Improved competitiveness via more efficient implementation and application of EU legislation

Summary, examples and recommendations

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Summary

A large part of the new or amended rules and approximately half of the regulatory burden affecting Swedish companies are related to EU legislation. In order to avoid creating costs and distorting competition, it is paramount that the implementation of EU directives is carried out in a similar manner in the different EU Member States and that the application of EU legislation is consistent.

Both the Board of Swedish Industry and Commerce for Better Regulation (NNR) and other participants have repeatedly drawn attention to shortcomings in the Swedish procedures for work on EU legislation and pointed out that there is a substantial need for improvements. Areas highlighted include the fact that national impact assessments are not performed, and there is a lack of procedures and processes for early and recurring consultations with the business community throughout all stages of EU legislation work – not least in regard to how to achieve efficient implementation and application of EU legislation. Over-implementation (often referred to as gold-plating) is neither justified nor clarified; nor are the effects accounted for in the impact assessments. As a result, decision makers lack sufficient supporting documentation to determine whether the most efficient possible solutions have been chosen.

To illustrate the problem of over-implementation and inefficient application, NNR has within the framework of a special project compiled a number of examples (13) from its members and compared them with a few of our neighbouring countries. The examples involve legislation in such areas as transport, food, accounting, finance, the environment and procurement.

Our examples confirm the specific problems described by both NNR and other participants. They show that Swedish over-implementation and application have negative effects in the form of costs and/or competitive disadvantages for small and large Swedish companies alike – both in general, and within a number of different areas. Over-implementation means, for example, that Sweden has chosen to extend the scope of application so that more companies are affected or that regulatory requirements have been added on top of the requirements already in the directive. Furthermore, Swedish national rules that go further than those stipulated in the relevant directive have been retained and stricter sanctions or other enforcement mechanisms are used than are necessary to implement the legislation correctly. In three of the cases, Sweden has adopted a stricter interpretation of the EU legislation.

A majority of the impact assessments that preceded the Swedish legislation in the example areas did not contain sufficient information to enable decision makers to determine whether the most efficient implementation alternative had been chosen. Moreover, they show that the business community's criticism often is still valid or remains unanswered after the implementation of the regulatory framework, thereby raising the question of whether and how the government, authorities and investigators have taken the business community's views into account. Further, it is evident that systematic evaluations are not carried out.

In addition to the above, the country comparisons, so-called neighbour checks, performed in most of the examples show that alternative and more efficient solutions for implementation and interpretation can be achieved and considered by comparing and learning from other

EU countries. The international outlook shows that other countries (the UK and Denmark, for example) have understood the necessity of an efficient implementation that does not inhibit companies' competitiveness and have therefore created principles, procedures and forums in order, at an early stage, to influence and amass knowledge about the effects of implementation.

The outlook also shows that there are countries (Denmark and Finland, for example) that have understood the importance of systematic comparisons with other countries.

If an authority is of the opinion that the (less strict) assessments made by other countries are incorrect in one way or another, NNR feels that Swedish authorities need to work actively at EU level to ensure that all member countries interpret the rules in the same manner, rather than deciding on restrictions that apply only to Swedish companies. All that is otherwise achieved is that Swedish companies are unilaterally disadvantaged while equivalent products are simultaneously released in the Swedish market through import from other countries – as our examples demonstrate.

To avoid the adverse effects that over-implementation entails for Swedish companies, NNR presents to the government a number of proposed measures:

The starting point should be the principle that Swedish implementation and application/ interpretation of EU law should not impair companies' competitiveness. Further, it is the EU legislation's minimum level that should apply in terms of implementation and application. Impact assessments should contain a description of the minimum level and an evaluation of whether it will be exceeded. It should be accounted for whether:

- National regulatory requirements are being added beyond what is required by the directive in question.
- The scope of application of the rules is being extended.
- Opportunities for derogations are not being taken advantage of or are only partially being taken advantage of when this can lead to barriers in the single market.
- National regulatory requirements that are more comprehensive than is required by the directive in question are being retained.
- Requirements in a directive are being implemented earlier than the date stipulated in the directive.
- Stricter sanctions or other enforcement mechanisms are being used than are necessary to implement the legislation correctly.

