OECD REVIEWS OF REGULATORY REFORM

REGULATORY REFORM IN SWEDEN

GOVERNMENT CAPACITY TO ASSURE HIGH QUALITY REGULATION IN SWEDEN

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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AND DEVELOPMENT

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government Capacity to Assure High Quality Regulation in Sweden* analyses the institutional set-up and use of policy instruments in Sweden. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in Sweden* published in 2007. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 23 member countries as part of its Regulatory Reform programme. The programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses, drawing on the 2005 *Guiding Principles for Regulatory Quality and Performance,* which brings the recommendations in the 1997 *OECD Report on Regulatory Reform* up to date, and also builds on the 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation.*

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness and on specific issues, such as multi-level regulatory governance and environmental policy for Sweden. These are presented in the light of the domestic macro-economic context.

This report was prepared by Delia Rodrigo in the OECD Public Governance and Territorial Development Directorate. It benefited from comments from Josef Konvitz and Stephane Jacobzone in the OECD Public Governance and Territorial Development Directorate, from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in Sweden. The report was peer reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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SUMMARY

This report analyses regulatory policies, institutions and tools in Sweden from a regulatory policy perspective in an international context. Past, current and future efforts to improve the governance framework for high quality regulation are described in the different sections of this chapter.

The economic, social and institutional circumstances in Sweden are key to understand its regulatory framework. Sweden enjoys high-quality standards of life. Its economy has a strong potential for innovation and is largely open to international trade. Its social and economic model is based on a large and wide-ranging welfare state. The administrative and legal environment is characterised by a decision-making process based on consensus, transparency, significant role for social partners, strong ministerial autonomy and decentralised decision making. The institutional context is conducive to consultation, transparency and accountability.

Since the end of 1970s, the Swedish government has introduced different measures to adjust to a changing international environment, modernising its regulatory framework. Streamlining the stock and flow of regulations, reducing administrative burdens and strengthening the institutional design for law-making procedures with high quality standards are among its achievements. Continuous efforts in opening up economic sectors to competition during the 1980s and 1990s contributed to a renewed economic performance over the past decade. However, a prolonged dynamic growth rate to sustain the tax base is needed to maintain the core of the welfare system and to face the challenges of ageing.

Good regulatory practices can contribute to accomplish this task. Robust principles and practices to produce laws and regulations of high quality are laid down in different legal instruments; transparent procedures and broad consultation mechanisms are in place. Alternatives to regulation are widely used. But there is still scope for improving the system of impact assessments and reinforcing the efforts to reduce administrative burdens, especially for SMEs, issues which are important to the service sector which has potential for growth.

The report presents policy options aimed at consolidating governance structures to improve the overall effectiveness and clarity of the regulatory system. These cover strengthening co-ordination and capacities and clarifying roles among bodies responsible for regulatory reform; setting up an advisory body for regulatory reform to raise awareness at the political level; streamlining the current RIA system and improving control of quality; continuing efforts on administrative simplification and SME policy; improving the use of ICT mechanisms; reinforcing efforts in the measurement of administrative burdens, and strengthening the governance of sectoral economic regulators.

1. REGULATORY REFORM IN A NATIONAL CONTEXT

1.1. The administrative and legal environment for regulatory reform

Sweden ranks highly in most indicators of the quality of life. The United Nations places it sixth on its Human Development Index of 2005. Its social and economic model is characterised by a large and wide-ranging welfare state. The main features of this system are: a generous and comprehensive social insurance, extensive income redistribution, a preference for universal benefits, large-scale public ownership and production, and a wage bargaining framework that delivers considerable wage compensation.[1] The public sector constitutes a very large part of the economy. Measured as a share of employment, it amounted to 31% of the Swedish economy in 2004.[2] The public consumption-to-GDP ratio is the highest in the OECD area.[3]

The administrative and legal environment in Sweden is characterised by a decision-making process traditionally based on consensus,[4] active involvement of the population with significant role for social partners, strong ministerial autonomy and decentralised political power. Local governments are entrusted with a large number of complex tasks. This highly decentralised structure reflects the emphasis put on local democracy and the ability to match service provisions to local preferences.[5]

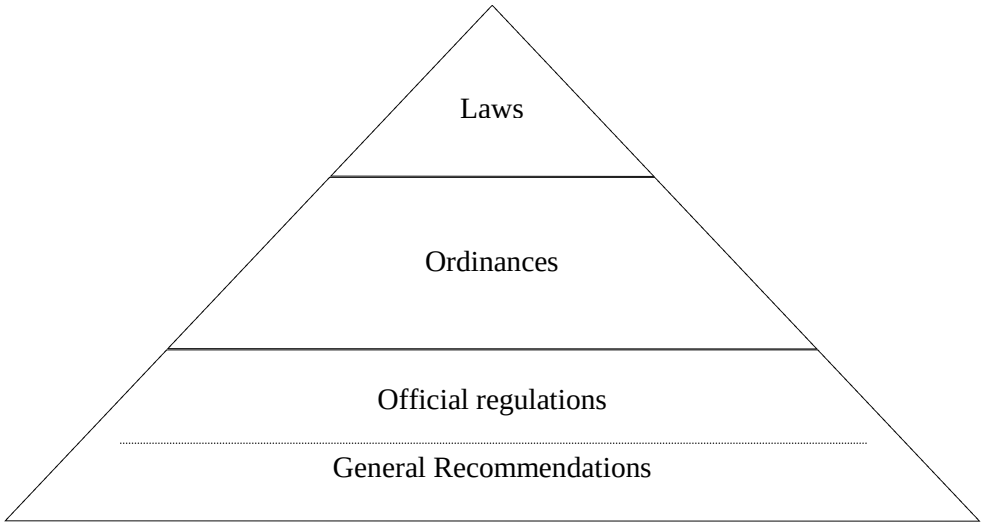
Sweden's achievements in terms of regulatory reform and its potential for further progress need to be assessed in the light of its institutional and economic framework, which gives the State a strong role in the economy. The Swedish model of government is characterised by small policy-making ministries and independently managed government agencies responsible for the implementation of the government policy.[6] These agencies have to follow guidelines prepared by the ministries. There are constitutional provisions with strong historical roots that impose constraints on changes in delegation and administrative organisation. Thus, the central government is organised according to a dualist principle: a clear distinction is made between the policy-making government, with its ministers and their departments, and the policy-implementing agencies.

The Government defines the missions and sets the goals for the agencies. Departmental ministers and the Government are not allowed to interfere in any specific case. According to the law, the Government cannot intervene in the agencies' handling of issues.[7] It can only influence policy implementation through general prescriptions to the agencies. Each agency has a high degree of freedom in choosing how to use their resources to achieve the results demanded by the government. In principle, neither the government nor an individual minister may determine the outcome of agencies' decisions on individual matters, which limits the accountability of departmental ministers for decisions made at agency level.[8]

Different possibilities exist for the Government and the Parliament (*Riksdag*) to manage and control the agencies, and monitor and assess the performance of the administration. The Government, in practice the Prime Minister and his office, uses of the 'nomination power', *i.e.* it has the power to appoint agencies' Director Generals, a tendency that has been more systematic in the recent years, making formal control less needed. Apart from a number of general laws and regulations concerning activities and agencies (see below section 2.1.), financial restrictions are laid down in the Budget Act and in a number of Financial Management Ordinances. Other instruments, such as objectives, specific instructions for each agency, and formal and informal performance dialogue between the Government and the agency, contribute to govern the agencies and make them accountable on how public revenues were spent, whether the objectives of different government programmes were accomplished and what was actually achieved.[9] Agencies have to present annual reports to the Government not later than February 22 of the following year, containing financial data and information on their activities.

Within this framework, a substantial part of the sub-ordinate regulations has been delegated by the Government to the agencies. Since government agencies take and implement decisions on individual matters, they have an important role in issuing regulations which are often complementary to the laws decided by the Parliament. The Swedish regulatory system – known as "the regulation pyramid" (see Figure 2.1) - presents the following features.

Figure 2.1. The Swedish regulatory system – The "regulation pyramid"



Fundamental provisions are laid down in Chapter 8 of the Instrument of Government, under the heading of "Laws and Other Regulations". Regulations can be adopted by three various bodies at the central level: Parliament, Government and agencies. The pyramid shows this hierarchy:

- The Parliament is the sole enactor of *laws*. At the top is the area where the Parliament works: the various statutes are collectively designated as laws by its law-making power, as stated in the Instrument of Government. There are about 1000 laws in Sweden.

- The regulations laid down by the Government are called *ordinances*. The Swedish word for ordinances (*förordning*) is exclusively used for regulations adopted by the Government. There are, however, still old ordinances that can only be amended or abolished by the Parliament. There are over 2330 ordinances produced by the Government as of March 2006. One particular group among them consists of regulations for various central government agencies.

– Central government agencies lay down *regulations*. This is by far the largest part of the Swedish regulatory system and it expresses the principle that agencies are organisationally independent from the Government and ministries. The agencies are "accountable to the Government", but enjoy a greater measure of autonomy than in most countries. They are subject to the Government, not to individual ministers. There are over 8200 official regulatory instruments, and they are more extensive in content than laws and ordinances.[10]

– There is an important distinction between *regulations* and *general recommendations*. The former category comprises binding norms, while the latter comprises recommendations that are not formally binding on the people and organisations to which they apply. There is an obligation to comply with a regulation and it is binding on courts of law and other adjudicating bodies. There is no obligation to follow a general recommendation, nor does it bind adjudicating bodies.

In the late 1970s, the government charged some of the central-government agencies to issue special codes of statutes, in order to rationalise the sets of regulations, creating an orderly system and making regulations more accessible to the public and businesses. In these codes, other agencies also publish their regulatory instruments. Today there are 65 codes of statutes, which are used by a total of 104 agencies. In addition, each of the 21 County Administrative Boards (*länsstyrelse*) has its own regional code of statutes. The government has prescribed to compile annual lists of regulatory instruments, and to trace the number of such instruments at any time. This effort towards codification matches similar strategies undertaken in other countries when facing an increasing stock of regulations.

Art. 17 of Chapter 8 of the Instrument of Government stipulates "no law shall be amended or repealed otherwise than by a law". This means that a law is abrogated in the same way that it is adopted, which has important consequences for the stock and flow of laws and ordinances (see Table 1). While the table reflects the pyramidal production of laws and ordinances by the Parliament and Government, it does not take into account the production of regulatory instruments by agencies, around 8200, which represents the main body of regulation in Sweden. Nevertheless, it provides a clear picture of the constant total number of laws and ordinances in force by the end of each year, even if there are around 1300 new or amended provisions every year.

Table 2.1 Stock and flow of laws and ordinances in Sweden – The Swedish Code of Statutes (SFS)[1]

	1985	1990	1995	2000	2001	2002	2003	2004	2005
Total number of new or amended laws and ordinances	1 123	1 537	1 730	1 477	1 309	1 175	1 227	1 388	1 257
New laws					37	27	41	38	47
New ordinances					99	102	94	98	115
Amended laws and ordinances					1 173	1 046	1 092	1 252	1 095
Total number of pages in SFS[2]	2 621	2 967	3 576	2 550	2 387	2 186	2 080	2 463	2 659
Total number of laws and ordinances that are in force by ….	3 858 1st Dec	3 577 1st Dec	3 134 1st Jul	3 236 1st Jan	3 249 1st Jan	3 280 1st Jan	3 325 1st Jan	3 333 1st Jan	3 287 1st Jan

1. The SFS does not contain consolidated versions of laws or ordinances; only new laws and ordinances, amendments and reprints are published. Consolidated versions are available at the website: *www.lagrummet.se*

2. Including register and other information published in the SFS.

Source: Ministry of Justice, 2006.

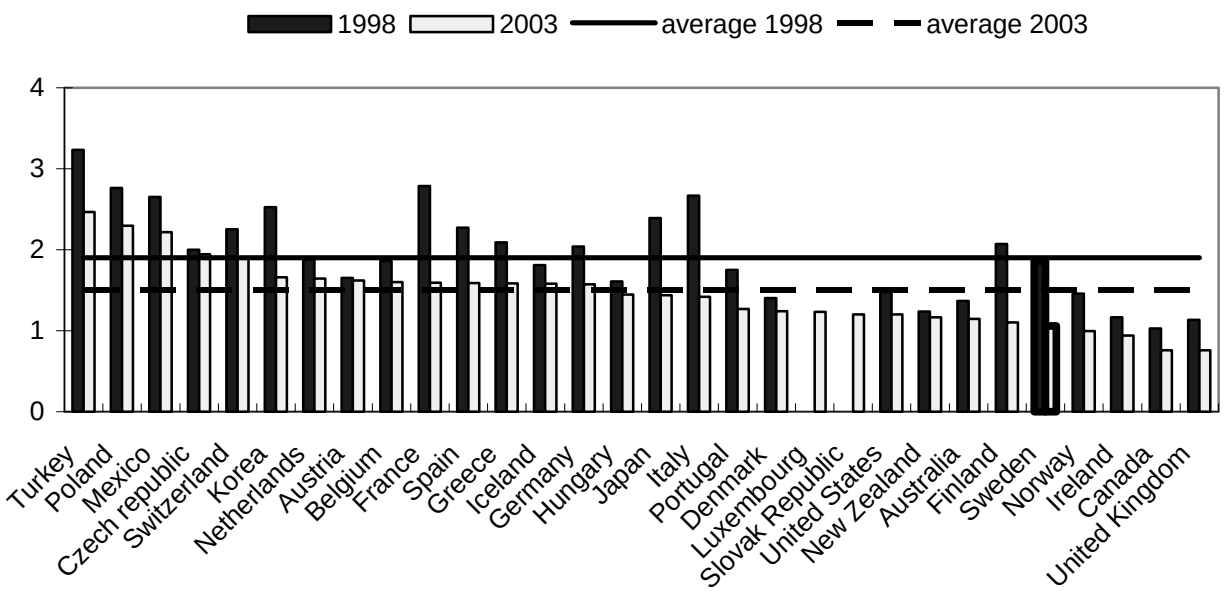
The reduction of the total number of laws and ordinances can be explained by different factors. The introduction of the 'guillotine rule' in the early 1980s contributed to nullify hundreds of regulations that were not centrally registered by July 1986 (see Section 4.1. for a more detailed discussion on the 'guillotine rule'). Not all authorities were computerised at that time, which affected the different ways of counting and publishing regulations. Nevertheless, the current numbers of the Swedish Code of Statutes refer to an aggregate number of 40 000 pages (in terms of pages, the number of paragraphs or the like), related to the 7 000 'major regulatory instruments'. The annual regulatory production is around 5 000 pages.[11]

From a regulatory governance perspective, the institutional set up described above is accompanied with a strong role of the State in the economy: public spending and the scope of public sector functions are significant by international comparison. The State is in Sweden the largest company owner and the largest single owner of the Stockholm Stock Exchange; its share of business-sector activity is the highest in the EU. In this context, the challenge is, however, to improve the public sector efficiency, in order to use the gains and capital for better welfare services. This may create a specific concern for regulation inside government and also for the issue of the "regulatory State", clearly identifying and separating the policy making, ownership and enforcement function in certain sectors.

In this context, Sweden has been able to modernise its regulatory framework, opening certain activities to competition, without necessarily shifting the major boundaries of the State itself. Sweden has experienced an impressive economic performance over the past decade – surplus in the public accounts, positive fiscal accounts, low inflation rate and a remarkable surge in productivity. All these elements are vital if Sweden is to maintain the core of its welfare system and to face the challenges of ageing. This calls for a dynamic growth rate in order to ensure the sustainability of the tax base.

The improved economic performance in the recent years, after decades of low growth, may also be related to the deregulation process initiated in the 1990s, which has been fairly widespread, strengthening competition. As some indicators show, there is relatively little "red tape" holding back the business sector, in terms of entrepreneurship (see Figure 2.2). While procedures to start-up a business many not be very complex as such, other factors such as labour market, taxation and environmental related issues, may have a negative impact in terms of entrepreneurship. Sweden hosts a number of leading firms in key sectors, which have been established for some time. But the question remains as to why relatively few new Swedish companies are able to grow and become significant players. The goal for Sweden is to ensure competitiveness, encouraging economic growth and higher employment, with highly paid jobs in R&D-intensive industries. Some of the measures taken by the Government for these companies focus on five areas: entrepreneurship, regulatory improvements, intergenerational transfer, risk capital and export promotion.

Figure 2.2. Barriers to Entrepreneurship, 1998 and 2003[1]

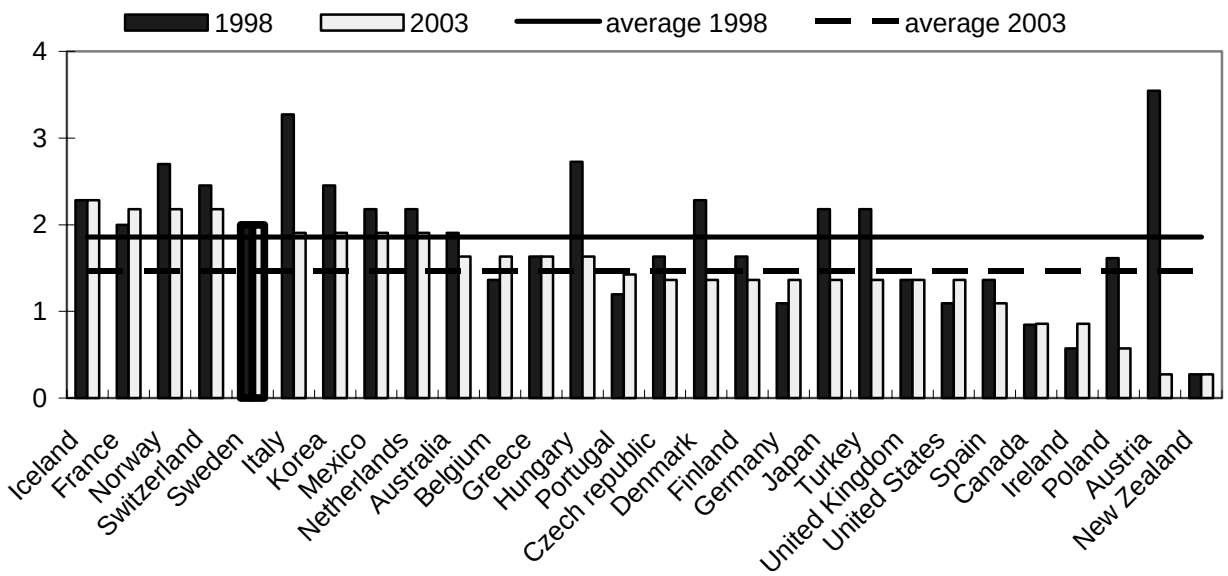


1. Sorted by 2003 values. The scale of indicators is 0-6 from least to most restrictive of competition.
*. EU 15 (simple average).

Source: Conway, Paul et al. (2005), *Product Market Regulation in OECD Countries: 1998 to 2003*, Economics Department Working Papers, No. 419, OECD, Paris

A key means to improve the efficiency of the public sector and to increase its productivity is to expose it to greater competition. In this context, it also seems that a number of legal barriers to competition remain (see Figure 2.3).[12] Liberalisation has led to greater efficiency and consumer benefit in different markets exposed to competition and regulatory reform. However, scope for further strengthening competition remains.[13] In recent years, the private alternatives have increased in several areas, such as healthcare, education, waste management, infrastructure and different technical areas. There are, however, still large areas where competition is weak or non-existent. To a large extent, public financing still implies public production or delivery: while there has been a slight increase in the private provision of welfare services, public employees still make up nearly 90% of those employed in this sector.[14]

Figure 2.3. Legal Barriers, 1998 and 2003[1]



1. Legal barriers refer to national, state or provincial laws or other regulations that restrict the number of competitors allowed operating a business in a wide range of economic sectors.

Source: Conway, Paul *et al*. (2005), *Product Market Regulation in OECD Countries: 1998 to 2003*, Economics Department Working Papers, No. 419, OECD, Paris

1.2. Recent and current regulatory reform initiatives

Since the beginning of the 1970s, the Swedish government has undertaken different measures to introduce a policy on better regulation and reduction of administrative burdens for business, especially in the SME area. In December 1969, a Committee of Inquiry was appointed in order to investigate the regulations regarding employer's information and tax collection obligations. The Committee report, delivered in 1976 as a Swedish Government Official Report (SOU 1976:12), resulted in a number of suggestions of measures to facilitate the companies' obligation to provide information. In 1977 the government also submitted the so called "Small Companies Bill",[15] which included principal lines for future efforts. Thus, it provided the foundation for SME policy, trying to provide better conditions for SMEs creation.

A second bill was submitted in 1982 implying many measures to facilitate and improve the conditions for SMEs.[16] A thorough inquiry had preceded the bill and each ministry had to make concrete suggestions to be included in the bill to reduce the regulations affecting companies and businesses in their respective field. In addition, the government stated that the intention was to regulate questions regarding consultation in a separate ordinance. The Consultation Ordinance[17] was adopted later the same year, requiring authorities to consult the industry and local authorities when designing new forms or systems for acquiring information.

In 1987, the first Government Agencies and Institutes Ordinance was adopted, under which agencies are obliged to investigate and analyse the consequences of new regulations and compile this investigation into an impact assessment.

During the 1990s, it was clear that a new system was needed to make impact assessments better and more efficient. A deregulation delegation (*Avregleringsdelegationen*) was therefore appointed in 1993 in order to support and move this work forward. The delegation submitted a report in May 1994 "Deregulation for growth and more jobs" where different directions were identified:

- Create a system for active deregulation,
- Increase the knowledge about the impact of regulation,
- Facilitate the work for SME's.

Within the government offices, a memorandum, "Control by regulation – Check-list for legal drafters", was drafted in 1995 in order to give officials guidance in making impact assessments when drafting new regulations. The same year an update was made of the Government Agencies and Institutes Ordinance[18] that obliges agencies to follow up their activities and the consequences of their regulations.

In the bill Central Government Administration in Public Service[19] the Government issued guidelines and requirements for the central-government administration of the future. Based on these, the Government has embarked on a long-term administrative-policy action programme.

In 1998 two important ordinances were adopted, the Committees Ordinance[20] and the Ordinance on the special impact analysis of rules on small enterprises, the so-called Simplex Ordinance.[21] These ordinances apply to committees and agencies and provide among other things rules on how to consider whether public action is necessary, how to identify different alternatives to solve the problem and how to make impact assessments. In addition, the government appointed a group of state secretaries with responsibility for the work on regulatory reform within the government offices. The group announced its guidelines on how regulatory reform should be conducted within the government offices in 1999. Generally, these guidelines contain the same advice as the above mentioned Ordinances.

In March 2000, the government presented to Parliament a bill on Information Society for All,[22] which deals with the use of IT in the public sector. IT is seen in Sweden as the foremost tool for developing service in public administration. The main goal behind this law is to enable central-government agencies to collaborate among themselves, as well as with municipalities, county councils and private enterprises and to create rational service arrangements for all parties.

The Programme "Public Administration in the Service of Democracy", launched in 2000 by the Government, aimed at creating forms of organisation, governance and management that pave the way for three values to be realised throughout the public administration: democracy, the rule of law and efficiency. Measures and objectives that were suggested to be included in the Government programme for long-term development of public administration included: openness and accountability, better service for citizens and companies (which includes the use of plain language), quality and skills development, regulatory quality, focusing central-government activities, agency governance adapted to activities, better documentation for decision-making, and relations with EU and internationalisation of the Swedish economy.

In addition to the work on impact assessments, the efforts on regulatory reform have expanded during the last five years. In the Budget Bill for 2004, the Government sets out the most important initiatives in its coming Action Plan to reduce the administrative burden for enterprises. This Action Plan contains 310 actions to be implemented between 2004 and 2006 (see Section 4.2.). Some actions are general and affect most entrepreneurs, while others are more specific and only affect certain industries. The government has also decided to measure the administrative burden for enterprises. Measurements of important bodies of regulations have been conducted during 2004-2006, including tax, accounting, environmental and

agricultural regulations. These sets of regulations account for approximately 65 per cent of the total burden on companies. Further measurements will be completed during autumn 2006 and 2007 and ambitions targets will be drawn up for all areas.

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The 2005 OECD Guiding Principles for Regulatory Quality and Performance recommended that countries adopt broad programmes of regulatory reform at the political level that establish principles of "good regulation" and clear objectives and frameworks for their implementation. Regulatory policy may be broadly defined as an explicit, dynamic, continuous and consistent "whole-of-government" policy to pursue high-quality regulation.[23] It is an integral part of the process that links a policy goal, a policy action and regulation to support the policy action.

Box 2.1 Good practices for improving the capacities of national administration to assure regulatory quality and performance

The 2005 OECD Guiding Principles for Regulatory Quality and Performance capture the dynamic and on-going whole-of-government approach to implementation of regulatory quality. Based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation, on the Report on Regulatory Reform, welcomed by Ministers in May 1997, and on the OECD work of 20 country reviews and new monitoring exercises, the Guiding Principles form the basis of the analysis undertaken in this report:

A. BUILDING REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political level.
2. Dynamic dimension of regulatory policy.
3. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
4. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.
3. *Ex post* evaluation.

Experience in OECD countries suggests that an effective regulatory policy has three basic components that are mutually reinforcing: it should be adopted at the highest political levels; contain explicit and measurable regulatory quality standards; and provide for continued regulatory management capacity.[24] In Sweden, different sub-elements of such a policy exist in several programmes addressing a number of important regulatory quality aspects. However, these elements have not yet been integrated in a formal whole of government policy promoting regulatory policy. Regulatory quality efforts are segmented across ministries and agencies, without an overarching framework.

In Sweden, regulatory quality issues appear as part of a broader public sector reform, primarily touching upon elements such as high standards for law-making procedures, assessment of impacts and use of alternatives, and easing administrative burdens for business. Very important aspects of regulatory reform policies already in place are described in the following legal documents:

- *The Swedish Constitution.* The Constitution comprises the fundamental rules governing Sweden's state. It was modified in 1970 and the first chamber in Parliament (with an eight-year election period) was abolished, the election period for the remaining chamber was shortened to three – since 1994 to four - years, and a shift to strictly proportional elections made it more difficult to obtain a parliamentary majority.[25] This may have had some implications for the political economy of the reform as there was a need to build coalitions to sustain the process.

  The Constitution contains provisions that define the relation between the legislative and the executive powers, and the rights and freedoms enjoyed by citizens. Laws and ordinances are not permitted to come into conflict with the Constitution. The Swedish constitution consists of four fundamental laws:

  - *The Instrument of Government*. This law contains the basic principles of the form of government, the fundamental rights and freedoms of Swedish citizens, the organisation of the government and the Parliament, laws and regulations, international relations, administration of justice and general administration, parliament control, foreigner's rights, and financial powers.

  - *The Act of Succession*. This law establishes the right of succession of the throne of Sweden.

  - *The Freedom of the Press Act*. This law contains the rules for public access to official documents: it contains the right of every Swedish subject to publish any written matter, without prior hindrance by a central administrative authority or other public body, and not to be prosecuted thereafter on grounds of the content of such matter other than before a court of law.

  - *The Fundamental Law on Freedom of Expression*. This law guarantees every Swedish citizen the right, vis-à-vis the public institutions, publicly to express his thoughts, opinions and sentiments, and in general to communicate information on any subject whatsoever on sound radio, television and certain means of expression, like transmissions, films, video recordings, sound recordings and other technical recordings. The purpose of freedom of expression is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation.

- *The Parliament Act.* The Parliament Act lays down detailed provisions on the Parliament (*Riksdag*) and its procedures. It occupies a unique intermediate position between the Constitution and ordinary laws. It contains provisions on how its members can submit proposals to Parliament, by means of private member's motions, and provisions on the work of different Committees appointed to deal with specific issues.

- *The Law on Publishing Laws and Regulations* (SFS 1976:633). This law lays down the basic rules on publishing laws and regulations and the Code of Statutes.

