



Better Regulation in Europe
SWEDEN



Better Regulation in Europe: Sweden 2010



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Foreword

The OECD Review of Better Regulation in Sweden is one of a series of country reports launched by the OECD in partnership with the European Commission. The objective is to assess regulatory management capacities in the 15 original member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom). This includes trends in their development, identifying gaps in relation to good practice as defined by the OECD and the EU in their guidelines and policies for Better Regulation.

The project is also an opportunity to discuss the follow-up to the OECD's multidisciplinary reviews, for those countries which were part of this process (Austria, Belgium, Luxembourg and Portugal were not covered by these previous reviews.), and to find out what has happened in respect of the recommendations made at the time. The multidisciplinary review of Sweden was published in 2007 [OECD (2007), *OECD Reviews of Regulatory Reform: Sweden 2007: Achieving Results for Sustained Growth*, OECD, Paris].

Sweden is part of the second group of countries to be reviewed – the other five are Belgium, Finland, France, Germany and Spain. The reports of the first group of Denmark, the Netherlands, Portugal and the United Kingdom were released in May 2009 and the remaining countries will follow in the second half of 2010. This report was discussed and approved for publication at a meeting of the OECD's Regulatory Policy Committee on 15 April 2010.

The completed reviews will form the basis for a synthesis report, which will also take into account the experiences of other OECD countries. This will be an opportunity to put the results of the reviews in a broader international perspective, and to flesh out prospects for the next ten years of regulatory reform.

Table of Contents

Abbreviations and Acronyms	9
Country Profile - Sweden.....	11
Executive Summary	13
Introduction: Conduct of the review	41
Chapter 1: Strategy and policies for Better Regulation	47
Assessment and recommendations	48
Background	53
Economic context and drivers of Better Regulation	53
Main developments in the Better Regulation agenda	54
Guiding principles for the current Better Regulation policy agenda	56
Main Better Regulation policies	56
Consultation with the business sector	59
Communication on the Better Regulation agenda	59
<i>Ex post</i> evaluation of Better Regulation strategy and policies.....	60
E-Government in support of Better Regulation	60
Chapter 2: Institutional capacities for Better Regulation.....	63
Assessment and recommendations	64
Background	69
General institutional context.....	69
Key institutional players for Better Regulation	74
Regulatory agencies and Better Regulation.....	77
Resources and training.....	86
Chapter 3: Transparency through consultation and communication.....	91
Assessment	91
Background	94
General principles.....	94
Public consultation on regulations.....	95
<i>Ex ante</i> impact assessment in Committee reports.....	97
Public communication on regulations.....	98

Chapter 4: The development of new regulations	101
Assessment	102
Background	105
General context	105
Trends in the development of regulations.....	106
Procedures for making regulations	107
Forward planning	108
<i>Ex ante</i> impact assessment.....	111
Chapter 5: The management and rationalisation of existing regulations.....	121
Assessment	122
Background	128
Simplification of regulations	128
Administrative burden reduction for citizens	144
Administrative burden reduction for the administration.....	144
Chapter 6: Compliance, enforcement, appeals	147
Assessment	147
Background	148
Compliance and enforcement	148
Chapter 7: The interface between member states and the European Union	155
Assessment	155
Background	157
General context.....	157
Transposition of EU regulations	160
Institutional framework	160
Chapter 8: The interface between national and subnational levels of government.....	167
Assessment	168
Background	170
Structure, responsibilities and funding of local governments.....	170
Co-ordination.....	177
Bibliography	181
Annex A: The e-Government Delegation.....	183

Tables

Table 1.1. Milestones in the development of Swedish Better regulation policies.....	55
Table 2.1. Milestones in the development of Swedish Better Regulation institutions	73
Table 4.1. Stock and flow of laws and ordinances in Sweden	106
Table 5.1. Administrative costs to the business sector as a result of government legislation by regulatory area.....	137
Table 5.2. Consultation undertaken by ministries regarding Better Regulation.....	139
Table 8.1. Sweden's performance in transposition of Internal Market Directives over time.....	161

Boxes

Box 1.1. Findings from the 2007 OECD report	50
Box 1.2. Sweden's Government Communication on Better regulation (2008/06:206)	57
Box 2.1. Recommendations from the 2007 OECD report.....	65
Box 2.2. Sweden's institutional structure.....	70
Box 2.3. Sweden's Better Regulation Council	76
Box 2.4. Government agencies.....	77
Box 2.5. The application of Better Regulation by Government agencies: three examples	81
Box 2.6. Training courses on regulatory quality	87
Box 3.1. Recommendations from the 2007 OECD report.....	93
Box 4.1. Findings from the 2007 OECD report	103
Box 4.2. Structure of regulations.....	106
Box 4.3. The legislative process in Sweden.....	107
Box 4.4. <i>Tillväxtverket</i> checklist for Impact Assessment (IA) by government agencies	115
Box 4.5. NNR reports on the quality of impact assessments	118
Box 5.1. Recommendations from the 2007 OECD report.....	122
Box 5.2. Definition of regulatory costs	131
Box 5.3. Action Plan for Better Regulation	132
Box 5.4. Baseline measurement of administrative costs	135
Box 5.5. Public consultations by government agencies on Better Regulation	138
Box 5.6. Reported results from the rolling Action Plan in 2007, 2008 and 2009	141
Box 6.1. Parliamentary Committee on Public Sector Responsibilities: enforcement/supervision proposals.....	150
Box 6.2. Risk-based approaches to enforcement.....	151
Box 7.1. Sweden's performance in the transposition of EU Directives.....	161
Box 7.2. NNR proposals for more effective EU Better Regulation, May 2008.....	163
Box 8.1. Findings from the 2007 OECD report	169
Box 8.2. Committee on Public Sector Responsibilities: 2007 report	171
Box 8.3. Findings from the 2007 OECD report	175
Box 8.4. Regional development and policies for equalisation	176
Box 8.5. The Swedish Association of Local Authorities and Regions (<i>SALAR</i>): Priorities for 2008 ...	178

Abbreviations and Acronyms

BAU	Business As Usual
CCD	Common Commencement Dates
EJTN	European Judicial Training Network
EPA	The Swedish Environmental Protection Agency
ERDF EU	Regional Development Fund
ESV	Swedish National Financial Management Authority (Ekonomistyrningsverket)
IDA	Inter-Ministerial Group on Better Regulation (den interdepartementala arbetsgruppen för regelförenklingsarbetet)
JO	The Ombudsmen of Justice
LO	The Swedish Trade Union Confederation
NNR	The Board of Swedish Industry and Commerce for Better Regulation (Näringslivets Regelnämnd)
NUTEK	Former title of the Swedish Agency for Economic and Regional Growth (Verket för näringslivsutveckling) – now Tillväxtverket
PMO	Prime Minister’s Office
RIA	Regulatory Impact Analysis
SALAR	The Swedish Association of Local Authorities and Regions
SBOA	The Swedish Board of Agriculture
SCRO	The Swedish Companies Registration Office
SFS	Swedish Code of Statutes (Svensk författningssamling)
SME	Small and Medium-sized Enterprises
TCO	The Swedish Confederation for Professional Employees

Country Profile – Sweden

Source: CIA Factbook, www.cia.gov/library/publications/the-world-factbook/geos/sw.html.

Country Profile – Sweden

The land		
Total Area (1 000 km ²):	410	
Arable area (1 000 km ²):	27	
Major regions/cities (thousand inhabitants, 2007):	Stockholm	795
	Göteborg	494
	Malmö	281
The people		
Population (thousands, 2007):	9 148	
Number of inhabitants per km ² :	20	
Net increase (2006/07):	0.7	
Total labour force (thousands, 2007):	4 838	
Unemployment rate (% of civilian labour force, 2009):	8.3	
The economy		
Gross domestic product in USD billion:	340.5	
Per capita (PPP in USD):	36 900	
Exports of goods and services (% of GDP, 2007):	49.5	
Imports of goods and services (% of GDP, 2007):	40.3	
Monetary unit:	Krona	
The government		
System of executive power:	Parliamentary	
Type of legislature:	Unicameral	
Date of last general election:	September 2006	
Date of next general election:	September 2010	
State structure:	Unitary	
Date of entry into the EU:	1995	
Composition of the main chamber (Number of seats):	Social Democrats	130
	Moderates	97
	Liberals	28
	Christian democrats	24
	Left	22
	Centre	29
	Greens	19
	Total	349

Note: 2008 unless otherwise stated.

Sources: OECD Economic Survey of Sweden 2008, OECD in Figures 2009, OECD Unemployment Outlook 2009, and OECD Government at a Glance 2009.

Executive Summary

Economic context and drivers of Better Regulation

Better Regulation policies in Sweden have traditionally been harnessed to the achievement of important economic goals. The country's economic recovery from the crisis of the early 1990s was partly based on regulatory reforms which supported structural changes, opening up previously closed product markets, reinforcing international market openness. Substantial efforts were made to minimise regulatory burdens on companies engaged in international trade. Product market deregulation was tackled, and the competition law was strengthened. As recorded in the 2007 OECD report on Swedish regulatory reform,¹ this yielded a considerable “productivity dividend”.

Efforts have intensified since the 2006 general election (and partly in response to the OECD's 2007 report) to address issues which undermine a positive development of the business environment and in particular, the development of small firms. The 2007 OECD report noted that the Swedish economy depends fairly heavily on large companies, with a relatively small service sector and muted entrepreneurial activity, which could be limiting the potential number of new jobs.

The drivers of Better Regulation in Sweden are defined by the current government as a push for stronger growth, the need to sustain international competitiveness, and the need to create jobs, which will help to prevent social exclusion (*utanförskap*) in the population. The strategy for growth and renewal, launched by the government when it came to office in September 2006, included support for entrepreneurship, including easing regulatory burdens.

The Better Regulation agenda is structured around a simple but compelling formula. Simplifying regulations will reduce burdens on business and release capacities to deal more with day-to-day business operations, which in turn could create economic growth and generate more jobs. The full baseline measurement of administrative costs carried out by the Swedish government estimates administrative costs for businesses at approximately SEK 97 billion.