In instances where the minimum level is being exceeded, the impact assessment should contain an explanation of why, a description of the implementation measures being proposed and an evaluation of the impact on companies.

Comparisons of how other Nordic and EU countries implement and apply/interpret EU legislation need to be performed in order to gain input about more efficient solutions. A Nordic collaboration in this area could contribute to reducing the differences between our countries and even generate a better appreciation for our specific conditions in discussions at EU level regarding the drafting of EU rules.

Sweden needs a well-developed procedure with proactive work and an ongoing dialogue with the business community to provide analysis and input to the government on these matters. An advisory forum to the government comprised of representatives for the state, business community and other stakeholders should therefore also be established. Other countries such as Denmark and the UK already work in this manner today.

For stronger positions in the EU that better take Swedish conditions into account, Swedish impact assessments must be performed of proposed EU rules that have consequences for Swedish companies. It is imperative that Swedish follow-ups and evaluations are carried out to determine whether implemented EU Directives and interpretations of EU legislation are still fit for purpose and effective.

5. Examples of over-implementation of EU directives and inefficient application of EU legislation – summary and analysis

Below is a compilation of 13 concrete cases in which Sweden has implemented EU directives in a more far-reaching manner than the directive requires or has interpreted EU regulations more strictly. The examples, compiled by eight of NNR's members, illustrate the problems that can arise through over-implementation, and inefficient interpretation and application of EU legislation.

A more detailed account of the examples is presented in Annex 1 to the full report (only in Swedish).

Examples of over-implementation are arranged according to type of over-implementation in line with the criteria for what denotes over-implementation as stipulated in NNR's petition of September 2015 to the Parliamentary Committee on Industry and Trade. The criteria for over-implementation were drafted in collaboration with the Swedish Better Regulation Council and accounted for in a joint report on gold-plating.[1] BusinessEurope, the Confederation of European Business, has also presented similar criteria. In most of the examples, a neighbour check (a comparison of implementation and application in one or more of Sweden's neighbouring countries and Germany) has been performed.

Examples of over-implementation (arranged according to type of over-implementation)

Extension of the scope of application

Amending directive concerning measures to prevent the use of the financial system for the purposes of money laundering or terrorist financing
Directive 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing introduces a new provision that Member States should introduce central registers for bank and payment accounts. Information in the central register is to be directly accessible to national Financial Intelligence Units (FIUs) – in Sweden: Finanspolisen – as well as competent national authorities so that they can fulfil their obligations in accordance with the money-laundering directive.

In the extended Swedish proposal, not only are more authorities than Finanspolisen given the possibility to access and process private information about individuals easily, but the scope of application is also extended to include taxation and debt enforcement purposes. This is an infringement of personal privacy and thereby probably encroaches on the general public's confidence in the banks' ability to maintain statutory professional secrecy.

Since there is no requirement for coordination between the authorities, companies will be required to submit the same information to several authorities to a greater extent than today. This entails more work and an administrative cost for the companies.

1 NNR and the Swedish Better Regulation Council, 2012, Clarifying gold-plating – Better Implementation of EU Legislation.

The data traceability requirements may also mean that some products/services are not considered to be sufficiently profitable and may therefore be discontinued.

The proposal lacks a comparison of how other countries in the EU intend to implement the regulations in national law.

Contractor liability (implementation of the Posting of Workers Directive)
Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of service aims in brief to establish effective protection of the rights of posted workers. At the same time, it should prevent rogue companies from abusing the Directive.

The Directive was implemented in the Act concerning Contractor Liability for Wage Claims in the Construction Industry (2018:1472). According to the Act, a contractor can be liable to pay wages to another contractor's workers for work carried out in the Swedish building and construction industry. The over-implementation consists, in part, in the contractor liability covering not only posted workers but also workers within Sweden. Furthermore, the liability is strict and no longer limited to one stage.