- *The Codes of Statutes Ordinance* (SFS 1976:725) contains more specific provisions on publishing Codes of Statutes.

- *The Government Agencies and Institutes Ordinance* (SFS 1995:1322).[26] This ordinance governs the operations of the central government authorities, laying down the principles for how agencies should conduct their regulatory responsibilities. According to this, any agency should, before issuing binding or non-binding regulations consider the following:

    - Closely consider if this is the most appropriate measure;

    - Analyse the economic and other consequences, integrating the results in an impact analysis;

    - Give government agencies, municipalities, county councils and others who are concerned or in any other important way, the opportunity to give their opinion;

    - Ask for permission to the government before issuing regulations leading to increased costs for those who are concerned.

  In addition to this, agencies should also ensure the economic consequences are limited when they ask for information and execute supervision.

  This ordinance also establishes the general responsibilities for the Heads of the agency. Among them, the most relevant are:

    - Continuous follow-up and examination of the agency's own activities and the consequences of its regulations and decisions, taking appropriate actions when needed;

    - Ensure that contacts from citizens and third parties are facilitated by a good service and accessibility, by information and by a clear and understandable language in the agency's communication and decisions.

- *The Administrative Procedure Act* (1986:223)[27]. Its aim is to safeguard citizen's legal rights in their dealings with administrative agencies and to improve the agencies' services to the public.

- *The Committees Ordinance* (1998:1474)[28] requires all Committees of Inquiry to examine all new or amended legislation in, *inter alia*, a small business perspective. The committee has to conduct impact analysis and describe the consequences of its proposals. Consequences concerning small enterprises' working conditions, competitiveness or other conditions in relation to other enterprises, crime, employment and gender equality issues shall, where applicable, be evident in the report of the Committee of Inquiry.

- *The Ordinance on the special impact analysis of rules on small enterprises* (1998:1820)[29], also called "The Simplex Ordinance", which came into force in 1999, stipulates that a government authority has to undertake, as soon as possible, a special impact analysis on SMEs if there new or changed rules have significant effects on small enterprises' working conditions, competitiveness, etc. This Ordinance contains a checklist with twelve questions to help to understand the consequences of regulations (see Section 3.3.). This Ordinance indicates that authorities, when carrying out the Regulatory Impact Analysis (RIA), should consult with representatives from the business community and authorities that are particularly affected.

- *Guidelines for the Government Offices on special impact analysis of rules on small business* is an instrument issued by a state secretary group with special responsibility for the work on regulatory reform that specify that a special RIA has to be conducted in the Government offices when new or changed rules can have significant effects on SMEs. In an annex to these Guidelines there is a *Checklist on the special impact analysis of rules on small enterprises* that has to be used when the analysis is conducted. The checklist is the same one as in the Simplex Ordinance.

- *Control by regulation – Checklist for legal drafters* is a document issued by the Cabinet Office that helps civil servants, officers engaged with inquiries and investigations and employees of the public authorities to ask themselves the right and necessary questions in regulatory work.

- The *Bill Handbook* is a document issued by the Cabinet Office about preparing and writing bills.

- The *Green Book Guidelines for writing laws and regulations* is also issued by the Cabinet Office and contains guidelines for writing and publishing laws and regulations. There are also other handbooks and guidelines published which aim to promote quality in drafting laws and regulations, and their relations to the EU dimensions.

2.2. Mechanisms to promote regulatory reform within the public administration

Mechanisms for managing and tracking reform inside the administration are needed to keep reform on schedule and to avoid a recurrence of over-regulation. It is often difficult for ministries to reform themselves, given countervailing pressures. Maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based.

As in many OECD countries, individual ministries in Sweden are responsible, with a high degree of autonomy, for initiating and developing regulatory proposals within their areas of responsibility, as well as for consulting with affected parties and assuring regulatory quality control. In most areas, regulatory powers have been delegated to agencies or autonomous bodies, which often draft, implement and supervise secondary legislation.

All formal government decisions are taken collectively and unanimously by the members of the government, preceded by a joint drafting procedure, in which all concerned ministries participate, in order to obtain different points of views. After this procedure, the decision is circulated for comments among all ministries. These procedures have to be completed and all ministries concerned must have come to a common understanding regarding the proposed measure before an item can be placed on the agenda as a formal government decision. These procedures serve as an important way of securing a comprehensive inter-service consultation in order to be able to consider and co-ordinate all different interests involved. It also reflects the operations of a consensus-based State, where decisions need to reflect the broad consent of all those involved.

Box 2.2 The legislative process in Sweden

The Swedish government lays some 200 legislative proposals every year. They are presented to the Swedish Parliament (*Riksdag)* in the form of government bills. Some of them contain proposals for new legislation, requiring extensive debate before a decision can be reached, while others consist of proposals for major and minor amendments to existing laws. The law making process in Sweden includes the following stages:

1. *Initiation*. Although most legislative proposals submitted to the *Riksdag* are initiated by the government, some bills may be based on suggestions put forward by the parliament or by citizens, special interest groups or public authorities.

2. *The inquiry stage*. Before the Government can draw up a legislative proposal, the matter in question must be analysed and evaluated. The task may be assigned to officials from the ministry concerned to a commission of inquiry or a one-man committee. Inquiry bodies, which operate independently from the Government, may include experts, public officials and politicians. The reports setting out their conclusions are published in the Swedish Government Official Reports series (*Statens Offentliga Utredningar, SOU*). The reports are available in Swedish on the Internet.

3. *The referral stage (external consultation)*. Before the Government takes up a position on the recommendations made by a commission of inquiry, its report is referred for consideration to the relevant bodies. These referral bodies may be central government agencies, special interest groups such as business or consumer organisations, trade unions, academic society, courts, regional and local government authorities or other bodies whose activities may be affected by the proposals. This process provides valuable feedback and allows the Government to gauge the level of support it is likely to receive. If a number of referral bodies respond unfavourably to the recommendations, the Government may try to find an alternative solution.

In principle, referrals must be in writing and the referral bodies must be given at least three months in which to submit their opinions. Only in exceptional cases can other forms be used, for example referral meetings. Any member of the public can choose to participate in the consultation. There have been no changes in recent years to the consultation process to make it more effective or efficient.

4. *The drafting stage*. When the referral bodies have submitted their comments, the responsible ministry drafts the bill that will be submitted to the *Riksdag*. If the proposed law has important implications for private citizens or the welfare of the public, the Government should first refer the proposal to an independent body, the Council on Legislation (*Lagrådet*). The Council's scrutiny shall relate to the manner in which the draft law relates to the fundamental laws and the legal system in general, the manner in which the different provisions of the draft law relate each other, the manner in which the draft law relates to the requirements of the rule of law, whether the draft law is so framed that the resulting act of law may be expected to satisfy the stated purposes of the proposed law and what problems are likely to arise in applying the act of law.

The drafting procedure for a government bill starts within a ministry through consultations between the political executive and public officials, and among public officials (*beredning*). Then there is a joint drafting procedure between public officials at different ministries, sometimes involving political officials as well (*gemensam beredning*). Sometimes all the members of the Government also discuss a matter at a so-called general meeting (*allmän beredning*). In order to obtain different views the matter is then circulated for comments to all ministries (*delning*). The minimum period allowed for this last type of consultation comments inside the Government is, in principle, one week. When the joint drafting procedure is complete, the matter is placed on the agenda for the next Cabinet meeting. The minister in question presents the matter at the Cabinet meeting (*regeringssammanträde*). The formal government decision is then taken collectively by the members of the Government (*regeringsbeslut*).

5. *The parliamentary stage*. Responsibility for approving all new or amended legislation lies with the *Riksdag*. Legislative proposals, whether proceeding from the Government or a private member, are dealt with by one of the parliamentary committees. Anyone of the 349 members of the *Riksdag* can table a counter-proposal to a bill introduced by the government. Such a proposal is called a *motion*. If a motion is formally adopted by the *Riksdag*, the government is bound to implement its provisions. When the committee has completed its deliberations, it submits a report and the bill is put to the chamber of the *Riksdag* for approval. If adopted, the bill becomes law.

6. *Promulgation*. After its successful passage through the *Riksdag*, the new law is formally promulgated by the Government. All new or amended laws are published in the Swedish Code of Statutes (*Svensk författningssamling, SFS*).

In Sweden horizontal regulatory reform responsibilities and quality control of law drafting are diffused among several ministries and agencies. The government offices form one authority. This authority is divided into, at present, nine ministries. Inside each of the nine ministries of the Swedish administration,[30] there is a Director General (DG) for Legal Affairs. This person is responsible for the preparation of laws and the reviewing of their legality, consistency and conformity when preparing them. Each DG undertakes the final review of the drafting of bills and secures that demands for inter-ministerial consultations are fulfilled. Within the Ministry of Justice and the Ministry of Finance this task regarding consultation lies on a special assigned responsible official, who works in co-operation with the DG. The role of the DGs at the Prime Minister's Office and at the Ministry of Justice, being responsible for the publication of the Swedish Code of Statutes (see section 3.1.3), deserves special mentioning. They review together the conformity of bills, draft proposals and terms of reference of Committees of Inquiry, and co-ordinate different legal issues among the government offices.

In the Swedish administrative and institutional landscape, the following ministries, agencies and special bodies have a prominent role in promoting regulatory quality across the whole of government:

- *Prime Minister's Office*. The Prime Minister's Office is responsible for the political and legal co-ordination of the legislative work within the government offices. Its role, however, is more confined to matters of a procedural nature.

  - *Legal Secretariat*. Even if each ministry in Sweden is responsible for its own process of drafting new legislation within its area of responsibility, the Head of the Legal Secretariat within the Prime Minister's Office has a special responsibility for the general quality of regulations. This includes a responsibility for issuing regulations that are lawful, consistent and uniform, co-ordinating legal and linguistic questions among the government offices. The Guidelines issued by the Prime Minister's Office, as well as other administrative procedures, contribute to co-ordinating legal and linguistic questions to promoting conformity and to ensuring uniformity and high quality in legislation and in the law making process.

  - *EU Coordination Secretariat*. In April 2005 this Unit was established at the Prime Minister's Office. Its main task is to take responsibility for horizontal European integration issues. Thus, the Prime Minister's Office has overall responsibility for coordinating Swedish EU policy, *e.g.* for determining the overall political priorities for Sweden's action in the EU and for co-ordinating the work of the ministries in the Council of Ministers.

- *Ministry of Finance*. This Ministry is responsible for handling government business in different areas, such as economic policy for full employment and sound public finances, establishment of the central government budget and to propose legislation on taxes, local authorities, and public administration. The Ministry revises the budget implications for new or amended regulation.

- *Ministry of Justice*. This Ministry is responsible, among others, for legislation concerning the Constitution and general administrative law, civil law, procedural law and criminal law.

  - *Division for Legal and Linguistic Draft Revision*. The lawyers and the language experts of this Division review all draft government bills, government ordinances and terms of reference of Committees of Inquiry, from a constitutional point of view and as regards general quality. The language experts, in particular, further ensure compliance with

plain language drafting requirements and provide guidelines and handbooks that advise on the use of plain language. This Division organises training seminars for all new employees dealing with law drafting issues in each ministry. It is also responsible for ensuring that the government offices undertake consultation with external parties, as stated in the Instrument of Government.

- *Ministry of Industry, Employment and Communications*. This Ministry is responsible for creating conditions for improved welfare and increased employment. The Business Division deals with issues related to business development, SMEs, supply of capital, entrepreneurship, simplification of rules, competition policy and state aid, issues relating to patents and innovation, cooperative enterprise and general conditions for enterprise growth.

  - *Better Regulation Unit*. As part of the Business Division in this Ministry, the Better Regulation Unit is responsible for providing guidance and support in the work on better regulation and small business considerations, as well as approving the quality of the small business impact assessments. The Unit serves to coordinate, support and follow up the work on regulatory reform. Initially, it constituted a separate division within the Ministry of Industry, Employment and Communications, but later it was incorporated in the Business Division at the same Ministry. This Unit is always included in the compulsory circulation for comment within the government offices that precedes the adoption of new or amended regulations, if the proposal concerns small business. The Unit scrutinises all proposals that other ministries want to present and makes sure that the impact assessment is taken into account and that its quality is acceptable, only at ministerial level.

- *Ministry of Foreign Affairs*. The *Division for Export Promotion and Internal Market* (UD-EIM) within the Ministry of Foreign Affairs needs to be consulted in all matters concerning the internal market and it is also responsible for the overall co-ordination in the government offices of the procedures, according to Directive 98/34/EC.

- *Office for Administrative Affairs*. Within the Government Offices, it is responsible for the development of managerial methods and administrative routines, finances, administration, employer issues, information technology, etc. Its committee service in the General Services Division supports the Committees appointed by the Government. Among other tasks, this service organises two-day courses for new committees secretaries (four per year), which include issues such as the role of the Committees in the political decision-making, the planning work, information about administration and registration, how to draw up reports, use of language, the quality of Committees reports, etc.

- *The Swedish National Audit Office (Riksrevisionen)*. The National Audit Office, whose independent status is embodied in constitutional law, is responsible for auditing the operations of the entire Swedish state and, in this way, promoting the optimum use of resources and efficient administration. *Riksrevisionen* is part of the system of checks and balances provided by the Parliament. It is responsible for auditing the accounts of government agencies through annual financial audits, and for auditing the effectiveness and efficiency of government undertakings through performance audits.

- *The Council on Legislation (Lagrådet*). The Council on Legislation, which normally consists of three members, judges from the Supreme Court and the Supreme Administrative Court, scrutinizes the proposed legislation from the legal viewpoint. If a

proposed law regards certain constitutional matters, civil law, penal law or administrative law consisting of obligations for the public, the government should refer the proposal to this independent body to ensure that it does not conflict with existing legislation, before the proposed law could be submitted to the Parliament. The Council's scrutiny shall relate to the manner in which the draft law relates to the fundamental laws and the legal system in general, the manner in which in which the different provisions of the draft law relate to each other, the manner in which the draft law relates to the requirements of the rule of law, whether the draft law is so framed that the resulting act of law may be expected to satisfy the stated purposes of the proposed law and what problems are likely to arise in applying the act of law.

- *The Swedish Financial Management Authority (Ekonomistyrningsverket*).[31] The Swedish National Financial Management Authority has a certain role in monitoring how agencies apply the Ordinance on Government Agencies and Institutes, related to impact analysis. Regulatory agencies shall analyse the economic and other consequences of their regulations and make a documentation of the result of the impact analysis. There is no requirement on a certain methodology to be used, but a quality control is in force by the Swedish National Financial Management Authority, which is monitoring the agencies' work on impact analysis.[32]

- *The Swedish Agency for Economic and Regional Growth (Verket för Näringslivsutveckling, NUTEK).*[33] NUTEK has special responsibility as a better regulation agency since January 2005, when it was assigned with new and more clarified directions and instructions. Its role was expressed in the Government's annual report to the *Riksdag* (2004/05:48). According to these new responsibilities, NUTEK will provide support and advice on the work on impact assessments to other agencies.[34] The amendments to the Ordinance indicate that NUTEK will receive the impact assessments for information and could give feedback.[35] NUTEK's role in this regard is laid down in the NUTEK Ordinance (2000:1178), § 7a. NUTEK is also responsible for training programmes on RIA, as stipulated in the Simplex Ordinance (1998:1820).

- *The Swedish Agency for Public Management (Statskontoret).* Statskontoret provides support to the government, government offices and government-appointed Committees of Inquiry. Its task is to conduct studies and evaluations at the request of the government and Committees of Inquiry in the field of public management. It is responsible for review, evaluation and follow-up of public/government administration and state-financed activities. Its reports are public documents.

- *The Swedish Administrative Development Agency (Verket för Förvaltningsutveckling, VERVA).*[36] Since January 2006, VERVA is the new public government agency in charge of public administration and human resource development, strategic human resource management and of co-ordination inside the Government administration. VERVA plays also a role in promoting e-government inside the administration and integrating information and technologies for public service delivery.

- The *Parliamentary Ombudsmen* are elected by the Parliament to ensure that public authorities and their staff comply with the laws and other statutes governing their actions. The Ombudsmen exercise this supervision by evaluating and investigating complaints from the general public, by making inspections of the various authorities and by conducting other forms of inquiry that they initiate. The Ombudsmen report annually to the Parliament.

- The *Chancellor of Justice* is appointed by the Government. The Chancellor's task is quite similar to the Parliamentary Ombudsmen and it is carried out in the same way. The Chancellor of Justice can also decide upon damages caused by the governmental authorities.

In Sweden the *Riksdag*, as the representative of the people, enacts laws, decides on state income (taxes) and spending, scrutinises and checks the government's and authorities' work and appoints the Prime Minister. The *Riksdag*'s decisions are based on proposals from the Government (government bills) or from members of Parliament (private member's motions). There are 16 standing committees working in Parliament that have to pave the way for decision-making and ensure that proposals comply with previous legislation. The Committee on Industry and Trade, in particular, deals with matters related to general guidelines for industry and trade policy, state-owned enterprises and price and competition conditions in the business sector, providing input and political support to the work on regulatory issues done by the Government.

2.3. Co-ordination between levels of government

Regulatory systems are composed of complex layers of regulation stemming from sub-national, national and international levels of government. Complex and multi-layered regulatory systems have long been a subject of concern with respect to the efficiency of national economies and the effectiveness of government action. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform. This section will only concentrate on the interaction of the national and European level, as a full picture of the multi-level regulatory system of Sweden will be developed in Chapter 5.

2.3.1. National – European level

Sweden joined the European Union (EU) on January 1, 1995. Through its membership in the EU, Sweden is able to influence all issues dealt with by the Union. Sweden is involved and affected by decisions taken by the Union. A considerable proportion of the daily work of the Government Offices is devoted to EU issues.

Sweden's accession was preceded by a long period of integration with EU countries. Important milestones along the road to membership included the 1972 Free Trade Agreement between Sweden and the European Community (EC) and the 1992 treaty that established the European Economic Area (EEA). This agreement, between EU countries and the European Free Trade Association (EFTA) regulated most of the terms of entry for Sweden's participation in the EU internal market.

Inside the Swedish administration, overall responsibility on EU policy lies with the Prime Minister. Other government ministers are responsible for their respective policy areas in EU work, but the Government is collectively responsible for EU policy decisions.

The Prime Minister's State Secretary and the EU Policy Coordination Unit at the Prime Minister's Office are responsible for the management and co-ordination of EU-related activities at the government offices. The duties of the Prime Minister's Office in this respect include:

- Setting inter-ministerial priorities and formulating policies with regard to EU issues;
- Heading the government think-tank on the long-term development of the Union;

- Resolving inter-ministerial points of contention and promoting cohesive policy approaches in Sweden's EU work;

- Preparing for meetings of the European Council.

- Guidance on EU legislative issues.

Related to EU issues, ministries are responsible for preparing government business in their respective areas. They formulate Swedish position prior to negotiations in the Council of Ministers, and follow up EU decisions. Before a ministry presents its view on a particular matter to the *Riksdag*, and subsequently to the EU, it must first consult with the Prime Minister's Office, the EU Department of the Ministry of Foreign Affairs and the Budget Department of the Ministry of Finance.

EU issues involving several ministries are prepared collectively in the government offices so that all ministries have a chance to state their views. When implementation work involves several ministries, one ministry is normally designated to lead the process. In most cases, the leading ministry is the one whose responsibilities are the most affected by the legal act.

The timely implementation of EU legislative acts is supervised by the Prime Minister's Office. In planning the implementation, action at central administrative as well as regional or municipal level are taken into account. National legislation can indicate that further measures are foreseen at such level. Implementation of EU legislative acts, in particular those involving a high degree of technical rules, can take place primarily at central administrative level in accordance with powers delegated to a particular administrative body. The National Board of Trade (*Kommerskollegium*),[37] the Swedish government agency for foreign trade and trade policy, provides Internet-based information on transposition into Swedish law of EU legislative acts.

The National Board of Trade has requested a survey and analysis of how the Swedish authorities understand the EU market, and how this affects the handling of EU issues.[38] While the common perception is that Sweden is at the forefront of implementing EU legislation, the facts show that the implementation of EU legislation often occurs under time pressure and the Government offices often hesitate in giving notice on which agency is responsible for the implementation procedure. The delay can be up to one year in some cases. This is a contributing factor to the fact that many Swedish authorities are very late in commencing the implementation or law-drafting process, when EU decisions require this. According to the results, it is widely agreed among Swedish agencies that there is need for better central coordination of the implementation process. When a legal document is published in the official EU gazette this is a signal that the implementation phase should already have begun, but the Government office concerned seems to lack the proper organisation to gather information and communicate properly to the agencies in question. Swedish stakeholders think that the implications of EU law need to be clarified, as well as more knowledge of the internal market and associated rules and regulations is important.[39]

The transposition of EU legislation into the Swedish regulatory framework reflects the legal system of this country (see section 1.1.): while very few laws and ordinances transpose directly the *acquis communautaire*, regulations laid down by agencies, according to the delegation of powers given by the Government, are the main legal instruments that implement EU legislation. In 1999, for instance, 196 laws and ordinances implemented EU directives and 68 supplemented EU regulations. In percentage terms, this means that 8.3% were linked to EU. Most legal instruments in the *acquis* have a bearing on the Swedish system only at agency level. EU directives have been implemented through 442 regulatory instruments at 26 central government agencies and EU ordinances had been supplemented by means of 124 regulatory instruments issued by 15 central government agencies. This means that around 8% of the 7,000 agency regulatory instruments were linked to the EU.[40]

As far as business regulations and the resulting administrative burdens on business are concerned, the Board of Swedish Industry and Commerce for Better Regulation (*Näringslivets Regelnämnd*, NNR) has found that 44% of the proposals for new or amended business regulations stem from EU regulations adopted. This figure shows that businesses are affected strongly by EU regulations and that there is still scope for administrative simplification measure. Moreover, business actors have noted that there is a need to further familiarise them with basic information on the internal market and on basic EU law. As the situation in Sweden stands now, with the implementation of EU legislation being very centralised in the hands of the Government offices, involvement of and coordination with the agencies and business actors could still be improved. The involvement of stakeholders would contribute to the efforts made by the Government to reduce administrative burdens (see Section 4.2.).

Regarding the notification procedure according to Directive 98/34/EC (Directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), several initiatives have been taken to inform stakeholders of the procedure, as well as to create an interest among them to take advantage of the information in the procedure. Seminars are conducted, like the one which will take place next October 2006 in Stockholm, between representatives of the Commission and Swedish stakeholders, *i.e.* government agencies and business/industry organisations.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATIONS

This section reviews how current processes for making legislation and subordinate regulations support applications of core principles of good regulation. It describes and evaluates systematic capacities to generate high quality regulation, and to ensure that both processes and decisions are transparent to the public.

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps insure against undue influence by special interests. Transparency reinforces the legitimacy and fairness of regulatory processes. Transparency involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, and codification. Transparency thus serves to make rules easy to understand and find and contributes the implementation and appeals processes being predictable and consistent.

3.1.1. Transparency of procedures for making new laws and regulations

Transparent and consistent processes for making and implementing legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the formulation of laws. In Sweden, as in the majority of OECD countries, such procedures are established in legislation supplemented by decrees, guidelines or policy statements issued by the government or individual ministries. Essential provisions in this respect are stipulated in the Instrument of Government and the Freedom of the Press Act (see Section 2.1.).

The Instrument of Government and the Parliament Act set the general rules about the legislative work. Within the government, these rules for legislative work are supported by other instruments, such as the governmental decree with instruction for governmental offices, instruction books for the ministries, handbooks and guidelines, etc. These documents contain rules and principles about responsibilities and formalities regarding the legislative work.

General principles on regulatory quality are stated in different binding regulations and several guiding documents to ensure the uniformity and high quality of legislation. The guidelines target all levels of bodies involved in the drafting of new or amended legislation, the Government Offices, government agencies and committees of inquiry. Explicit principles are defined concerning the following issues: targeting (fulfilling the aim, solving the problem identified), regulatory impact analysis, reduction of administrative burdens on business, consultation, alternatives to regulation, plain language drafting, intelligibility (clear structure and clear language) and access to legislation.

The guidance material is published and distributed to government officials. The information is also available on the Internet. The Head of the Legal Secretariat within the Prime Minister's Office is responsible for issuing those guidelines and handbooks that are used by the Government offices. For instance, a checklist exists on how to comment on draft EU legislation, while it is still under consideration by the Commission, the Council and the European Parliament. The handbook is primarily addressed to officials representing Sweden at negotiations in the EU. The aim is to reach legal texts that are clear, simply and concise at the European and the national level.

Training of law drafters

The Government offers special seminars and training courses for the officials concerning areas such as quality of legislative drafting and plain language requirements. There are special courses on how to draft acts and regulations (twice a year), and courses on how to write Government bills (four or five times a year). All newly employed regulators in the Government offices are required to take part in the course. 130 people attend these courses annually, on average. There are also introductory seminars for newcomers (441 attended this in 2004 in the Government offices), including different aspects of quality in legislation, which include discussion on the importance of RIA and of feasible alternatives to regulation.

There are also other special seminars and training sessions addressing specific aspects of quality in legislation, including plain language aspects, for the benefit of smaller groups of more experienced Government officials. The training sessions are supplemented by written materials. The Cabinet Office publishes numerous guidelines and handbooks covering every aspect of quality in legislative drafting, including plain language drafting requirements.

The purpose of the course in drafting rules and regulations is to give guidance to the regulators on how to write in order to create lawful, consistent and uniform legislation. The course involves practical elements and covers among other things the following topics: to govern by rules; the allocation of power to legislate; different kinds of legal rules; the outline and language in new regulations; how to revise amendments to regulations linguistically; the technique of writing legislation; preambles, notes, provisions about entry into force and transitional provisions, etc.; and the examination by the Council on Legislation.

The overall purpose of the course in drafting Government bills is to improve the general quality of the products. It is among other things important that all Government bills are composed in a uniform and consistent way. The content of the course includes the following topics:

- What is to be decided by the Parliament?
- What is a Government bill?
- How to plan the work to draft a Government bill;
- The referral for consideration;

- How to put together and present comments on drafts sent out for consultation;
- What a Government bill should contain;
- How the content of the Government bill should be presented;
- Language recommendations and advice.

The linguists at the Division for Legal and Linguistic Draft Revision occasionally give courses on an *ad hoc* basis in special projects and for officials who specifically request such training.

3.1.2. Transparency as dialogue with affected groups: use of public consultation

Public consultation gives citizens and business the opportunity to make an active input in regulatory decisions. A well-designed and implemented consultation programme can contribute to higher quality regulations, identification of more effective alternatives, lower costs to business and administration, better compliance, and faster regulatory responses to changing conditions. Just as important, consultation can improve the credibility and legitimacy of government action, win the support of groups involved in the decision-making process, and increase acceptance by those affected.

Consultation procedures during the legislative process

Public consultation plays a significant role during the referral stage (see Section 2.2.) of the law making process in Sweden. Public consultation with affected parties by a certain piece of legislation is a routine part of developing draft laws and subordinate regulations. Consultation is, in principle, mandatory. The 1974 Instrument of Government, one of the four fundamental laws on which the Swedish Constitution is based, states in chapter 7, article 2, that "In preparing Government business the necessary information and opinions shall be obtained from the public authorities concerned. Organisations and private persons shall be afforded an opportunity to express an opinion as necessary." The Constitution takes precedence over all other laws, and no other enactment may conflict with its provisions.

Consultation procedures within the Government offices constitute an important part of the work to ensure the legal and technical quality of regulations. In Sweden, there is a collective and unanimous decision-making procedure within the Government. All ministers (and their units) have to agree upon proposals for new legislation, which in practice means a process of inter-ministerial negotiations in order to take into account all aspects of the proposal.