Sweden is currently facing a deeper contraction than the crisis of the early 1990s, although many economic indicators remain favourable. Public finances are still in good shape, the national debt has been pressed back to the same level as before the financial crisis, and so far the increase of the debt has been moderate. Indeed the extensive regulatory reform of the 1990s and early 2000s, completed before the crisis, suggest that Sweden may experience a good recovery of productivity growth and overall employment. There remains scope to develop the potential for self employment and entrepreneurship, by further reducing administrative and regulatory burdens on small firms.

The Better Regulation programme, and in particular the Action Plan for Better Regulation, which was launched in late autumn 2006, after the general election in September 2006, is the centrepiece of the government's strategy. The target is to reduce the administrative costs for businesses by a net 25% by autumn 2010, and to create a "noticeable, positive" change in day-to-day business operations. The government's 2009 Budget Bill restated the commitment to Better Regulation which had already been made in autumn 2007 and 2008, underlining that a "simple and efficient regulatory framework is urgently required". It emphasised the identification of simplification proposals that "yield substantial effects for companies in the short term". The strategy is widely supported within the central government and among the business community, which has been constructively vocal and active.

The public governance framework for Better Regulation

Sweden has a strong and well established public governance framework. The Swedish model of government is characterised by small policy-making ministries and a much larger network of government agencies responsible for the implementation of government policy. Constitutional provisions with strong historical roots impose constraints on any changes to the underlying structure of government. Local governments are entrusted with a large number of complex tasks, reflecting an emphasis on local democracy and the need to match the provision of services to local preferences.

The basic institutional structure is relatively stable. Some important constitutional changes in the 1970s altered the structure of the parliament and introduced proportional representation, further underlining the importance of co-operative and consensus building processes for policy and rule making. The election cycle was changed from 3 to 4 years in 1994.

Developments in Better Regulation and main findings of this review

Sweden has moved from an emphasis on deregulation associated with the market liberalisation of the 1990s to the improvement and simplification of rules (Better Regulation), much on the same pattern as other European countries. The policy has also broadened from simplification and cost reduction to a renewed interest in making *ex ante* impact assessment work. A key focus throughout has been on the needs of enterprises. Regulatory quality principles have also extended their reach across different institutions, starting with the committees of inquiry which have always been subject to strong requirements (on consultation for example), even if this remains a work in progress regarding the local levels of government.

After the 2006 election, the government announced its intention to intensify work on Better Regulation, setting a target to reduce administrative costs for businesses by a net 25% by autumn 2010, and putting in place a series of tools and measures to promote Better Regulation, including a renewal of the impact assessment process.

Strategy and policies for Better Regulation

There is a strong commitment by the current government to move forward on Better Regulation. This is extremely positive for Sweden and its international competitiveness prospects. The emphasis is on creating a better regulatory environment

for business, which is timely and helpful. The development of the Better Regulation programme and in particular the Action Plan for Better Regulation has acted as a wake-up call, in a context where Sweden was slipping behind in Better Regulation (and was aware of a growing gap compared with some of its European neighbours), and has started to concentrate minds on the importance of the regulatory framework as an essential “infrastructure” for business. The efforts to strengthen and give new impetus to *ex ante* impact assessment also show that Sweden is conscious of the need to manage burdens which may flow from new regulations. It is visible that important investments have been made recently. For example, the establishment of the Better Regulation Council (an autonomous external oversight body) is an important signal of the government’s commitment to change. It can be expected that these investments will pay off in the near future.

Important tools, processes and institutional structures for Better Regulation are now in place. There have been significant improvements since the 2007 OECD report, which have laid some foundations for further achievements.² The processes for *ex ante* impact assessment have been strengthened, clarified and streamlined, and regulatory simplification is now well underway, supported by the completion of a full baseline measurement of administrative costs for businesses, enhanced consultation processes with the business community and a reinvigorated institutional framework, which includes the establishment of the Better Regulation Council and a more operational group of state secretaries responsible for promoting better regulation policies within government. As the government itself recognises, the new processes now need to be used, and where necessary, strengthened. It has taken time to agree the changes. It may take some time for these processes to bear fruit. Sweden is now moving into a more demanding phase of its Better Regulation programme, where efforts need to be sustained and results may not come overnight. As one interviewee put it, “there are no quick fixes if the objective is to make deep changes and turn the regulatory management framework around”. Better Regulation has to be seen as the sum of many efforts over time.

The regulatory simplification measures are generally well structured and go beyond administrative cost reduction. The recommendations of the 2007 OECD report have been largely implemented and there is a clear framework to tackle burdens on business and to implement a range of broader regulatory as well as other simplification processes. The quantitative net target of a 25% reduction of administrative costs on businesses by 2010 is in line with good international practice. It has also acted as an important driving-force in the Better Regulation strategy. The latest update measurement (June 2009) shows an encouraging net decrease in regulatory burdens of 2% from the original baseline. The policy goes beyond administrative costs, and aims to address the more effective overall design of rules, processes and procedures so that they are better adapted to business needs. Proposals and actions are well documented, and transparency is good.

However, some issues with regulatory simplification tools and processes need attention if the target is to be met. The pressure on participating ministries and agencies to contribute to the 25% reduction target is weak, partly because there are no differentiated or individual targets for each ministry. Use of the *Malin* database, which brings together the results of the measurement, also needs to be encouraged, to identify actions that will help to ensure the target is met. *Malin* can also help with the *ex ante* assessment of whether identified actions will be sufficient to meet the target.

Sweden has also taken steps to strengthen its impact assessment processes since the 2007 report. The new policy seeks to broaden the approach and the institutional framework has been strengthened. A common framework of instructions is in place, replacing the previous disjointed approach. However, the policy remains highly business focused. Other impacts (social, environmental etc), although they are not neglected, should merit greater attention, through a more balanced approach. This will help to secure the closer engagement not only of stakeholders inside government, but also outside. An early evaluation of progress will be important.

Public consultation is a traditional Swedish strength, and dialogue with the business community has been boosted. Sweden has a very positive underlying commitment to openness, which frames its overall approach to consultation. Participating stakeholders are generally supportive of the system which rests, notably, on the longstanding practice of establishing Committees of Inquiry for the development of major policies and legislation. The processes established by the government as part of the Action Plan for Better Regulation include significant structures and efforts to engage in dialogue with the business community over their concerns.

The government's current policies need to be extended, if they are to address all the issues that are relevant for a comprehensive Better Regulation strategy. It was right to start with an emphasis on regulatory simplification for businesses, and to use this as a motor for pulling forward the agenda. Policies aimed at other societal groups could now be envisaged, alongside what is already in place for the business community. A broader policy on public consultation for the development of new regulations (not just with the business community), enforcement policy, the need to engage the local levels of government in Better Regulation, and the management of EU issues would now benefit from increased attention. A broader vision would help to pull these elements together, put Swedish Better Regulation policy on a more sustainable basis, and ensure that Sweden is a front runner on Better Regulation within Europe. There has been tangible progress beyond administrative burdens since the 2007 OECD report. However there is a need to go further still.

Better Regulation in Sweden remains tilted towards business and neglects the engagement of other societal groups. To a number of actors, Better Regulation is currently perceived as “deregulation”, and a zero sum game, posing a threat to other societal goals. “Citizens are forgotten”, as one interviewee put it. There is a palpable concern that “we would lose something in the process” of making things easier for business and that standards could suffer. This negative perception is aggravated by the fact that civil society does not consider itself as well represented or resourced as the business community for effective participation in Better Regulation processes such as consultation or impact assessment. Addressing perceptions of an imbalance – as well as working on the imbalances which do exist – will be important to sustain support for Better Regulation over the longer term.

The current approach to enforcement is complex and widely acknowledged to be in need of reform, which the government has started. The government has started to take steps to rationalise and clarify responsibilities, and the issue was also highlighted in the 2007 Parliamentary Committee on Public Sector Responsibilities. Some organisations have been applying risk based approaches to enforcement (such as the use of risk analysis to determine the optimum frequency of inspections). However, a stronger and more coherent policy would encourage the more widespread uptake of new

approaches. As one interviewee put it, “the problem is not just the production of regulations, but the lack of a clear steer on implementation”.

The engagement of subnational levels of government in Better Regulation needs to be strongly encouraged. There is an increasingly urgent need to bring local governments more fully into the government’s Better Regulation programme, as they are the primary interface with SMEs. The Action Plan for Better Regulation currently covers central government (the ministries within the Government Offices) and a number of government agencies, currently 39. The municipal level (the main level of local government) is not yet integrated to the same extent. They are considered by many to be a key source of burdens. Inadequate integration of this level of government weakens the proposition that the government is doing all it can to reduce burdens on business. Although this is beginning to change, the process of integrating this level of government into Better Regulation needs to be formalised and accelerated. It is increasingly urgent for local government to be further engaged, as they are the primary interface with SMEs. This would have the support of a wide range of stakeholders both within and outside government. A particular institutional issue is that there does not appear to be any specific forum for discussion between the national and subnational levels.

The management of EU regulations would benefit from more attention. There are clear formal processes for setting strategic decisions in the negotiation of EU directives, but capacities for effective negotiation in practice may need reinforcement. The framework appears less strong once a specific negotiation has started, and external stakeholders raised some concerns. Public consultation by the government is not systematic. The transposition of EU directives would benefit from particular attention. It would be beneficial to carry out a wide ranging evaluation and consultation on EU aspects of Better Regulation.

The widest range of stakeholders need to buy into the government’s policy for its sustainability to be assured over the longer term. This report suggests that the Better Regulation agenda should be explicitly extended to cover societal groups beyond the business community. In any event, a more inclusive approach to communication on the government’s policy and regulatory plans is important. This is complementary to the basics of everyday communication such as the right of access to official documents. Sweden is strong in these basics, but a more strategic perspective is also needed. Because of strongly rooted transparency and consensus making traditions, reforms that are tackled through public debate in Sweden are more likely to gain support.