Contractor liability hits sole traders or companies with few employees particularly hard and leads to an unwillingness to hire highly specialised or newly started companies since these may constitute a higher economic risk. It undermines the distribution of liability and, in a worst-case scenario, favours rogue companies that intentionally do not want to pay wages to their workers.

Accounting Directive (amending directive)
Directive 2014/95/EU of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information.

In Sweden, the Directive's scope of application has been extended to cover all large companies[2], as compared with the Directive, which limits application to large companies of general interest and which have more than 500 employees.

The Swedish implementation of the Directive entails a considerable extension in relation to the Directive's limits. This means that unlisted companies are covered by the requirement regarding sustainability reporting. In Sweden, even forms of association other than those regulated in the Directive are included. Maintaining capacity and systems to compile sustainability information is both resource-intensive and an administrative burden for the companies concerned. The benefits associated with this reporting do not justify the increased regulatory burden that this gives rise to.

2 Large companies are companies that fulfil more than one of the following: Average number of employees is more than 250 during each of the past two financial years. Total assets of more than SEK 175 million during each of the past two financial years. Net sales of more than SEK 350 million during each of the past two financial years

According to a report from CSR Europe and GRI[3], Sweden is one of the very few Member States that has gone beyond the Directive in its implementation, and the only country in which the Directive's requirement for sustainability reports extends to companies with fewer than 500 employees.

The EU's first railway package

The EU's first railway package contains several different directives in the areas of safety, technical specifications and markets for the railway. The Directive was incorporated in the Railway Act (2004:519) that took effect on 1 July 2004. There are two examples of over-implementation in this incorporation. The first concerns which permanent tracks in Sweden are to be subject to EU's requirements. The second concerns which railway companies must have a licence (permit) to operate the service.

Exemptions are made in the Railway Act and in the EU Directive for so-called industrial spurs where tracks are used for loading and unloading trains for company-specific operations. But, if the same company also owns and manages a secondary track to the facility, that track cannot be exempted in the Swedish legislation. Most of these are manufacturing companies primarily engaged in producing/processing goods – which means that these companies face higher costs compared with corresponding companies in other countries. Unfortunately, at the same time, we see a steady reduction of industrial spurs.

Norway excludes "private sidings and freight tracks" from its infrastructure concept, and Denmark also excludes private sidings.

Driver Training Directive

Directive 2003/59/EC of the European Parliament and of the Council on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers leaves scope for derogations of drivers of vehicles used for transport operations considered to have a lesser impact on road safety or in those cases where the requirements in this Directive would impose a disproportionate economic or social burden.

The Directive has been implemented in Swedish law through the Act on Qualifications of Professional Drivers (2007:1157) in which it is stipulated, among other things, that drivers must have a driver certificate of professional competence (CPC) and further training in order to drive a vehicle for the carriage of goods or passengers.

There is no professional practice concerning equestrian companies (that do not make a living solely from transporting horses) and whether these are exempted. The Swedish Transport Agency has announced that it does not consider the exemption to apply to equestrian companies.

3 CSR Europe and GRI, 2017, Member State Implementation of Directive 2014/95/EU – A comprehensive overview of how Member states are implementing the EU Directive on Non-financial and Diversity Information, https://www.csreurope.org/sites/default/files/uploads/CSR%20Europe_GRI%20NFR%20publication_0.pdf

The training that a CPC requires involves numerous hours and is quite costly. The profit margins of these sole traders are small, and further expenses are not only a heavy blow in terms of training costs but also the need to set aside a minimum 140 working hours for training.

Regulatory requirements are being added beyond what is required by the directive in question

Procurement Directive – labour law terms
Article 18.2 of Directive 2014/24/EU of the European Parliament and of the Council on public procurement states "Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X."

Chapter 17 Section 2 of the Swedish Public Procurement Act (2016:1145) states that: "A contracting authority shall, if necessary, require that the supplier performs the contract in accordance with stated requirements on wages, holidays and working hours that the employees who will be performing work under the contract shall, as a minimum, be guaranteed."