When it comes to issues that require more extensive analysis and preparation before a proposal can be drafted, the government may choose to appoint a special expert or group, officially known as a Commission or Committee of Inquiry. This is also an opportunity for the Government to examine various alternatives before submitting a proposal for new legislation to the *Riksdag*. The Committee of Inquiry may consist of one or several people, including experts, officials, politicians, etc., who are normally familiar with the area or matter to be examined. They could represent authorities, NGOs and other interest organisations and political parties. A large number of Committees of Inquiry are in fact set up every year, depending on the issues to be discussed, but their number goes up to 200 at the same time. They provide significant materials with options for reform.

When the Government appoints a Committee of Inquiry it also provides "Terms of Reference" for its work. These identify the area or issue to be investigated, define the problems to be addressed and set a closing date for the inquiry. These terms of reference are published in paper format, and collected annually in paperback. Committee's terms of reference are also available on the Government Offices legal

databases, where they are published on a continual basis. These databases also include committee reports containing information about all government committees, including the names of members and experts on committees. This report is also available in an annual paperback.

The committee process is one way of accessing knowledge about a particular issue that affects different areas of society. It offers politicians and specialists an opportunity for fruitful cooperation. Furthermore, the parliamentary opposition and different advocacy groups are given an opportunity to follow reform work from an early stage. After a Committee's report has been submitted to the responsible Minister, its contents are referred to the relevant authorities and the public in general for consideration. They are given an opportunity to express their views on the conclusions of the inquiry before the Government formulates a legislative proposal. The Government would like to hear the opinion of those likely to be affected by future legislation to find out whether there is support for the proposal. If a large proportion of the bodies to which the matter has been referred to respond negatively, the Government may decide not to pursue the matter further, or try to find other solutions than those proposed by the Committee.

Not only are the reports from Committees of Inquiry referred to concerned bodies for consideration. Public consultation with parties affected is a routine part of developing all draft primary laws and subordinate regulations. Referrals must be in writing and the referral bodies must be given at least three months for submitting their opinions. Only in exceptional cases can other forms, for example referral meetings, be used.

Once finished, the Committee of Inquiry presents its proposals to the Government in a report published as part of the Swedish Government Official Reports (*Statens Offentliga Utredningar*, SOU). If a government ministry has conducted the inquiry, it is published in a series known as the Ministry Publications Series (*Departementsserien*, Ds). These documents are available via *www.regeringen.se* and *www.lagrummet.se*.

The consultation process continues when the regulation has been drafted. Some authorities always send the final version of the regulation directly to the different actors who have been involved in the referral process after the regulation has been decided upon. The final version is accompanied sometimes with a compilation of the different comments sent in and a justification of the final wording of the regulation. In some cases, the new regulation is distributed more widely to the actors within a specific branch, for example, to all companies that have special licenses or permits issued by the authority and would be affected by the new rules.

Forward planning

A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future. Forward planning has proven to be useful to improve the transparency, predictability and co-ordination of regulations. It fosters the participation of interested parties as early as possible in the regulatory process and it can reduce transaction costs by giving more extended notice of forthcoming regulations.

In Sweden, as in many other OECD countries, the legislative work follows the political agenda. Different instruments allow the government to inform not only the parliamentarians, but also the citizens about future reforms and laws. Inside the administration, ministries plan for their forthcoming actions, *e. g.* for the appointment of new Committees of Inquiry and drafting of bills. The set up of a Committee of Inquiry requires the approval of terms of reference that contain the scope and desired outcomes of the process.

The Swedish government presents forthcoming reforms in the annual budget bill that also indicates the direction of reforms. The government further informs annually the Parliament about appointed Committees and their work (The Committee Report), and publishes annually a compilation of the directives for the Committees. These documents are available in Swedish to the public also via the Government's websites: *www.sou.gov.se* or *www.regeringen.se*, and the official legal information system *www.lagrummet.se*. Twice a year, the government informs the Parliament about the bills it intends to put forward during the forthcoming term. The government also publishes bi-annually general information on new important laws that will enter into force in the coming six months.

Assessment. The extensive consultation procedures undertaken in Sweden seem to be effective in communicating future legislation and consolidating the participation of invited stakeholders. Standards for consultation mechanisms during the law-making process are of high quality and close to best practices in OECD countries. Consultation procedures during the legislative process in Sweden add benefits in terms of improved legitimacy and transparency and they contribute to internal co-ordination between different institutions. While the work of a Committee of Inquiry provides a thorough and extensive assessment of the underlying issue, it can also take time and is not necessarily conducive to decisions. After the Committee of Inquiry has submitted its report, this is referred for consideration to the relevant bodies and the referral bodies are, normally, given three months to submit their comments.

There is, however, scope to improve the quality of consultations, especially with the business sector and consumers, and to incorporate their views in the draft proposals at an early stage of the process. This could help to better weigh up the costs imposed to citizens and businesses, the possible alternatives and the impacts of future legislation. Consultation procedures at government agencies level could be strengthened, as they are the implementing bodies of most of regulations that affect stakeholders. Swedish agencies use consultation procedures quite extensively, *e.g.* in connection with regulatory changes or before taking positions on international issues. Some agencies also use consultation procedures in connection to the development of new products or services.

3.1.3. Transparency in the implementation of regulation: communication

Another dimension of transparency is the effectiveness of communication and the accessibility of the rules for regulated entities. Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public.

In Sweden, the principle of public access means that the general public and the mass media newspapers, radio or television are to be guaranteed an unimpeded view of activities pursued by the government and local authorities. The principle of public access is manifested in the following ways:

- Everyone is allowed to read public documents held by public authorities (public access to official documents);
- Civil servants and others who work in the central government sector or for local authorities have the right to tell outsiders what they know (freedom of expression for civil servants and others);
- Civil servants also enjoy special freedoms to provide information to the mass media (freedom to publish for civil servants and others);
- Court proceedings are open to public, as are meetings of legislative assemblies.

The principle of public access to documents applies to three kinds of documents:

- All documents received by an authority (and an authority cannot receive any document 'unofficially');
- All documents dispatched by an authority; and
- All documents 'established' (decided, adopted, etc.) by an authority.

The document may be an ordinary document or paper, but it can equally well consist of information that can be read, listened to or taken in some other way using technical aids. Everyone who wishes to study a particular public document can address himself to the relevant authority.

In principle, all individuals – either Swedish or foreign citizen – have the right to read official documents held by public authorities. However, this right is subject to two restrictions:

- The general public is entitled to read only those official documents that are classified as public documents;
- Some documents are secret.

In some cases, public documents may be kept secret, when secrecy is needed to protect one or more of the following interests:

- The security of the realm or its relations with another sovereign state or international organisation;
- National fiscal, monetary or currency policy;
- Inspection, control and other supervisory operations carried out by public authorities;
- The prevention or prosecution of crimes;
- The economic interests of the general public;
- Protection of the personal and economic position of private individuals;
- Protection of animal or plant species.

Any restriction of the right of access to official documents shall be scrupulously specified in a provision of a special act of law, or, if this is deemed more appropriate in a particular case, in another act of law to which the special act refers. With authority in such a provision, the Government may however issue more detailed provisions for its application in a statutory instrument. If secret information is to be presented or adduced in court proceedings, the court is generally permitted to hold proceedings in closed session.

In terms of accessibility of the rules for regulated entities, there is an obligation in Sweden to publish acts and ordinances, including amendments, in the Swedish gazette for regulations: the Swedish Code of Statutes (*Svensk författningssamling*, SFS). It is the official publication, since 1825, of laws enacted by the *Riksdag* and ordinances issued by the Government. The tradition sets out the new regulations should be published four weeks before they enter into force. New statutes and amendments are published every

Tuesday, all the year. An annual hardback with a keyword index is published at the end of each year. The Code of Statutes is available at the Library of the *Riksdag* and the municipal libraries. It is also possible to subscribe to the Gazette, following the Instrument of Government (Chapter 8, Article 19), the Law on Publishing of Rules and Regulations (1976:633) and the Governmental Ordinance on the Code of Statutes (1976:725).

New regulations and amendments are published also on the Internet, and they are available via the website: *www.lagrummet.se*. This gateway of the official legal information system contains a directory of all laws, ordinances and regulations, making available statutes, government bills and texts of treaties. Case law from general courts as well as administrative courts is also available. The information is in Swedish; a selection of Swedish codes and acts of special interest issued by the Swedish ministries can be found in English on the website of the Swedish Government: www.sweden.gov.se/sb/d/3288.

Regulations issued by agencies are published in the gazette for each authority. Around sixty authorities have their own gazette. They have to also publish their regulations electronically, available via *www.lagrummet.se* and most of the agencies publish their regulations at their own websites as well. Thus, all information on legislation in the public domain may be accessed free of charge via Lagrummet, following the Governmental Ordinance on Legal Information (1999:175). Visitors to the site have access to all statutes currently in force and information on impending legislation.

A database with consolidated versions of laws and ordinances is also making regulations more accessible for citizens. Such versions are available via the website for the official legal information system *www.lagrummet.se*, but also via the Government's website, *www.regeringen.se*, or the Parliament's website *www.riksdagen.se*. The Parliament's website also offers a large number of texts from the Parliament such as government bills (*propositioner*), minutes of debates (*protokoll*), proposals from members of the *Riksdag* and committee reports (*utskottsbetänkanden*). It also contains many guides, fact sheets and explanatory texts. This database is updated a few days after the paper version is published. The Government's website offers a large number of documents from the Government, such as terms of reference for committees, committee's register, committee's reports, ministerial reports, bills, international agreements and laws and ordinances as they are published. All Internet sources and databases are available free of charge and anyone can use their content in the way they want.

Plain language

Plain language is a statutory requirement for drafting laws and regulations. Efforts to evaluate the linguistic clarity of Government authorities and agencies have been underway since 1994. The Plain Swedish Group has served the Government to be engaged in active efforts to promote preservation of linguistic purity among the agencies. It encouraged government agencies all over Sweden to start plain language projects. The Plain Swedish Group channels knowledge, ideas and experience gained from plain language projects in Sweden and abroad. As part of its work, the Group arranges conferences and visits government agencies to inform them about the use of plain language. As from July 2006, the Plain Swedish Group continues this work as part of a new state body for plain language.

At the Government level, this requirement is set out in the Ordinance on the Duties of the Government Offices (1996:1515, § 26). This ordinance states that the Director-General for Legal Affairs at the Prime Minister's Office shall, together with the senior civil servant at the Ministry of Justice, who is publisher of the Swedish Code of Statutes, promote "…the greatest possible simplicity and clarity in the language used in statutes and other decisions".

As to the government authorities, the statutory basis for plain language drafting requirements is found in the Administrative Procedure Act (1986:223, § 7) which says that government authorities "must endeavour to express themselves in a comprehensible manner". The Government Agencies and Institutes Ordinance (1995:1322, § 7) requires the Director-General of a government authority to ensure that the authority uses a plain Swedish approach when drafting official documents: agency heads are responsible for facilitating the dealings of the public and others with the agencies by such means as "clear, comprehensible language in the agencies' written material and decisions".

The methods for ensuring adherence to the plain language drafting requirements include revision of all new Government bills, Government Ordinances and Committee Terms of Reference by the Language Experts at the Division for Legal and Linguistic Draft Revision, guidelines and handbooks with advice on plain language, and training seminars for all new employees.

Assessment. In Sweden, easy access to the legislation and the regulations in place is guaranteed by the different Ministries and government agencies. The consolidated database available (via *www.lagrummet.se*) responds to high quality standards: central, easily searchable, free of charge and Internet-based engine for laws, ordinances and regulations. The different legal instruments to support the clarity of laws and regulations are complemented by training of legal drafters, which contributes to improve the quality and transparency of legal documents and to make them understandable for citizens that are expected to comply with them.

3.1.4. Transparency in the implementation of regulation: compliance, enforcement and appeal

Design, adoption and communication of regulation are not sufficient. To achieve its intended objective, a regulation must be implemented, enforced and complied with. A mechanism of redress should also be in place, not only as a democratic safeguard of a rule-based society, but also as a feedback mechanism to improve regulations, as mentioned in the OECD 2005 Guiding Principles for Regulatory Quality and Performance.

Compliance and enforcement

Regulations can also be assessed in terms of the possibility to comply with them. An *ex ante* assessment of compliance is increasingly a part of the regulatory process in OECD countries, although the level of resources and attention focused on it varies significantly (see Box 2.3).

Box 2.3 Initiatives of ex-ante assessment of legislative proposals' enforceability in OECD countries

In the **Netherlands**, "The Table of Eleven" is used both to guide reviews of compliance and enforcement relating to existing legislation and as an analytical tool in the development of new regulation. The Table is structured in three parts: *spontaneous compliance dimensions*, *control dimensions* and *sanctions dimensions*. This "checklist" approach can help regulators consider compliance issues in detailed, systematic fashion, and also provide a useful review and quality control tool. In the **United Kingdom**, government policy and guidance on the preparation of regulations include explicit considerations on securing compliance. Policy makers are encouraged to consider a variety of compliance factors, including taking a balanced approach between high compliance and (over-) active enforcement. In **Canada**, implementation and compliance strategies are also required to be explicitly and publicly discussed as part of the preparation of a regulatory proposal.

Source: OECD (1999), Regulatory Reform in the Netherlands, Paris; OECD (2001), Regulatory Reform in the United Kingdom, Paris; OECD (2002), Regulatory Reform in Canada, Paris.

In Sweden, inspection and supervision are important instruments to ensure compliance. Different kind of inspection activities are stipulated in about two hundred laws. More than 70 central and 21 regional government authorities have been designated with responsibilities for inspection activities. In certain areas, concerning about twenty laws, the inspections are carried out by the 290 municipalities.[41]

Even if inspection is widely used in Sweden, there is a lack of a clear definition of what is meant by "inspection". Since there is no common accepted use of the term in the Swedish legislation, the distinction between drafting of regulation, information activities and inspection can in some cases be difficult to uphold. This can cause problems both for the executers and the objects of inspection activities. It can also complicate the evaluation of the results and efficiency of the supervisory agencies. Another issue is the overlap of inspections required by several national agencies, when they concern the same activity at the level of an individual basis. Coordination issues may arise, and may also generate unnecessary burdens.

The Swedish government has therefore initiated an analysis of the inspection and supervision activities in order to make inspections more distinct and efficient as an instrument for better compliance. The analysis on supervision[42] has resulted in proposals on a "framework" on how to execute inspections, on the principles for financing and the role of the municipalities in the inspection activities. The government is considering these proposals but no decision has yet been taken on any changes needed.

In 2000, the total costs of inspection activities were roughly estimated to 4,2 MSEK (ca. 453 000 Euros). The cost is shared in approximately equal parts between Government agencies and municipalities. The inspections by government agencies were financed 75% by charges and 25% by taxes (appropriations to agencies). In the municipalities 30% is financed by charges and 70% by taxes. Municipalities decide normally themselves on how to finance their activities.

Box 2.4 Market surveillance in the area of product legislation

A high level of compliance with legislation is essential to guarantee the proper functioning of an "open system", and effective market surveillance is central in order to reach a high level of compliance. The dual purpose of market surveillance is to ensure consumer safety, health and the environment as well as fair competition. The legal base for market surveillance is to be found in the EC directives and, for non-harmonised sectors, in national legislations. The authorities shall ensure that the products available on the market fulfil all legal requirements and shall take action when this is not the case.

The Swedish Board for Accreditation and Conformity Assessment (SWEDAC) is the public authority responsible for co-coordinating market surveillance activities and strives, nationally and internationally, for uniform implementation and enforcement of rules and principles concerning market surveillance. The co-ordination is mainly performed within the framework of the Market Surveillance Council, which consists of representatives from sectoral authorities. SWEDAC provides the secretariat and its Director-General presides over the Council.

In April 2004, a governmental study "Commission on the Organisation of Market Surveillance" (SOU 2004:57) presented several recommendations to strengthen the role of market surveillance in Sweden. The study was followed up by a governmental bill approved by the Parliament in June 2005 (prop. 2004/05:98), and an Ordinance on market surveillance was decided in November 2005 (SFS 2005:893). As an outcome of the ongoing revision of the EU New Approach to technical harmonisation, proposals for a more uniform implementation in the EU of accreditation, standardisation, conformity assessment and market surveillance will follow. The revision in particular stresses the importance of market surveillance, including efficient sanctions, to strengthen business and consumer confidence in the functioning of the internal market.

Public redress and the judicial system

A sound regulatory system requires clear, fair and efficient procedures to appeal administrative decisions based on a regulation as well as the regulation itself. Swedish law, drawing on Germanic, Roman, and common law, is neither as codified as in France and other countries influenced by the Napoleonic Code, nor as dependent on judicial practice and precedents as in the UK and the United States. Legislative and judicial institutions include, in addition to the *Riksdag*, the Supreme Court, the Supreme Administrative Court, the Labour Court, Commissions of Inquiry, the Council on Legislation, District Courts, County Administrative Courts, Courts of Appeal and Administrative Courts of Appeal, the Chief Public Prosecutor, the Bar Association, and ombudsmen who oversee the application of laws with particular attention to abuses of authority.

The role of the courts and other authorities which apply the law in controlling the manner in which the *Riksdag*, the government and other rule-making bodies perform their tasks – judicial review – is regulated in Chapter 11, Article 14 of the Instrument of Government. This Article distinguishes between two principal cases: 1) a case in which a provision of law is found to conflict with a rule of fundamental law or other superior statute (material error); and 2) a case in which the procedure laid down in law is found to have been disregarded in some important respect at the time when the provision was made (formal error: the provision was made by a body that was not competent, procedural rules were set aside etc.). The ground-rule in both cases is that the provision may not be applied. But if the provision has been approved by the *Riksdag* or the government, application is barred only provided 'the error is manifest'.

According to the 2006 Act on Judicial Review of certain Governmental Decisions[43], citizens are entitled to apply for judicial review of a decision made by the Government, if this decision contains a determination against citizen's civil rights and obligations within the meaning of Article 6:1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. An application for judicial review is made to the Supreme Administrative Court, which shall examine whether the decision in question infringes any legal rule as adduced by the applicant. If so, the decision is repealed. Otherwise, the decision stands.

Appeal procedures

According to the Administrative Procedure Act (1986:223), "a person whom the decision concerns may appeal against it, provided that the decision affects him/her and is subject to appeal". It is a fundamental right of all persons to have their case considered by an impartial and independent court. Similarly a person who has been accused of an offence is to be regarded as innocent "until her/his guilt has been legally determined". Foreign persons have the same right to access to court as Swedish nationals.

There are three kinds of court in Sweden: the general courts, which comprise district courts, courts of appeal and the Supreme Court; the general administrative courts, *i.e*. county administrative courts, administrative courts of appeal and the Supreme Administrative Court; and also the special courts, which determine disputes within special areas, for example, the Labour Court and the Market Court.[44]

General administrative courts

The task of the general administrative courts may be described as one of maintaining due observance of the law within the public administration. A number of cases are instigated directly in a general administrative court, but most cases are referred there as a result of an appeal against the decision of some administrative authority. Those decisions of authorities that are open for appeal to general administrative courts have been prescribed by statute. These are primarily cases in which legal assessments predominate. Consequently, the activities of the general administrative courts far from embrace all parts of the domain of

public administration. In this context, the administration may be divided into the following three categories:

- The first category, quantitatively the largest, covers all normal state administration. It is primarily central government administration authorities that decide on different levels in this category, but locally or regionally elected municipal authorities are also encountered. Decisions can ultimately be appealed against to the Government. Previously, there was no right to bring matters falling within this category before the courts for trial. However, since 1988, the Supreme Administrative Court has been empowered in certain cases which relate to the exercise of public power vis-à-vis a private individual, to examine whether the decision made by the Government or by an authority is compatible with legal provisions. This examination, so-called legal review, may have the effect of rejection, whereby that the Supreme Administrative Court may quash the appealed decision without arriving at a new decision to take its place. Thus, this entails an assessment of legality.

- Within the second category, the main decisions are reached in the same way by central and local government authorities, but appeal is made to an administrative court. This category essentially encompasses such disputes between private individuals and the public administration where the legal element is pronounced. The ruling of the Court relates both to legality and to the appropriateness of the appealed decision, and the ruling of the Court will supersede any decision which was reached by the administrative authority.

- The third category encompasses decisions by local or regional authorities that operate within the municipal self-government sector and which are consequently entrusted with considerable freedom to decide at their own discretion. On petition by any person living in the municipality or region involved, decision by these authorities can be sent for review by an administrative court. However, such a review is limited to an assessment of legality and involves a simple rejection.

The county administrative court is the court of first instance among the general administrative courts. There are 23 county administrative courts. Like the district courts, they vary substantially in size. The titles of the judges are the same as in the district courts, i.e. chief judge (*lagman*), senior judge (*chefsrådman*) and judge (*rådman*). Most cases before the county administrative court are adjudicated by a legally trained judge with three lay judges.

The administrative court of appeal is the court of intermediate instance among the general administrative courts. There are four administrative courts of appeal. The chief judge of an administrative court of appeal is entitled Administrative Court of Appeal President, while the other ordinary judges are either an Administrative Court of Appeal Head of Division or Administrative Court of Appeal Judge. The major duty of the administrative courts of appeal can be described as that of examining appeals lodged against the rulings of the county administrative courts. However, in many kinds of cases, leave to appeal is required to enable the administrative court of appeal to consider the appeal. Furthermore, the administrative court of appeal in some cases considers appeals as a court of first instance. Appeals against the decision of authority to refuse to disclose an official document may, for example, usually be appealed against to the administrative court of appeal.

Cases before the administrative court of appeal are generally adjudicated by three legally trained judges. In certain cases, for example a number of cases relating to the taking of children into care, lay judges are also included in the court. The Supreme Administrative Court is the highest instance among the general administrative courts. At present, it consists of 17 members entitled Justices of the Supreme Administrative Court. At least two-thirds of the members of the Supreme Administrative Court must be legally trained. Like the Supreme Court, the Supreme Administrative Court is divided into a number of divisions. And like the Supreme Court, the Supreme Administrative Court has a chairman as a President.

Five Justices of the Supreme Administrative Court constitute a quorum. When considering issues relating to leave to appeal, one to three justices of the Supreme Administrative Court participate. The rules on leave to appeal and ruling in plenary session are substantially the same as those applicable to the Supreme Court. Leave to appeal shall be granted if it is of importance for the guidance of the application of law that the action is considered by the Supreme Administrative Court or if there are extraordinary reasons for such consideration, such as grounds for relief for substantive defects exist or that the outcome of the case in the administrative court of appeal obviously results from a grave oversight or a grave mistake. However, leave to appeal is not required in all types of cases.

The Supreme Administrative Court and the Supreme Court are courts of precedent. Thus, the rulings of these courts are published so that they may serve as guidance for the courts of first instance.

In this context, it should also be mentioned that the Justices of the Supreme Court and Justices of the Supreme Administrative Court occasionally serve on the Council on Legislation. The Council on Legislation is an independent institution and is often called upon to issue a statement of opinion before the Government brings important legislative proposals before the *Riksdag*. The Council on Legislation, which normally consists of three members, scrutinizes the proposed legislation from the legal viewpoint. The revision by the Council on Legislation is concentrated on the issue whether they proposed legislation is in conflict with the legal system in general or the constitution. The Council shall also examine how different provisions relate to each other and pays attention to the need of legal security. Finally, the Council has to consider whether a legal proposal is framed so as to satisfy its purposes and what problems are likely to arise when the law is applied. The Government is not obliged to abide by the opinion of the Council on Legislation. By tradition, the Council's advice will normally be accepted and if the Council on Legislation rejects a legislative proposal, this is normally withdrawn or revised. If the Government wants to bring a rejected proposal before the *Riksdag*, which has occurred in very limited cases, the Government has to present arguments in the proposal against the opinion of the Council on Legislation.

Proceedings at the general administrative courts

In cases under the provisions of the Code of Judicial Procedure, it is almost without exception an issue involving two parties in conflict with one another. In cases at the general administrative courts, a mandatory two-party procedure was introduced in 1996. This means that if an individual appeals against the decision of an administrative authority, the authority that first decided in the matter shall be the individual's opposing party. However, this does not apply to matters concerning decisions that are appealed against directly to an Administrative Court of Appeal. Where there is a need to deviate from the provision concerning mandatory two-party procedure in administrative proceedings for special kinds of cases, this is governed by the substantive provisions of the relevant legislation.

According to the main rule, the proceedings in the general administrative courts are in writing, but there are possibilities for an oral hearing. The county administrative court and administrative court of appeal – but not the Supreme Administrative Court – must hold oral hearings if any party so requests and if such hearings are not unwarranted. Since the principle of immediateness does not apply, the court must base its determination on all of the material in the case irrespective of whether it was adduced at the oral hearing or not. It is the duty of the court to ensure that the case is as well investigated as its nature requires. There have been some significant delays with resolving appeal processes in courts. In 2005, the average time for resolving processes was 4.8 months in the county administrative courts, 8.2 months in the administrative courts of appeal and 11.2 months in the Supreme Administrative Court.

In certain cases, primarily those that relate to compulsory orders issued in respect of the mentally ill, drug or alcohol misusers and children, the party is entitled to be represented by a public counsel. These are generally members of the Swedish Bar Association. Legal costs to counsel are defrayed in their entirety by

the state. The procedure at administrative courts is relatively inexpensive for the party. As a result of the basically written proceedings, costs can be kept to a minimum. In principle, a winning party is not entitled to reimbursement for costs incurred in the case.

The Parliamentary Ombudsmen

The Parliamentary Ombudsmen, established in Sweden in 1809 in connection with and as part of the Instrument of Government adopted in that year, are responsible for ensuring that the bodies involved in public administration comply with laws and other provisions and in general fulfil their duties. They respond to complaints from the public, but can also initiate their own investigations. A complaint to the Parliamentary Ombudsmen can be made by anybody who feels that he or she or someone else has been treated wrongly or unjustly by a public authority or an official employed by the civil service or local government. In other words there is no need for a person neither to be a Swedish citizen nor to have reached a certain age to be able to lodge a complaint. The Institution has no jurisdiction, however, over the actions of members of the *Riksdag*, the Government or individual members of the cabinet, the Chancellor of Justice or members of county or municipal councils. Nor do newspapers, radio and television broadcasts, trade unions, banks, insurance companies, doctors in private practice, lawyers etc. come within the ambit of the Ombudsmen. Other supervisory agencies exist for these areas, such as the Press Council, the Financial Supervisory Authority, the National Board of Health and Welfare and the Swedish Bar Association.

The Chancellor of Justice

The Chancellor of Justice is a non-political civil servant appointed by the Government. His duties can be classified in six main groups:

- to be the State's representative in trials and other legal disputes;
- to receive complaints and claims for damages directed to the State and decide on financial compensation for such damages;
- to be the Government's counsellor in legal matters;
- to act as the Government's ombudsman in the supervision of the authorities and the civil servants, and to take action in cases of abuse;
- to ensure that the limits of the freedom of the press and other media are not transgressed and to act as the only public prosecutor in cases regarding offences against the freedom of the press and other media; and
- to act as the guardian for the protection of privacy in different fields.

Neither the Parliamentary Ombudsmen nor the Chancellor of Justice can review or modify the decisions of another authority or court.

3.2. Choice of policy instruments: regulations and alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. As experimentation occurs, the range of policy tools and their use is expanding, learning is diffused and understanding of the potential role of markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically disincentives for public servants to be innovative. A clear leading role – supportive of innovation and policy learning - must be taken by reform authorities if alternatives to traditional regulation are to make serious headway into the policy system.

Systematic considerations and the use of regulatory alternatives at ministerial level in Sweden are supported by clear formal obligations on regulators to consider alternatives and to justify when they opt for 'traditional' regulatory solutions (see Box 2.5).

Box 2.5 Check-list for legal drafters: the use of alternatives

The Guidelines of the Prime Minister's Office, the memorandum "Control by regulation – Checklist for legal drafters" includes a section on the use of alternative measures. Question 5 of the Checklist refers to what kind of instruments can be used. After establishing the causes of the problems and the underlying factors that can be influenced, legal drafters may need to consider the following alternatives:

- a reconstruction of the existing regulation;
- information or other informal control instruments (campaigning, verbal agreement, negotiation solution) or standards;
- economic control instruments (investments, subsidies, taxes, fees or other economic incentives);
- administrative control instruments (other legal solution, including general advice).

