3 (a) is simplified in order that restrictions pertaining to the age of drivers and distance of routes are removed thus allowing a Member State to authorise drivers from the age of 18 and 20, holding the required licence and CPC, to carry passengers on regular services on all routes of all distances, within its territory.

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The simplification would in our view consist of removing the following provisions from article 5.3 (a):

- 5.3 (a) i: ~~“where the route does not exceed 50 kilometres”~~
- 5.3 (a) ii: ~~“where the driver drives such vehicles without passengers”~~.

This would bring the requirements put on professional drivers of vehicles carrying passengers on par with the requirements put on professional drivers of vehicles used for carrying goods, which in our view would be desirable.

### **Effects of the simplification proposal**

The simplification proposal would bring several benefits to the public transport sector in that:

- It would allow public service operators responsible for providing public transport services to plan and manage their schedules and staffing of routes, as all qualified drivers would be able to drive all routes.
- It would make the career path of professional bus driver more attractive to younger people as there would be no restrictions put on their career development, and this would in turn make it easier for public service operators to fill driver vacancies and counteract shortage of skilled drivers.

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### **FAMILY FARMS/SMES SHOULD NOT BE INCLUDED IN THE INDUSTRIAL EMISSIONS DIRECTIVE**

#### **Legislation concerned**

Directive 2010/75/EU on industrial emissions.

#### **Problem description/Burden on business**

A directive on industrial emissions should include industries, not SMEs such as ordinary farms. In Sweden there are approx. 15 000 farms with beef and milk production, mostly family businesses. For them an inclusion in the directive would be seen as unnatural and disproportional and would cause massive red tape. The IED includes binding emission levels of ammonia-nitrogen. Such are possible to calculate for animals kept indoors as pigs and poultry. Milk cows and beef cattle however are grazing large part of the year in Sweden which makes it nearly impossible to launch such standard emission levels.

#### **Simplification proposal/suggested solution**

The ongoing revision of the IED should not result in an inclusion of beef and milk farmers.

#### **Effects of the simplification proposal**

A non-inclusion of beef and milk farmers in the industrial emissions directive would be proportional and signals to the farmers that they can focus on their main objective, to produce sustainable food for consumers.

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## DELEGATED ACTS

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### INCREASED TRANSPARENCY AND CONSULTATION PERIOD REGARDING DELEGATED ACTS AND USE OF NO-ACTION LETTERS

Lack of transparency in the Commission (and EU agencies) preparation of delegated acts and too short consultation and implementation periods risk leading to delays, uncertainties and re-coils during later stages of the adoption process or in even worse cases, the adoption of EU acts that are not fit for purpose, ineffective and impose business unnecessary costs and burdens.

#### Delegated acts

Through the use of Article 290 of the TFEU the Commission is often delegated by the Council and Parliament to adopt non-legislative acts of general application that supplement or amend certain non-essential elements of a legislative act.

This procedure is frequently used in several areas, for example the internal market, environment, consumer protection, agriculture and transport.

The Commission is said to only be mandated by the Parliament and Commission to propose and adopt delegated acts on non-essential technical issues. Industry experience is though that many of these technical issues, often elaborated by a European agency and put forward to the Commission for adoption as a delegated act (or implemented act), have significant effects to member states' economies and businesses. Recent examples are delegated acts for the Taxonomy Regulation, and the output floor in final BASEL III.)

Business perception is that there has been a development towards more framework legislation complemented with delegation to the Commission to adopt delegated acts that supplement or amend the legislation containing the details. This development is worrying as the requirements regarding transparency and consultation are lower than for the normal legislative process and no in-depth analysis precedes a delegation to avoid that issues with significant effects to member states' economies and business become subject to delegation.

#### Transparency

Business experience is that the transparency in the work on delegated acts is much too low and needs to be enhanced. Transparency is a prerequisite for insight, participation and legitimacy and is thus important to ensure a democratic EU and that EU regulations that are decided are fit for purpose, effective and do not impose business unnecessary or disproportionate costs and burdens on business and society.

One problem regarding transparency is that early drafts of acts or measures or other preparatory documents shared by the Commission with Member States' (MS) representatives in the relevant committee or with experts are confidential as "it is intended only for the member state or entity to which it is addressed for discussion and may contain confidential and/or privileged material". This means that neither an MS representative nor an expert may share these documents with other business organizations or other stakeholders that are not part of these groups but are impacted by the delegated acts. The effect is that groups that have significant experience of and the greatest role in the implementation of the legislation are excluded from contributing during the preparatory work of the delegated act. This by neither having access to information on what is being discussed at an early stage nor on the impacts it might have.