The management of expectations which have been encouraged by the Better Regulation programme could be enhanced through more targeted communications. Securing the continued support of key external stakeholders needs the anchor of an enhanced effort at communication. The experience of other European countries is that a critical (albeit not the only) success factor of a well run regulatory simplification programme is effective government-stakeholder communication. The business community and parliament are impatient to see results at this stage. Business said that it can and must act rapidly on its own decisions, and finds it hard to understand why the government takes longer. The Government needs to persuade them more strongly (with supporting evidence) that results are coming, and to manage expectations by a careful explanation of the processes and timescales needed, in order for a government proposal to become a concrete reality.

As in many other OECD countries, ex post evaluation of Better Regulation policies or strategy could be strengthened and become a systematic part of the agenda. This is especially important for Sweden, which needs to ensure that the tools and processes now in place for Better Regulation are functioning as they should. A strategically important missing link is an overall evaluation of the Better Regulation agenda, which could be used both to pinpoint gaps, and to establish more clearly how the agenda is contributing to the reinforcement of Sweden's competitiveness as well as citizen and other societal needs. Evaluation also supports greater transparency about progress, which encourages external pressure and support to step up efforts.

The government's Action Plan on e-Government is a clear signal of the commitment to regaining lost ground on the development of e-Government. A carefully elaborated Action Plan has been put in place, with a supporting high level group in the Government Offices, consisting of State Secretaries, and an e-Government Delegation ("E- delegationen"),³ consisting of heads of government agencies and a representative of SALAR. This is very positive, not least for the signals that it gives of the government's commitment. The e-Government Delegation will need to track progress continuously on an aggregate level to promote appropriate intervention from the government when necessary. It was beyond the scope of this review to go into any depth, but it appears that some good progress has been made. Some issues such as funding may need attention.

Institutional capacities for Better Regulation

Sweden has a strong and well established public governance framework characterised by a small policy making centre and a very large network of implementing agencies. Sweden has a particularly disaggregated structure of public governance, with a few small ministries at the apex, and several hundred agencies (some with horizontal, most with sector specific responsibilities). There is also a highly autonomous municipal level of government. Policy and rule making are carefully framed and based on clear principles which are embedded in the constitution. There is an important tradition of consensus building to meet policy and regulatory objectives involving key actors both within and outside government, including the social partners.

The breadth of the institutional structure raises challenges for rapid progress on Better Regulation. In the absence of strong and determined management, this is a system with centrifugal tendencies. There are many autonomous actors, with a constitutionally anchored independence of action with regard to some aspects of their activities. Effective steering and firm encouragement from the centre of government is therefore critical for the success of a Better Regulation strategy that needs to encompass all the relevant institutions and different levels of government. The system may also encourage a sense that issues are the responsibility of other actors, thus fragmenting collective effort and leading to uneven performance. The growing importance of the EU adds another critical dimension to the need for a strong central engine to promote regulatory quality. The issue is how to achieve change and promote a shared vision whilst respecting the character of the Swedish traditions, which have a number of strengths. There is awareness that fragmentation is an issue. An important distinction, however, needs to be made between the government agencies, which are autonomous but ultimately under the control of central government, and the municipalities, which have a constitutionally protected independence vis-à-vis central government.

Against this somewhat challenging background, significant progress has been made since the 2007 OECD report to set up a stronger central driver for Better Regulation, and a “whole of government” approach. The 2007 OECD report recommended that an additional process or structure may be needed to boost reform, promoting a strategic reform vision and helping to establish consensus on important issues. It recommended the establishment of an external advisory body. This has now been done, with the establishment in 2008 of the Better Regulation Council. This is rightly seen as evidence that the government is serious about Better Regulation. The Ministry of Enterprise responsibilities have also been boosted. The ministry has a team of officials responsible for the coordination, support and follow up of work on Better Regulation, and it chairs the cross government group of State Secretaries on Better Regulation as well as the cross government working group on Better Regulation (with officials from different ministries within the Government Offices).

The establishment of the Better Regulation Council has been greeted with enthusiasm by many stakeholders. Considerable expectations are vested in this body. Sweden needs independent perspectives to challenge the strength of government policies for regulatory reform and to ensure that all relevant actors buy in to Better Regulation (not just the enthusiasts). This new watchdog is a major step forward for Sweden. The Better Regulation Council is expected to play an important scrutiny role for impact assessments. Although it is an advisory body, the Council’s opinions are made public through its website⁴ and it is expected to provide an incentive to prepare better quality impact assessments. It published a report on its experiences in January 2010 and will publish another report at the end of its current mandate in 2010. It is too soon to comment on its success. It certainly has the potential to make a difference, but does need to find its place, and assert itself as a new player with influence. There is a need to decrease dependency on political cycles or personal commitments, which this type of institution can help to meet.

The National Audit Office (Riksrevisionen) is a potentially valuable external observer of the regulatory process. Its 2004 report to the Riksdag was instrumental in encouraging the development of today’s Better Regulation agenda. It carries out performance audits which, whilst they may not be directly focused on Better Regulation processes, can nevertheless raise issues relating to the effectiveness of regulatory management have a direct bearing on Better Regulation, including impact assessment. Some of its recent work points, in particular, to the “cascade” effect of regulatory development and the need to be clear not just what regulations raise issues, but who produces and implements them.

The Board of Swedish Industry and Commerce for Better Regulation (NNR) and other business organisations also provide valuable feedback on the progress of Better Regulation. The NNR represents the views of a large part of Swedish business and is active and vocal in support of further progress. The added value of these organisations is that they are able to identify the practical issues which need attention to help the business community. Sweden is fortunate to have a business organisation of this kind, which works solely on Better Regulation issues.

Within the government, the Ministry of Enterprise needs more resources and support. The Ministry of Enterprise is the most appropriate focal point for Better Regulation at this stage, but it seems to be treading a somewhat exposed path as the flag bearer for Better Regulation. Its Better Regulation team (it is not even a unit, and staff have to combine their work with other Better Regulation tasks) is under pressure, under resourced and needs to be strengthened if it is to be effective in its work with

other ministries for the development of the Action Plan and more broadly to support the further development of Better Regulation. The ministry also needs the stronger support of other key central government actors – the Ministry of Finance and the Prime Minister’s Office – if it is to have the desired political impact and leverage on the range of autonomous actors that need to be part of regulatory reform. The leverage of the Ministry of Finance is needed if there is to be concrete and more rapid progress in respect of the agencies, local government as well as the use of e-Government in support of Better Regulation (all of which it co-ordinates). The Prime Minister’s Office has a necessarily more complete view of the system, including the EU aspects, and could bring its influence to bear on potential blockages and slow movers. Its visible policy support is needed to secure the sustainability of Better Regulation.

The role of the Ministry of Justice for securing legal quality and promoting plain language remains important and the Council on Legislation may have useful input. The Ministry of Justice plays a fundamental role in support of legal quality. Care is needed to ensure that it is not sidelined in the promotion of new Better Regulation processes. It currently appears to operate somewhat apart from the other core ministries in this respect. The Council on Legislation, which vets draft legislation from a legal perspective, should not be neglected as a potentially valuable ally and source of information on regulatory quality. It may, for example, spot trends over time regarding such issues as quality of legal drafting, which is part of Better Regulation.

The steps taken by ministries themselves in support of Better Regulation appear to be uneven. Support structures of different kinds have been set up in a number of ministries, ranging from a single central unit to a looser network approach. It is not clear how far this boost to internal systems has been adopted across all relevant ministries. The OECD peer review team heard that some ministries (and agencies) are less interested in Better Regulation than others.

The Swedish institutional context puts a premium on effective internal co-ordination and communication across the different parts of government. The different parts of the institutional machinery, which comprise a range of agents who are used to working autonomously, need to be encouraged to work toward common Better Regulation goals. The State Secretaries’ Group chaired by a State Secretary at the Ministry of Enterprise and the inter-ministerial working group on Better Regulation are excellent starting points but may need a stronger mandate to address horizontal issues. One interviewee said that further horizontal co-operation was not just desirable but essential. Better Regulation issues often cross the boundaries of individual ministries (notably regulatory simplification initiatives).

The government agencies are key actors in the institutional structure as regards Better Regulation, and need to play a stronger role overall. The powers delegated to the agencies to develop secondary regulations (giving effect to primary laws, which also includes responsibility for the transposition of most EU regulations) give them a powerful and central role in Better Regulation. Government agency regulations form by far the largest part of the Swedish regulatory system. A lot of administrative burdens stem from these regulations. The underlying complexity and breadth of the agency structure is a challenge (one which is in some ways specific to Sweden), as is the fact that there is fairly continuous organisational change, even if some of these changes are intended to simplify the structure. Effective steering by central government is thus essential to reap the full benefits of agency contributions to Better Regulation. Important tools are in place for this. Beyond the traditional tools of appropriation directions etc, there are specific requirements (through decisions by the government in

November 2006, May 2007, July 2008 and August 2009) on ministries and agencies participating in the Action Plan to identify measures and report on actions in support of regulatory simplification, which are brought together in a working plan by each ministry and submitted to the Ministry of Enterprise. Some of these tools may need reinforcement and need to be used more effectively. Some government agencies are very active as regards Better Regulation and co-operate closely with businesses. Government agencies also need to co-operate with each other where their interests converge. There is, in the words of one interviewee a “need to tackle a web of regulations which interact”. Some agencies are clearly out in front on co-operation, but others may need to catch up.

Parliamentary views on the government’s Better Regulation strategy appear broadly positive but its involvement is perhaps not sufficiently encouraged. The *Riksdag* appears broadly supportive of the government’s Better Regulation efforts (more so than in some other European countries). The Trade and Industry Committee suggests that there is scope to broaden the understanding of Better Regulation and its importance to competitiveness. Much of this advocacy of course needs to be done within the parliament itself. A strengthened reporting cycle on progress with the Action Plan could enhance support and understanding.

