

SYSTEMATIC EVALUATION

Taking political responsibility for
more cost-effective regulations



Summary and recommendations

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Author: Tomas Lööv

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BOARD OF SWEDISH
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– CUTTING RED TAPE FOR BUSINESS –

Andrea Femrell, President and legally responsible for the compilation
Tomas Lööv, Senior Advisor and compilation author
Scantech Strategy Advisors, production and layout

Summary

Political decisions need to be taken on many different issues of varying complexity and within a whole series of areas within society. In an ever faster-moving world, it is easy for the political system to focus wholly on introducing new measures instead of first looking back and learning the lessons of the past. In addition, globalisation and digitisation mean that national institutions and regulatory framework are subject to pressure from the outside world, requiring the regulations to adapt to new changes in the outside world and new frameworks. Asking what functions well and less well should therefore be a natural starting point, providing a basis for identifying change requirements in both businesses and society in terms of regulatory framework and policy instruments.

In connection with the most recent amendment to Sweden's constitution in 2010, the requirement for parliamentary committees to work on follow-up and – within their remits – to evaluate decisions made was extended. Another formal requirement for regulators to conduct evaluations is set out in the Ordinance on Impact Analysis of Regulation.

The Board of Swedish Industry and Commerce for Better Regulation, NNR, considers that the various committees conduct relatively few evaluations, given the large number of decisions that are taken with regard to new or amended regulations. Where the requirement in the Ordinance on Impact Analysis of Regulation is concerned, in principle no evaluations are ever carried out. Evaluations in some form are conducted within the framework of committee work, in reports published by the Government Offices of Sweden and through a number of assignments given to various authorities, often with different kinds of demarcations. According to NNR, evaluations seem to be conducted primarily by authorities when it comes to assessing the effects of how public funds are used, for example by IFAU (the Institute for Evaluation of Labour Market and Education Policy), the Swedish National Agency for Education and the National Board of Health and Welfare, but by no means to the same extent when the costs are being covered by the business community. NNR considers the total allocation of resources must be key and incorporated in various evaluations. This includes costs for both the public sector and for businesses, and is necessary to be able finally to discuss the question of effectiveness of various regulations.

In this report, NNR presents three case studies of regulatory framework that have been in existence for different lengths of time and where the businesses concerned currently perceive there to be various problems. The regulations concerned are compulsory ID and attendance reporting and fines; water protection areas; and ex ante testing of livestock buildings. What these regulations have in common is that they have been evaluated in some respect but that this has been done by authorities that are themselves responsible for formulating and monitoring the regulations in question, and thus there is a form of self-interest at play.

The case studies clearly show good reason to evaluate regulatory frameworks from a holistic perspective so as to capture problems critical to the legitimacy and application of the regulations. Where the regulations on compulsory ID and attendance reporting and fines are concerned, the question is whether undeclared work and tax evasion have decreased as a result of the regulations and whether the costs associated with the regulations are in reasonable proportion to the benefits. The issues regarding the regulations of water protection areas include the risk of companies being treated differently as a result of municipalities being able to invoke different legal principles for exactly the same matter, as well as who should bear the responsibility for reporting data to support the drawing up of boundaries and restrictions on the companies' rights

to use the land. In the case of pretesting livestock buildings, it may be questioned whether the regulations are suited to the current level of development and new requirements within agriculture. Moreover, the original objective of the regulations was linked to animal welfare, while their application concerns the construction of livestock buildings.

For all that, society spends considerable amounts on reviews in the broad sense, for example supervision, evaluations, audits, etc. Estimates suggest that related expenditure in these areas could be as high as SEK 300 billion per year. NNR considers that some form of redistribution of resources and focus ought to be possible here.

What is important is not that evaluations are carried out per se; evaluations should rather be viewed as a means of achieving regulations that are fit for purpose and cost effective. Evaluations can provide the politicians responsible with supporting data to legitimise the need to review decisions that have been taken. Countries such as Australia, the United Kingdom and Germany definitely use evaluations more systematically within the framework of their regulatory work. Sweden has much to learn in this respect.

NNR considers that a number of measures need to be implemented to strengthen the work on evaluating regulatory framework. The principle must be that the Swedish parliament carries out systematic evaluations and implements measures to strengthen the transparency and openness linked to the explicit tasks assigned to the committees. Another reasonable requirement is that the outside world must be aware that an evaluation will take place and that the Riksdag (the Swedish parliament) has a systematic approach that allows various business organisations, for example, to submit their views. If the various groups affected do not even realise that an evaluation is taking place, and no one gathers information from those affected, it will be difficult to form an idea of the effects that have arisen as a result of requirements introduced previously. In addition, the issue of choice of areas and the focus of certain evaluations feels somewhat strange at present. The demarcation should be a self-evident question as to whether specific legislation of major significance to the national economy simultaneously contains specific requirements. Some form of threshold values that create a transparent system for conducting evaluations should be introduced in Sweden, in line with practice in Germany and the United Kingdom.