Source: Control by Regulation – Checklist for Legal Drafters, Swedish Cabinet Office

At government agency level there is no explicit requirement about the use of alternatives, but the Ordinance on Government Agencies and Institutes, in article 27, has an implicit requirement for agencies issuing regulations to consider whether regulation is or not the most appropriate measure.[45]

In terms of regulations that may affect small businesses, any alternative policy instrument has to be analysed and indicated before regulations are adopted or amended. Common alternatives assessed are: to leave the market to deal with the problem, information and consultancy measures, guidelines and recommendations, revoking existing regulations, voluntary agreements, etc. The implications for different parties in the society should be identified for each alternative, indicating if they are direct or indirect or if they will be different as time passes.

Voluntary agreements

Voluntary agreements are arranged when companies take voluntary action to redress a policy concern that may stave off more onerous government regulation. A government with a credible threat of possible future regulation can encourage an industry to deal with the issue itself rather than actually taking the step of implementing regulation. Firms may enhance their reputation and hence increase sales via participation in voluntary associations.

Different examples of voluntary agreements can be found in the Swedish system. In the consumer protection area, the Swedish Consumer Agency negotiates with business organisations (more rarely direct with single companies) to conclude agreements about contract terms and content in standardised consumer contracts. The legal basis for the negotiations is generally existing consumer protection legislation. The purpose of the negotiations can be to fill out gaps or clarify something in the legislation, to regulate in more detail a specific issue or to make sure that common market practice (representing good market behaviour) not yet regulated in legislation is considered, all to make the contract situation between consumers and companies more transparent. A contract term agreement with a business sector organisation is in itself not directly binding for the member companies of the organisation and is not at all binding for non-member companies. The organisation tries to convince their member companies about the advantages of using the negotiated contract terms. Generally, the companies comply with contract terms negotiated by their organisation.

By tradition, legislation on the Swedish labour market has been kept to a minimum, leaving an extensive freedom for the social partners to regulate matters concerning the relation between the employer and worker and between the organisations themselves through collective agreements. There is no legislation on minimum wages in Sweden, as pay is a question which is exclusively regulated by the social partners in collective agreements. Collective agreements are basic instruments on the Swedish labour market. A collective agreement is a private law agreement between individual legal persons and can be concluded between parties on different levels. There is no mechanism in Sweden to declare the agreements generally applicable through law or decision. Collective agreements regulate, besides wages, a number of working and employment conditions. The collective agreements cover around 90 per cent of the workers on the Swedish labour market. According to Swedish legal principles a collective agreement is applied to all workers at a work place, organized as well as non-organised workers, when the employer has signed an agreement.

When a dominating part of the market complies with the contract terms it is seen as good market behaviour. If a company is using contract terms not in line with the legislation or the negotiated contract terms the Consumer Agency can point that out and convince them to change their contract terms. The Consumer Agency strives to achieve contracts and contract terms representing good market behaviour and that the contracts are balanced and not disadvantageous to consumers. Another alternative instrument used by the Consumer Agency is to issue guidelines, following negations with the business. These are also a complement to the statutes and provide guidance for business. Both instruments are important when the Consumer Ombudsman wants to try the fairness of an advertisement or a contract clause in a standardised contract in the Swedish Market Court, which issues precedential decisions. A contract considered as unfair and harming for consumers can be questioned before the Swedish Consumer Complaints Board as well in ordinary Court proceedings (see Box 2.6).

Box 2.6 Mechanisms for consumer dispute resolution and redress

The Group Proceedings Act (2002:599) regulates group proceedings, which are legal proceedings for group action. A group action may be instituted by private physical or legal persons (private group action), organisations (organisation group action) or authorities (public group action). The person, organisation or authority, that brings the group action, act as a representative for a considerable group of people. The Consumer Ombudsman has been appointed as an authority that may bring public group actions. A non-profit organisation devoted to the safeguarding of consumer interests may bring an organisation group action, if the action concerns goods, service or other items sold to consumers. A group action can be brought in civil cases, e.g. cases concerning the purchase of goods or services. The Group Proceedings Act is particularly useful for obtaining redress in cases involving small individual amounts and a large number of consumers. There are no specific limitations as to cross-border cases. Since the act entered into force on 1 January 2003, there have only been a limited number of group actions.

Small claims procedures

There is a small claims procedure available within the court system for low value cases, for example concerning consumer complaints. According to the main rule the threshold is half of the base amount according to the National Insurance Act (1962:381), approximately 2000 EURO.

National Board for Consumer Complaints

The National Board for Consumer Complaints (*Allmänna reklamationsnämnden*, ARN) is a public authority that functions roughly like a court. Its main task is to impartially try to solve disputes between consumers and business operators. Petitions are filed by the consumer. The Board submits recommendations on how disputes should be resolved, for example that the business operator shall repair the defect on a product. The Board's recommendations are not binding, but the majority of companies nonetheless follow them. It usually takes about six months from the petition to a decision. The Board's inquiry is free of charge. The Board is divided into thirteen different departments. The dispute is usually settled at a meeting with the department under which the matter falls. The parties are not entitled to be present at the meeting. A department constitutes a quorum (may make a decision) when the chairperson and four other members are present. A department also constitutes a quorum with the chairperson and two other

members, unless one of the members requests that four members participate. The chairperson is a lawyer and has court experience. The other members come from various consumer and trade organizations.

Standardisation

Standardisation is a private sector activity in Sweden and standards are voluntary documents under private law. A special council, the Swedish Standardisation Council (SSR), which is composed of representatives from the government and the Confederation of Swedish Enterprise,[46] is established to supervise the statutes and overall operation of the Swedish standardisation bodies, but has no right to intervene in the day to day work. Government agencies participate in standardisation work on equal terms as industry and have no veto.

The standardisation bodies have undertaken in their statutes not to adopt Swedish Standards conflicting with laws or regulations. Furthermore, a special committee within the Standardisation Council has to approve exclusive national standards (standards not prepared in European or international standardisation) before they are finally adopted. The committee which is chaired by a government official assesses if the standard creates barriers to trade or distortion of competition. Standards are frequently referred to in national and European legislation. The power to make such reference lies fully with the authorities and the authorities could at any time withdraw such reference. Voluntary standards, not referred to in legislation, do in many cases reduce the need for legislative actions.

Conformity assessment

In the mid 1990s, Sweden changed its system for conformity assessment (technical analysis, testing, calibration, certification and inspection). Today, conformity assessment is performed by private and public bodies in competition, an approach which is referred to as an "open system for conformity assessment". It concerns primarily activities that are required in safety and environmental legislation prior to placing a product on the market, or recurrent inspection of products in use. Authorities do not generally regulate quality aspects etc. Accreditation is a prerequisite for bodies wishing to perform conformity assessment work.

SWEDAC, the Swedish Board for Accreditation and Conformity Assessment, is the national accreditation body in Sweden.[47] SWEDAC is a governmental authority and its main duty is to accredit and supervise laboratories, certification and inspection bodies. SWEDAC is also the central governmental authority for matters concerning conformity assessment.

Accreditation means that SWEDAC recurrently checks to ensure that the company or the organization concerned is competent to perform the tests, analyses, calibrations, certifications or inspections for which it is accredited. The reports, certificates and other documents issued under accreditation are recognized in Europe and in many other countries in the world. This facilitates trade across national borders, and guarantees that the results shown on the documents do not need to be retested in other countries.

SWEDAC´s responsibility is to ensure that the laboratories, evaluation and certification bodies working in the field maintain their competence, and can perform well on the European and international markets. For that reason there must be a solid national implementation of EU and international rules. A study is to be prepared before the end of 2006 concerning the function of the Swedish open system for conformity assessment.

Self-regulation

The Swedish legislature has not delegated regulatory or supervisory powers to any body outside the public sector within the area of corporate governance, financial markets or accounting. Such powers lie with public authorities like the Swedish Financial Supervisory Authority (*Finansinspektionen*, FI),[48] which authorises, supervises and monitors all companies operating in Swedish financial markets.

This does not mean that the non-governmental bodies which do issue rules on corporate governance, financial markets and accounting are not significant. The rules may be binding for *e.g.* listed companies according to the listing agreement. In the field of accounting, the rules issued by the Swedish Financial Accounting Standards Council as a basic principle become accepted accounting practice in the Annual Accounts Act. The most important self-regulatory bodies are listed in Box 2.7.

Box 2.7 Self-regulatory bodies in corporate governance, financial markets and accounting

The Swedish Corporate Governance Board

A new Swedish Companies Act came into force in January 2006. It contains a comprehensive framework of rules on corporate governance. In addition to the law, there are a number of self-regulating rules, such as the new Code of Corporate Governance. The Board is responsible for the promotion and development of the Code, which primarily is intended for listed companies. It is a result of collaboration between the business sector and the Commission on Business Confidence. The Commission was formed by the Swedish government in the autumn of 2002. The government appoints one of the ten members of the Board.

The Swedish Society for Good Practice on the Securities Market

The Society is a newly formed body which serves as an umbrella organization for the self-regulating bodies mentioned below (except FAR) and above. The Society is independent from the government.

The Swedish Industry and Commerce Stock Exchange Committee

The Committee, formed by industry associations, has the purpose to promote good practice on the securities market by making rules on e.g. information about benefits for senior executives and public offers for the acquisition of shares.

The Swedish Securities Council

The Council was established in 1986 with the purpose to strengthen the standard of ethics on the Swedish securities market. The Council, among other things, makes statements in individual cases (compare The Panel on Take-Overs and Mergers connected with the London Stock Exchange). The chairman is a Justice of the Supreme Court. The Council has no possibility to impose sanctions.

The Association for the Development of Generally Accepted Accounting Principles

The Association aims to promote the development of generally accepted accounting principles by working towards standardised accounting, formed on the basis of a share market perspective. The members of the Association are the Stock Exchange, FAR and industry associations. The Association works through its organs, inter alia the Swedish Financial Accounting Standards Council, the Emerging Issues Task Force and the Panel for Monitoring Financial Reporting, all independent entities under the association. Generally speaking, the association and its organs are to follow developments in accounting via analyses and investigations. In addition, the Panel has the task of monitoring the financial reporting of listed companies.

In this field, there is also a governmental body with the main objective of promoting the development of, in Sweden, generally accepted accounting principles regarding current recording as well as the setting up of annual accounts – The Swedish Accounting Standards Board. The Board issues – concerning non-listed companies – general advice and information material on accounting matters and accounting practices.

Regarding listed companies, Sweden will implement the recently adopted EC Transparency Directive, which among other things means that Sweden will designate a Competent Authority which will examine that listed companies draw up information referred to in the directive in accordance with the relevant reporting framework.

FAR - The professional institute for authorised and approved public accountants and other professionals in the accountancy sector.

FAR develops professional standards for the audit profession in Sweden. The current standards are translations of the International Standards of Auditing (ISA), with the changes and add-ons which are necessary according to Swedish law. However, Swedish law stipulates that it is the responsibility of a government body, the Supervisory Board for Public Accountants, to ensure that the development of professional ethics and professional audit standards is satisfactory and adequate. This is mainly done by the issuance of regulations concerning the activities of public accountants and public accounting firms. Professional ethics and standards can also be subject to the board's interpretation in individual disciplinary cases. The Board relies on the standards issued by FAR to a large extent, but has the preferential right of interpretation in cases of disagreement.

The Swedish standard bodies

The three standard bodies approved by the Swedish Standardisation Council are open on equal terms to all stakeholders. These bodies represent Sweden in the European and international standardisation. In the day to day work, the bodies are independent from the government, but government agencies participate in the work on equal terms with industry and trade. Standards are frequently referred to in legislation. In other cases, standards often reduce the need for legislative action.

3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis.

3.3.1. Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA by systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development, review, and reform of regulations." A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries*.[49] The 2005 *Guiding Principles for Regulatory Quality and Performance* recommends that RIA is conducted in a timely, clear and transparent manner.[50] This section describes the current RIA system in place in Sweden and assesses it against OECD best practices.

In Sweden, responsibility for issuing regulations is located at all three levels of central-government administration: Parliament, the Government and the Government agencies. The agencies' responsibility is to draw up regulations on the application of laws and ordinances. The independence of the public authorities is one of the most basic principles in Swedish administrative culture, and it is founded in the Swedish constitution:

> Chapter 11, Art.7 of the Instrument of Government: No public authority, including the *Riksdag* and the decision-making bodies of local authorities, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis a private subject or local authority, or relating to the application of law.[51]

This division between the central government and the agencies (see Section 1.1.), the local government dimension (see Chapter 5) as well as the significance of the Committees of Inquiry, are the keys to understanding all regulatory reform issues in Sweden – including the history and performance of the Swedish system of Regulatory Impact Analysis (RIA). The practical implications of that principle are that no ministry can interfere with a decision made by an agency, nor can agencies interfere with or block the decision of other agencies. The only means of influence that the central government exerts over the Swedish agencies is through ordinances and budget documents. They can thus set general goals for the agency, but the implementation process is entirely the responsibility of the agency in question.

The Committees of Inquiry and their work have been described in section 3.1.2. It is often stipulated in the Terms of Reference for Committees' work that the consequences of the proposals shall be evident in their reports, which consists often of 200 – 400 pages. Alternative solutions, their advantages and disadvantages, are often described, as well as opinions of different interest groups. Committees' reports are in Sweden an extensive assessment of the issue. They are not, however, a technical RIA, as those produced in other OECD countries (see Box 2.8). After they are submitted, they are referred for consideration to the relevant bodies. The opinions of the Committee and the referral bodies are thereafter presented in the government bill, before the Government's motivation of its legislative proposals.

Box 2.8 Regulatory Impact Analysis in OECD countries

What is Regulatory Impact Analysis (RIA)?

RIA is a regulatory tool that examines and measures the likely benefits, costs and effects of new or changed regulations. It provides decision-makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. A poor understanding of the problems at hand or of the indirect effects of government action can undermine regulatory efforts and result in regulatory failures. RIA is used to define problems and to ensure that government action is justified and appropriate.

Key elements of a RIA programme

RIA in the context of the OECD countries takes many forms, reflecting a variety of government policy agendas. The objectives, design and role of administrative processes differ among countries and among regulatory policy areas. There is, however, a key element related to the institutional framework that makes RIA a successful regulatory tool: the quality control through independent review, which contributes to assess the substantive quality of new regulations and ensures that ministries achieve the goals embodied in the assessment criteria. Oversight bodies responsible for RIA must be able to question its quality and regulatory proposals. An oversight body needs the technical capacity to verify the impact analysis and the political power to ensure that its view prevails in most cases.

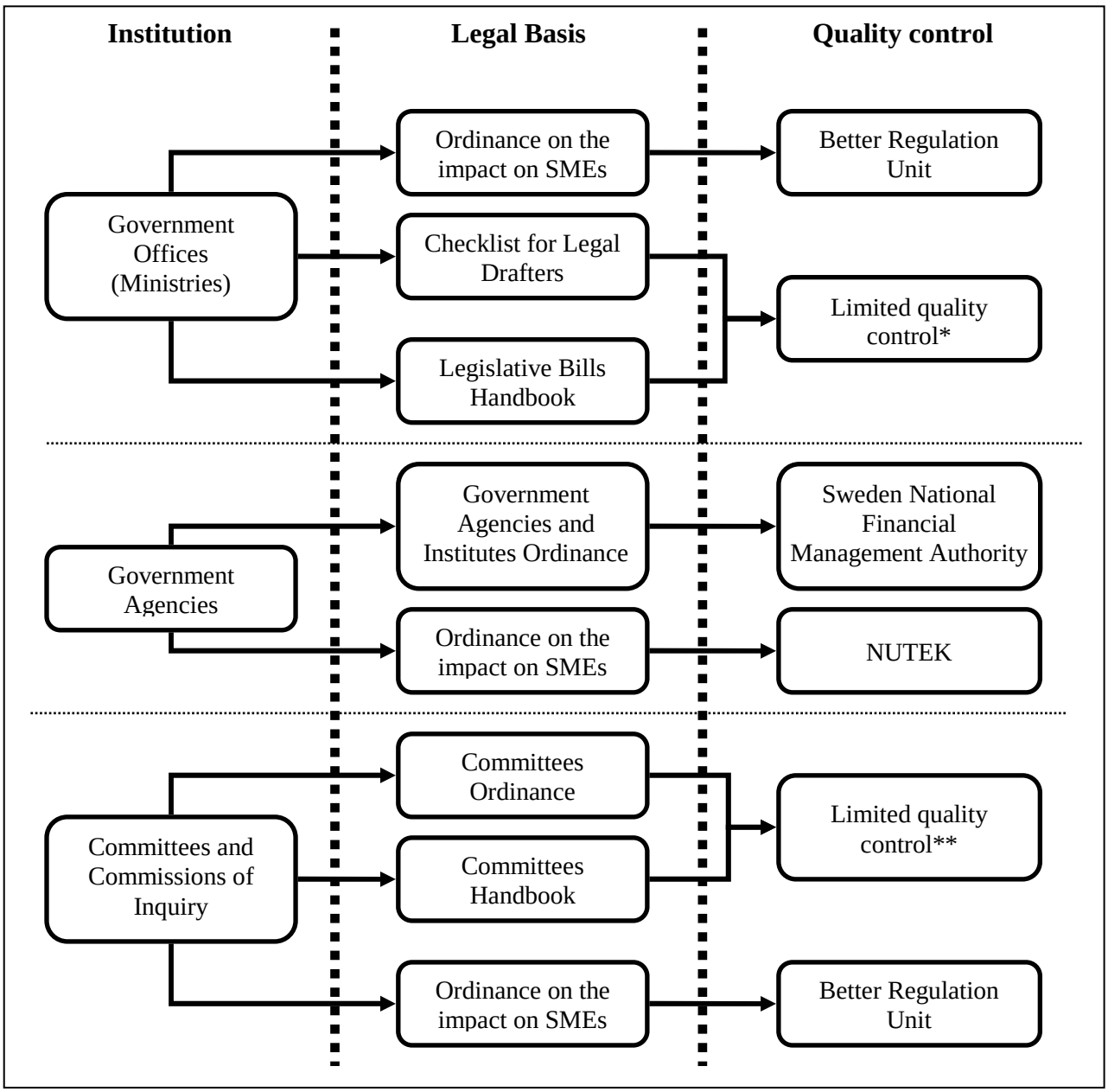
Good RIA practices identified in OECD countries:

1. Maximise political commitment to RIA.
2. Allocate responsibilities for RIA programme elements carefully.
3. Train the regulators.
4. Use a consistent but flexible analytical method.
5. Develop and implement data collection strategies.
6. Target RIA efforts.
7. Integrate RIA with the policy-making process, beginning as early as possible.
8. Communicate the results.
9. Involve the public extensively.
10. Apply RIA to existing as well as new regulation.

Source: OECD (1997) Regulatory Impact Analysis: Best Practice in OECD Countries, Paris.

The following description of the Swedish RIA system takes this as a vantage point. The section will be divided into three parts. The first part examines the assessment of consequences of legislation (RIA system) on the governmental and departmental level. The second part deals with the Swedish agencies and Committees. Finally the third part draws some general conclusions on the features of the Swedish method of conducting consequence analysis. To complement the description, the following figure shows the RIA system in place in Sweden.

Figure 2.4 The current system for impact assessments in Sweden



* Each Ministry has a legal division that controls that the Checklist for Legal Drafters is followed when drafting regulation. The Division for Legal and Linguistic Draft Revision makes a quality control concerning the Legislative Bills Handbook, making sure that it has been followed for different documents.

** No formal quality control is performed by an independent body concerning Committees of Inquiry. However, a support function exists with economic and statistical expertise providing advice when needed. A linguistic expert also is available for the work carried out by Committees of Inquiry.

Source: OECD Secretariat

RIA at ministerial level

Every ministry is responsible for their own legislation concerning quality as well as the drafting process. The other ministries may comment on the legislation proposed by the individual ministries.

In relation to SMEs, the Government has issued an Ordinance 'the Simplex Ordinance' (1998:1820) concerning the special impact analysis of the rules on SMEs. All new or amended legislation are examined from a small business perspective. This RIA is intended to show what measures a small enterprise must take to comply with the proposed new regulations, such as measures that entail investment costs and/or measures that result in costs for more administration. The assessment must also report whether the proposal can lead to the distortion of competition. A Checklist for this RIA is available for regulators (see Box 2.9).

Box 2.9 Checklist for the special impact analysis of rules on small enterprises

The Swedish Ordinance (1998:1820) on the special impact analysis of rules on small businesses or "Simplex Ordinance" contains a checklist to support the special impact analysis that government authorities should undertake when new or changed regulations have significant effects on small businesses.

The following questions are intended to help regulators to carry out impact analysis of rules on small enterprises:

1. What is the problem to be solved by the regulation and what happens if a regulation does not occur?
2. Are there any alternative solutions?
3. Which administrative, practical or other measures must the small businesses take as a result of the regulation?
4. How much time would be needed for small businesses to comply with the regulation?
5. Would the regulation lead to additional costs for wages and salaries, other expenses or burden on resources for small businesses?
6. Can the regulation distort competition to the disadvantage of small businesses or otherwise decrease their competitiveness?
7. Will the regulation affect small businesses in any other aspects?
8. Is it possible to control the compliance of the regulation, and how will the effects of the regulation on small businesses be observed and checked?
9. Should the regulation be in force only for a limited time to prevent possible negative effects on small businesses?
10. Is particular concern needed for small businesses when the regulation comes into force?
11. Is a need for any additional information activities?
12. How has the required consultation with businesses and authorities been carried out, and which special viewpoints have arisen?

Source: Simplex Ordinance, 1998

The quality control of this mandatory RIA on the impact on small to medium sized businesses is undertaken by the Better Regulation Unit, within the Ministry of Industry, Communication and Employment, which has been set up to provide comments, guidance and support for the process. This unit scrutinises all proposals that other ministries want to present, and ensures that the impact assessment is taken into account and that its quality is acceptable. Under this Ordinance the agencies must report to the Swedish Agency for Economic and Regional Growth (NUTEK) annually, by March 1, on their work carried out on the impact analysis. NUTEK shall in its turn, by July 1 at the latest, present to the

Government a summary of the agencies' performances. This summary forms a basis for the Government's annual report on better regulation. The above mentioned special impact analysis of rules on small businesses is a mandatory RIA at the ministerial level.

In 1995, the Swedish Cabinet Office issued a *Check-list for Legal Drafters.*[52] This Checklist is intended to provide a foundation for everyone involved in drafting regulation (whether at department or agency level) for assessing some of the most important questions that comes up when drafting legislation (see Box 2.10).

Box 2.10 Checklist for Legal Drafters

The Checklist for Legal Drafters is divided into a set of general questions:

1. What is the problem?

2. Does international cooperation require a measure to be taken?

3. Is a measure required for other reasons?

4. Is the measure a public commitment?

5. What alternative instruments can be used?

6. What will be the result of an impact assessment and what control instrument should eventually be selected?

7. How is follow-up and reassessment conducted?

And a set of specific questions concerning the particular instruments in question:

8: How should the legal problems be solved?

9: What will be the actual application of the rules?

Source: Swedish Cabinet Office (1995), *Control by Regulation. Check-list for Legal Drafters*, Stockholm

Each question in the above Checklist is followed by a set of sub-questions and guidelines that – if meticulously followed – provides a very detailed and informed foundation for deciding on whether and how to draw up new legislation. This Checklist for Legal Drafters combined with the scrutiny carried out by the Better Regulation Unit provides a potentially very thorough, competent and coherent RIA system at the ministerial level, with a particularly strong focus on the burdens imposed on SMEs. This system, however, depends to a large degree on consensus across ministries on the importance of carrying out high quality RIAs.

As already mentioned, the RIAs required according to Simplex Ordinance (1998:1820) are checked by the Better Regulation Unit. This Unit scrutinises around 400 RIAs for government bills, ordinances and ordinances for committee directives annually. There are no statistics on the distribution between these various documents, but according to a report by the Swedish National Audit Office the distribution is fairly even between the three categories.[53] According to this report the government bills are judged to be the most time consuming, when assessing the RIAs.

The degree of compliance with the Checklist for Legal Drafters on the other hand is not scrutinised by the Better Regulation Unit. Nevertheless, each ministry has a legal division that checks that the Checklist for Legal Drafters is followed when drafting regulation. At ministerial level there seems to be a clear and

effective focus on the impact of regulation when it comes to SMEs. However, the effort towards mitigation of the impacts of regulation in general seems to be less in focus. Due to the constitutionally based division in the Swedish administration, the Better Regulation Unit does not oversee the RIAs carried out by agencies.

RIA at committee and agency level

The Committees of Inquiry

When regulatory proposals that are considered to constitute a major change in the approach to regulation are developed, it is customary in Sweden to appoint an independent Committee of Inquiry. The Committees Ordinance (1998:1474) governs the appointment of Committees.[54] According to this Ordinance the government approves the budget and the plan for the Committee, but the substantial work of the Committee is independent. According to article 16 of the same Ordinance, the Government is requested to state the specific requirements for the impact analysis in the terms of reference for the individual Committee, but article 14 makes clear that general cost calculations and consequences have to be present in all Committee reports:

> Article 14: To what extent the proposed legislation affects income and costs for the state, municipality, county-council, businesses, or other individuals. If there are such costs, then a description of the consequences should be evident in the report. If the proposal has other socio-economic consequences these should also be described. If the proposal involves costs for state, municipality or county-council the committee shall propose an alternative financial solution.[55]

Article 15 of the Committees Ordinance stipulates, likewise, that the proposals in a Committee's report shall be specified if the proposals have significant effects on *e.g.* small enterprises' working conditions, competitiveness or other conditions in relation to other enterprises, crime, employment and gender quality issues.

Apart from the legal requirement to include the above in the assessment of the consequences of the proposed legislation, there exists also a Committee Handbook (*Kommittéhandboken*), which outlines how to carry out an impact analysis, and further points out that the Ordinance 1998:1820 on a special RIA concerning SMEs also applies to committees as well.[56] Since 2001 the Government includes in the terms of reference especially for business relevant committees an obligation to consult with the Board of Swedish Industry and Commerce for Better Regulation (*Näringslivets Regelnämnd*, NNR) on the consequences for the business sector and businesses.

The above description indicates that the conditions for a consistent RIA system are present. At this very early stage in the development of a proposal it can be difficult to estimate the consequences of the proposed legislation. This is not least because the appointment of an independent Committee of Inquiry by definition implies that a certain degree of reform is inherent in the proposed legislation. An example of this is the Committee of Inquiry appointed to propose a new law on electronic communication (see Box 2.11):

Box 2.11 RIA for law on electronic communication

"It is difficult to estimate the size of the fee to be paid by individual enterprises as it is uncertain how many enterprises will be affected. This uncertainty is due to on the one hand to inadequate information about the number of actors and on the other hand to difficulties in estimating how many of these companies will be conducting activities for which notification is required. The fee may be related to turnover or distributed on the basis of some other criterion. In order to assess the possible distribution of fees across different enterprises we need data about the turnover of businesses subject to notification, if that is the principle used for calculating distribution. At the present each enterprise provides turnover data in a special report to the agency. In the light of other uncertainties, we have not considered it

possible to investigate the turnover of enterprises more closely in this respect."

Source: *Toppdomän för Sverige*, SOU 2003:59

The consequences of new regulation that cut across previous categories can be difficult to determine. This due not only to lack of information, but also due to the fact that the new or amended regulation in itself may change the way the market is perceived and thus the strategic choices of the actors in that market. The above example from the field of electronic communication shows that a RIA conducted at this very early stage need not necessarily be a full-fledged quantitative cost/benefit analysis. It also – and in some cases to a large extent - involves soft estimates of possible outcomes of the proposal.