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Lack of transparency is also a problem related to the drafting by European agencies of recommendations/guidelines or of binding Regulatory Technical Standards (and Implementing Technical Standards), which are adopted by the Commission as delegated (or implementing) acts<sup>1</sup>. Today, there are limited opportunities to participate in the EU authorities' reference groups. As this work and related documents are subject to confidentiality, and as confidentiality also applies to participating industry representatives, it is not possible for businesses or trade associations that are not representatives to at an early stage take part of what is being discussed or to give their input on the impacts.

### **Consultation**

According to the Commission's better regulation agenda, citizens and other stakeholders can provide feedback on the draft text of a delegated act during a four-week period. The four-week consultation period however doesn't give stakeholders including business organizations and businesses enough time to consult different parts of the organization, carry out analyses and calculations and to formulate a response to proposed delegated acts which often contain several proposals.

It is also the case that the later the views are addressed in the regulatory process, the less chance there is that these will lead to any major changes to the proposal.

### **Late preparation and adoption**

Another complication is that the Commission or European authorities often are late in their preparation and adoption of delegated acts or of technical standards (or recommendations). This has for example been the case regarding the Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and has occurred at several occasions regarding acts related to the financial area.

As the time for implementation is set in the Directive or Legislation this often leads to much too short implementation periods both for the member states, concerned businesses and other stakeholders. Realistic implementation periods are a key factor to achieve an effective and efficient implementation with legal certainty. With a late adoption of a delegated act or technical standards (or recommendations strongly related to the act) member states will be forced to implement the directive or regulation even though not all parts and details (specified in the delegated act or in technical standards) are finalized and adopted. The consequence of this is that businesses need to make adaptations/changes without knowing all the details and shortly thereafter may need to make adaptations/changes again when the related delegated act or technical standards (or recommendations) have been decided. This legally uncertain procedure can cause business onerous and high additional regulatory burden and costs, the latter sometimes related to development of systems, which could have been avoided. In a worst case scenario businesses may even be sanctioned for not following the rules, despite the fact that implementation periods were cut short through no fault of the businesses.

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<sup>1</sup> Transparency with regard to the process for implementing acts could also be an issue but is not the focus of this proposal.

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### **Proposed solutions**

Increase stakeholders insight in and possibilities to participate and provide input on early texts/ drafts of delegated acts or European agency technical standards (or recommendations) for example by easing confidentiality requirements regarding material for discussion in reference groups to European agencies and with member states representatives and advisory groups to the Commission in the work on delegated acts.

The four week consultation period regarding proposals for delegated acts should be extended to give stakeholders including business organizations and businesses enough time to consult different parts of the organization, carry out analyzes and calculations and to formulate a response to the proposed delegated acts.

To overcome the problem related to short implementation periods due to late decisions made by the Commission and/or European authorities on delegated acts or on technical standards (or recommendations strongly related to an act) we suggest that:

Consideration could be given to the possibility for European- (and member states) supervisory authorities to have a mechanism like the so-called No-Action letters (or Grace period) used by certain non-EU financial authorities, for example the US authorities. Such a possibility could give industry and financial markets in EU some needed flexibility when faced with implementation challenges that they will not be able to comply with the rules on the day of application.

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## IMPACT ASSESSMENTS/RSB

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### INCREASED QUALITY IN THE IMPACT ASSESSMENT AND CONSULTATION PROCESS

The European Commission established in 2016 a new body for regulatory scrutiny to increase the quality of impact assessments- the Regulatory Scrutiny Board (RSB). RSB replaced the former Impact Assessment Board and was given more independence and a stronger mandate than its predecessor. The Board's scrutiny is important to strengthen and ensure a high quality of the European Commission's impact assessments.

To afford stakeholders the opportunity to submit feedback on impact assessments and their different parts at a stage when adjustments can still be made, we suggest that the draft impact assessments should be published on the RSB's website. The draft impact assessments should be published before the final regulatory draft is adopted by the European Commission.

Furthermore, the mandate of the RSB should be expanded to include examining how consultations have been held and how they have been addressed in the impact assessments.

The RSB's mandate should be expanded to also include situations where no impact assessment has been carried out.

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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 was formed in 1982 and is a politically independent non-profit organisation wholly financed by its members, which include 25 Swedish business organisations and trade associations together representing just over 300.000 companies. This means that NNR speaks for all active companies in Sweden with one or more employees; companies in every industry and of every size. NNR's task is to advocate and work to achieve more effective and less costly regulations and a reduction in the extent to which companies are required to report information in Sweden and the EU. NNR coordinates the business sector's review of impact assessments of proposals for new or amended regulations as well as the business sector's regulatory improvement work at national and EU level. This focused area of activity makes NNR unique among business organisations in Europe. More information on NNR is available at [www.nnr.se](http://www.nnr.se).