The Swedish over-implementation lies in the wording "shall" and the link to specific terms concerning wages, holidays and working hours in individual collective agreements. The rule is very difficult to manage with consideration to the Swedish collective agreement model. The effect of the complex and unpredictable management is the risk of fewer tenders for public procurements, particularly from companies not bound by collective agreements. Moreover, this leads to impaired competition in the public market, which leads to higher prices. In addition, this gradually undermines the Swedish model, which is built on the contents of collective agreements decided by negotiations between the labour market parties.

The EU Birds Directive
Directive 2009/147/EU of the European Parliament and of the Council on the conservation of wild birds, also referred to as the Birds Directive. The requirements in the Bird Directive have in Sweden been implemented through Section 4 of the Species Protection Ordinance (2007:845), which also aims to implement Article 12 of the Habitats Directive. The provisions have therefore been formulated in accordance with the Habitats Directive's more rigorous requirements concerning specifically identified species.

The over-implementation concerns the entire agricultural and forestry industries as well as many other businesses. For example, forest owners can be prevented from felling their forest without receiving any compensation, resulting in major economic consequences. The effects of the ambiguous legal framework and disproportionate assessments made by the authorities has forced forest owners to take the matter to court. However, there remains substantial uncertainty as to how much of the forest may potentially be covered by a ban and whether there is any right to compensation.

Electronic invoicing in public procurement
According to Directive 2014/55/EU of the European Parliament and of the Council on electronic invoicing in public procurement, contracting authorities and contracting entities are required to accept and process electronic invoices which comply with the European standard on electronic invoice (Article 7).

Swedish over-implementation consists in Swedish legislators also choosing to require all suppliers to the public sector to meet a certain EU standard for electronic invoicing. However, in this case the problem is not primarily that such requirements are introduced, but that the companies are not given sufficient time to adjust to the new legal framework. Because Sweden has also chosen to introduce the possibility to impose a penalty, there may be consequences for suppliers who are unable to adjust quickly to the new requirements.

Finland has chosen a solution by which the contracting entities and businesses have the right to receive, on request, electronic invoices in accordance with the European standard. After receiving negative comments from advisory bodies concerning the need for sufficient time to adjust, the Finnish legislators chose to postpone the date for introducing the provisions until 1 April 2020. Nor has any statutory sanction been introduced should a company not comply with the electronic invoice requirement. Germany has also given companies more time to transition (27 November 2020).

Retained Swedish national regulatory requirements that are more comprehensive than is required by the directive in question

Industrial Emissions Directive
Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, also referred to as the Industrial Emissions Directive (IED),which is a recast of the IPPC Directive, affords the best alternative techniques (BAT) conclusions a more prominent role. The purpose of BAT is for industrial facilities to take suitable measures to minimise the emission of pollutants by adopting the best available techniques. The best techniques for various industrial sectors are compiled in the BAT conclusions and subsequently serve as guidance for an eight-year period before they are updated.

On implementation of IED in Swedish law, no change was made to the wording of the precautionary principle (Chapter 2 Section 3) of the Swedish Environmental Code's General Rules of Consideration stating that professional operations are to use the best possible technology (BPT) in order to prevent, hinder or counteract damage or detriment to human health or the environment. Because BPT places higher demands on techniques than BAT does, Swedish industrial companies must apply BPT in addition to BAT, which gives them a competitive disadvantage in the global market. Stricter technique requirements mean that companies are forced to invest in more expensive equipment in order to be granted a licence, resulting in higher production costs and, ultimately, a more expensive product compared with international competitors.

Most of the other EU countries have chosen to use the BAT concept only. By retaining the older, and partially contradictory BPT concept, Sweden stands out in a European context.

Stricter sanctions or other enforcement mechanisms are being used than are necessary to implement the legislation correctly

Habitats Directive – exemption from conservation
Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (the Birds Directive), jointly referred to as the EU Nature Legislation.

Article 16.1 of the Habitats Directive outlines the possibility for Member States to derogate from the protection provisions for certain reasons including, for example, serious damage to property. Section 23 a of the Hunting Regulation stipulates under which conditions protective hunting may be allowed.