The RIA for electronic communication is an example of a well produced RIA that seeks to give a varied and sound estimate on the impacts of the Committee's proposal, based on the best possible available information. The problem is whether or not this is a representative case of the RIAs produced by Committees of Inquiry. There are no legal requirements for Committees to submit their RIAs to quality checks. Furthermore, there exists no procedure for handling a committee report that does not meet the requirements of either the general Committee Ordinance (1998:1474) or the Ordinance on a special RIA for SMEs (1998:1820), even if RIAs are checked by different bodies at the referral stage and the Better Regulation Unit at the Ministry of Industry, Employment and Communications has the possibility to demand the need for amendments to the RIAs produced at ministerial level. A report from the Swedish National Audit Office from 2004 pointed out that there where indications that the Committee reports did not always meet the requirements stated in the various ordinances.[57]

The government agencies

As concerns Swedish agencies, there is one agency-specific ordinance that sets out each agency's individual goals, tasks and organisation and also one general ordinance that concerns all agencies. The Government Agencies and Institutes Ordinance (1995:1322) contains the requirements and standards for the RIA at the agency level. According to article 27 of this Ordinance any Swedish agency considering issuing subordinate regulation should:

1. Closely consider whether this is the most appropriate measure.

2. Investigate the related cost as well as other consequences and document these in a consequence analysis.

3. Give governmental authorities, municipalities, county-councils, organisations and others which will suffer increased cost or be affected in any other way by the regulation an opportunity to comment on the RIA. The Swedish National Financial Management Authority should also be given a chance to comment in connection on the consequence analysis.

4. In case of significant costs for those affected, the agency in question should ask the governments permission to issue the subordinate regulation.[58]

Agencies shall give governmental authorities, municipalities, county councils, organisations and others which will suffer increased cost or be affected in any other way by the regulation in question, as well as the Swedish National Financial Management Authority (*Ekonomistyrningsverket*, ESV) an opportunity to comment on the RIA. According to the Ordinance (2003:884) with instruction for the Swedish National Financial Management Authority, the Authority shall oversee the agencies' application of the provision on RIAs in the Government Agencies and Institutes Ordinances (1995:1322).

Swedish National Financial Management Authority

In the context of RIA the primary task of the Swedish National Financial Management Authority is to oversee the implementation of article 27 of the Government Agencies and Institutes Ordinance, *i.e.* to monitor the way government agencies apply the rules on impact assessments. There is no requirement on a certain methodology to be used for this purpose. Its work, however, has lost prominence in recent years, without any real reason being given for this change.[59]

Agency for Economic and Regional Growth (NUTEK)

NUTEK provides support and advice in the work undertaken on impact assessments done by other agencies under Ordinance (1998:1820) on the special impact analysis of rules on small enterprises. Following amendments in this Ordinance on 1 January 2005, the agency now also receives the impact assessments for information and can give feedback on the same. NUTEK has no powers to enforce the drafting of a new impact assessment if the one presented has been inadequate or has not been carried out at all, nor can it stop a proposal for new or changed regulation. Its tasks are limited to providing support and advice.

Through the amendments of 1 January 2005, NUTEK further receives the government agencies' annual reports on their work and experiences on impact assessments. The reports include information on measures the agencies have taken or are planning to take to reduce the administrative costs of enterprises within the Action Plan for reduced administrative costs for enterprises (see Section 4.2.). NUTEK presents the reports in a compilation to the Ministry of Industry, Employment and Communication. The compilation serves as a basis for the Government's annual report on better regulation which it presents to the *Riksdag*.

Several agencies have requested that the requirements for impact assessments in these two Ordinances shall be combined and that roles between NUTEK and The National Financial Management Authority must be clarified. The Committee of Inquiry on a Review of the Government Agencies and Institutes Ordinance also proposed in its report “From a Government Agencies and Institutes Ordinance to a Government Agencies Ordinance” (SOU 2004:23) that the requirements for impact assessments under the two ordinances should be combined in a single ordinance on impact assessments of regulations. A revision of the impact assessment system is currently carried out by an appointed Committee. The Government offices are currently working on a proposal for an improved model for impact assessments. The preliminary idea is to integrate different methods, traditions and approaches to impact assessments into one coherent system. One objective is to strengthen the already good tradition of inter-ministerial negotiations. The new system is meant to be both flexible and enable a more systematic use of impact assessments in the regulatory making process.

The quality of RIAs

Since 2002 the Board of Swedish Industry and Commerce for Better Regulation (*Näringslivets Regelnämnd*, NNR)[60] has been measuring the quality of the RIAs conducted by the Swedish institutions, systematically assessing the quality of proposals for new or amended business regulations from government agencies, official Committees and Commissions of Inquiry and the Government offices. The Board has constructed several quality indicators for the RIAs and measured the performance of the Swedish RIA over several years.[61] The summary from 2005 is based on some 200 proposals for new or amended regulations from ministries, committees or commissions and agencies:

1. *Summary*. A summary of proposals exists in as many as 93% of cases, against 49% in 2002.

2. *Previous regulations*. In 86% of cases, against 55% in 2002, the regulations applied previously are reported.

3. *Alternatives described*. In 53% of cases, against 26% in 2002, alternatives to the proposal presented are described.

4. *Early consultations*. In 48% of cases, against 30% in 2002, the manner in which consultations with sectors and companies concerned have taken place is reported.

5. *Number of companies*. In 28% of cases, against 6% in 2002, the number of companies concerned is reported.

6. *Costs per company*. The proportion of cases in which the costs entailed by the proposal for an individual company are reported is 17%, against 4% in 2002.

7. *Total costs*. Total costs are reported in 9% of cases, against 4% in 2002.

8. *Competition aspects*. In 47% of cases, against 9% in 2002, the competition aspect is clarified.

9. *Gold plating*. In 7% of cases, against 5% in 2002, the manner in which the proposal relates to an EU decision adopted is clarified.

10. *Official review period*. In 86% of cases, against 55% in 2002, the official review period lasts at least three weeks.

11. *SimpLex analysis*. In 35% of cases, against 47% in 2002, an analysis has been presented according to the requirements contained in the SimpLex Ordinance.

12. *Administrative burden*. Since autumn 2003, for every case received, NNR has assessed whether the proposal would result in an increase or decrease, or no change, in companies' administrative burden. The findings of the assessments, which were made up and including June 2005, show that 58% (against 52% in 2004) will result in an increased burden, 16% (as in 2004) in a reduced burden and 26% (compared with 32% in 2004) in no change in the administrative burden.

13. *EU-based*. Of the cases received by NNR in 2005, 44% of the proposals for new or amended business regulations stem from EU regulations adopted to date; the figure for 2004 was 40%.[62]

The table below shows the results obtained from NNR's quality database. The figures by NNR include both major and minor regulatory changes. In fact, some of these covered by the figures are such minor changes that might not, from a comparative point of view, be preceded by a consequence analysis in other countries. They represent the percentages of cases that entail or fulfil the various quality factors from 2002 to 2005. Only some of the indicators used by NNR are legal requirements; that for administrative burden is just estimated by NNR.

Table 2.2 Quality Factors and Target Fulfilment in 2002-2005 (percentages)

	2005	2004	2003	2002		2005	2004	2003	2002
1. Summary	93	77	64	49	*7. Total costs*	9	5	5	4
2. Previous regulations	86	79	56	55	*8. Competition aspect*	47	43	20	9
3. Alternatives described	53	49	37	26	*9. Gold plating*	7	6	3	5
4. Early consultation	48	35	36	30	*10. Official review*	86	75	64	55

5. Number of companies	28	25	9	6	*11. SimpLex analysis*	35	39	51	47
6. Costs per company	17	7	7	4	*12. Admin burden:* *Increased* *Reduced* *Unchanged*	 58 16 26	 52 16 32		
					13. EU-based	44	40		

Source: Board of Swedish Industry and Commerce for Better Regulation (2005), *How High is the Quality of the Swedish Central Government's Regulatory Impact Analysis (RIAs) in the Business Sector?*, The NNR Regulation Indicator for 2005, NNR, Stockholm, p. 14

There is a clear tendency in Sweden that the quality of RIAs is improving, but in some areas there is still a long way to go. One explanation for this relatively poor performance, when compared to the level of ambition in the various ordinances reviewed here, is that there seems to be an overall lack of control mechanisms to ensure the enforcement of the relatively high standards. There are plenty of consultation procedures, but no institutional checks that forces reluctant parties to commit themselves when assessing the actual impact of their legislation. An exception to this situation is the role of the Better Regulation Unit at the Ministry of Industry, Employment and Communications, which has the possibility to demand the need for amendments to the RIAs.

Assessment against best practice

Maximise political commitment to RIA. The OECD experience shows that the use of RIA to support reform should be endorsed at the highest levels of government. In Sweden, there is scope to improve RIA in the day-to-day regulatory process. The Government has emphasised the importance of RIA as part of the regulatory making process. As mentioned previously, the current RIA system follows the instructions of two Ordinances and a Checklist designed for legal drafters.

Even if there is a long tradition in the Swedish law-making process to include a justification of proposed legislation, RIA is not undertaken systematically by all parties concerned. The present quality control mechanism, mainly done by the Swedish Financial Management Authority (ESV), NUTEK and the Better Regulation Unit of the Ministry of Industry, Employment and Communications does not reflect the exceptional strong political incentives needed to deal with regulatory quality issues.

Allocate responsibilities for RIA programme elements carefully. Experience in OECD countries shows that RIA will fail if left entirely to regulators, but will also fail if it is too centralised. To ensure 'ownership' by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA are often shared between ministries and a central quality control unit.

Under the Guidelines issued by a state secretary group set up by Government with special responsibility for the work on regulatory reform, every Swedish ministry must put in place the organisational conditions and routines needed to carry out the RIA. Thus, responsibility for carrying out RIA rests with the Ministry that handles the legislative issue in question, as in most OECD countries. The shortcomings of the current RIA system in Sweden in this respect relates to the fact that in some cases regulators have to submit two RIAs for the same proposal, especially when SMEs issues should be given special consideration. However, in most cases RIAs are conducted in an integrated manner by the agencies. Besides this, not all the bodies responsible for the quality control have powers to reject a RIA or impose the need for amendments. The quality control bodies which are confronted with vested interests have no formal power to impose their views.

Train the regulators. Regulators must have the skills to prepare high quality economic assessments, including an understanding of the role of RIA in assuring regulatory quality and an understanding of methodological requirements and data collection strategies. All complex decision-making tools, such as producing adequate RIA, demand a learning process.

Training is an important aspect covered by the Swedish government, mainly through the Ministry of Industry, Employment and Communications and NUTEK. The Better Regulation Unit from the Ministry is responsible for providing advice and support regarding regulatory reform and the drafting of impact assessments covering the consequences for small businesses. The Unit further provides training addressed to the officials working in the Government Offices. This training includes, among other things, a thorough investigation of the conditions in the Ordinance (1998:1820) on the special impact analysis of rules on small enterprises and realistic exercises on drafting impact assessments. It also includes information on where and how to find more information, including support and advice, on regulatory reform and the drafting of impact assessments. The Better Regulation Unit also participates in training for Committees of Inquiry in RIA skills.

A handbook used by the Better Regulation Unit has been issued to provide guidance on different considerations than can be relevant to discuss under each of the 12 questions in the checklist included in the Ordinance on special impact analysis of rules on small business. The Handbook is used at the training sessions as well as handed out in individual drafting cases.[63]

Support and advice on impact assessments to the government agencies is also part of the work carried out by NUTEK. This institution holds trainings on the methodology for undertaking RIA as stipulated in the Simplex Ordinance (1998:1820) and makes available examples and tools to understand RIA. During 2005, NUTEK also initiated a forum bringing together agencies' representatives who according to their tasks contained in the Simplex Ordinance (1998:1820). In total 52 government agencies with enterprise-related regulations appointed representatives to the forum. The forum met twice during 2005. The meetings are a forum for inspiration, exchange of information, competence development and have shown that participating agencies have much appreciated it. Through the forum NUTEK also receives important input on the agencies' demands for support and advice.

Use a consistent but flexible analytical method. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society."[64] A cost-benefit analysis is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being 'socially optimal' (*i.e.* maximising welfare).

In the Swedish RIA system there are no precise guidelines on how to undertake a full cost-benefit analysis of proposed legislation. In some cases, however, the different bodies reflect the economic implications of new or amended regulations, since the Simplex Ordinance and the Checklist for Legal Drafters contain questions related to this issue. More specific information and an assessment of the costs are requested in the RIA concerning SMEs.

Target RIA efforts. RIA is a difficult process that is often opposed by ministries that are not used to external review or that are under time and resource constraints. The preparation of an adequate RIA is a resource intensive task for drafters of regulations. Experience shows that central oversight units can be swamped by large numbers of RIAs concerning trivial or low impact regulations. OECD countries have opted for different approaches to target RIA (see Box 2.12).

Box 2.12 Targeting RIA efforts: the OECD experience

OECD countries have opted for different approaches to target RIA. In **Korea**, the RIA system requires a rough

estimate of costs for all regulations, and defines as "significant" regulation those that have an annual impact exceeding KRW 10 billion (USD 0.9 million), an impact on more than one million people, a clear restriction on market competition, or a clear departure from international standards. Significant regulations, as defined, are subject to the full RIA requirements. The **United States** adopts similar criteria, requiring a full benefit/cost analysis where annual costs are estimated to exceed USD 100 million or where rules are likely to impose major increases in costs for a specific sector on region, or have significant adverse effects on competition, employment, investment, productivity or innovation. This means, the US oversight body, OMB, reviews roughly 600 regulations a year (around 15-17% of the rules published), of which fewer than 100 (around 1-2% of the rules published) are "economically significant", and thus require a full benefit/cost analysis. The **Netherlands** adopts a two part approach to targeting RIA effort. The first stage involves the application of a set of criteria, similar to those discussed above, which the effect that only about 8 to 10% of draft regulations are subjected to RIA. The second stage involves the adaptation of the questions to be addressed in the RIA to the specific regulation. A Ministerial Committee reviews the regulatory proposal and determines which of the 15 standard questions contained in the Directive governing RIA must be answered for each regulation.

Source: OECD (2002), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris

Current guidelines in Sweden give no advice on the scope of RIA, except for that related to the costs imposed on small businesses, even if they are general in nature. In Sweden, as in other countries, RIAs are applied to all significant regulation. There is however no special requirement for those proposals that might have the largest impact on society. This situation raises the question whether RIAs can always be done with the same thoroughness and if the resources in place to revise their quality are sufficient.

An important gap in the Swedish system is that it is not compulsory to carry out RIAs related to the European Commission's proposals for binding business regulations. The EU dimension of the legislation is not explicitly included in any of the checklists of the current RIA system. This calls for special attention because the European Commission has integrated, since 2003, a new method for impact assessment at EU level, covering economic, environmental and social impacts. Nevertheless, when necessary and time and resources are available, a RIA is conducted regarding the EU proposal, in accordance to the Simplex Ordinance (1998:1820). In specific cases, reports of Committees of Inquiry include assessments in connection to the implementation of EU-Directives.[65]

Develop and implement data collection strategies. The usefulness of a RIA depends on the quality of the data used to evaluate the impact. An impact assessment confined to qualitative analysis provides less accountability of regulators for their proposals. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed.

In Sweden, there are no specific guidelines on how to integrate data collection mechanisms and quantitative analysis into RIAs. The Better Regulation Unit asks ministries to quantify RIA if they have not included in the initial draft, but this does not follow a systematic procedure.

Integrate RIA in the policy making process, beginning as early as possible. Integrating RIA in the policy making process will, over time, ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy in accordance with its ability to meet objectives become a routine part of policy development. If RIA is not integrated into policy making, impact assessment becomes simply an *ex post* justification of decisions already taken, and contributes little to improving regulatory quality. Integration is a long-term process, which often implies significant cultural changes within regulatory ministries. Early integration in the policy process of RIAs would require stronger incentives to do so and possible sanctions for non-compliance. More important, it would require that policy makers be convinced of and request the added-value of RIA.

In the current system, RIAs accompany the law and ordinance proposals, which have already been discussed in the inquiry phase, as they are presented in Committees' reports, and then in the referral stage

of the legislative process. RIAs are not always done at the very beginning of the law-making process, when it would be appropriate to have an assessment of the proposed piece of legislation. The system of the regulations and their provisions follows another path: agencies reflect the implementation of the laws through regulations that result from broad frameworks laid down by the *Riksdag*. There is scope to improve the timing to integrate RIAs into the decision-making process, when ministries, committees and agencies start a proposal.

Communicate the results. The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation. Releasing RIAs along with draft regulatory texts as part of the consultation procedure is a powerful way to improve the quality of the information available about new regulations, and so improve the quality of the regulations themselves.

In Sweden, in contrast to many other OECD countries, RIAs are not systematically made available to the public, except for the final reports presented by Committees of Inquiry that include extensive assessments. RIAs for ordinances, for instance, are considered as 'work material' by the government offices. Not all agencies publish their RIAs in their websites. This does not contribute to transparency in the dialogue between stakeholders and the Government. The Constitution, however, grants organisations and private persons the opportunity to express their opinion as necessary and public authorities shall make documents available for public debate in preparing Government business.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can constitute cost-effective sources of the data needed to complete high quality RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered and on the degree of acceptance of the proposed regulation by the affected parties. The extensive use of other different strategies, such as consultation, can be seen as an important means of collecting information and integrating the public in the decision-making process. The challenge is to use this information in a structured and critical way, avoiding promoting interests of particular stakeholders.

In Sweden, the Consultation Ordinance[66] obliges the government agencies to consult organisations representing the companies and municipalities to provide information. Although consultation at a very early stage of the RIA process is more frequent and dialogue with businesses has become an important way to understand the consequences of regulations, there is still scope for improvement. The results of these consultations, for instance, are not reported systematically[67], even if later on, in the case of Government bills, consultations are broadly reported.

Apply RIA to existing as well as new regulation. RIA is equally useful in reviewing existing regulation as it is in assessing proposed new regulatory measures. In fact, reviewing existing regulation involves fewer data problems, so the quality of the resulting analysis is potentially higher. Consistently applying RIA to existing regulation is a key priority. Parts of the regulatory structure that are not directly subject to government disciplines should be included in the analysis, such as local government regulations or the actions of independent regulators.

In Sweden the different assessments are applied to existing and new laws, ordinances and regulations. Particular attention is paid to the SMEs perspective. This special RIA is intended to show what measures a SME has to take to comply with the proposed new or amended regulation.

Overall assessment. Sweden has more than 10 years experience developing and implementing *ex ante* regulatory impacts. Today, there is a mixed picture of the RIA system in place. On the one hand, most necessary tools are available, as well as the formal obligation to integrate RIAs fully in the decision-making process through the existence of different ordinances. Moreover, major reforms prepared by

Committees of Inquiry and extensive consultation with affected parties ensure draft regulations of high quality. The RIA guidelines provide good substantive and procedural advice on how to conduct RIAs, although there is scope for improvement in certain areas, such as data collection and targeting. Training is constantly developed to support regulators to improve the quality of RIAs.

On the other hand, there is a lack of a comprehensive framework to weigh and consolidate the different RIAs carried out. There is no single unit in the Swedish administration responsible for the review, support and monitoring of RIAs: three different institutions deal with this issue, depending on who produced the RIA, lacking formal power to veto in case their quality is not sufficient. In the current system, the Better Regulation Unit of the Ministry of Industry, Employment and Communications, during the joint drafting procedure, has the possibility to demand the need for amendments to the RIAs, and different units at ministerial level also have the possibility to give their point of view on the RIAs, making sure that their interests are taking into account. Quality checks and sanctions for non-compliance with RIAs do not exist. RIAs, even if they are public documents, are not systematically made available to the public, reducing the value of the instrument and the transparency of the process.

In the current system, the limited institutional oversight and scrutiny, as well as a limited political attention and priority of RIA, has lead to a systematic bias in the regulatory process. This is reflected in different linked elements. First, regulations, more than laws and ordinances, which are sometimes not even prepared by expert groups, do not follow a common methodology for the analysis of their impacts. Second, effects on competition, business and consumers are not systematically subject to scrutiny. This is especially relevant when it comes to regulations that have a clear impact on the economic performance. Finally, an improved institutional oversight and co-ordination should be a strong driver for ex-post evaluations of regulatory tools and procedures.

3.4. Building regulatory agencies

In most OECD countries, economic structural reforms –promoted in part by international commitments such as those from the WTO or the European directives for European countries - have stimulated the set up of independent regulatory agencies and the remodelling of existing regulations. These institutions are intended to create capacity for regulatory oversight in liberalised or privatised sectors and prudential oversight of competitive markets, making a clear distinction between the role of the State as a regulator and as an owner. The goal is also to minimise the potential for conflicts of interests and stimulate the opportunities for long term investment in key infrastructure sectors. The design and management of such regulatory agencies present significant challenges.[68] Key issues in this respect include considerations on how to establish institutions that are:

- Competent, accountable and independent;
- At arms length from short-term political interference;
- Capable of resisting capture by interest groups, but still
- Responsive to general political priorities;
- Able to exercise delegated powers, including for example the power of granting licences or imposing sanctions in specific cases;
- Have decision-making procedures that take into account the particularities of the area being regulated, while at the same time maintaining transparency and accessibility for all stakeholders; and
- Ensure transparency and accessibility for all stakeholders.

This section provides a brief introduction to the discussion of these liberalised sectors in Sweden, with a focus on railway, energy, postal services, telecommunications and aviation. It will also discuss the regulatory institutions now in place in Sweden for these selected economic sectors, with more details view on the governance structure in Annex I.

Liberalising economic sectors

A number of sectors have been liberalised in Sweden, including railway, telecommunications, energy, postal services and domestic aviation. This reflects technological progress, internationalisation and new patterns of customer demand. The Government has used regulatory reform, mostly deregulation measures and adjustments to existing regulations governing public services, to introduce competition to the markets, in order to enhance their efficiency, diversity and product quality. In many cases, Sweden was an early reformer in Europe, with for example opening up markets for postal services way before many other European countries.

The degree to which the different sectors have been opened up to competition remains unequal (see Table 2.3). At present, even if none of the selected sectors is fully exposed to competition, the liberalisation process has resulted in the elimination or reduction of restrictions on competition and barriers to market entry.

Table 2.3 Market profile of selected economic sectors in Sweden

	Formal monopolies	Other barriers to market entry[1]	Public procurement through competitive bidding	Competitively non-neutral access to infrastructure	Problems of business concentration and dominance	Transaction costs etc., that afford weak incentives for consumers to act
Electricity	(●)[2]	(●)			●	●
Postal services		(●)		●	●	
Telecoms		(●)		●	●	●
Domestic aviation		●	(●)	(●)	●	
Railways	●[3]	●	(●)	(●)	●	(●)
Taxi			(●)		(●)	●

1. Bottlenecks/ capacity shortages, technical trade barriers, etc.

2. The bullet points in brackets convey the existence of obstacles or restrictions to competition on a small scale or indicate that they are of minor importance because, for example, they apply only to parts of the market.

3. The bullet points indicate the existence of various forms of market-entry barriers and circumstances that reduce competition. While the points of the first, second and third columns relate mainly to various types of entry barriers, i.e. obstacles for free entry into and exit from the markets, the points in the fourth and fifth columns are more a matter of producers' scope for acting independently of one another. The points in the sixth column concern the presence of obstacles to consumers' mobility.

Source: Statskontoret (2005), *Six Deregulations*, Stockholm, pp. 72-73

Overview of sectoral regulatory authorities

In Sweden there is no overarching policy on the establishment, design or functions of independent sectoral regulators. As a general rule, and according to the Government bill on administrative policy "State government administration in the service of citizens", the exercise of public authority should be carried out in the form of governmental agencies. From the Government's point of view, carrying out government activities through agencies ensures that general administrative rules and principles are applicable, which promotes legal certainty. It satisfies the demand for publicity, transparency and clear distinction of responsibilities. The agencies have to follow the principles of openness and freedom of communication.

Individuals are able to refer to valid rules and be certain of the fact that authorities grant appropriate procedures concerning the rights and responsibilities of citizens. The Government is able to make changes in the assignments of the agencies. The competition authority itself (see Chapter 3) is also an agency, which raises some issues in terms of its powers and organisation. This also applies to the governance of the sectoral regulators.

Powers

Regulatory authorities in OECD countries often differ from 'administrative agencies', as they are entrusted with significant powers which can be delegated to them by law, but also through other regulations. This allows authorities to issue opinions, set rules, monitor and inspect, enforce regulations, grant licences and permits, set prices and settle disputes (see Annex 2). In Sweden, the Government Agencies and Institutes Ordinances stipulates the general provisions governing the operations of central government authorities and lays down the principles of how these agencies should conduct their regulatory responsibilities (see Section 2.1.). Their design differs from market to market, depending on what has been considered to be the best solution to create efficient supervision and sound development and economic performance of the sector.

Independence

Institutional arrangements, including the legal framework and the provisions for governance, as well as a given administrative and political practice (see Annex 3) are a necessary condition for the independence of regulators. In Sweden, government agencies, and consequently regulatory authorities, are independent authorities in the sense that the Government is prohibited to influence the authorities in their decision-making on individual cases. The regulatory authorities thus have full competence to make decisions. All sectoral regulators are organically separated from the Government offices, but they are subject to general guidelines from the Government. Most of them are under the scope of the related ministry.

The governance structures of independent regulators have a significant role in safeguarding their independence (see Annex 4). While there is no commonly accepted model for managing state agencies in Sweden, as is the case elsewhere, the Government tends to rely on Director Generals, with six-year mandates, sometimes with a prolongation of three years. Governmental administrative agencies shall be led in one of the following ways, which is chosen by a mandate from the Government:

- By a head of authority alone;
- By a head of authority that is supported by a lay board; and
- By a board with full responsibility.

The general practice in Sweden is to assign significant autonomy to the heads of national agencies in carrying out the tasks that are delegated to them by the Government, which is often only fixing broad policy objectives on a yearly basis. A Director General is not recruited through an open procedure, as other officials of agencies. Heads of Swedish agencies may only in exceptional circumstances be dismissed during the period of office.

At present, the Committee on the Constitution is conducting a concerted review of the Instrument of Government from 1974. One of the issues of the Committee is to review the Government's power to make appointments, in particular to look into different measures to increase the openness of such appointment procedures. The report of the Committee is to be submitted no later than December 31, 2008.

Accountability

Independence needs to be balanced with accountability. However, accountability for regulatory authorities, which are at arms' length from the political decision makers is often obtained through a set of procedural means, including annual reports, transparency in decision-making, self and external evaluation. In Sweden, the annual Budgetary Bill reports to the Parliament its observations and proposals for the coming year. In its work, the Parliament has the possibility to focus on all sectors and subjects, thus also on the activities concerning certain sectoral regulators. A Parliamentary committee has the mandate to call upon any party in order to obtain information on an issue, and is thereby entitled to also arrange hearings.

The Ombudsmen of Justice (JO) or the Parliamentary Ombudsmen are elected by the *Riksdag* to ensure that public authorities and their staff comply with the laws and other statutes governing their actions. The Ombudsmen exercise this supervision by evaluating and investigating complaints from the general public, by making inspections of the various authorities and by conducting other forms of inquiry that they initiate themselves.

Consultation

Consultation is a key element of regulatory quality and also contributes to accountability. A guarantee that the procedure will be properly respected and that the parties involved will be consulted is essential to building confidence, particularly among new operators. In Sweden, the procedural framework for all administrative authorities and courts is regulated by the Administrative Procedure Act. This Act includes detailed requirements for the administrative procedure, related to issues which contribute to ensure the consistency of individual enforcement decisions, such as the following:

- Authorities shall provide information, guidance and advice to all persons concerning matters falling within the scope of its functions.
- Each matter shall be handled as simply, rapidly and economically as possible without jeopardising legal security.
- Applicants, appellants and third parties shall be afforded an opportunity to make an oral statement.
- Information obtained otherwise than from a document shall be recorded.
- Applicants, appellants and third parties are entitled to have access to the material that has been brought into the matter, subject to restrictions prescribed by the Secrecy Act.
- Applicants, appellants and other parties are to be informed on all facts brought into a matter by others, and to respond to such information, before the matter is concluded.
- An authority's decision on a matter shall be reasoned.
- Decisions affecting a party adversely shall include information on how to appeal.
- Appeals shall be made in writing and delivered to the authority that made the decision within three weeks.