Inadequate resources are an issue, and there is a need to accelerate training focused on Better Regulation processes to support an enhanced performance by ministries and agencies. The number of officials working directly on Better Regulation is quite small, relative to the ambition of the Better Regulation programme and the large and fragmented institutional structure. Central government needs appear to be the most pressing (with its current assignments, the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) appears to be managing well in respect of the agencies). As already noted, the Ministry of Enterprise capacities need to be enhanced. The ministry’s plans to roll out further training and support for impact assessment are important.

Transparency through public consultation and communication

Sweden’s underlying and long established commitment to openness frames the overall approach to public consultation, which is based on a traditional, methodical approach. The establishment of Committees of Inquiry remains a cornerstone of the Swedish policy and rule making process, especially for significant issues. They must follow certain carefully established working methods, and considerable information about their work is made public, including not least the report on their findings to the government. They are required to consult widely. Sweden also has a longstanding tradition of consultation with the social partners. Beyond this, there is a general requirement on ministries to consult, and the Ministry of justice checks that this has been done. Public consultation with policy affected by a certain piece of legislation is a routine part of developing draft laws and subordinate regulations. Consultation is in principle, mandatory, based on the 1974 Instrument of Government which sets out 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.” There is also a range of further guidelines on regulatory management which cover consultation. There seems to be a general level of satisfaction among stakeholders who engage with the system.

There have been some positive changes since the 2007 OECD report, concerning consultation with the business community. The Government's Better Regulation policy and Action Plan have given rise to significant new developments since the 2007 OECD report, regarding consultation with the business community. The Ministry of Enterprise has established a central working group with business representatives to identify areas of particular concern to business. Several ministries and government agencies have either established similar working groups or have held meetings with business organisations and other stakeholders in their better regulation work.

Whilst generally supporting Sweden's approach, participating stakeholders do have some issues with the system. Within the framework of guiding documents, ministries may define their own approach. With regard to major legislative changes, before the government takes a position on the recommendations of a Committee of Inquiry, its report is referred for consideration to a wide range of relevant "referral" bodies. This provides feedback and allows the government to judge the level of support it is likely to receive. If there is a significant unfavourable response, the government may try to find an alternative solution. Despite these provisions, some issues were raised with the OECD peer review team. These included "one way" consultations (more information than consultation), unhelpfully short deadlines for making comments and a tendency to accelerate the process, inadequate feedback, and the need to incorporate views at an earlier stage in the process.

The system may lack transparency for outsiders, even if this is not the intention. Public consultation is a routine part of developing draft laws and subordinate regulations and it is in principle mandatory. Nonetheless, it was suggested that ordinary citizens can be left out of the loop, the first practical opportunity for access to a draft law being when the text is submitted to the Council on Legislation. The Committees of Inquiry system appears to work well for established stakeholders (and big issues), but is less effective for the general public (where it is desirable to engage the latter), even though there is a formal right to participate in the system. The number of Committees of Inquiry set up at any one time may not help. The 2007 OECD report noted that consultation procedures seem to be effective in communicating future legislation and consolidating the participation of invited stakeholders, but had some misgivings about the extent of transparency, and heard that participation by some groups was difficult because of the resources that needed to be committed. An updated, practically oriented, consultation guide would be helpful in highlighting good practices, and in encouraging the use of new approaches, such as the Internet, as well as emphasising the importance of timelines, feedback and other issues.

There appears to be a specific issue regarding the development of regulations by government agencies. Regulations developed by agencies to give effect to primary laws are a key part of the Swedish regulatory infrastructure. A handbook for agencies on how to draft regulations includes consultation, and beyond this, the agencies may develop their own procedures. It is not, however, clear to what extent agencies apply the principles of Better Regulation regarding consultation and transparency. Although government agencies are not legally obliged to comply with advice provided by the handbook, this kind of advice from the government is traditionally adhered to by the agencies. The 2007 OECD report noted that the consultation procedures of government agencies could be strengthened, as they are the implementing bodies of most of the regulations that affect stakeholders. There is no clear evidence of progress in this field.

Public communication of regulations is handled robustly with a number of access points. This is a strong feature of the Swedish system. It includes a number of well

maintained websites where interested parties may consult developments in a number of different ways. The *NNR* has, however, noted that companies can find it hard to obtain information on which regulations apply, and how to comply in practical terms. It also notes that more could be done to communicate on changes in regulations, as companies may not otherwise notice that regulations have been simplified.

The development of new regulations

There are several processes through which interested parties may find out about proposed new legislation, but these are scattered. Different instruments ensure that those inside and outside government can, if they wish, keep in touch with legislative plans (for example, the annual Budget bill, and information on Committees of Inquiry work). The parliament drew attention to an unhelpful “bunching” of law making activity. Forward planning could be made more transparent to those inside and outside government by publishing, on a regular basis, the list of proposals for new bills. There does not appear to be any systematic information dissemination process for the development of secondary regulations.

Processes to secure legal quality are a strong feature of the Swedish system. Law drafting benefits from a strong framework of supporting institutions, guidance and training, which have their roots in the constitution (Instrument of Government). The institutional support framework includes a Directorate General for Legal Affairs in each ministry, which is responsible for ensuring that draft bills are well prepared, legally correct and conform with requirements. The Prime Minister’s Office and the Ministry of Justice provide further support. The Council on Legislation provides a further legal check at the end of the process. Sweden also emphasises the importance of plain language, spearheaded by the Ministry of Justice. This includes work on the promotion of plain language within the EU institutions. The parliament also takes a keen interest in plain language, with the adoption of a law in 2005, where several national language policy goals were adopted, among them on plain language. This was followed in 2008 with a Swedish language law, which among other issues states that authorities should strive to use clear and comprehensible language.

Sweden has taken steps to strengthen its impact assessment processes since the 2007 OECD report. The 2007 OECD report drew attention to a number of serious shortcomings. The system was fragmented (different arrangements for ministries, agencies and committees of inquiry), there was a heavy focus on SME impacts (the only mandatory part of the system) to the detriment of a broader perspective, and no integrated institutional framework to monitor compliance and challenge the quality of impact assessments. The quantitative dimension was very weak. Sweden acknowledged that it had so far failed to develop an effective system. There was considerable support for improvement to secure a stronger evidence base for policy and rule making, not only inside the government but also with the parliament and the business community. The new policy has sought to broaden the approach and strengthen the institutional framework, not least through the establishment of the Better Regulation Council which will scrutinise draft impact assessments.

Oversight for impact assessment has been strengthened, with the Better Regulation Council providing some integrating glue. The institutional support framework has traditionally consisted of different arrangements for ministries, government agencies and committees of inquiry. This division of responsibilities has not changed since the OECD report of 2007, with the notable exception of the Better Regulation Council.

The Council will scrutinise proposals prepared by both ministries and agencies as well regulatory proposals from Committees of Inquiry (the majority of its work has so far been on proposals of government agencies and Committees of Inquiry). It criticises, in its opinions, drafts if they are not good enough, but cannot send them back. The other improvement is an enhanced status and role for the Ministry of Enterprise as part of its broader co-ordinating responsibilities for Better Regulation. The issue is whether these changes are going to be sufficient to secure effective and coherent oversight. It is too early to tell. However, it is clear that much depends on the Better Regulation Council, the only actor with a complete view given the continued fragmentation of other actors and their essentially advisory role. Capacities and resources is another weak spot. The Ministry of Enterprise is already short on capacities to meet its responsibilities, and its resources may well need to be strengthened.

For the government agencies, support continues to be provided by the Swedish Agency for Economic and Regional Growth (Tillväxtverket), with input from the Swedish National Financial Management Authority (Ekonomistyrningsverket, ESV). Streamlining this part of the institutional structure would likely benefit efficiency. The 2007 OECD report had already drawn attention to the issue, and Tillväxtverket continues to have some reservations about the current process.

Although the new ordinances and guidelines appear to have clarified requirements, the handling of some key issues remains weak. In some respects this seems to be a refreshment of existing policies rather than a completely new departure. Some issues need further attention. Quantification of costs and benefits is not sufficiently emphasised. The support arrangements for ministries to carry out quantification may not be adequate, given that this is new territory for many officials.

The policy remains highly business focused. The new ordinances and guidelines anticipate that social and environmental impacts as well as economic and business impacts, should be addressed. Although the new approach clearly signals the need to go beyond impacts on SMEs (the main focus of the previous policy) the emphasis remains on business. The mandate for the Better Regulation Council's work requires it to focus on business, even if other aspects may be taken into account. Sweden also wants to avoid the "Christmas tree" effect. A business focus is valuable and necessary, especially post crisis and given the prominence of Sweden's Better Regulation strategy as part of a drive to enhance competitiveness. However, work on other impacts may be crowded out and this risks alienating stakeholders both inside and outside government.

An early and objective evaluation will be important, given the weaknesses that may still be in the revised ex ante impact assessment system. The new system is an improvement in many respects but nonetheless contains some potential weaknesses. Evaluation will be important, sooner rather than later, so that the necessary steps can be taken to remedy weaknesses as quickly as possible. Two potential candidates for carrying out the evaluation are the Better Regulation Council (with hands on experience of the new system) and the National Audit Office (Riksrevisionen), (which has previously shown interest in Better Regulation).

The management and rationalisation of existing regulations

Sweden has a good track record of deploying processes to clean up the regulatory stock. Over time, Sweden has been active in the use of different processes aimed directly at ensuring that the regulatory stock remains clean and clear, including codification, the enactment of a guillotine rule in the 1980s, through the work of

Committees of Inquiry, and most recently, via some of the work which is being taken forward under the Action Plan for Better Regulation.

Recommendations of the OECD's 2007 report have been largely implemented and there is clear progress. The key recommendations of the last OECD report on administrative burden reduction for business have been acted on. In particular, Sweden has set a quantitative net target for the reduction of burdens on business (25% by end 2010), in line with good international practice, and has integrated *ex ante* burden measurement into its recently updated policy on impact assessment. The latest update measurement (June 2009) shows the good news of a net decrease of 2% in regulatory costs on business compared with the original baseline.