The Swedish over-implementation stems from the fact that the Section implements both Article 16.1 of the Habitats Directive and corresponding provisions in the Birds Directive. Over-implementation means that a number of common, trivial species of mammals that exist in large populations, such as wild boars, fallow deer and roe deer, are not covered by the Directive and thus are not covered by the conditions for exemption from conservation. In addition to the above, a number of hunting methods have been prohibited in the Hunting Regulation, in part incorrectly.

In summary, this means that a portion of Swedish hunting and protective hunting of common mammals cannot be as effectively carried out as the Habitats Directive allows. Agriculture and forestry are particularly affected since the possibility to protect against wildlife damage is more limited than the Directive demands.

Electronic invoicing for public procurement
(presented above under the heading Regulatory requirements are being added beyond what is required by the directive in question.)

Impact assessments and the Swedish Better Regulation Council's review

The majority of the impact assessments that preceded the Swedish legislation in the area did not contain sufficient information to enable decision makers to determine if the most efficient implementation alternative had been chosen. The lack of or shortcomings in analysis and calculations of economic impacts is the most common shortcoming noted in the examples.

In cases where the Better Regulation Council has issued an opinion, it has delivered similar criticism.[4] Other shortcomings highlighted by the Better Regulation Council were the lack of, or shortcomings in the assessment of the proposal's consistency with EU law and the

4 The three examples described concern legislation introduced before the current regulatory framework on impact assessments. However, the requirement for impact assessments was made earlier through the so-called Simplex Ordinance, i.e. the Ordinance on special impact analysis of rules on small enterprises (1998:1820), which applied to government authorities and the Government Offices. The requirement for impact assessments by authorities was also stipulated in the Government Agencies' Ordinance (1995:1322).

impact on the companies affected by the proposed over-implementation, as well as an inadequate description of the impact on competition.

On closer review, shortcomings were also noted in the description of the scope of the problem and other consequences, such as the time allowed for implementation.

In terms of EU regulations, which apply directly and are not implemented in Swedish law, there is no requirement for impact assessments except in cases where Swedish supplementary legislation can be introduced, such as sanctions or other enforcement mechanisms. In the three examples that show inefficient application of EU regulations, there is therefore no impact assessment and therefore no statement from the Better Regulation Council.

Examples of inefficient application of EU legislation

Liquidity coverage requirement for credit institutions (LCR Regulation)
From the Commission Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (the LCR Regulation), there ensues a liquidity requirement that credit institutions shall maintain a liquidity coverage ratio of 100 percent of the aggregate currency level and a general requirement that the liquidity buffer's composition is largely consistent with the net outflow per currency. Furthermore, credit institutions are subject to a diversification requirement whereby the holdings of liquid assets that constitute a bank's liquidity buffer must always be appropriately diversified.

The Financial Supervisory Authority's (FI) application of the liquidity requirement means that 13 banks must comply with specific requirements for a liquidity coverage ratio of at least 75 percent for individual currencies in Swedish kronor and for other significant currencies, and a liquidity coverage ratio of at least 100 percent for EUR and USD.

The FI's interpretation of the diversification requirement in the LCR Regulation means, among other things, that the share of covered bonds issued by Swedish issuers that may be included in the liquidity buffer may amount to a maximum of 50 percent of the total liquidity buffer when calculating the liquidity coverage ratio.

These detailed requirements can lead to a more inefficient liquidity risk management in the banks and subsequently greater risks for the financial system and, by extension, for the real economy.

The FI's requirement of a liquidity coverage ratio of at least 75 percent in Swedish kronor is well above similar requirements in other Nordic countries. For example, the regulatory authority in Norway decided on a requirement of at least 50 percent in Norwegian kroner for Norwegian companies that have EUR and USD as significant currencies.

The FI's special diversification requirement means that Swedish covered bonds are at a disadvantage compared with those issued by foreign players. This has an adverse impact on market competition and means that the regulatory conditions are not equal.

Regulation on organic food
Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control. Article 29 of the Implementation Regulation (889/2008) stipulates the conditions for when the Member States may authorise exemptions for non-organic food ingredients of agricultural origin.