Transparency and communication

Transparency allows the parties concerned to understand decisions and to secure confidence in the regulator's decision-making process. Transparency alone is not necessarily sufficient: the decisions of the economic regulatory authority are often not easy to understand in themselves. It is essential to explain and justify why certain decisions have been taken in order to secure public support for regulatory actions,

which involves, for example, organising public hearings, disseminating reports and setting up properly designed websites.

Principles of transparency and legal certainty apply to all Government agencies in Sweden, irrespective of their tasks and scope. The principle of public access to official documents applies for all agencies. All documents held by public authorities must be made available for citizens. According to the Administrative Procedure Act any applicant, appellant or other party is entitled to have access to all the materials that have been brought into the matter, *i.e.* party's access is guaranteed by law. Each party has to be given the opportunity to respond to all relevant materials in order to make a decision on the matter in question. Therefore, the general provisions of the legal framework ensure a significant level of regulatory quality for the regulators.

Sanctions

One of the important powers of regulatory authorities is the capacity to impose sanctions. In Sweden, sanctions against public authorities can consist of damages decided in court or by the Chancellor of Justice. It can also consist of criticism from the Ombudsmen of Justice or the Chancellor of Justice. These supervisory bodies have the possibility to press charges for misconduct. Most agencies do not have direct sanctioning powers, as they do not have jurisdictional capacity as an agency. They have to rely on the court system to call on sanctions, or to exercise other indirect means of pressures on the regulatees. This may also limit their effectiveness due to some shortcomings in the appeal process.

Administrative appeals and public redress

The existence of procedures to appeal against administrative decisions taken by regulators is also an important aspect in terms of regulatory quality. In Sweden, the Administrative Procedure Act applies to the handling of matters by the administrative authorities and the handling of administrative matters by the courts. Where another act or an ordinance contains a provision that is inconsistent with this Act, that provision shall prevail. A person concerned by a decision may appeal against it in the general administrative court, provided that the decision affects him adversely and that it is subject to appeal. However, this does not apply to decisions on matters of administration and decisions regarding the issuing of provisions.

Decisions of an administrative authority on matters of the issuing of provisions can not normally be appealed against. Since the administrative authorities obtain their competence from the Government, the Government is always able to correct a decision of the issuing of provisions.

There is no unified system of appeal between sectoral regulators and the competition authority in Sweden. Decisions from sectoral regulators tend to be appealed to administrative courts, while decisions by the competition authority tend to be appealed to the Stockholm City Court and the Market Court (Box 12). This does not ensure consistency in the jurisdictional process. This is also an issue when considering proper coordination between sectoral regulators and the competition authority. The Swedish government has commissioned an inquiry that will study the appeal process in the sector for electronic communications and the organisation of authorities that deals with this sector according to the Swedish electronic communication act. Another inquiry has been commissioned to study the efficiency of competition law enforcement, including the appeal process.

Box 2.13 Judicial appeals in different economic sectors

The Stockholm City Court is first instance in Competition Act cases on administrative fines for breach of prohibition rules, prohibition of mergers, and authorisation to carry out a dawn raid. Together with other City and District Courts, the Stockholm City Court is also competent to impose penalties set by an injunction by the Competition Authority. The Market Court is a specialised last instance court handling cases under the Competition Act, the Act on Action against Undue Behaviour in Public Procurement and four laws in the area of unfair competition and consumer protection. Competition cases brought to the Market Court include appeals against rulings by the Stockholm City Court and decisions ordering the termination of an infringement taken by the Competition Authority. Companies affected by restrictive practices may bring an action at the Market Court, subject to a decision by the Competition Authority releasing the subsidiary right of suit.

According to the Swedish Railways Act an individual case determined in accordance with that Act or with regulations made in accordance with that Act, may be appealed against to a general administrative court. Leave to appeal is required in connection with appeals to the Administrative Court of Appeal.

Appeals can be made against all decisions made by the National Post and Telecomm Agency (*Post- och telestyrelsen*, PTS)[69] according to the Act on Electronic Communication, with some exceptions. In the area of electronic communications there are the same three court instances as mentioned above that can be concerned: County Administrative Courts, Administrative Courts of Appeal and the Supreme Administrative court.

Appeals can be made against all decisions made by the Energy Market Inspectorate within the Swedish Energy Agency (*Energimarknadsinspektionen vid Energimyndigheten*)[70] according to the Electricity Act and the Natural Gas Act. Generally there are three court instances, County Administrative Courts, Administrative Courts of Appeal and the Supreme Administrative Court, that can be concerned. With regards to decisions on the granting of concessions, appeals are made to the government.

Appeals can be made against almost all decisions made by the Swedish Financial Supervisory Authority (*Finansinspektionen*, FI) according to the acts regulating the financial sector. Decisions made by *Finansinspektionen* may be appealed to the general administrative courts, i.e. first instance is the County Administrative Court, according to The Banking and Finance Business Act (SFS 2004:297), The Investment Funds Act (SFS 2004:46) and other acts that have been passed in recent years. Leave to appeal is required in connection with appeals to the Administrative Court of Appeal. The principle is the same also for most decisions according to older acts such as The Insurance Business Act (SFS 1982:713) and The Securities Business Act (SFS 1991:981), but according to the older acts, more important decisions such as to grant or revoke authorisations are exempted from this principle and may be appealed directly to the Administrative Court of Appeal and without leave to appeal. However, there are three common exceptions from the possibility to appeal to the general administrative courts.

- Decisions made by *Finansinspektionen* to summon members of the board of directors of for example a credit institution, an investment firm or a management company to a meeting may not be appealed according to The Banking and Finance Business Act (SFS 2004:297), The Securities Business Act (SFS 1991:981) and The Investment Funds Act (SFS 2004:46).

- Decisions made by *Finansinspektionen* to order a party conducting operations to provide information necessary in order for *Finansinspektionen* to be able to assess whether the operations are covered by acts, if it is unclear whether the operations that a party conducts are covered by acts.

- Decisions made by *Finansinspektionen* on issues pursuant to Chapter 8 of the Instrument of Government, i.e. decisions on issuing regulations.

There are also two additional exemptions concerning credit institutions and insurance companies. According to The Insurance Business Act (SFS 1982:713) and The Banking and Finance Business Act (SFS 2004:297), *Finansinspektionen* may submit cases to the government on matters of principle or of particular importance regarding for example granting or revoking authorisations. A decision to submit a case to the government may not be appealed.

Co-ordination between regulators and the Competition Authority

Co-ordinating between sectoral regulatory authorities and the competition authority in order to remedy existing or potential overlaps in the assignment of their respective responsibilities is a key issue in OECD countries. The administrative relationship between sectoral regulators and the Swedish Competition Authority (*Konkurrensverket*)[71] is based on the annual appropriation direction to the Competition Authority and sector authorities as well as on specific government assignments to the authorities from time to time.[72]

The Swedish Competition Authority is the only authority responsible for applying the Swedish Competition Act and other competition rules. Other authorities that have an issue closely related to competition matters often, informally or formally, consult with the Competition Authority before adopting its decision in order to ensure consistency, for example when market dominance issues are concerned. According to its appropriation direction for 2006 the Swedish Competition Authority shall summarise all consultations with other authorities during the year and proposes measures to make the consultations more effective. The view is that generally the coordination between the sectoral regulators and the Competition Authority is relatively satisfactory. However, this is not sufficient to compensate the absence of a unified system of appeals.

Assessment. While a number of activities have been liberalized, the roles of sectoral regulators in Sweden vary considerably. Some institutions, like the Swedish Rail Agency, perform a market monitoring function, and others, in the electricity market regulation and supervision have focused more on network operations, protected by a monopoly, while activities facing competition have been largely left without supervision. Telecoms is the only sector with a sectoral agency that has explicit competition promoting functions, as it can actively define conditions for market operators or intervene against operators' behaviour. The current set up illustrates the limits of a piecemeal approach to institutional design, with maybe limited powers for some regulators in certain sectors, and significant implications from the jurisdictional system in this field.

4. DYNAMIC CHANGE: KEEPING REGULATION UP-TO-DATE

4.1. Revisions of existing regulations

Over the years, most OECD countries have accumulated a large stock of regulation and administrative formalities. Regulations that are efficient today may become inefficient tomorrow, due to social, economic, or technological change. If not checked or reviewed these can lead to a highly burdensome regulatory system. The 1997 *OECD Report on Regulatory Reform* recommends that governments review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively. The 2005 *OECD Guiding Principles for Regulatory Quality and Performance* recommend that the assessment of impacts and the review of regulations include ex-post evaluation.

In the 1980s, Sweden enacted the 'guillotine rule', nullifying hundreds of regulations that were not centrally registered. In 1984, the Government found that it was unable to compile a list of regulations in force. The accumulation of laws and rules from a large network of regulators meant that the government could not itself determine what is required of private citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. The approach proposed by the Government and adopted by the *Riksdag* was simple. The Government instructed all government agencies to establish registries of their ordinances by July 1, 1986. When these agencies prepared their lists, they cut out unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or outdated, in effect reversing the burden for maintaining old regulations. When the 'guillotine rule' went into effect, hundreds of regulations not registered were automatically cancelled,

without any further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within a day of adoption.

The 'guillotine rule' was considered as a great success. The government had, for the first time, a comprehensive picture of the Swedish regulatory structure that could be used to organise and target a reform programme. The registry also had the indirect effect of slowing the rate of growth in new regulations, and by 1996 the net number of regulations had indeed dropped substantially.

Following the 'guillotine rule', the Government carried out further, less drastic mechanisms to review existing regulations. One way of carrying out comprehensive reviews of regulatory frameworks is the appointment of a Committee of Inquiry, which might be in charge of revising measures in a major area, *e.g.* taxation, the development of the judicial system, or more specific issues. There are normally 200 government inquiries in progress at any given time. Committees of Inquiry are used frequently and on a regular basis as a tool to carry out more comprehensive reviews of whole sectors or policy areas, such as:

- The Committee on Public Sector Responsibilities (Fi 2003:02)
- The Commission on Supervision (Ju 2000:06)
- The Regulatory Reform Commission (N 2004:2)

Another way of reviewing legislation is to commission an authority to follow the development within the specific authorities' field of activity. Such commissions are usually given instructions through decrees. The authorities are thus responsible for giving feedback to the government.

At government agencies level, agencies shall, according to the Government Agencies and Institutes Ordinance, continuously follow up and examine the agency's own activities and the consequences of its regulations and decisions, and take appropriate actions when needed.

A concrete example of a systematic review of legislation affecting business is the Government's Action Plan to reduce administration for enterprises (see Section 4.2), presented in 2004. The main goal of this Action Plan is to simplify the existing body of regulations (see Box 2.14). It comprises 310 measures to be completed by September 2006. The purpose and the expected effect of every single action are described, which could contribute to further formal evaluation.

Despite these efforts, the Report on Simplification of Rules for Companies (RiR 2004:23), published by the Swedish National Audit Office (*Riksrevisionen*),[73] has pointed out that the work on rule simplification undertaken by the Government has attached more importance to getting agencies to amend administrative provisions and less to amending the laws and ordinances. This results from a lack of knowledge or whether the regulatory burden arises at the level of the law or ordinance or of the administrative provision. The Government, following the recommendations of the Report, has to obtain knowledge of where the regulatory burden arises, both by further work within the Government Offices and by encouraging the agencies to submit proposals for amendments to laws and ordinances that govern administrative provisions.

Box 2.14Action Plan to Reduce the Administrative Burden for Enterprises

The following are some examples from the Action Plan that have led to changes in regulation. The first one shows improvement in the regulatory framework; the second one makes reference to administrative simplification (both in terms of fewer forms and less reporting of information):

Work environment regulations

Purpose: To make environment regulation easier to overview and understand

Description: During the period 2004-2006 more than 80 regulations and documents containing advice, instructions and notifications in the work environment field will be covered by the regulatory reform work of the Swedish Work Environment Authority. This entails a review of more than half the Authority's regulations. The annulment of all instructions and notifications is planned. Many regulations will also be annulled or integrated in new higher-level regulations. An effort is being made to simplify the language of the regulations.

Expected effect: Fewer regulations that are easier to overview and to understand, which provides better opportunities for enterprises to contribute as employers to a better working environment for their employees.

Timetable: To be done in 2004-2006.

The Accounting Act - simpler annual accounts (1995:1554)

Purpose: To introduce rules on simpler annual accounts for self-employed persons.

Description: The Accounting Act contains provisions on annual accounts. They must be applied by all enterprises that are obliged to close their current recording transactions with annual accounts instead of annual reports. The provisions on annual accounts can be seen as unnecessarily complicated for the smallest enterprises. So there may be reason to introduce provisions on simplified annual accounts for self-employed persons, for instance. The provisions on simplified annual accounts must be viewed against the background of the work being done by the Swedish Accounting Standards Board on general advice on accounting in self-employed business.

Expected effect: Simpler and quicker for enterprises to do their annual accounts, not least in combination with the initiative taken by the Swedish Accounting Standards Board.

Timetable: The changes of the Accounting Act took effect 2005.

Source: Ministry of Industry, Employment and Communication (2005), *The Government's Action Plan to Reduce Administrative Burdens for Enterprises*, Stockholm, pp. 16-17

Assessment. After the implementation of the 'guillotine rule' there have been efforts in Sweden to review legislation and regulations through different procedures, but not in a systematic and comprehensive way. In the absence of standardised approaches, discretion is left with the parties designing and conducting the reviews, *e.g*. Committees of Inquiry or government agencies. This might have positive aspects in terms of flexibility and goal-orientation, but inconsistencies are necessarily the result and quality control cannot be exercised at the whole of government level. There is still scope for further understanding on the impact of the flow and stock of laws, ordinances and regulations on citizens and businesses. The Action Plan to reduce the administrative burden for enterprises can be seen as a positive approach to know more about the sources of regulatory burden. It can contribute to ensure consistency in approaches and review criteria.

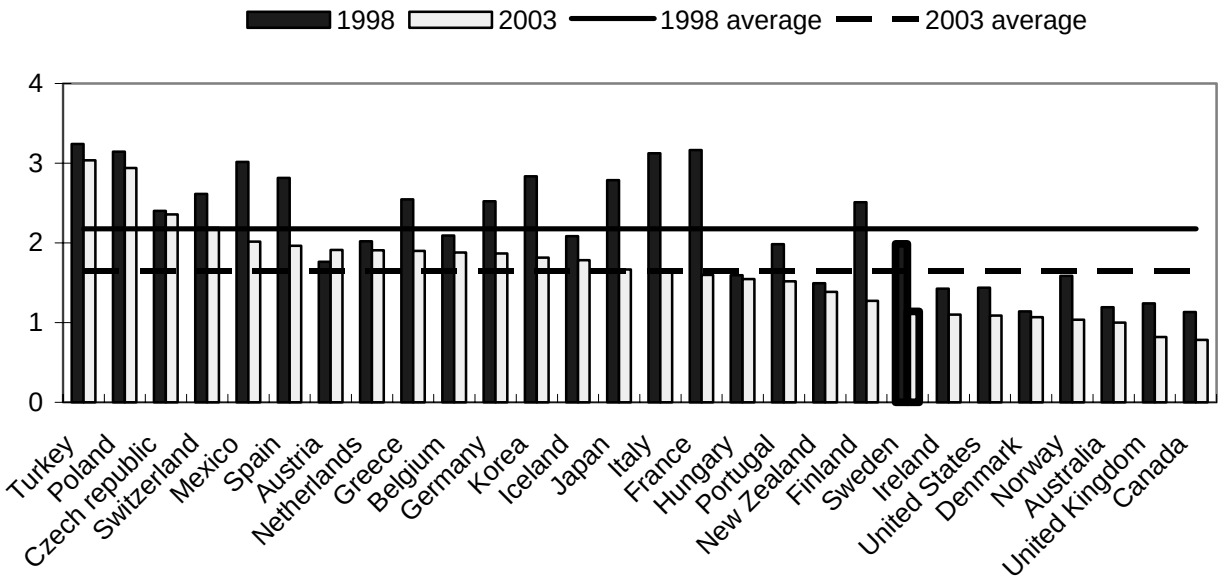
Unlike other OECD countries, sun-setting is not used in Sweden as an automatic review requirement for laws, ordinances and regulations. There is neither use of specific review clauses and requirements for primary and subordinate regulations. Review programmes used in *ad hoc* basis do not include the analysis of budgetary and economic costs of regulation in a systematic way. The application of RIA standards may contribute to assess the impacts of regulations; *ex ante* assessment is key in weighing the policy alternatives from the very beginning. This should complemented by ex-post evaluation to understand if regulation is meeting its initial objectives.

4.2. Reducing administrative burdens

Government formalities are important tools to support public policies in many areas. Administrative regulations can also create benefits for enterprises by setting level playing fields where commercial transactions can take place in a pro-competitive and low cost environment. There is a risk, however, that administrative regulations can impede innovation or create unnecessary barriers to trade, investment and economic efficiency. Cutting red tape is firmly on the political agenda in most OECD countries.

Sweden has made important progress in reducing administrative burdens and compared to other OECD countries it can be placed in the front of the distribution of Product Market Regulation (PMR) indicators concerning administrative regulation (see Figure 2.5). Nevertheless, compliance with all regulations stipulated by the government, municipalities and EU are seen as a major obstacle for entrepreneurship, as the regulatory environment is still discouraging, lengthy and costly. Merely by administering government regulations, business incurs an estimated SEK 50 billion (ca. 5.5 billion Euro) a year at least.[74] This is especially cumbersome for SMEs, which have no capacity to handle all legislation due to limited resources. While efforts have resulted in positive reductions of administrative burdens, the pending areas for reduction, from the business perspective, are employment legislation, environmental standards and tax regulation.[75]

Figure 2.5. Administrative Regulation, 1998 and 2003



Source: Conway, Paul et al. (2005), *Product Market Regulation in OECD Countries: 1998 to 2003*, Economics Department Working Papers, No. 419, OECD, Paris

Rule simplification has been on the political agenda in Sweden for more than three decades. Since the 1970s the intention was to introduce provisions that could limit the cost-generating effects of various rules in both the public and the private sectors. During the 1980s the focus gradually shifted to the problems to industry and commerce caused by various rules. In the 1990s different government commissions tackled the issue. In 1999 and 2002 the *Riksdag* made public announcements requesting the Government to increase the scope and the speed of its work on rule simplification. Under these resolutions, the *Riksdag* entrusted the Government to review business regulations in their entirety to eliminate those that are unnecessary and burdensome and to set a quantitative target for the purpose of reducing companies' costs

of administering regulations. The explicit purpose was to create better working conditions for small businesses and thus promote economic growth.

In 2004, the Swedish National Audit Office (*Riksrevisionen*) presented its report Regulatory Reform for Enterprises (RIR 2004:23). The audit was carried out to support the above mentioned *Riksdag*'s requests. The report analysed whether there was a purposeful approach in the work of rule simplification, how effective the inspection of impact assessments of government agencies and committees was, and if Government feedback to the Parliament was sufficiently informative. The five recommendations in the report addressed to the Government entail the following measures linked to administrative and rule simplification:

- Action to amend existing regulations primarily to achieve simplifications for enterprises must increase, and a review of the regulatory reform work undertaken by the Government offices should be carried out to bring about this change;
- The Government should investigate more the roots of regulatory burden and whether they arise at the level of laws, government ordinances or agency regulations;
- The division of responsibilities between the Swedish Agency for Economic and Regional Growth (NUTEK) and the Swedish National Financial Management Authority (*Ekonomistyrningsverket*, ESV)[76] as regards supervision of agency work on regulatory reform should be clarified;
- As regards the measurement of administrative burdens the Government should look more closely at the scope for starting development work intended to also take other regulatory burdens into account;
- The annual communication to the *Riksdag* should place more focus on how the total flow of amended laws and ordinances impacts on enterprises, what laws and ordinances have been amended during the year mainly to achieve regulatory reform and the difficulties encountered in work on amending the existing regulatory framework.

The Swedish Government has launched a comprehensive Action Plan to Reduce the Administrative Burden for Enterprises. On October 2003 the Government had instructed all ministries to examine the laws and ordinances affecting enterprises they were responsible for. A total of 46 agencies were also instructed to examine their own regulations and general advice. The reviews were conducted 'regulation by regulation' and for each single action the purpose, description, expected effect and timetable was given. Both ministries and agencies had to report all actions to be taken during the term of office, in order to improve services and reduce the administrative cost of enterprises. The Government decisions stated that consultations had to be held with representatives of business. After the instructions to agencies were issued, the Ministry of Industry, Employment and Communications held different information meetings with the agencies concerned. The objective of the meetings was to make clear the detailed content of the instructions and to discuss the purpose and procedure to be followed. In cooperation with the agencies, the Ministry drafted instructions to facilitate inventories of regulations. The instructions were distributed at the end of 2003.

On January 2004, the Ministry of Industry, Employment and Communications invited all Director Generals affected to discuss the Action Plan. The same procedure was taken with agencies' officials. During spring 2004, agencies presented their reports to the responsible ministry. The Action Plan was drafted: it contains 310 actions from eight ministries and 46 agencies, to be implemented between 2004 and 2006. Some actions are general and affect most entrepreneurs, while others are more specific and only affect certain industries (see Box 2.15). Their common feature is to reduce administrative burdens for enterprises that comply with regulations.

Box 2.15 The Swedish Board of Agriculture: cutting red tape

The government decision

In October 2003 the Government decided that 44 Swedish agencies should scrutinize the regulations and guidelines issued by them, to the extent that these concerned business. The Swedish Board of Agriculture was among those 44 agencies. The aim of the exercise was that the agencies should present measures that either had been, or would be undertaken to reduce the administrative burdens imposed on business.

The method and the project

In order to carry out the project a project group was formed with representatives from all the departments within the Swedish Board of Agriculture that issues/ work with regulations and recommendations. Apart from that an external consultancy firm was participating in the project. The project was coordinated by the Legal Service Division of the Board of Agriculture. Throughout the process there were continuous quality checks with the industries and sectors concerned.

The results

A preliminary task resulting from the project was to make an inventory of all the ordinances and recommendations and then separate out the ones causing administrative burdens. This resulted in a total of 293 ordinances and recommendations to be scrutinized.

A further breakdown into articles revealed that 1332 articles were the cause of administrative burdens. The distribution of the burdens was categorised as follows:

Number of articles	Category
56	The information requirement is deemed unnecessary and can be abolished.
115	Coordination with other agencies should be possible.
172	Information required to be transmitted in special form.
430	The regulations and/or recommendations are complex.

Cutting red tape: Now and in the future

Based on the above grouping of the problems arising from administrative burdens the following measures were agreed upon:

Abolish unnecessary legislation: This concerns the 56 articles deemed unnecessary.

Information and comprehension: This involves a linguistic review of legislation, informing about the implications of the law if it is complex and continuous review of the agency's website.

Availability and processing: This involves e.g. simplifying transfer of payment entitlements, tailor made information packages, shortening of processing times, increasing the amount of livestock registers, introducing keyword searches in regulations databases.

Less red tape: Increase the number of available forms on the web site, switching from application to registration.

Preventing administrative burdens in the future: Introducing continuous measurements, establishing reduction targets for each department, creating an ombudsman position for simplifying rules, annual review of regulations and introducing guidelines for simplifying EU legislation.

Source: Swedish Board of Agriculture

The Action Plan does not contain specific instructions for local and county public administrations, even if they are important actors to reduce administrative burdens through simplification, both in terms of reviews and action. However, there are some elements of the Action Plan, such as fewer forms and less reporting information, improving service and accessibility that facilitate the co-ordination between different authorities in a multi-level framework (see Chapter 5). Currently there is no specific co-ordination mechanisms with national authorities, but reforms to reduce burdens can be included in broader programmes aimed at improving regional and local economic growth. One of them is the "The regional growth programme" which the Swedish Agency for Economic and Regional Growth (NUTEK)

coordinates. According to a survey by NUTEK, in 2003, 71% of the municipalities were developing programmes aimed at improving or simplifying the permitting process for business.

The Ministry of Industry, Employment and Communications has followed up and updated the Action Plan, with the help of NUTEK. A central component of such follow-up is the development and application of a fair method of measuring the administration in enterprises caused by regulations. A reliable measurement method has been seen as an important pre-requisite for a decision to set up objectives for the reduction of the administrative burden for enterprises.

The new Government has recently launched a call for measures to be presented in spring 2007, as part of a new broad Action Plan. A more comprehensive measurement of administrative burdens will be completed in the coming months. NUTEK will continue to measure the areas that remain. The goal is that all measurements of administrative costs for businesses be completed in 2007. A quantitative target for a reduction of the overall administrative burden has recently been announced. The government has also set a target to reduce the overall administrative costs for businesses by 25% in 2010.

Measurements of administrative burdens

In June 2002, the Government commissioned the Institute of Growth Policy Studies (*Institutet för Tillväxtpolitiska Studier*, ITPS)[77] to develop a method of measuring administrative burdens. A proposal for such a method was presented to the Government in March 2003. In line with its commission, the Institute studied the countries that had made progress in the area of measuring administrative burdens, *i.e.* the Netherlands, Denmark and Belgium. ITPS found that the method used in the Netherlands was the most reliable, but also the most challenging and expensive. The 'Standard Cost Model' makes possible to see exactly what provisions in a law make most administrative demands on enterprises.[78]

In November 2003, the Government commissioned NUTEK to carry out trial measurements using the measurement method proposed by ITPS (see Box 2.16). The results were listed in a report in May 2004. At the same time, a proposal on how to carry out further measurements was presented. The trial measurement, which was conducted in the area of the value added tax (VAT), showed that the administrative costs for enterprises to administer this tax amounted to a total of SEK 2.8 billion per year.[79]

Box 2.16 NUTEK's work on measuring administrative burdens

After the pilot project in 2004, measuring the VAT, an evaluation of the method was made. This resulted in some further adjustments. A manual was written to support the continuity and similarity of future measurements. There is also an international manual that has been done within the international network. There are not so much variations in the content of the manuals; the difference is more concerns more the structure. Sweden has changed the structure of the manual and included a more detailed step-by-step guide on how to carry out the measurements. The Swedish manual has been used when introducing new participants in the administrative burden project in Sweden, mostly contact persons in public authorities and other business organisations.

As was done during the trial measurement in the VAT area, NUTEK proposed that further measurements should be carried out in close cooperation with business organizations, the responsible authorities and ministries. Cooperation in the development of the measurement method with other countries using the standard cost model has continued. According to the task, the measurement of the acts in the tax area was completed in February 2005 and the measurement concerning the Annual Reports Act was completed in May 2005. The commission to NUTEK also included the analysis of the areas that should be subject to future measurements. Such an analysis had been reported to the Government in November 2004. The analysis showed that tax, environmental and labour law regulations, in that order, are the regulations that require the greatest volume of administration in enterprises. Then follow the regulations contained in annual reports. Measurements in the areas of environment and agriculture and labour law are now done and have been reporteted during Spring 2006. In sum, this work requires at least another ten measurements during the remainder of the current term of office, finishing during 2007. Measurement results will be available for the four sets of regulations that give rise to about 65 per cent of all administration for enterprises.