This part of the Swedish Better Regulation agenda is benefiting from the institutional framework set up for the agenda as a whole. The establishment of an external body, the Better Regulation Council and the stronger co-ordinating role of the Ministry of Enterprise are particularly important developments. The Ministry of Enterprise now has a prominent co-ordinating role in encouraging efforts to meet the target. It is backed up by a State Secretaries steering group (chaired by the ministry), and the inter-ministerial officials working group to spread best practice and prepare progress reports. The keynote in this context is encouragement and sharing of best practice, rather than “name and shame”. The Better Regulation Council strikes an altogether stronger note, at least potentially. This recently established external body scrutinises all proposals for new or amended regulations that could affect business competitiveness and its views are made public. Its role may well be crucial in assuring the overall success of burden reduction.

The institutional framework and resources to drive the programme need, however, to be further strengthened. Sweden recognises that key challenges include consolidating official and political “buy in” to the programme. This will not happen if steering and support capacities are inadequate. Currently, the co-ordinating Ministry of Enterprise deploys a small team of fewer than ten officials (not full time). The ministry is strongly committed to and enthusiastic about the programme but struggles because of capacity constraints. Key implementing ministries may also need to upgrade their resources, especially where it is proving difficult to take forward sufficient proposals to meet their “share” of the target, ensure that goals are translated into concrete measures, and secure timely implementation of the measures. The OECD peer review team were told that in general, there are difficulties of time and resources, and that “people do their best”. That said, some ministries are doing better than others.

The decision to have a net target is critical to long term success. This is especially the case in a context of likely pressures, post economic crisis, to step up regulation in some areas. It is also important in the specific Swedish context of concern for sustaining high regulatory quality standards. The issue is not to question that concern, but to ensure that regulations do not come with unnecessary burdens attached.

The pressure on participating ministries and agencies to contribute to the target is, however, weak. There are few obvious incentives to encourage a consistently high performance across participating ministries and agencies. The 25% target for 2010 is an overall target for the whole government and there are no individualised targets, which would put greater pressure on individual ministries. This means that a lesser commitment by some has to be compensated by an above average commitment by others. There is a limit to this. Evidence of considerable variability in performance suggests that unless firm action is taken soon, there is a real danger of failing to meet

the overall target. Overall commitment and the chances of success would gain a considerable boost from the establishment of individualised targets.

The reduction of administrative burdens is technically well supported by the establishment of a zero base measurement and the Malin database. Sources and inspiration for the measures which are being taken forward in the Action Plan are the baseline measurement carried out by *Tillväxtverket* and stored in the *Malin* database, and the simplification proposals made by the business community, which are also loaded into the database. The zero base measurement, completed in February 2008 with a baseline year of 2006, is updated annually by *Tillväxtverket* to take account of new burdens. *Malin* also includes a simulation facility which can be used by government offices and agencies to calculate the potential administrative costs of new regulations and changes to existing regulations. The success of Sweden's simplification policy rests on an effective use of these instruments. Zero base measurements provide in-depth insight in the government wide composition of administrative burdens – insights which can be used to identify concrete proposals for burden reduction. They are also an essential starting point for effective monitoring of progress.

It seems, however that these instruments are under-used and that the user-friendliness of the Malin database needs improvement. An updated version of the *Malin* database was launched in spring 2009, with some improvements as regards the user-friendliness. This is important. The OECD peer review team heard from a number of stakeholders that the *Malin* database tends to be under-used for the purpose of identifying simplification actions. The result is that the measurement of burdens on the one hand, and the reduction of burdens on the other hand, are two separate processes in practice, instead of the first adding value to the second. It seems, in short, that the measurements are only loosely linked with the policy. A more user-friendly database would also remove any excuses from reluctant ministries that they are having difficulty identifying burdens. If *Malin* is under used, this also implies that the simulation facility for forecasting burdens in new regulations is not exploited to its full potential. If the facility is not used, then the extent of expected reductions from new regulations will not be known. It will not therefore be possible to identify in a timely manner whether and to what extent the measures are going to be sufficient to meet the target, or whether more will need to be done. A more systematic use of *Malin*, which appears well constructed, would help to identify further possibilities for reductions, as there is some concern at this stage that not enough actions have been identified to meet the target. *Malin* is also especially relevant to the co-ordinating Ministry of Enterprise, which needs to have a detailed understanding of burdens (what burdens, who is responsible etc), not least for monitoring purposes, as well as to back up the efforts of individual ministries to make their contributions to the Action Plan.

Agencies are critical to success, and despite excellent work by Tillväxtverket, the framework for securing this needs reinforcement. The serious involvement of government agencies is critical to the success of the Action Plan as the secondary regulations which they produce contain many of the burdens that the government needs to cut. *Tillväxtverket* plays an important and effective central role as co-ordinator and adviser. However, this needs to be systematically backed up by the parent ministries, as the depth of agencies' engagement depends in many cases on the interest of their parent ministry. The OECD peer review team heard that some ministries did not take an especially close interest in the actions of their agencies in this regard. It is important

that agencies are given clear instructions on what is expected of them as regards their contribution to the parent ministry's Action Plan.

Horizontal co-operation between agencies and ministries is also important, for those issues which require shared solutions. More shared working is needed across and between agencies and ministries, in order to identify issues that individual ministries/agencies cannot address alone, to share best practice, to eliminate overlap (for example, multiple requests for the same information), and not least, to prevent the syndrome of expecting someone else to take responsibility for action. Co-operation is happening where ministries and agencies are motivated, but the OECD peer review team heard that it was, overall, a weakness.

Local governments need to be encouraged into making a contribution to the programme. A successful Better Regulation policy requires the involvement of all relevant actors. The municipalities, which are the primary interface for SMEs and responsible for licences and planning, are not sufficiently integrated into the policy. This is a significant weakness. The process is, however, at an early stage, and in the Swedish context of autonomous local government (a situation that is similar to that of several other European countries), making progress is inevitably slow and complicated. An important institutional issue slowing progress is the lack of resources within the Government Offices, and the fact that no government agency has a clear mission to support the process.

The Riksdag is a key source of support as well as an increasingly necessary partner in securing the changes that need to be made. As in other countries, once the low hanging fruit have been picked, progress is likely to depend increasingly on legislative changes. The government already makes annual reports available to the Riksdag, albeit with a certain time lag. The parliament seems well disposed to offer support. It was instrumental in encouraging the government to step up work on regulatory simplification in the first place (with public requests in 1999 and 2002). It is aware of the fact that part of the programme requires changes in legislation.

The government has encouraged regular communication with the business community, and a number of ministries and agencies have established robust consultation arrangements. In setting up the programme, the government has promoted the development of structures to gather the views of the business community. So called reference groups were set up to help establish the baseline measurement. The Ministry of Enterprise has established a central working group with business representatives and this is flanked by the working groups of a number of ministries and agencies (who have to report on what they have done). A majority of ministries now engage in a "continual dialogue" with the business sector, although approaches differ, and the quality of the interaction appears to vary. Around half of the agencies now arrange consultation devoted to Better Regulation. The experience of other European countries is that a critical success factor of a well run regulatory simplification programme is effective government-business communication, which instills mutual trust.

Securing the continued support of key external stakeholders needs the anchor of an enhanced effort in communication. The timely presentation and communication of developments and results from the Action Plan needs to be boosted. Although the roots of the current Action Plan go back a number of years, it is only with the current government, from 2006, that the programme has taken serious shape and obtained effective political support. As in other European countries, the results of this kind of programme can be frustratingly slow to take effect. The business community has been quite patient so far. The main current vehicle for communicating results seems to be the annual report to the *Riksdag*. This may not be enough. Perceptions of progress matter. The Better Regulation Council could be helpful in this regard.

The current programme addresses a wide range of issues and is on the right track in its scope. The Action Plan for Better Regulation extends a considerable way beyond measures to reduce administrative burdens, covering issues such as simpler regulations, improved service and accessibility, and shorter processing times. Its scope reflects the feedback from the business community on what is important for them. The next step might be to consider identifying further specific targets for the programme, in areas other than administrative burdens, against which progress could be more effectively measured and evaluated.

Evaluation of the Action Plan is important, to check that it is on course to deliver real benefits in support of competitiveness. The NNR has drawn attention to the need for systematic evaluation of progress and results, not least to check that the latter are of real use to business. It plans some evaluation work of its own. The Swedish National Audit Office was pro-active at an early stage, presenting a report to the government in 2004 (Regulatory Reform for Enterprises) in support of the *Riksdag*'s own pressures for government action. Could it be persuaded to do more and to evaluate the programme on a regular basis?

The EU dimension is important. About 50% of the administrative burdens are of EU origin. Swedish efforts (as in other EU countries) depend in large part on corresponding efforts at the EU level and the EU's own administrative burden reduction programme. Burdens stemming from EU origin regulations may take longer to unwind than ones generated entirely within Sweden.

So far, the Swedish regulatory simplification programme only covers business needs. There was no evidence picked up by the OECD peer review team that Swedes are demanding more. The effective deployment of e-Government may be a reason for this. Area 4 of the e-Government project aims to produce visible results for citizens as well as businesses in terms of simplified contact with the public administration, and Sweden ranks well in international comparisons. Nevertheless, some other European countries have set up specific programmes aimed at simplifying life for citizens. Should one be considered for Sweden?

There is no specific programme for the reduction of administrative burdens inside government, although there are several initiatives. Sweden might usefully consider strengthening its work on regulation inside government, given the public policy challenge of sustaining high levels of social welfare against the background of an ageing population, and the significant role of the state in the economy. Consideration might be given to developing a specific programme, as several other European countries have done (such as the United Kingdom). A stronger policy in this area could release public sector employees from unnecessary tasks so that they can focus on service delivery. This may be an issue of interest at the local government level.

Compliance, enforcement, appeals

Data on compliance with regulations is not collected on an aggregate basis, however the compliance record is assessed to be good. Sweden, like most other European countries, does not monitor compliance rates, yet this could be important in order to evaluate the effectiveness of the current regulatory system in this regard, and to guide next steps in enforcement policy. The issue could also be built into the impact assessment process, via a requirement to review *ex post* the actual effectiveness of adopted regulations compared with expectations, as well as an emphasis in *ex ante* impact assessment to consider likely compliance and enforcement issues downstream.