Only one company has applied to the Swedish Food Agency for an exemption in accordance with Article 29 of the Implementation Regulation 889/2008 to the Regulation on organic products 834/2007, but the application was rejected by the agency. The application concerned oil from algae and fungi used as ingredients in formula for babies and supplements. The basis for the application is that there are currently only a few companies in the world that can deliver these highly specialised ingredients, and no organic alternative is available.

The rejected application means a self-imposed Swedish restriction that specifically affects Swedish companies since they cannot sell the product as organic – as opposed to, for example, the German competitors' products which are available in Sweden. Swedish companies thus lose out in terms of competitiveness to imported products from countries that have approved the exemption, and correspondingly experience greater difficulties in exporting their products.

In other EU countries, Germany for instance, several exemptions for these ingredients have been granted.

Regulation on residue levels of pesticides in food
Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin regulates the maximum levels for pesticide residues in food.

The Swedish Food Agency interprets the Regulation in a radically different manner from the German authorities in terms of the teas to which the level for anthraquinone residues should apply. Smoked tea (Lapsang Souchong), a popular product in Sweden, is considered by the German authorities to be a composite product where the smoke is an added ingredient. Consequently, the maximum residue level for anthraquinone is not applied to smoked tea. However, the Swedish Food Agency feels that the smoking falls under "processed in another manner" and that the maximum values therefore cover smoked tea. This means that a consignment of smoked tea imported directly to Sweden from China runs the risk of being stopped at the border and sent for destruction, while the same tea would be allowed to enter Germany.

The alternatives available to Swedish companies are to buy the same tea from a German importer or to find another method of flavouring tea – both alternatives entail considerable added costs and a weaker competitive situation for the Swedish companies compared with competitors in, for example, Germany.

The authorities in Germany consider smoked tea (Lapsang Souchong) to be a composite product where the smoke is an added ingredient. This means that the maximum residue level for anthraquinone is not applied to smoked tea in Germany. German companies can therefore import the smoked tea directly from China.

General observations for all examples

Consultation and follow-up
The business community's criticism is often still valid or remains unanswered after the regulatory framework has been introduced. This raises the question of how the business community's views are being taken into account by the government, authorities and investigators. Initiatives for a review or revision of the regulatory framework occur only many years later (for example, in regard to the Species Protection Regulation and the Railway Act). In one case, representatives from the business community who participated as experts in a committee of inquiry, as well as the other experts involved, were not given the opportunity to write a separate statement containing their comments, which could have contributed to a better decision-making basis.

Target realisation
The Regulation concerning Organic Food and the Regulation concerning Residue Levels of Pesticides In or On Food shows that the Swedish interpretation and application does not achieve greater target realisation in the form of, for example, increased protection for consumers. The restrictions imposed lead only to Swedish companies being unable to sell their products as organic products in Sweden or being excluded from import – while competing companies in other EU countries can.

Comparison of implementation and application in other countries
In nine of the 13 examples, the business community points to countries that have implemented or interpreted the EU legislation in a more efficient manner than Sweden, which risks adversely impacting the competitiveness of the Swedish business community. The comparisons of the examples were primarily made with neighbouring Nordic countries such as Denmark, Finland and Norway, but also Germany and, in some instances, all of the EU.

Conclusions

The above examples of legislation reveal the adverse effects of Swedish over-implementation and application in the form of costs and/or competitive disadvantages for small and large Swedish companies alike, both in general, and within a number of different areas. The most frequent type of over-implementation is extending the scope of application. Normally, this means that more companies are covered by the requirements in the directive than required in the original EU directive, which often entails additional costs for these companies.

In one case – Electronic invoicing in public procurement, where over-implementation has taken the form of additional regulatory requirements beyond what is required in the directive – the problem is not primarily that such requirements are introduced, but that the companies are not given sufficient time to adjust to the new regulatory framework. Since Sweden has also chosen to introduce the possibility of imposing a penalty, there may be consequences for suppliers that are unable to adapt to the new requirements quickly. Finland has opted for a solution under which procurement units and businesses have the right to, on request, receive electronic invoices in line with the European standard. Further to negative comments from advisory bodies concerning the need for sufficient time to adjust, the Finnish legislator chose to postpone the introduction date of the provisions to 1 April 2020. Nor has any statutory sanction been introduced for instances when a company does not comply with the requirement for electronic invoices. Germany has also given companies more time for the transition (27 November 2020). This example clearly demonstrates that sufficient time for the implementation does matter.