For reasons of cost and expertise, NNR believes that regulations should be evaluated by a small number of expert practitioners or with the help of consultants and academics. To handle these processes, an organisation should be set up within the central government administration with operational responsibility for the Riksdag's commissions and further coordination of activities in this area. Public authorities should not be allowed to evaluate their own regulations because of the risk of conflicts of interest.

The requirement for evaluations may seem to constitute a considerable workload for the central government administration, but this must be weighed against the costs to the national economy that may ensue as a result of poorly functioning regulations creating significant distortions or causing disturbances in the economy over time. There is also the risk of the regulations failing to deliver the result that formed the starting point when they were introduced. Correctly designed, and with requirements linked to significant regulations, a system of evaluation can help to increase both target achievement and cost-effectiveness for regulations going forward.

Conclusions and recommendations for measures

"There is nothing wrong with change, if it is in the right direction"
(Winston Churchill)

This report started with a familiar quotation, so it is perhaps appropriate to finish it in the same way to show that the issue addressed within the framework of this report is something that politicians have been reflecting on for a long time. It may be perceived as challenging to make decisions about and relate to change in various forms. However, given that everything changes over time, there must be a way to review political decisions too, since no one could predict the future at the time the decision was made and, in most cases, regulatory framework have unintended consequences over time.

In the light of this fundamental problem, a number of countries around the world – as mentioned in the report – are working systematically on various forms of retrospective analysis. In Sweden, a number of evaluations linked to political decisions are being carried out, mainly relating to the allocation of funding for various types of policy instruments and initiatives in the areas of schools, the labour market and innovation, for example. When it comes to regulations where the costs are ultimately borne by business owners and consumers, NNR finds that evaluations are conducted more on an ad hoc basis. We have not counted all the evaluations that have been carried out, but our conclusion is based on the wide variety of matters referred to NNR by the Government Offices of Sweden and various public authorities each year, as has long been the case. Information has previously been presented indicating that evaluation has become a more common element of administrative policy and the shift that came with ‘new public management’.

NNR has pointed out in the present report that these processes entail problems and challenges in reaching high-quality evaluations that address the right issues. Moreover, we find in our examples of individual cases where evaluations have been conducted after all that significant questions remain as to how these regulatory framework affect the businesses concerned and how they relate to the objective in the area. In our view, this indicates a need for a different kind of implementation and one with different starting points. What we mean by this is that there is a need to draw up shared fundamental values applicable to a ‘statistical life’, rate of interest, etc. We consider that a life in a traffic context should be valued in a uniform way in economic and statistical terms. Without these forms of shared fundamental bases of calculation, it is difficult for decision-makers to relate to the results, particularly if they span several policy areas.

We consider achieving increased openness and transparency linked to these processes to be key, irrespective of where the evaluations take place and who has commissioned them. NNR believes the European Commission’s evaluation plans can be seen as a form of model, enabling interested parties to provide various inputs to the Commission on issues linked to the body of regulations to be evaluated. Australia’s guidelines provide another model in many ways, not least concerning the process for involving groups affected by the regulations, e.g. from the business community.

The Riksdag has a big responsibility, given its role as legislator and the attendant requirements for follow-up by committees. The starting-point should probably be to strengthen the work on impact assessments and that more information must be available on various matters right from when the decision is made. Statistics from the Better Regulation Council show that Sweden’s

levels of quality in this area remain low. NNR has long advocated the need for other measures and, in 2013, wrote to the Swedish government about the need for a holistic perspective in order to improve the impact assessments. Unfortunately, it must be noted that no substantive measures have been adopted further to our suggestions, either by the previous majority or the present one.

NNR considers it important to establish a transparent process in which the political system, headed by the Riksdag, takes clear responsibility for the regulatory framework it has introduced and, in this perspective, evaluating the regulations is of course key. Against this background, NNR proposes a number of measures that, taken together, can facilitate high-quality evaluations that can be used going forward to assess the effectiveness of various regulations and the extent to which they have achieved their objectives.

NNR proposes the following measures be implemented to strengthen the work on evaluations:

- Adopt criteria for when important regulatory framework need to be evaluated. It is expedient here to use the same criteria to determine the scope of the impact assessment and within what timeframe evaluation is to be carried out, based on the type of model used in several other countries.
- The Riksdag should commission evaluations and present an overall plan for what is to be evaluated. Moreover, the Riksdag should – in its capacity as the body responsible for commissioning evaluations – require transparency to be improved in terms of the actual implementation and for the work to be conducted with increased openness.
- The institutions that are to carry out the evaluation must have the independence and autonomy to decide which issues are relevant to elucidate in the individual case. The fact that the regulator can directly or indirectly influence this, as now, may cause material issues to be excluded from follow-up.
- Sweden should take advantage of the evaluation process that is being conducted at European level by systematically compiling data for the regulatory framework that the Commission is to evaluate.
- To establish a cost-effective organisation, NNR considers that a central unit should be created within the central government administration to handle the Riksdag's commissions and assignments linked to other evaluations.
- The work on impact assessments must be strengthened and more information must be available when the decision is made, for example objective, various kinds of costs, the cost–benefit ratio and which alternatives have been considered. Without this type of information, it is difficult to evaluate the effects.

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

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