The current approach to enforcement is complex and widely acknowledged to be in need of reform. Enforcement responsibilities are spread across a range of bodies, and regulated in different ways through more than 230 laws. This makes it hard to identify the best from the “not so good” performers and to promote new, more efficient and streamlined approaches to enforcement. The issue has also been highlighted in the 2007 Parliamentary Committee on Public Sector Responsibilities. The government has started to take steps to rationalise and clarify responsibilities, through organisational changes in some specific sectors. The general direction of further reforms has been expressed in a report by the government to Parliament in December 2009. Reform would, in particular, lay the groundwork for encouraging the further deployment of approaches such as the use of risk analysis to determine the optimum frequency of inspections.

The Swedish appeal system is strongly rooted in a culture that protects citizens’ rights, and an issue with appeal delays is being tackled with noticeable effects. Swedish appeal processes for contesting administrative decisions are well established and well structured. The government is aware that there is an issue of delays in reaching decisions on appeals, partly due to a rise in the number of cases, and it is taking action.

The interface between member states and the European Union

The EU dimension is a prominent aspect of Swedish preoccupations over Better Regulation. The EU was a prominent topic of discussion with the OECD peer review team at most of its meetings with Swedish stakeholders. In Sweden, as in other EU countries, a high and rising proportion of regulation is of EU origin, and is estimated to account for at least half of administrative burdens. The EU dimension is perceived to be growing in importance, with a corresponding need to manage issues more effectively at all stages of the process.

There are clear formal processes for setting strategic decisions in the negotiation of EU directives, but capacities for effective negotiation in practice may need reinforcement. There are clear formal processes for allocating and managing responsibilities for negotiation, and for setting negotiating positions (which also engage the parliament). But the framework appears less strong once a specific negotiation has started, and external stakeholders raised a number of concerns. Public consultation by the government is not systematic. Adopted directives may raise a range of problems. These include the level of detail and specificity of many directives, leaving little room for adaptation to the Swedish context, unclear language, and the frequent requirements in directives for the provision of reports, which adds to bureaucracy. Although these are issues which are beyond the capacity of one member state to resolve, they do suggest that more could be done in negotiation to minimise the

problems. A requirement for the *ex ante* impact assessment of draft EU directives (at least the key ones) would also help to identify important issues for the attention of negotiators.

The transposition of EU directives also raises some issues. Transposition deadlines are monitored by the Prime Minister's Office but there are no formal or systematic mechanisms for requiring timely and effective transposition by responsible ministries. An issue raised by a number of stakeholders concerns gold plating (going further in transposition than is strictly required by a directive). It was difficult to form a clear view of whether, and why, goldplating does occur. Factors which obscure the picture include the fact that transposition may be used as an opportunity to review a range of related national regulations, efforts to maintain Swedish standards, and a clash between EU and Swedish legal frameworks.

Local governments, through their responsibilities for implementing EU origin regulations in a range of important policy areas, are important actors. The EU regulatory influence on local governments is significant due to their role in the enforcement and execution of regulations in key policy areas such as the environment, food policy, public procurement and regional development. Although there are formal processes for involving them in the development and transposition of EU regulations, there appears to be a deficit of resources and capacities for effective participation by this level of government.

Sweden attaches importance to the interface with EU Better Regulation processes, and puts significant effort into supporting the development of these processes. Some Swedish ministries and agencies are very active in their own policy areas. Efforts have been made to support the EU administrative burden reduction programme with Swedish measurement inputs, and significant progress on the EU's impact assessments is acknowledged. The NNR (Board of Swedish Industry and Commerce for Better Regulation) which advocates for a large part of the business community, has been especially active in developing and presenting proposals, both strategic and detailed, for improvement. The general consensus is that there is important further work to be done at EU level, for example ensuring that all significant draft directives are the subject of an impact assessment and that this is updated to capture the effects of major amendments on the way to adoption.

The interface between the subnational and national levels of government

Strong traditions with deep historical, legal and cultural roots define the interface between central and local government. There is a considerable degree of constitutionally protected decentralisation and municipal autonomy to reflect local conditions, compared with many other European countries. This sits alongside the principle of homogeneity in living conditions across the Swedish territory. The two principles are a challenge to reconcile. In the same way, significant independent powers of taxation are mitigated by a tax equalisation scheme to even out inequalities. Regulatory effects on local governments can be contradictory as a result, as the result may be a mix of detailed regulation from the centre for some areas, and no central direction in other areas. This is further reinforced by the traditional autonomy of central government ministries and of their agencies, meaning that a very large number of players are taking regulatory actions in relative isolation from each other. The 2007 Parliamentary Committee on Public Sector Responsibilities report put it this way: "Little consideration is given to the aggregate effect of individual measures on each

other, and approaches can be contradictory... central government should develop a complete and coherent strategy for governance of the local government sector... there is a great need to reunite the state”.

This framework, together with other structural factors, presents challenges for the effective and timely roll out of Better Regulation at the local level. There is also a complex subnational geography, highlighted by the 2007 Parliamentary Committee report. The structure of government and agency offices in the regions is a complicating factor (each government agency, for example, is organised to fit the needs of its own functionality). The inefficiency of the current geography is recognised by the government. Another deep seated structural factor is the traditionally significant role of the state in the economy and society, which is also reflected at the local level. Municipalities are major providers of public services, and may compete with private entrepreneurs, undermining efforts to promote SMEs.

Yet municipalities play a critical role in the interface with citizens as well as businesses, which necessitates the application of Better Regulation principles. Municipalities have a broad range of tasks, mostly concerned with the execution and enforcement of national regulations, which includes the delivery of public services, the management of planning, and the allocation of a range of permits and licences. Fundamental decisions about how to use “soil and water” are made by the municipalities. A number of stakeholders, including the business community and *Tillväxtverket*, underlined the growing need for this level of government to engage in the Better Regulation agenda, despite the difficulties. Municipalities are not yet firmly linked up with Better Regulation, compared with the situation in a number of other European countries.

The central level of government needs to consider how to develop a stronger integrated framework and vision for the management of policies and regulations affecting municipalities. The conclusions of the Parliamentary Committee in this regard are highly relevant, and were already picked up in the 2007 OECD report. The Ministry of Finance, as overall co-ordinator for local government issues, has a potentially important role to play in this regard.

The autonomy of municipalities means that central Better Regulation policies do not automatically apply directly at this level, yet some are highly relevant. For example, municipalities are not directly involved in the central government’s Action Plan for regulatory simplification, despite being a major source of burdens on business through their application of higher level rules, according to the measurements carried out by *Tillväxtverket*.

Locally generated Better Regulation is also important, and efforts are being made, but there is some way to go. Efforts, mainly orchestrated by *SALAR*, are being made by the local level itself to adopt Better Regulation best practices. *SALAR* is increasingly active, for example seeking to encourage its members to standardise on approaches to the interpretation and enforcement of regulations. This review was not able to go into detail about the actions of specific municipalities but the overall sense is of very uneven progress, and some reluctance to adopt best practices. Yet sharing best practice is proving a powerful lever in some other European countries such as the Netherlands, the United Kingdom and Denmark. Benchmarking is used in some countries to encourage change, such as in Germany.

There is no specific framework or forum that would provide a mechanism for discussion between the national and local levels on Better Regulation. There does not appear to be any change since the 2007 OECD report, which recorded the unusual absence of such a mechanism “to manage issues and build a common purpose”. There is no forum, as exists in many other European countries, to bring together the national and local levels of government for regular debate on issues of shared interest. This might aid progress in a number of directions such as the integration of the local level into the Action Plan for business burdens, and the best way to ensure that the local level is effectively consulted on draft regulations of special importance to that level, given capacity constraints.

Key recommendations

<i>Strategy and policies for Better Regulation</i>	
1.1.	Build on the effective foundations that are now in place. Keep a careful watch on the speed and effectiveness with which the new framework is delivering results so as to take rapid corrective or reinforcing action as needed. Check, at regular intervals, whether there is a need for further investments to strengthen major processes such as <i>ex ante</i> impact assessment.
1.2.	Increase resources in support of regulatory simplification. Ensure that each ministry has its own individual target to encourage buy in. Arrange for an evaluation of the programme to make sure that it is on course to deliver real benefits in support of competitiveness.
1.3.	Monitor the institutional framework for oversight of <i>ex ante</i> impact assessment and be ready to strengthen it quickly if impact assessments fail to improve. Address weaknesses such as the quantification of costs and benefits. Ensure that the full range of impacts (not just impacts on business) is addressed in a balanced way.
1.4.	Address the missing links in the current Better Regulation policy (see more detailed recommendations below) and pull this together into a “whole of government” strategy for Better Regulation. Consider whether the Better Regulation Council should be formally asked to advise on further development of the policy.
1.5.	Strengthen commitments to other societal groups and interests, beyond the business community.
1.6.	Consider whether it would be helpful to establish updated detailed consultation guidelines covering key aspects of good practice. Encourage the use of new approaches, such as Internet consultations, when there is a real need to reach out to a broader audience. Ensure that government agencies apply best practice as well.

1.7.	Announce a clear formal commitment to broadening participation in Better Regulation processes across all the levels of government. Strengthen discussion with local government to establish a plan for including them in the programme. Establish a forum for the regular exchange of views between central government and the municipalities on Better Regulation.
1.8.	Consider a White Paper on management of the EU dimension of Better Regulation, to capture both detailed and strategic issues that need attention at this stage. Include a review of transposition, which appears to raise issues.
1.9.	A persuasive explanation of the reform agenda to the widest public needs to be articulated by the government, explaining that the objective is Better Regulation in support of societal as well as economic objectives, going beyond the creation of a better regulatory environment for business.
1.10.	Ensure that all major regulatory policies and processes are evaluated. Publicise the fact that this will happen, and the results when they emerge. Consider whether to strengthen links with relevant research institutes for specific evaluations. Consider a strategic evaluation of the whole Better Regulation agenda.