In three of our cases, Sweden has adopted a stricter interpretation of the EU legislation. NNR notes that when it comes to import/export of goods, this means a weakening of competitiveness compared with, for example, import goods from EU countries since other EU countries' authorities have not made the same interpretation. Restrictive Swedish interpretation also worsens the potential of Swedish companies to export their products to other EU countries. The stricter interpretation concerning liquidity coverage requirements on credit institutions risks not only a worsening of liquidity in the market, but also risks affecting the competitive situation for Swedish covered bonds.

If an authority is of the opinion that the (less strict) assessments made by other countries are incorrect in one way or another, NNR feels that Swedish authorities need to ensure that all member countries interpret the rules in the same manner by being more active at EU level, not by deciding on restrictions that apply only to Swedish companies. All that is otherwise achieved is that Swedish companies are unilaterally disadvantaged while equivalent products are simultaneously released in the Swedish market through import from other countries – as our examples demonstrate.

Most of the examples show that alternative and more efficient solutions for implementation and interpretation are available and can be considered by comparing with and learning from other EU countries.

Based on the problems highlighted over a number of years by several interested parties, including NNR, the review shows that no improvements that have had any effect have been made in Sweden in this area. The international outlook shows that other countries, such as the UK and Denmark, have understood the necessity of an efficient implementation that does not impair companies' competitiveness and have therefore created principles, procedures and forums to influence and amass insight about the effects in connection with implementation at an early stage. The outlook also reveals that there are countries (for example, Denmark and Finland) that have understood the importance of making systematic comparisons with other countries.

6. Proposed measures

To avoid the adverse effects that over-implementation and inefficient application entail for Swedish companies and which our report reveals, we propose the following measures:

- **Introduce a principle that EU directives are to be implemented in Swedish legislation in a manner that does not weaken companies' competitiveness**
  NNR refers to the decision concerning the NU7 declaration to the government that was taken by Parliament on 3 April 2019 and encourages the government to put it into practice.

  EU directives should not weaken companies' competitiveness (NU7)
  "EU directives contain goals that the Member States shall achieve, and the countries decide themselves how the directives are to be implemented in the national legislation. Parliament feels that the competitiveness of Swedish companies should be protected. Therefore, Parliament asked the government in a declaration to work to ensure that EU directives are implemented in Swedish legislation in a manner that does not impair companies' competitiveness. One starting point should be that EU directives should be introduced at a minimum level in the national legislation. When there is cause to exceed the minimum level, the impact on companies should be clearly accounted for."

  NNR feels that interpretation and application of EU regulations should also be effected in a manner that does not impair Swedish companies' competitiveness and should therefore also be covered by this principle..

- **Make clearer demands on reporting of over-implementation in impact assessments in connection with implementation of EU legislation**
  Demands must be made on both the Government Offices and the authorities. Corresponding demands must also be made on committees, which are often appointed to analyse the Swedish implementation process. Impact assessments should contain a description of the minimum level and an evaluation of whether it should be exceeded.

  The evaluation of whether minimum levels will be exceeded should be made based on the criteria set out in NNR's and the Swedish Better Regulations Council's report on gold plating[5] and which has also been summarised in NNR's request to the Parliamentary Committee on Industry and Trade in October 2015. It should be accounted for whether:

  - National regulatory requirements are being added beyond what is required by the directive in question.
  - The scope of application of the rules is being extended.
  - Opportunities for derogations are not being taken advantage of or are only partially being taken advantage of when this can lead to barriers in the single market.
  - National regulatory requirements that are more comprehensive than is required by the directive in question are being retained.