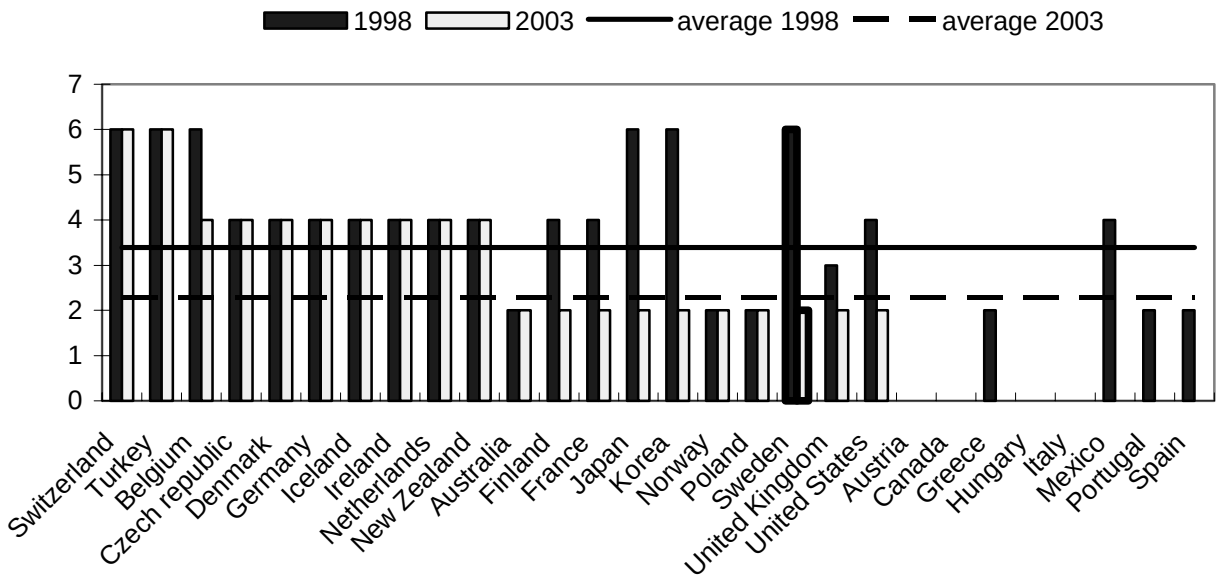
NUTEK has the government's assignment to carry out the Swedish measurements and that is being done in close cooperation with ministries, other public authorities and business organizations. NUTEK coordinates the baseline measurements and updates it, and together with the Ministry of Industry, Employment and Communications represents Sweden in the international context. A database containing results from the measurements is under construction and will serve as an instrument for public authorities and ministries in their work for better regulations.

As part of the efforts to measure administrative burdens, Sweden is participating in the OECD Red Tape Scoreboard Project, a way to exchange best practice and learn from other OECD countries. This activity has three purposes: to develop a methodology to measure and compare administrative burdens across OECD countries, based on the Standard Cost Model; to carry out comparative surveys of selected administrative burdens in OECD countries and to analyse reasons for cross-cutting differences in administrative burdens with a view to providing policy-advice and identify best practices on burden reduction strategies.

Authorisation procedures

A study regarding business permits was made by NUTEK in 2004. The objectives were to identify the most important permits needed when starting a business, and the average time needed for the authorities to administrate them. To carry out this research, NUTEK located a selection of all the permits needed to start a company. Then NUTEK contacted the relevant local and/or national authority with the intention of obtaining average processing times for the selection of permits. It was found that information about the average time often lacked.

Figure 2.6 License and permits, 1998 and 2003[1]



1. Licenses and permits systems reflect the use of 'one-stop-shops' and 'silence is consent' rules for getting information on and issuing licenses and permits.

Source: Conway, Paul et al., *Product Market Regulation in OECD Countries: 1998 to 2003*, Economics Department Working Papers, No. 419, OECD, Paris

The definition used by NUTEK for 'permission' was the following: when an application is sent to a public authority and a decision is made. This made the concept of average time for processing fairly easy to handle. It also captured the fact that the company in question needs a decision to be made in order to carry on the procedure, and thus entails a potential administrative burden. What affects the processing times is a variety of factors, especially what level of government is handling the process. In the case of the municipal level, municipalities have a relatively large degree of freedom as to how they want to handle the processing, what results in varying processing times (see Chapter 5). Internal or organisation issues that affect the process are, among others, the delegation of the task to a civil servant instead of a committee or in case several administrations are involved, *i.e.* a parallel process takes place instead of a sequential one. External factors such as workload or whether or not the applicant has filled in the application correctly, also contribute to increase the processing times.

Box 2.17 The average processing times: the 'F-tax note' and the registration for companies

The F-tax note:

Formally speaking the F-tax note is not a requirement in Sweden. However it is a de facto requirement since not having one, would make it very complicated for the companies clients to do business with the company. This means that every business in Sweden (more or less) has one. The goal when it comes to the F tax note is that 85% of the applications shall be processed – meaning a decision has been made – within three weeks. From January – April 2004 70% was processed within three weeks, and 79% within four weeks. Although these figures hides a lot of geographical variation:

Processing times	Processed within 3 weeks	Processed within 4 weeks
Stockholm	53%	64%
Linkjöping	80%	86%
Växjö	78%	86%
Malmö	74%	82%
Göteborg	77%	85%
Örebro	81%	87%
Västerås	78%	87%
Gävle	82%	87%
Östersund	73%	77%
Luleå	70%	79%

Registration of companies

For certain companies it is a prerequisite that they register with the Swedish Companies Registration Office (*Bolagsverket*: www.bolagsverket.se). This is the case for i.e. joint stock companies. Before the registration is complete the company does not actually exist. This makes a rapid and efficient handling process even more relevant. This agency displays their current processing time on their website. For the time being it is approximately four weeks. In 2003 the average processing time of a joint stock company was three weeks.

Source: NUTEK (2004), *Tillstånd vid företagsstart*, Stockholm

Use of ICT tools and e-government

The Swedish government attaches great importance to integrate ICT tools in the public sector, in order to provide individuals and businesses with the information they request regardless of the responsibility for the information is divided between agencies or between the state, municipalities and county councils.

A long term programme for modernising the public administration was initiated by the government in 2000. Better services for citizens and companies have been an important focus in the programme. One of the main instruments in this work has been the development of e-government. In the framework of the programme "Public Administration in the Service of Democracy" (see Section 1.2.), the Government has committed to make public administration more user-friendly and improve the scope for meeting stringent requirements in terms of the rule of law, democracy and efficiency. This will be accomplished by focusing in the following five tasks:

- Regularly setting targets and monitoring the performance of 24/7 e-government in various sectors of society;
- Initiating more permanent forms of collaboration between the central government, municipalities and county councils;
- Continuously assessing novel ways of reorganising public administration both to accelerate the development of e-services and to boost efficiency;
- More clearly defining targets for specific agencies' development of e-services;
- Shaping support measures to foster the development of services that afford major benefits for the public and businesses.

In Sweden the concept for this has been 24/7 agencies, which means that public agencies should be electronically available for information and services 24 hours a day on seven days a week.[80] The objective is for the public and business to be able to provide and obtain information, ask questions, and carry out other transactions when it suits them. The goals of the '24/7 Agency' programme are:

- Accessibility, irrespective of office hours and location;
- High-quality services and responses;
- Openness to user's opinions and ideas on how to improve public administration;
- Simple and fair rules;
- Optimal benefit to users through collaboration and continuous assessment and development of activities.

The Government has recently decided on a new strategy for the further development of e-Government in Sweden. The aim of the strategy is to make the public administration more efficient and to improve its service to citizens and businesses. This shall be accomplished by the following tasks:

- A more efficient information management within and between agencies;
- A faster and more secure handling of cases by electronic case handling;
- Implementing electronic procurement in all agencies;
- Stimulating he use of electronic signatures; and

– Better coordination and sharing of the agencies investments in IT.

In addition, several actions under the Government's Action Plan to reduce the administrative burden for enterprises are based on the use of information technology to improve the service to business and reduce their administrative burdens, for example through electronic filing of documents, one-stop shops, forms available for downloading from the agency's homepage etc.

One of the aims of the e-government programme is to make the contacts easier and the service better for businesses. An example is a pilot project where a one-stop shop has been developed for the handling of internet based applications for commercial traffic permits. To start a business in this field a permit is required from the County Administration Board (*länsstyrelsen*), but several other agencies are also involved in the process. In this system one can apply for a permit on the internet and the County Administration Board will handle all the contacts with other agencies involved electronically. This can reduce the time needed for the process substantially. The pilot project has been developed by the County Administration Board in Stockholm.[81]

Register for business formalities

NUTEK and six other authorities, which usually are involved in the start-up process of businesses, have initiated a project in order to create a start-up process that is more coherent and easier to overview by the entrepreneurs. Its focus is mainly on integrating and coordinating information services that agencies provide and create an overview on the start-up process of business.

The 'Entrepreneur's guide' on NUTEK's website[82] is aimed at all who run or want to run a company. The guide provides information and tools for starting and developing a company and is an entrance to government agencies relevant information for enterprises. It contains a database of more than 60 of the most important measures that enterprises could have to take. Some of them are measures which must be taken before start-up such as applying for permits and required registration, but also steps needed to be taken during the running of the business are included in the database. The database is regularly updated.

At local level, authorities are playing a more active role and some have started providing 'one stop shops', where businesses and people who are about to start a business only have to contact one person initially when dealing with the local authority (see Chapter 5).

Assessment. Administrative simplification is one of the main components of regulatory reform in The Action Plan to Reduce the Administrative Burden implemented by the Government has to be seen in a broader context: it is a way to encourage entrepreneurship and to improve the performance of the Swedish economy. Even if it is still early to assess the results of the initial efforts, the business sector has found that some of the simplification measures reported by ministries and agencies do not need implementation by means of official regulations, such as improvements in agencies' own websites and use of the Internet, or do not entail any substantial changes in regulations, but are a matter of combining two or more regulations in one.[83] This might hide an important factor that the Government should take into consideration: there are new regulations that are imposing additional administrative costs on companies that are not integrating part of the Action Plan.

The measurement of administrative burdens will help to have a systematic evidence on the actual size of the current burdens imposed, using a methodology that will be an information-based approach to developing a policy on burden reduction and the basis for the evaluation of policy initiatives taken. There is in Sweden already a concern about the burden reduction, but such a measurement can contribute to raise awareness at political level on the need to sustain initiatives and policies in this field.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. General assessment of current strengths and weaknesses

Sweden enjoys today strong economic performance while supporting specific policy priorities for social and environmental goals. This has been achieved through a number of changes in the institutional framework to consolidate sound public finances and maintain an effective macroeconomic policy. Significant reforms in the end of the 1980s and early 1990s opened a number of markets. In the last few years, Sweden has not been exposed to major economic crisis or regulatory failures. The state is seen as an appropriate tool for achieving the best results for the common good.

The current economic achievements, however, are no reason for complacency. Besides the impact of an ageing population putting further pressure on public finances, there is an increasing demand for higher regulatory standards, in particular for public services. Sweden needs to establish the conditions for greater product market opening, which can only be achieved with more exposure to competition and a more productive use of labour and capital, bolstering productivity growth. In order to maintain and develop the level of public welfare that Swedes enjoy at present, there is a need to allocate resources in public sector services appropriately. These resources have to be socially efficient and used in a cost-effective manner based on public priorities.

Meeting these challenges requires better regulatory policies and implementation through an institutional framework supporting the regulatory process. The most significant challenge is to set up a comprehensive, government-wide regulatory policy with the necessary institutional support to monitor and guide its implementation.

The Swedish approach has already demonstrated the complementarity of broad policy frameworks with decentralised initiatives at ministerial and agency level. Swedish regulatory management and reform is based on a sound basis of consensus-driven, high respect for the rule-of-law and transparent mechanisms. Important elements of a sound regulatory policy already exist. Sweden has high standards for law-making and strong institutional capacities to produce regulations. Well-functioning systems are in place in terms of forward-planning, co-ordination, consultation and communication. Efforts to measure and monitor administrative burdens imposed on businesses are consistent with OECD best practice. There is a long-standing tradition to use regulatory alternatives.

Nevertheless, Sweden does not have a comprehensive, explicit or published policy promoting a government-wide regulatory policy. As a consequence, regulatory policies are diffused across ministries and government agencies and not applied and enforced consistently across government. On the whole-of-government agenda, regulatory policy issues appear as parts of broader public sector reforms, primarily focusing on integrating competition gradually into the delivery of public services as well as easing administrative burdens for business. Notwithstanding its positive effects, this focus has distorted resources and diverted the attention of decision-makers away form broader regulatory quality issues such as RIA and the institutional set-up necessary to sustain regulatory policies.

5.2. Policy options for consideration

Policy options

This section identifies measures based on international consensus about good regulatory policies and on concrete experience in OECD countries that are likely to improve regulation in Sweden. They are derived from the recommendations and policy framework of the 1997 OECD *Report to Ministers on Regulatory Reform* and from the 2005 OECD *Guiding Principles for Regulatory Quality and Performance*.

1. Strengthen co-ordination and capacities and clarify roles among bodies responsible for regulatory reform.

Regulatory policies can only be successful if they include some mechanisms for managing and co-ordinating the achievement of reform, as well as monitoring and reporting on outcomes. In the Swedish regulatory governance structure, however, a multiplicity of bodies deals with regulatory reform. Not only are different ministries directly concerned with regulatory issues; a great number of government agencies play specific roles in promoting regulatory reform and regulatory quality across the administration. In some cases, the roles of these agencies are not clear enough, which leads to duplicity of tasks and uncertainty on the desired outcomes.

While a number of official guidelines provide references for co-ordination, there should be more focus and leadership in the regulatory process in Sweden. This does not necessarily mean to entrust a specific ministry with this task, but it requires that agencies themselves become engaged in the work, and take their own initiatives in a co-ordinated manner. While the specific traditions and context of Sweden should be taken into account, the OECD experience shows that in a wide range of countries, even with decentralised structures such as Denmark and the Netherlands, a certain degree of central co-ordination is important for a successful regulatory policy.

2. Set up an advisory body for regulatory reform to raise awareness at the political level.

Advisory bodies for regulatory reform have been set up in many OECD countries to assist governments in defining positions and options at the political level and on an ongoing basis. Advisory bodies are not only an approach to public consultation, but also a source of information and political support. They can have great influence on final decisions, depending on their status and authority, and should have a clear mandate or task within the regulatory process, either providing expertise or seeking consensus.

In Sweden, a central initiative with leadership at political level is needed to raise awareness and move the agenda of regulatory reform forward. While the existing Committees of Inquiry provide a source of useful expertise, they are bound by specific terms of reference and cannot set their own agenda. A permanent external advisory body to the government could help to move forward the policy agenda for regulatory reform on a standing basis. The composition and nature of this body would depend on the particular needs of the Swedish case, but it would reinforce the long tradition of consensus building, consultation and participation of stakeholders in the decision-making process. A key function of such a body would be to raise awareness of regulatory reform at the political level, serving as a reference point for other regulatory institutions, avoiding fragmentation of the regulatory policy agenda and ensuring that efforts made are focused, harmonised and effective. With a permanent structure, it could also support the work of Committees of Inquiry dealing with regulatory issues. The advisory body could play an active role in the design of administrative simplification strategies and support the work on the evaluation of future legislation.

The Government elected in September 2006 has stated in the Budget Bill for 2007 that an official body would be established, to *inter alia* scrutinise laws and other regulations affecting businesses. However, when writing the report, the exact functions of that body were still to be determined, including whether it would have an advisory role, involving the private sector or be supported at the political level.

3. Streamline the current RIA system and improve its quality control.

The use of RIA is widespread in OECD countries. While there is a variety of RIA systems, depending on historical, cultural, economic and social conditions, countries tend to see RIA as an adjunct to good decision-making. This implies that RIA systems are becoming more dynamic, with a strong focus on empirical methods and taking into account effects on trade, innovation, and competition.

In the current regulatory framework, Sweden has different kinds of assessments. Apart from the fact that various legal instruments act as the basis for impact assessments, depending mostly on the nature of public authorities concerned, a wide range of institutions participate in the assessment and quality control of RIAs, which reflects the very decentralised nature of the Swedish governance structure. A number of key elements to conduct appropriate RIAs are already in place, such as guidelines for regulators, integration of use of alternatives, etc. The challenge is, however, to streamline the current system to make RIA a more effective regulatory tool for decision making.

The shortcomings of the current system cover different aspects. First, the organisational structure of the assessment system presents some limitations. The division between different impact assessments carried out by agencies, Government offices and Committees of Inquiry does not provide a single framework for analysis and implementation. Except for the special emphasis on SMEs issues, there are no uniform criteria for evaluation by the different institutions concerned. The current instructions do not prescribe any formal or substantial requirements to be followed in the RIAs. As in other OECD countries, RIA should be seen as an integrated tool that provides decision makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. For Sweden this would imply that RIA should be carried out in an integrated, uniform fashion. A single Ordinance that applies for all institutions concerned with law-making and regulations could help to standardise procedures and avoid duplication of tasks. RIAs could then be published in a single document, which could contribute to increased transparency in the system.

Second, the scope of RIA should be revised. At present, a defining trait of the RIA system in Sweden is the separate treatment for SMEs. Even if any Swedish agency considering issuing a subordinate regulation should, *inter alia*, investigate the related cost as well as other consequences, and the Committee Ordinance makes clear that general cost calculations and consequences have to be present in all reports of Committees of Inquiry, the system remains fragmented. Sweden should consider integrating the SME perspective in a general RIA that would apply for all new or amended legislation and regulations. This should, however, be complemented with an evaluation of the goals the Government wants to achieve and the priorities for the system. Sweden should consider the possibility to target RIA in a more efficient way, with clearer criteria for when and how to prepare RIAs. The review of any single piece of legislation and regulation requires human and technical resources at different levels, as well as strong political support from the Government and an active participation from stakeholders at the initial stage of the process.

Thirdly, there is an important gap in the quality control of RIAs. This is linked to different factors. On the one hand, the model used for impact analysis does not provide for systematic assessments. The quantification of costs and benefits is not carried out for all pieces of legislation and there is no mechanism, except for the RIA on SMEs, to evaluate if the quantitative assessment has been done properly. As a consequence, cost-benefit analysis is rarely used in the decision-making process, even if, in a consensus driven system, there is a joint drafting procedure requiring general agreement on the proposals

being circulated. On the other hand, and this has to do with the institutional set up for regulatory reform in Sweden, there is no single oversight body responsible for the quality control of all RIAs carried out. The lack of a lead unit, in combination with an incoherent application of quality assurance tools, means that the scrutiny of draft regulations may vary significantly.

This particular institutional set up does not allow for imposing standards for quality control and mechanisms to supervise the real implementation of regulatory tools such as RIA and assessment criteria for regulatory quality. This results in RIAs of uneven quality and draft regulations whose scrutiny varies significantly. An integrated approach to the institutional support of regulatory policies may benefit Sweden in terms of creating synergies and promoting a more efficient, coherent and transparent implementation of regulatory policies.

Sweden should, therefore, consider introducing a comprehensive, integrated and uniform system for RIA, based on a single ordinance that provides clear guidance on when and how to undertake RIAs. This should be complemented with clarification of the role of institutions in charge of their quality control: the Better Regulation Unit in the Ministry of Industry, Employment and Communications, the Swedish National Financial Management Authority and the Swedish Agency for Economic and Regional Growth (NUTEK). The different actors of the regulatory process, the Government Offices, Committees of Inquiry and agencies, should be given more resources to undertake RIAs. This could consist of appointing people to be responsible for RIA, but also of technical capacity to integrate quantitative analysis in the decision-making process.

4. Continue efforts on administrative simplification and SME policy, improving the use of ICT mechanisms.

Administrative simplification is an integrated part of many governments' regulatory reform policies and broader programmes for public governance. Simplification efforts have evolved in recent years mainly in the context of growing pressure from businesses to reduce burdens and improve economic performance. Simplification efforts are embedded in broader regulatory quality issues and should supplement more fundamental regulatory reforms.

As in many OECD countries, burden reduction policies are a priority on the political agenda in Sweden. Administrative simplification strategies should focus on two dimensions: *ex ante* control of the burden introduced by new regulations (a flow concept) and *ex post* reform of existing burdensome regulation (a stock concept). While some OECD countries have strong *ex ante* strategies, others put their simplification efforts on the review of regulations *ex post*.

An important trend amongst countries is to avoid the creation of administrative burdens by improving rule making *ex ante*, operating procedural controls prior to the introduction of new legislation or regulation. In many OECD countries, this control is mainly done during the RIA process. In New Zealand, for instance, a specific Business Compliance Cost Statement is to be prepared for all regulatory proposals having "red tape" implications for business, in order to ensure that compliance costs of future policy measures are fully considered and kept as low as possible. In the Netherlands there is an assessment system for new legislation which includes the assessment of administrative burdens. In Denmark, economic and administrative consequences for the business sector are one of the areas of the impact assessment. In its RIA system, and not only in relation to SMEs as is the case now, Sweden should integrate the assessment of administrative impacts that result from new or amended regulation. The system could also be improved by integrating an automatic follow-up process: regulations would be reviewed after they are implemented to ensure that they are having the intended effect. This allows checking the performance of regulation against initial assumptions and is a powerful adjunct to *ex ante* RIA.

Administrative simplification consists mainly of setting priorities and identifying the areas where the burdens are to be reduced. In most OECD countries, governments are increasingly anchoring simplification strategies on factual evidence of burdens. The administrative simplification work has to be oriented not only towards simplification and improved methods, but also towards quantitative reductions. The former Swedish Government, following a resolution by the Parliament, launched an important Action Plan to Reduce Administration for Enterprises. This initiative provided a good start, with in total 310 proposals for simplification which had been identified by ministries and agencies. The new Government has recently launched a call for measures to be presented in Spring 2007. The measures in question will form the basis for a new broad Action Plan. A more comprehensive measurement of administrative burdens will be completed in the coming months. NUTEK will continue to measure the areas that remain. The goal is that all measurements of administrative costs for businesses be completed during 2007.

In the last few years, administrative simplification efforts have evolved in the context of growing pressure from businesses to reduce and improve economic performance. OECD countries are confronting key questions: What impacts can efforts to reduce administrative burdens have on other efforts to improve public sector performance? How can co-ordination at different levels of government be improved? What else can governments aim to achieve, to further improve business conditions? How can obstacles to change of the administrative culture be overcome more easily and how can burden reduction efforts be sustained over time?[84] These are also valid for the Swedish case: the Swedish Government should supplement and reinforce efforts on administrative simplification, integrating the Action Plan to Reduce Administration for Enterprises in a broader programme for regulatory quality, supported at political level, strengthening transparent processes and reinforcing consultation mechanisms with stakeholders that are directly affected by administrative burdens.

Sweden should continue its efforts to promote SME policy and integrate the SMEs' perspective to reduce administrative burdens. This should reflect the recognition that this sector is less well placed to deal with administrative requirements. But there is always the question whether special attention should be paid to SMEs: perhaps the economy as a whole would benefit from the same measures. Enterprises in Sweden have to comply with a great number of forms from different agencies. This implies costs in terms of money and time for entrepreneurs. Even if Sweden is well placed compared to other countries, the reduction in the time to start-up a business has always to be accompanied by a streamlining of the necessary procedures.

The use of ICT mechanisms for administrative simplification should be strengthened in Sweden. In terms of registers of formalities, the Entrepreneurs' Guide could be improved. The establishment of centralised government information portals is a key element in any e-government plan. This is not only to provide relevant government information, but also to conduct a wide range of transactions with the government. It could be envisaged to establish a one-stop shop as central entry point for procedures for enterprises.

5. Reinforce efforts in the measurement of administrative burdens.

Recent experiences in OECD countries show that more quantitative approaches are increasingly used as the primary source for assessing and quantifying the size of administrative burdens. In fact, a lack of objective measures of existing administrative burdens can make it difficult to measure objectively the effectiveness of programmes; it also impedes the targeting of burden reduction policies and programmes towards the areas of greatest need. This explains the growing efforts in OECD countries to assess burdens more systematically and develop evidence on administrative burdens, both to properly identify the burdens and target reform priorities, but also to track burdens over time and to measure reform success.

Sweden is fully embarked on a process to measure administrative burdens, in line with good practice at international level. The challenge is to extend the efforts to those regulations that have not been covered

in the initial process. Special emphasis should be put on tax procedures, environmental and labour regulations which can be linked to the promotion of SMEs. As a reflection of the political commitment now underpinning this process, a quantitative target for a reduction of the overall administrative burden has recently been announced in the Budget Bill for 2007. The recently elected Government has set a target to reduce the overall administrative costs for businesses with 25% in 2010.

6. Strengthen the governance of sectoral economic regulators.

Sectoral economic regulators are increasingly used in OECD countries when competition is established in formerly monopolistic industries, including utility sectors with network characteristics such as energy and telecommunications, and in other sectors where sector-specific prudential oversight is needed. The expected benefits are to protect market interventions from direct political interference and from the influence of specific interests, including the firms regulated. Independence goes hand in hand with transparency, stability and expertise.

In the current structure of the Swedish model of governance, sectoral economic authorities have the same status as other Government agencies even if they have some specific powers. This provides them with significant independence, but does not ensure that all tasks and powers as regulator can be fully accomplished and granted, particularly those linked with quasi jurisdictional powers, dispute resolution and sanctions. Since their design differs from market to market, the limitations of every institution vary accordingly. Common problems, however, should be highlighted to explore ways of improvement.

Some features of the governance structure of economic sectoral authorities could be streamlined, in particular to the appointment process and governing structures. There could be scope for improving the independence through nominating governing boards, as is the case in many OECD countries, where members are appointed for overlapping periods of time. In this respect, accountability mechanisms could be improved by reinforcing the evaluation of their conduct and the rationale for their decisions.

An additional limitation of the governance arrangements of the regulatory authorities in Sweden is the fact that, with a few exceptions, they generally lack direct powers to impose sanctions, since they do not have jurisdictional capacity as an agency. In the Swedish judicial system, administrative courts are responsible for call on sanctions. This situation is affected by the fact that there is no unified appeal system between sectoral regulators and the Competition Authority. Decisions from the sectoral regulators tend to be appealed to administrative courts, while decisions by the Competition Authority tend to be appealed to the Stockholm City Court and the Market Court. A revision of the appeal system in Sweden could contribute to improve co-ordination between sectoral regulators and the Competition Authority, with a unified jurisdictional approach. A Committee of Inquiry has been commissioned to study the efficiency of competition law enforcement, including the appeal process.

NOTES

1. OECD (2005), *OECD Economic Surveys. Sweden*, Volume 2005, Issue 9, Paris, August, p. 22

2. Statistics Sweden (2004), *National Accounts 1993-2004*, Table 9

3. OECD (2004), *OECD Economic Surveys. Sweden*, Volume 2004, Issue 4, Paris, p. 93

4. See Lindbeck for further analysis of the political economy of the consensus making in Sweden. Lindbeck, Assar (1997), "The Swedish Experiment" in *Journal of Economic Literature*, Vol. 35, No. 3, September.

5. A complete analysis of the different co-ordination mechanisms between levels of government in Sweden from a regulatory perspective can be found in Chapter 5.

6. There are nine ministries and around 300 government agencies in Sweden.

7. The Instrument of Government sets out in Art. 7 of Chapter 11 that "no public authority, including the *Riksdag* and the decision-making bodies of local authorities, may determine how an administrative authority shall decide in a particular case relating to the exercise of public authority vis-à-vis a private subject or a local authority, or relating to the application of law".

8. Christensen, Jørgen Grønnegård / Kutsal Yesilkagit (2005), *Delegation and specialization in regulatory administration: A comparative analysis of Denmark, Sweden and the Netherlands*, (forthcoming publication)

9. Swedish National Financial Management (2003), *Performance Management in Swedish Central Government*, Stockholm, p. 3

10. An example is provided by the Swedish Food Act. This small law of 35 sections and some six pages has been supplemented by more than 100 agencies statutes totalling over 1,800 pages.

11. Sterzel, Fredrik (2001), *Simplifying EU Regulations. Lessons from Swedish Regulatory Experiences*, Stockholm, p. 8

12. See Chapter 3 on Competition in Sweden for a more in depth discussion of the challenges faced in terms of competition policy.

13. See Chapter 3 on Competition in Sweden.

14. Ministry of Finance (2004), *The Long-Term Survey 2003/04*, Stockholm

15. Ordinance 1977/78:115

16. Ordinance 1981/82:118 on measures directed to SMEs and about the direction of the innovation politics.

17. Ordinance (1982:668) concerning government authorities' collection of data from business operators and local authorities.