Institutional capacities for Better Regulation

2.1.	Consider whether any aspects of the Better Regulation Council's mandate need to be strengthened. Ensure that its existence and advice are well publicised, for example by drawing attention wherever relevant to its website.
2.2.	Ensure that any observations which emerge from the work of the National Audit Office (<i>Riksrevisionen</i>) that are relevant to Better Regulation are incorporated into government strategic thinking on the further development of Better Regulation.
2.3.	Ensure that the surveys carried out by business organisations and feedback on business views are used in shaping the next steps for Better Regulation policies.
2.4.	Boost the resources of the Ministry of Enterprise Better Regulation team and form it into a proper unit, focused solely on Better Regulation. Consider how the Ministry of Finance and the Prime Minister's Office can be more closely and visibly associated in support of its work.

2.5.	Ensure that the work of the Ministry of Justice on legal quality and plain language continues to be fully supported, and that its views on developments are integrated into strategic thinking on Better Regulation. Consider whether it would be appropriate to establish regular feedback from the Council on Legislation on its perceptions of developments.
2.6.	Encourage all ministries to further enhance their internal arrangements in support of the Action Plan and the preparation of <i>ex ante</i> impact assessments, and to boost these as necessary. Consider whether any incentives and sanctions can be put in place to encourage a strong performance across the board. An obvious one is to confirm individualised targets for ministries in support of the Action Plan – see Chapter 5 – but there may be other useful mechanisms to promote consistently good performance.
2.7.	Consider how horizontal co-operation across ministries can be further boosted.
2.8.	Review the key levers available to parent ministries for setting agency performance, including especially the annual appropriation directions and annual reports, as well as funding. Consider, together with the Ministry of Finance, whether these can be used more strongly, for example whether there is scope through the annual budget round to apply pressure, or whether Better Regulation can be embedded as part of the performance evaluation of agency heads. Ensure that cross agency co-operation is part of the requirements that will be followed up.
2.9.	Ensure that the reports to the <i>Riksdag</i> on progress with the Action Plan get a wide circulation among the parliamentary committees. Consider whether it would be appropriate to encourage the parliament to set up a Better Regulation committee (as exists in some other countries such as the United Kingdom).
2.10.	Evaluate the current resource situation, specifically with regard to the Ministry of Enterprise (see above) and the resources of other ministries for Better Regulation, and take steps to strengthen key actors where this is needed. Prioritise the further development of training courses and supporting guidance for Better Regulation and ensure that this is offered to, and taken up by, ministries and agencies.

Transparency through public consultation and communication

3.1.	Review the Committee of Inquiry process to check for issues that make it hard for stakeholders to participate effectively (deadlines for comments, feedback processes, starting consultation at an earlier stage). Consider whether there is a need to review the way in which the general public may access the Committee of Inquiry process in order to make its voice heard. Encourage the use of new approaches, such as Internet consultations, where there is a real need to reach out to a broad audience.
3.2.	Consider whether it would be helpful to provide consultation guidelines focussed specifically on covering key aspects of good practice such as timing, scope, methods and feedback (the United Kingdom guidelines provide a good example). Consider how to ensure that such guidelines are respected.
3.3.	Consider how to ensure that government agencies systematically apply best practice principles for public consultation, at least as regards their more significant draft regulations.

The development of new regulations

4.1.	Review the processes which are currently in place for forward planning of new laws and secondary regulations, in consultation with interested parties (such as the parliament and the business community) and take steps to remedy weaknesses.
4.2.	Monitor closely the institutional framework for overseeing <i>ex ante</i> impact assessment and be ready to strengthen it quickly if impact assessments fail to improve.
4.3.	Review the arrangements under which both <i>Tillväxtverket</i> and <i>ESV</i> have responsibilities for advising on agency impact assessments, and address any issues that are found.
4.4.	Reassess the provisions as regards quantification of costs and benefits.
4.5.	Ensure that the full range of important impacts, costs and benefits is addressed in <i>ex ante</i> impact assessments.
4.6.	Plan for a full evaluation of the new policy in the near future.

<i>The management and rationalisation of existing regulations</i>	
5.1.	Ensure that efforts at codification and spring cleaning of the regulatory stock continue, in support of and alongside the strategy for regulatory simplification.
5.2.	Increase the resources available to the Ministry of Enterprise for its co-ordination and support role. Encourage key contributing ministries to review whether they are adequately structured and resourced to make an effective contribution to the Action Plan.
5.3.	Individual, or even differentiated targets should be defined for each participating ministry. Alternatively, it should be stated explicitly that every ministry will have to deliver 25% unless stated otherwise and confirmed by the Cabinet. Consider also other measures to encourage buy in, such as a link to the budget setting process for government offices, and acknowledgment of individual contributions to the success of the Action Plan through the performance appraisal system.
5.4.	Require the systematic use by ministries and government agencies of the <i>Malin</i> database for identifying simplification actions, and for forecasting burdens in new regulations. Ensure that <i>Malin</i> is exploited fully for monitoring purposes.
5.5.	Ensure that parent ministries' instruction ordinance and/or the annual appropriation direction to agencies contains clear objectives for a contribution to the Action Plan and what is expected of agencies in this regard. Back this up with other actions such as regular update meetings based on ongoing and transparent monitoring of activities, where these do not already take place.
5.6.	Develop discussions with local government to establish a plan for strengthening their involvement in the efforts at regulatory simplification. Consider, as part of efforts to increase central resources for Better Regulation, how resources could be made available for this work, and whether a government agency could be given a mission to support it. Encourage the involvement of the Ministry of Finance.
5.7.	If possible and subject to resources move from annual to bi-annual reports to the <i>Riksdag</i> . Ensure that the reports are available quickly. Review the content and presentation of the reports, to ensure that relevant information is presented that distinguishes plans from achievements, and explains clearly what is required of different actors including agencies. Ensure that the information is clearly set in the broader context of what the government is seeking to achieve for the economy and society.

5.8.	Ensure that all participating ministries and agencies have established robust structures for communicating with the business community, and that the latter is provided with regular feedback on developments.
5.9.	Develop a communication strategy, in order to draw attention to the progress and emerging results of the Action Plan.
5.10.	Consider whether it would make sense to define specific targets for actions, to add to the target already set for administrative burdens, drawing on the experiences of other European countries such as the Netherlands.
5.11.	Consider how the programme could be evaluated (objectively), and by whom, on a regular basis. Use the results to guide adjustments to the programme in order to maximise its impact.

Compliance, enforcement, appeals

6.1.	Consider a review of compliance rates, based as far as possible on data that is already available, in order to guide further steps for enforcement policy, and to feed back into the framework for <i>ex ante</i> impact analysis (paying more attention to issues of compliance and enforcement when a new regulation is under development).
6.2.	Continue the efforts at reform in order to streamline the enforcement system and improve efficiency. As part of this, consider how to encourage the spread of risk based approaches to inspection, as a means of minimising burdens on companies and improving public sector efficiency, using the experience of other European countries such as the Netherlands as a guide.

The interface between member states and the European Union

7.1.	Consider a White Paper on management of the EU dimension in Better Regulation, to capture both the detailed and strategic issues which need attention at this stage.
7.2.	Carry out a wide ranging consultation of both internal and external stakeholders over the issues raised by draft EU directives, as part of the White Paper proposed above. Consider how current mechanisms, such as the role of the Prime Minister's Office and its guidance on

	negotiations, might be strengthened to provide more active support to negotiating ministries and agencies. Consider whether key ministries and agencies have adequate capacities for effective negotiation. Prioritise efforts on key issues for Sweden, and make impact assessments a requirement for draft directives that fall within these priority areas (the Better Regulation Council could play a prominent role here). Develop contacts with like minded member states to address issues such as potentially excessive reporting requirements.
7.3.	Include, as part of the proposed White Paper, a review of transposition, including oversight provisions to ensure that transposition is timely, and potential issues arising in the transposition of directives.
7.4.	Establish whether there is an issue of effective input by local governments to the negotiation and transposition of EU directives, and if so, consider what action could be taken to facilitate their input, perhaps by targeting the key areas for this level. This could be part of a white paper. Encourage <i>SALAR</i> , the local government representative association, to include EU issues in its annual list of priority areas.
7.5.	Continue the efforts to support and influence the development of EU level Better Regulation processes.

The interface between subnational and national levels of government

8.1.	Consider, in discussion with the Swedish Association of Local Authorities and Regions (<i>SALAR</i>) and interested individual municipalities, how to bring the local level into the Action Plan for Better Regulation, and other relevant initiatives by central government (such as impact assessment of draft regulations that will have significant consequences for municipalities in terms of enforcement). Consider how issues of capacity and resources can be addressed.
8.2.	Encourage <i>SALAR</i> and interested municipalities to pursue their own efforts at developing and sharing best practice, drawing on the experience of other European countries.
8.3.	Establish a forum for the regular exchange of views between central government (including key agencies) and the municipalities on Better Regulation.

Notes

1. OECD (2007), *OECD Reviews of Regulatory Reform Sweden 2007: Achieving Results for Sustained Growth*, OECD Publishing, Paris.
2. The last OECD report, published in 2007, was based on missions to Sweden by an OECD team and information collected in 2006, and thus reflects the situation in 2006, rather than 2007.
3. <http://en.edelegationen.se>.
4. www.regelradet.se/Bazment/Regelradet/sv/Yttranden.aspx.

Introduction: Conduct of the review

Peer review and country contributions

The current review of Sweden reflects contributions from the Swedish government and discussions at meetings held in Stockholm on 26 September and 4-7 November 2008 by an OECD peer review team with Swedish officials and external stakeholders. Major initiatives and developments between these missions and January 2010 are referenced in the report, but have not been evaluated.

The OECD peer review team combined the OECD secretariat and two peer reviewers from other European countries:

- Caroline Varley, Project Leader for the EU 15 reviews, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Sophie Bismut, Policy Analyst, EU 15 project, Regulatory Policy Division of the Public Governance Directorate, OECD.
- Pekka Nurmi, Director General, Ministry of Justice, Finland.
- Jeroen Nijland, Director, Regulatory Reform Group, Ministry of Finance/Economic Affairs, Netherlands.