5 NNR and the Swedish Better Regulation Council, 2012, Clarifying gold-plating – Better Implementation of EU Legislation, http://nnr.se/wp-content/uploads/gold-plating_regelradet_nnr.pdf

- Requirements in a directive are being implemented earlier than the date stipulated in the directive.
- Stricter sanctions or other enforcement mechanisms are being used than are necessary to implement the legislation correctly. In instances where the minimum level is being exceeded, the impact assessment should contain an explanation of why, a description of the implementation measures being proposed and an evaluation of the impact on companies.

- **Establish a procedure and a forum for discussion and advice to the government concerning the implementation of EU legislation and interpretation/application of EU regulations**
  A forum should be set up tasked with discussing and offering advice to the government concerning how Swedish implementation and interpretation of EU legislation can be made business friendly and efficient. The task of the forum should include making recommendations about plans for future implementation of EU Directives and submitting proposals for how already implemented legislation can be simplified and how efficient interpretations and applications of EU regulations can be achieved.

  The forum should also be able to make recommendations on future EU legislation where early recognition of Swedish interests is needed in Brussels. Examples of such a forum exist in, for example, Denmark.

  In addition to the above, the forum should also be tasked with making recommendations to the government in areas where comparisons should be made with other countries' implementation and interpretation.

  However, a forum cannot function in isolation; it requires not only political commitment and participation, but also the presence of a procedure and a political support organisation to ensure that the proposals are realised. Feedback and transparency according to the comply-or-explain principle and a time schedule for feedback and implementation of measures decided on are other important matters that need to be settled.

- **Create processes for early and recurrent consultation with the business community**
  Early and recurrent consultation and dialogue with the business community should take place throughout the work on EU legislation, from the drafting of EU legislation to implementation in Swedish law. The business community should also be involved at an early stage to alert the government of a pending EU legislation procedure where early influence is vital to ensure that the drafting of the directive or regulation is carried out with consideration given to simplifying the rules and circumstances for Swedish companies.

- **Carry out Swedish impact assessments of proposals for EU rules with consequences for Swedish companies**
  An important part of an enhanced procedure concerning Swedish work on EU legislation is to carry out Swedish impact assessments of proposals for EU legislation. If Sweden is to gain greater influence in the negotiation processes in the EU, and if Swedish positions are genuinely to be decided based on supporting documentation that highlights the impacts of the proposal on Swedish companies, NNR feels that Swedish impact assessments

of proposed EU rules should be conducted. Moreover, the Government Offices should, in consultation with the business community, collate proposed EU rules that may potentially have such impacts.

- **Demand comparisons with other Nordic countries and EU Member States**
  Comparisons need to be made with how other Nordic countries and other EU Member States plan to, or have implemented or interpreted EU legislation to avoid competitive disadvantages and higher costs relative to their competitors for Swedish companies. The purpose of the comparisons is to examine if more efficient alternatives exist that can be used in Sweden. Comparisons must be made both by committees of inquiry and by the Government Offices and authorities.

- **Demand evaluations of implemented EU directives and interpretations of EU regulations**
  It is imperative to carry out Swedish follow-ups and evaluations to determine whether implemented EU directives and interpretations of EU legislation are still adequate and effective. Otherwise, there is a risk of inefficient rules or interpretations being retained, resulting in continued costs and competitive disadvantages for Swedish companies. The business community can provide valuable input for such evaluations and should be involved at an early stage.

- **Increase Nordic collaboration**
  Differences in rules entail costs for companies. Increased Nordic collaboration can contribute to reducing regulatory differences and barriers to freedom of movement between the Nordic countries. Given the similarities with other Nordic countries in regard to language, business structure, administration and perspective, Nordic comparisons should be relatively easy to do.

  There should be collaboration to bring about implementation of EU Directives and application of EU legislation that is efficient for the business community. Greater collaboration on new EU legislation with consequences for the Swedish and other Nordic business communities will also enhance the potential for gaining an appreciation for the Swedish and Nordic countries' specific circumstances in the drafting of EU legislation.

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

IKEM, Innovation and Chemical Industries in Sweden
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Swedish Private Equity & Venture Capital Association, SVCA (SVCA)
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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 23 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.

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