18. Ordinance 1995:1322

19. Bill 1997/98:136

20. Kommittéförordning (1998:1474)

21. Förordning (1998:1820) om särskild konsekvensanalys av reglers effecter för små företags villkor

22. Bill 1999/2000:86

23. Regulatory quality is defined by a framework in which regulations and regulatory regimes are efficient in terms of cost, effective in terms of having a clear regulatory and policy purpose, transparent and accountable. OECD (2004a), *Building Capacity for Regulatory Quality: Stocktaking Paper*, GOV/PGC(2004)11, Paris, April

24. OECD (2002), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris

25. Lindbeck, Assar (1997), "The Swedish Experiment" in *Journal of Economic Literature*, Vol. 35, No. 3, September, p. 1280

26. Verksförordningen (SFS 1995:1322)

27. Förvaltningslagen (1986:223)

28. Kommittéförordning (1998:1474)

29. Förordning (1998:1820) om särskild konsekvensanalys av reglers effecter för små företags villkor

30. There are, at present, nine ministries in Sweden: Ministry of Agriculture, Food and Consumer Affairs; Ministry of Defence; Ministry of Education, Research and Culture; Ministry of Finance; Ministry of Foreign Affairs; Ministry of Health and Social Affairs; Ministry of Industry, Employment and Communications; Ministry of Justice and Ministry of Social Development.

31. www.esv.se

32. A checklist is available at the web www.esv.se/konsultstod/verksamhetsstyrning/konsekvensutredning

33. www.nutek.se

34. Ordinance on the special impact analysis of rules on small enterprises (1998:1820)

35. For more information on the role of NUTEK concerning RIA see Section 3.3.

36. www.verva.se

37. www.kommers.se

38. Gullers Grupp (2004), *EU:s inre marknad i Sverige*, Gullers Grupp Informationsrådgivare AB 2004, Stockholm

39. The main results of a survey undertaken on behalf of the National Board of Trade indicate that only half of the business participating in the exercise knew what the internal market was, and only 6% considered the EU market as their home market, what shows big gaps in the knowledge held by enterprises on the EU market. Kommerskollegium (2005), *Visst är EU vår hemmamarknad – nästan all vår export går dit*, Stockholm

40. Sterzel, F. "How Does the EU Hinder Swedish Deregulation?", *EU and official Swedish regulations*, Report, September 1999, p. 15 Data are taken from a survey carried out by Swedish Employers Confederation (Svenskt Näringsliv SAF) and the Swedish Agency for Public Management (Statskontoret).

41. For a detailed description of inspection and supervision at local level see Chapter 5.

42. Finansdepartementet (2004), *Tillsyn*, Stockholm, SOU 2004:100

43. Rättsprövningslagen (2006:304)

44. See also Chapter 3 on Competition.

45. Ordinance 1995:1322, Article 27

46. www.svensktnaringsliv.se

47. www.swedac.se

48. www.fi.se

49. OECD (1997), *Regulatory Impact Analysis: Best Practices for Regulatory Quality and Performance*, Paris

50. OECD (2005), *Guiding Principles for Regulatory Quality and Performance*, Paris

51 The Chancellor of Justice, the Prosecutor General, the central administrative boards and the county administrative boards come under the Government. Other State administrative authorities come under the Government, unless they are authorities under the *Riksdag*, according to the present Instrument of Government or by virtue of other law. Thus the Governmental agencies must obey the Government. The Government guides the operations of the agencies through (laws and) ordinances, budget documents and management by results. The Government also decides upon appointments to senior posts and organisational form. On the other hand, the government cannot interfere or determine how an agency should decide in a particular case relating to the exercise of public authority vis-à-vis a private subject or a local authority, or relating to the application of law. The agencies report back to the Government about their results and achievements, e.g. through annual reports. The agencies also list their regulations and general recommendations. This list is annually reported to the Government.

52. Swedish Cabinet Office (1995), *Control by Regulation. Checklist for Legal Drafters*, Stockholm, [Memo 1995:2]

53. Swedish National Audit Office (2004), *Simplification of Rules for Companies*, Stockholm RiR 2004:23, p. 24

54. The Committees Ordinance 1998:1474

55. The Committees Ordinance 1998:1474. Please note that this is an unofficial translation of the original Swedish text.

56. *Kommittéhandboken,* Ds 2000:1

57. Swedish National Audit Office (2204), *Simplification of Rules for Companies*, Stockholm, RiR 2004:23, p. 33

58. Government Agencies and Institutes Ordinance 1995: 1322, article 27

59. Swedish National Audit Office (2204), *Simplification of Rules for Companies*, Summary, Stockholm, RiR 2004:23

60. www.nnr.se

61. The quality and scope of the RIAs is analysed on the basis of the assessment of eleven quality indicators. They are based on the regulations laid down in the SimpLex Ordinance and the Government Agencies and Institutes Ordinance. NNR has also included two more indicators considered as 'self-evident in terms of rule of law and scope of quantification'.

62. NNR, *Regelindikator*, 2005; NNR, *Regelindikator*, 2002.

63. The handbook is publicly available at the following address in Swedish www.regeringen.se/content/1/c4/23/17/88dc440c.pdf

64. OECD (1997), *OECD Report on Regulatory Reform*, Vol. I, Paris, p. 221

65. One example is the Directive 2006/32/EEC of the European Parliament and of the Council of Energy End-Use. The Swedish Government has assigned a one-man committee the task to give proposals on how the Directive should be conducted, which takes into account, *inter alia*, business consequences, as well as personal and socio-economic consequences.

66. Consultation Ordinance, 1982:668

67. According to NNR, in only 48% of the cases the mechanisms used for consultations with concerned sector and companies were reported in the RIAs. Board of Swedish Industry and Commerce for Better Regulation (2005), *How High is the Quality of the Swedish Central Government's Regulatory Impact Analysis (RIA) in the Business Sector?*, The NNR Regulation Indicator for 2005, Stockholm, p.15

68. For more details see OECD (2005), *Designing Independent and Accountable Authorities for High Quality Regulation*, Proceedings of an expert meeting held in London on January 10-11, 2005, Paris

69. www.pts.se

70. www.stem.se

71. www.kkv.se

72. See Chapter 3 for a detailed description of the relationship between the Competition Authority and government agencies applying economic sector specific legislation.

73. www.riksrevisionen.se

74. The costs have been estimated by the Board of Swedish Industry and Commerce (NNR) and no official measurement of the actual total costs has so far been conducted. Board of Swedish Industry and Commerce for Better Regulation (2005), *How High is the Quality of the Swedish Central Government's Regulatory Impact Analysis (RIAs) in the Business Sector?*, The NNR Regulation Indicator for 2005, NNR, Stockholm, p. 2

75. Munnich, Miriam (2004), *The Regulatory Burden and Administrative Compliance Costs for Companies*, Survey, Confederation of Swedish Enterprise, Brussels, p. 5; Board of Swedish Industry and Commerce for Better Regulation (2003), *The NNR Regulation Indicator for 2003*, NNR, Stockholm, p. 2

76. www.esv.se

77. www.itps.se

78. The Standard Cost Model (SCM) is a tool for simplification; it is not a statistic method. The process when measuring a specific regulation can be divided into a baseline measurement and following updates. The SCM has a bottom-up perspective. When using the SCM, regulations are broken down into a range of manageable components that can be measured and through business interviews it is possible to specify in details how much time companies use to fulfil them. On the basis of a couple of basic cost parameters, the SCM then estimates the costs for a normally efficient business of completing each activity. Using the measurement method as an instrument it is possible to follow the change in administrative costs of enterprises over time. As a result of the measurements potential simplifications for enterprises and agencies can be identified, comparisons can be made with other countries and regulatory reform can be followed up in relation to the objectives set. For further information see: *www.administrative-burdens.com*

79. Ministry of Industry, Employment and Communications (2005), *The Swedish Government's Action Plan to reduce administrative burden for enterprises*, Stockholm, p. 5

80. For further information see *www.sweden.gov.se/content/1/c6/03/03/93/0377bd22.pdf*

81. More information available at *www.ab.lst.se/tillstand/yrkestrafi*k

82. The Entrepreneur's Guide is available at www.foretagarguiden.nutek.se. There is also an English version available.

83. Board of Swedish Industry and Commerce for Better Regulation (2005), *How High is the Quality of the Swedish Central Government's Regulatory Impact Analysis (RIAs) in the Business Sector?*, The NNR Regulation Indicator for 2005, NNR, Stockholm, p. 4

84. OECD (2006), *Cutting Red Tape: National Strategies for Administrative Simplification*, Paris.

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ANNEX I. SECTORAL REGULATORS IN SWEDEN

Name of Agency	Laws and rules	Institutional and legal status	Sectors under the agency	Tasks	Independence and accountability
Järnvägsstyrelsen **(Swedish Rail Agency)**	Ordinance of the Swedish Rail Agency (2004:527) The Railways Act (2004:519) The Railways Ordinance (2004:526)	Independent Swedish agency. It is subject to general guidelines from the government, but is independent in its application of these guidelines to individual cases. The Swedish Rail Agency is under the scope of the Ministry of Industry, Employment and Communications.	Railway service	Supervision of the general quality and safety of rail, tunnel and urban transport system Overall responsibility for an efficient and competitive railway market. Supervise and bring forth disputes according to the railway act (2004:519) Granting of permits to conduct rail transports, manage railway-infrastructure, put subsystems into use etc.	Director General with a board of government appointed members. Annual budget document /appropriation directions (*regleringsbrev*) stating the goals of the agency.
Post och Telestyrelsen **(National Post and Telecom Agency)**	Ordinance with instructions for The Post and Telecom Agency (1997:401)	The National Post and Telecom Agency is independent in its handling of individual cases, but are subject to general guidelines. Independent advisory body	Telecommunications, IT, radio communications and postal services.	Licensing; managing the numbering plan; allocates frequencies; international co-ordination; radio transmitters licensing; investigates cases of radio interference; supervise price trends	General director with a board of 5- 10 members. Annual budget document /appropriation directions (*regleringsbrev*) stating the goals of the agency. Annual fee from businesses in the sectors covered by the agency.
Energimyndigheten **(National Energy**	Ordinance with instructions for the	Energimyndigheten is an independent body.	Electricity and natural gas	Tariff regulation, supervise access to the grid; issue permits for construction; set operating standards; grant licences for gas	Board and DG appointed by the government. The Chief Executive of the

Agency) **Regulator:** The Energy Markets Inspectorate, which is an autonomous part of the Swedish Energy Agency.	National Energy Agency (2004:1200)			supply; issue prudential regulations;	Energy Markets Inspectorate and the Surveillance Committee appointed by the government. Time limit: 6 years (renewable) for the DG and the Chief Executive of the Energy Markets Inspectorate 3 years (renewable) for the board and the Surveillance Committee. Annual budget document /appropriation directions (*regleringsbrev*) stating the goals of the agency.
Luftfartstyrelsen **(Swedish Civil Aviation Authority)**	Ordinance with instructions for the Swedish Civil Aviation Authority (2004:1110)	The authority is independent in its handling of individual cases, but are subject to general guidelines	Civil Aviation	The Swedish Civil Aviation Authority is responsible for regulations and inspections within Swedish civil aviation and shall supervise, analyse and evaluate the development of the sector as well as provide expertise in issues including physical planning, the environment, emergency planning and contingency planning.	Director General with a board of government appointed members. Annual budget document /appropriation directions (*regleringsbrev*) stating the goals of the agency.
Finansinspektionen **(The Swedish Financial Supervisory Authority)**	Ordinance with instructions for The Swedish Financial Supervisory Authority (1996:596)	Finansinspektionen is under the scope of the Ministry of Finance.	Banks and other credit institutions, securities companies and fund management companies, stock exchanges, authorised marketplaces and clearing houses, insurance companies, insurance brokers	Issues prudential rules and regulations; grant and revokes licences; examines the risks and control systems in financial companies; supervises compliance with laws and regulations; assesses whether existing legislation needs to be amended; investigates cases of suspected offences and share price manipulations; monitor public disclosure of information by companies	The DG is appointed by the executive collectively (the government). With no fixed time limit. Annual budget document /appropriation directions (*regleringsbrev*) stating the goals of the agency.

			and friendly societies		

ANNEX II. LEGAL STATUS AND GENERAL DESCRIPTION OF NATIONAL POSTAL REGULATORY AUTHORITIES

Country/ Regulator	**Year of creation/ beginning of postal regulation**	**Combined with other non postal sectors**	**Legal status**
Austria: Ministry of Transport, Innovation and Technology, Dept. for Postal Affairs	1999	Ministry	Ministry of Transport, Innovation and Technology, Department for Postal Affairs
Denmark: Road Safety and Transport Agency, Postal Supervisory Department	1995	Other, road safety and transport	Authority under the auspices of the Ministry of Transport
Finland: Finnish Communications Regulatory Authority	1994	Yes, Telecom	An independent agency
France: ARCEP, Electronic communications and postal regulatory authority	2005	Yes, Telecom	Independent Administrative Authority
Germany: Federal Network Agency	1998, modified 2005	Yes, Telecom, Electricity and Gas	Higher Federal Authority
Ireland: Commission for Communications Regulation	2002	Yes, Telecom and other	
Italy: Ministry of Communications	1999	Ministry	Ministry of Communications
Netherlands: Independent Post and Telecommunications Authority	1997	Yes, Telecom	Public body created by law
Spain: Infrastructure Ministry	1998	Ministry	Department attached to the Vice-Minister
Sweden: National Post and Telecom Agency	1994 (postal services)	Telecom, IT and radio	Independent regulatory authority
Switzerland: Postreg	2004	Ministry	Administratively attached to the Secretary General of the DETEC (Infrastructure ministry)
United Kingdom: PSC Postal Services Commission (PostComm)	2000	No	Independent Regulator, Non-Ministerial Government Department

Source: WIK report 2004 and CERP 'compendium' adjusted by the OECD Secretariat

ANNEX III. INDEPENDENCE OF SECTORAL REGULATORS

Independence of national postal regulatory authorities

Country/Regulator	Appointed by	Head/ Board	Terms	Financing source	Employees (professional)
Austria: Ministry of Transport, Innovation and Technology, Dept. for Postal Affairs	Minister of Post	Director	None	State Budget	-
Denmark: Road Safety and Transport Agency, Postal Supervisory Department	Minister of Post	1 Director	No	State budget	6 (3) WIK / 8 CERP
Finland: Finnish Communications Regulatory Authority	The President	1	Indefinite	Net budgeting: all expenses are covered by income from operations, (fees for public services)	9 (2) WIK / 5 (3 are part-time) CERP
France: Ministry of Industry/ARCEP	President (3), President of the Senate (2), President of the National Assembly (2)	7 Board	6 years, not renewable	State Budget	-
Germany: Federal Network Agency	Nominated by the Federal Government upon the proposal of the Advisory Council. Appointed by the President	3 President, two Vice-Presidents	5 years	Government	-
Ireland: Commission for Communications Regulation	Minister of Post	1-3	3-5 years, max 2 terms	Industry Levy on USP's	5 WIK / 4 CERP
Italy: Ministry of Communications	Prime Minister	1 Head	5 years	State budget	20
Netherlands: Independent Post and Telecommunications Authority	Minister of Post	3	4 years	Public finance and own income	4 (4) WIK / 100 CERP
Spain: Ministerio Fomento, Subd. Regulación Serv. postales	Minister of Fomento	1 Head	None	National budget	52 WIK / 50 CERP
Sweden: National Post and Telecom Agency	Government	Director-General	6 years	Licensing fees	6 (6) WIK / 15 CERP
Switzerland: Postreg	Secretary General (SG) of the DETEC	Director	No	Financed by the State Budget	7/ 6
United Kingdom: PSC Postal Services Commission	Secretary of State for Trade and Industry	7	3 years	Licensing fees	37 WIK / 38 CERP

Source: WIK report 2004 and CERP 'compendium' adjusted by the OECD Secretariat. Note: in certain cases, numbers also correspond to telecommunications authorities.

Independence of regulatory institutions: the case of telecommunications

Country/Regulator	Regulator appointed by	Term of office	Financing Source	Reports to	Decisions can be overturned by[a]
Australia: Australian Communications Authority (ACA) and Australian Commission and Competition Commission (ACCC)	The Governor-General	Not more than 5 years	Budgetary	Department of Communications and the Arts	None
Austria: Telecom Control (TKC)	The Government	5 years	Industry fees	Legislature (and Federal Ministry for Science and Transport)	None
Belgium: Belgian Institute for Postal Service and Telecommunications (BIPT)	The Minister of Telecommunications	6 years	Fees	No reporting responsibility except publishing an annual report	None
Canada: Canadian Radio Television and Telecommunications Commission (CRTC)	The Governor in Council	5 years	Fees	Department Industry Canada (and the Legislature)	The Governor in Council
Czech Republic: Czech Telecommunications Office (CTO): as a part of the Ministry of Transport and Communications	The Minister of Transport and Communications	Indefinite	Budgetary	Ministry of Transport and Communications	None
Denmark: National Telecom Agency (NTA)	The Minister of Research and Information Technology	Indefinite	Fees and budgetary	Ministry of Research and Information Technology	Telecommunications Complaints Board and Telecommunications Consumer Board
Finland: Telecommunications Administration Centre (TAC)	The President	Indefinite	Industry fees	Ministry of Transport and Communications	None
France: Autorité de la régulation des Télécommunications *(ART)*	The President (commissioners are appointed by the President and the Legislature)	6 years	Budgetary	Annual report to the Government and the Legislature	None
Germany: Regulatory Authority for Telecommunications and Post (Teg TP)	The President	5 years	Industry fees and budgetary	Legislature every two years	None
Greece: National Post and Telecommunications Commission (EETT)	The Minister of Transport and Communications	5 years	Industry fees	Ministry of Transport and Communications	None
Hungary: Communications Authority	The Minister of Transport, Communications and Water Management	Indefinite	Industry fees	Ministry of Transport, Communications and Water Management	The Minister
Ireland: Director of Telecommunications Regulation (ODTR)	The Minister of Public Enterprise	Indefinite (can only be removed by the Parliament)	Industry fees[b]	Ministry of Public Enterprise	None
Italy: Autorita Garante nelle Communicazioni (AGC)	The Prime Minister (commissioners are appointed by the legislature)	7 years	Budgetary (plan to collect industry fees)	No reporting responsibility except publishing an annual report.	None
Japan: Ministry of Posts and Telecom (MPT)	–	–	Budgetary	–	None

Country/Regulator	Regulator appointed by	Term of office	Financing Source	Reports to	Decisions can be overturned by[a]
Korea: Korea Communications Commission (KCC) (a semi-independent body in the Ministry of Information and Communication – MIC)	The President	3 years	Budgetary	–	None
Mexico: Comisión Federal de Telecomunicaciones (Cofetel), decentralised body of the Ministry of Communications and Transports	President of Republic (upon advice of the Minister of Communications and Transports)	No fixed term	State budget	No reporting responsibility except publishing an annual report.	The Minister or a representative designated by the Minister
Netherlands: Independent Post and Telecommunications Authority (OPTA)	The Minister of Transport, Public Works and Water Management	4 years	Industry fees	Annual report to the Ministry of Transport, Public Works and Water Management	None
New Zealand: Commerce Commission (competition authority)	The Minister of Commerce		Budgetary	(Outcomes monitored by the Government)	None
Norway: Norwegian Post and Telecommunications Authority (NPT)	The Government	Indefinite	Industry fees	Ministry of Transport and Communications	The Norwegian Telecommunications Appeals and Advisory Board. Ministry of Transport and Communication (matters of political or fundamental importance)
Poland: Ministry of Post and Telecommunications	–	–	Budgetary	–	None
Portugal: Instituto das Comunicaçoes de Portugal (ICP)	The Council of Ministers	3 years	Industry fees	Ministry of Equipment	The Minister
Spain: Comisión de Telecomunicaciones (CMT)	The Government. Needs approval from the Parliament.	5 years	Industry fees[c]	Ministry for Development (General Secretariat for Communications)	None
Sweden: National Post and Telecom Agency (NPTA)	The Government	6 years	Industry fees[c]	Annual report to the Ministry of Transport and Communications	None
Switzerland: Communications Commission (ComCom), and Federal Office for Communications (OFCOM)	ComCom: the Federal Council OFCOM: the Minister	4 years Indefinite	ComCom: Industry fees OFCOM: Industry fees and budgetary	ComCom: Annual report to the Federal Council (Confederation's executive). OFCOM provides information on its management of the sector to the Ministry of Environment and Transport	None
Turkey: Ministry of Transport and Communications	–	–	Budgetary	–	None
United Kingdom: Office of Communications (OFCOM)	The Minister of Trade and Industry	5 years	Industry fees	Ministry of Trade and Industry	Monopolies and Mergers Commission
United States[d]: Federal Communications Commission (FCC)	The President. Needs to be confirmed by the Senate	5 years	Industry fees and budgetary	Legislature	None

Note: "–" indicates no information available.

a) In most countries, the independent regulator's decision can be overruled through a court decision. However, in many countries, while the court can nullify the decisions of the independent regulator, it cannot impose a new decision on the issue.

b) Periodical contribution by operators.

c) Periodical contribution by operators based on turnover.

d) Entries for the United States only reflect telecommunications regulation at the federal level. *Source*: Gönenç *et al.* (2001). STI DSTI/ICCP/TISP(99)15/Final.

Independent regulatory agencies in the Electricity Supply Industry (ESI)

Country	Scope	Board Members	Length of terms	Possibility of renewal	Main Source of Financing	Main functions
Australia	Energy, Telecoms and Airports	7	Up to 5 years	Yes	Treasury's Budget	Network regulation; Wholesale market rules; Antitrust
Canada	Electricity, Gas and Oil	9	7	Yes	Annual fees paid by the regulated companies (based on the volume of activity)	Regulation of electricity exports
Finland	Electricity	1	Indefinite	-	Supervision and permit fees on network activities	Licensing of network activities; network price regulation (ex post)
France	Electricity	6	6	No	Main budget: Budget proposed to the Ministry of Energy by the regulator.	Grid and distribution Network access,
Ireland	Electricity	1 (could increase up to 3)	Up to 7	Yes, one time	Paid by electricity undertakings (to be determined)	Network regulation, Access and pricing of the grid Licensing, advise on purchase of external electricity producers
Italy	Electricity and Gas	3	7	No	Tax on utilities revenue not to exceed 1 per thousand of regulated industry income	End user tariffs; network regulation
Mexico	Electricity and natural gas	5	5 years	Yes	Public Funds	Grants, administrates and revokes permits for the electricity, LPG and natural gas industries in accordance with law. Oversees the compliance of the permit-holders with the regulatory framework, approves contracts and agreement models. Issues directives and official standards. Sets ceilings for gas prices. Participates to price-setting in the electricity sector (MOF in charge). Applies sanctions and resolves disputes.
Norway	Water and energy (electricity)	1	6 years	Yes	Public Funds	Issues regulations, licences and monitors the energy market, and monopoly operations of energy companies.
Portugal	Electricity	3	5	Yes	Surcharge on transmission tariffs	End user tariffs
Spain	Electricity, Gas and Oil	9	6	Yes, one time	Surcharge on consumption not to exceed 0.5 per thousand of electricity revenue	Approves Mergers and Acquisitions of transmission and distribution companies
Sweden	Electricity, gas	9	3 years	Yes	On electricity the regulated companies pay a fee to the state. (Funding for the Regulator through the treasure budget On gas the regulated companies pay a fee directly to the Regulator.	End user tariffs; licensing , network regulation and access, market monitoring
United Kingdom	Electricity and gas	1	5	Yes, one time	Charge on the income of the regulated parties	End user Tariffs, licensing
United States (FERC)	Electricity, Gas and Oil	5	5	Yes	Fees for services (e.g. filing fees) and annual charges on utilities	Rules for interstate electricity sales and transmission:; transmission and wholesale tariffs; overseeing Mergers

(1) (approx., Million USD, Year 1997).

Source: Adapted from IEA, Regulatory Institutions in Liberalised Electricity Markets (2002). Data as collected by the IEA in 2000-2001 and released in the report. Updated by the Secretariat for France, Mexico, Switzerland and Norway.

ANNEX IV. APPOINTMENT OF THE HEAD OF THE TELECOMMUNICATION REGULATORS

Country	Appointed by	Term of office	Renewable Terms (Parenthesis means renewed only once)	Dismissal of the Head	Number of Appointed Members including the Head
Australia	The Governor-General	The period must not exceed 5 years.	No	Possible	3-5
Austria	The Minister and the Federal Chancellery	5 years	Yes (once)	Not possible	3 (There are another 3 substitute members in case of a member's death, retirement etc.)
Belgium	The Minister	6 years	Yes	Possible	4
Canada	The Governor in Council	5 years	Yes	Possible	13 full-time including Head (maximum); 6 part-time (maximum)
Czech Republic	The Minister	4 years	Yes (once)	Possible	1
Denmark	The Minister	Indefinite	-	Possible	1
Finland	The President	Indefinite	-	Possible	1
France	The President (Members of the executive board are appointed by the President, the President of the National Assembly and the President of the Senate.)	6 years	No	Not possible	5
Germany	The President	5 years	Yes	No specific provisions (Members of the Presidential Chamber (one of the Ruling Chambers which implements decision-making) depend on political appointment and they have annullable public service contracts, whereas the members of the other ruling chambers are lifetime officials.)	1
Greece	The Minister	5 years	Yes (once)	Possible	9
Hungary	The Prime Minister	5 years	Yes	Possible	6
Iceland	The Minister	5 years	No specific provisions	No specific provisions	1
Ireland	The Minister	Indefinite	-	Possible	1-3
Italy	The President	7 years	No	No specific provisions	9
Japan	The Minister (in case of Telecommunications	3 years	Yes	Possible	5

Country	Appointed by	Term of office	Renewable Terms (Parenthesis means renewed only once)	Dismissal of the Head	Number of Appointed Members including the Head
	Business Dispute Settlement Commission)				
Korea	The President (in case of KCC)	3 years	Yes	Possible	9 (maximum)
Luxembourg	Gouvernement en Conseil	3 years	Yes	Possible	7
Mexico	The Minister	Indefinite	-	Possible	4
Netherlands	OPTA: The Crown; Radio-communications Agency: The Minister	OPTA: 4 years; Radio-communications Agency: Indefinite	OPTA: Yes; Radio-communications Agency: No specific provisions	OPTA: Possible; Radio-communications Agency: Possible	OPTA: 3; Radio-communications Agency: 4
New Zealand	The Governor-General	5 years	Yes	No specific provisions	4-6
Norway	King in Council	Indefinite	-	No specific provisions	1
Poland	The President of the Council Ministers	5 years	No specific provisions	Possible	1
Portugal	The Council of Ministers	5 years	No	Possible	3-5
Slovak Republic	The National Council	6 years	Yes (once)	Possible	1
Spain	CMT: The Government with approval from the Parliament; State Radio-communications Agency: -	CMT: 6 years; State Radio-communications Agency: -	CMT: Yes (once); State Radio-communications Agency: -	CMT: Possible; State Radio-communications Agency: -	CMT: 9; State Radio-communications Agency: -
Sweden	The Government	6 years	Yes	Possible	9
Switzerland	OFCOM: The Minister ComCom: The Federal Council	OFCOM: Indefinite ComCom: 4 years	OFCOM: - ComCom: Yes (twice)	OFCOM: Possible ComCom: No specific provisions	OFCOM: 1 ComCom: 5-7
Turkey	The Council of Ministers	5 years	Yes	Possible	5
United Kingdom	The Secretaries of State	Between 3 and 5 years	Yes	Possible	9
United States(*)	The President; need to be confirmed by the Senate	5 years	Yes (once)	Possible	5

Notes: (*) Entries for the United States only reflect telecommunications regulation at the Federal level.

Source: OECD.