The team interviewed representatives from the following organisations:

- The Association for small business, trade & Industry (FöretagarFörbundet).
- Board of Swedish Industry and Commerce for Better Regulation (NNR - Näringslivets Regelnämnd).
- Members of the Committee on Industry and Trade and civil servants from this committee (Näringsutskottet).
- Committee on Public Sector Responsibilities (Ansvarskommittén).
- Confederation of Swedish Enterprise (Svenskt Näringsliv).
- Members of the Council on Legislation (Lagrådet).
- The Federation of Private Enterprises in Sweden (Företagarna).
- Ministry of Employment, Division for Labour Law and Work Environment (A ARM).

- Ministry of Enterprise, Energy and Communications, Secretariat for Strategic Co-ordination, Market and Competition Division (N/MK), Secretariat for Legal Affairs (N/RS) and Secretariat for Strategic Communication (N/SAM).
- Ministry of the Environment, Division for Legal Services (M/R) and Division for Eco-management Strategies and Chemicals (M/KK).
- Ministry of Finance, Division for State Administration (Fi/SF), Division for Local Government (Fi/KL) and Division for Tax and Customs (Fi/SE).
- Ministry for Foreign Affairs, Division for EU Internal Market and Promotion of Sweden and Swedish Trade (UD/FIM).
- Ministry of Health and Social Affairs, Secretariat for Legal Affairs (S/RS).
- Ministry of Justice, Division of Constitutional Law (Ju L6), Division for Procedural Law and Court Issues (Ju/DOM), Division for Legal and Linguistic Draft Revision (Ju Gransk).
- The Parliament.
- The Prime Minister’s Office, EU Secretariat (SB/EU).
- The Regulatory Council: (Regelrådet), Head of Secretariat.
- Representatives from the Inter- Ministerial Group on Better Regulation (IDA).
- The Swedish Agency for Economic and Regional Growth (Tillväxtverket formerly NUTEK).
- The Swedish Agency for Public Management (Statskontoret).
- The Swedish Association of Local Authorities and Regions (SALAR - Sveriges Kommuner och Landsting).
- The Swedish Board of Agriculture (Jordbruksverket).
- The Swedish Companies Registration Office (Bolagsverket).
- The Swedish Confederation for Professional Employees (TCO).
- The Swedish Consumers Association (Sveriges Konsumenter).
- The Swedish Environmental Protection Agency (Naturvårdsverket).
- The Swedish National Audit Office (Riksrevisionen).
- The Swedish National Financial Management Authority (ESV- Ekonomistyrningsverket).

- The Swedish National Tax Agency (Skatteverket).
- The Swedish Trade Federation (Svensk Handel).
- The Swedish Trade Union Confederation (LO).

The report, which was drafted by the OECD Secretariat, was the subject of comments and contributions from the peer reviewers as well as from colleagues within the OECD Secretariat. It was fact checked by Sweden.

The report is also based on material provided by Sweden in response to a questionnaire, including relevant documents, as well as relevant recent reports and reviews carried out by the OECD and other international organisations on linked issues such as e-Government and public governance.

Within the OECD Secretariat, the EU 15 project is led by Caroline Varley, supported by Sophie Bismut. Elsa Cruz de Cisneros and Shayne MacLachlan provided administrative and communications support, respectively, for the development and publication of the report.

Structure of the report

The report is structured into eight chapters. The project baseline is set out at the start of each chapter. This is followed by an assessment and recommendations, and background material.

- **Strategy and policies for Better Regulation.** This chapter first considers the drivers of Better Regulation policies and the country’s public governance framework seeks to provide a “helicopter view” of Better Regulation strategy and policies. It then considers overall communication to stakeholders on strategy and policies, as a means of encouraging their ongoing support. It reviews the mechanisms in place for the evaluation of strategy and policies aimed at testing their effectiveness. Finally, it (briefly) considers the role of e-Government in support of Better Regulation.
- **Institutional capacities for Better Regulation.** This chapter seeks to map and understand the different and often interlocking roles of the entities involved in regulatory management and the promotion and implementation of Better Regulation policies. It also examines training and capacity building within government.
- **Transparency through consultation and communication.** This chapter examines how the country secures transparency in the regulatory environment, both through public consultation in the process of rule-making and public communication on regulatory requirements.
- **The development of new regulations.** This chapter considers the processes, which may be interwoven, for the development of new regulations: procedures for the development of new regulations (forward planning, administrative procedures, legal quality); the *ex ante* impact assessment of new regulations; and the consideration of alternatives to regulation.

- **The management and rationalisation of existing regulations.** This chapter looks at regulatory policies focused on the management of the “stock” of regulations. These policies include initiatives to simplify the existing stock of regulations, and initiatives to reduce burdens which administrative requirements impose on businesses, citizens and the administration itself.
- **Compliance, enforcement, appeals.** This chapter considers the processes for ensuring compliance and enforcement of regulations, as well administrative and judicial review procedures available to citizens and businesses for raising issues related to the rules that bind them.
- **The interface between the national level and the EU.** This chapter considers the processes that are in place to manage the negotiation of EU regulations, and their transposition into national regulations. It also briefly considers the interface of national Better Regulation policies with Better Regulation policies implemented at EU level.
- **The interface between subnational and national levels of government.** This chapter considers the rule-making and rule-enforcement activities of local/sub federal levels of government, and their interplay with the national/federal level. It reviews the allocation of regulatory responsibilities at the different levels of government, the capacities of the local/sub federal levels to produce quality regulation, and co-ordination mechanisms between the different levels.

Methodology

The starting point for the reviews is a “project baseline” which draws on the initiatives for Better Regulation promoted by both the OECD and the European Commission over the last few years:

- The OECD’s 2005 Guiding Principles for Regulatory Quality and Performance set out core principles of effective regulatory management which have been tested and debated in the OECD membership.
- The OECD’s multidisciplinary reviews over the last few years of regulatory reform in 11 of the 15 countries to be reviewed in this project included a comprehensive analysis of regulatory management in those countries, and recommendations.
- The OECD/SIGMA regulatory management reviews in the 12 “new” EU member states carried out between 2005 and 2007.
- The 2005 renewed Lisbon Strategy adopted by the European Council which emphasises actions for growth and jobs, enhanced productivity and competitiveness, including measures to improve the regulatory environment for businesses. The Lisbon Agenda includes national reform programmes to be carried out by member states.
- The European Commission’s 2006 Better Regulation Strategy, and associated guidelines, which puts special emphasis on businesses and especially small to

medium-sized enterprises, drawing attention to the need for a reduction in administrative burdens.

- The European Commission’s follow up Action Programme for reducing administrative burdens, endorsed by the European Council in March 2007.
- The European Commission’s development of its own strategy and tools for Better Regulation, notably the establishment of an impact assessment process applied to the development of its own regulations.
- The OECD’s recent studies of specific aspects of regulatory management, notably on cutting red tape and e-Government, including country reviews on these issues.

Regulation: What the term means for this project

The term “regulation” in this project is generally used to cover any instrument by which governments set requirements on citizens and enterprises. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. The term is not to be confused with EU regulations. These are one of three types of EC binding legal instrument under the Treaties (the other two being directives and decisions).

Chapter 1

Strategy and policies for Better Regulation

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole of government” policy to pursue high quality regulation. A key part of the OECD’s 2005 Guiding Principles for Regulatory Quality and Performance is that countries adopt broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels, contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity.

Effective communication to stakeholders is of growing importance to secure ongoing support for regulatory quality work. A key issue relates to stakeholders’ perceptions of regulatory achievements (business, for example, may continue to complain about regulatory issues that are better managed than previously).

Governments are accountable for the often significant resources as well as political capital invested in regulatory management systems. There is a growing interest in the systematic evaluation of regulatory management performance – “measuring the gap” between regulatory policies as set out in principle and their efficiency and effectiveness in practice. How do specific institutions, tools and processes perform? What contributes to their effective design? The systematic application of *ex post* evaluation and measurement techniques can provide part of the answer and help to strengthen the framework.

E-Government is an important support tool for Better Regulation. It permeates virtually all aspects of regulatory policy from consultation and communication to stakeholders, to the effective development of strategies addressing administrative burdens, and not least as a means of disseminating Better Regulation policies, best practices, and guidance across government, including local levels. Whilst a full evaluation of this aspect is beyond the scope of this exercise and would be inappropriate, the report makes a few comments that may prove helpful for a more in-depth analysis.

Assessment and recommendations

There is a strong commitment by the current government to move forward on Better Regulation. This is extremely positive for Sweden and its international competitiveness prospects. The emphasis is on creating a better regulatory environment for business, which is timely and helpful. The development of the Better Regulation programme and in particular the Action Plan for Better Regulation has acted as a wake-up call, in a context where Sweden was slipping behind in Better Regulation (and was aware of a growing gap compared with some of its European neighbours), and has started to concentrate minds on the importance of the regulatory framework as an essential “infrastructure” for business. The efforts to strengthen and give new impetus to *ex ante* impact assessment also show that Sweden is conscious of the need to manage burdens which may flow from new regulations. It is visible that important investments have been made recently. For example, the establishment of the Better Regulation Council (an autonomous external oversight body) is an important signal of the government’s commitment to change. It can be expected that these investments will pay off in the near future.

Important tools, processes and institutional structures for Better Regulation are now in place. There have been significant improvements since the 2007 OECD report, which have laid some foundations for further achievements.¹ The processes for *ex ante* impact assessment have been strengthened, clarified and streamlined, and regulatory simplification is now well underway, supported by the completion of a full baseline measurement of administrative costs for businesses, enhanced consultation processes with the business community and a reinvigorated institutional framework, which includes the establishment of the Better Regulation Council and a more operational group of state secretaries responsible for promoting better regulation policies within government. As the government itself recognises, the new processes now need to be used, and where necessary, strengthened. It has taken time to agree the changes. It may take some time for these processes to bear fruit. Sweden is now moving into a more demanding phase of its Better Regulation programme, where efforts need to be sustained and results may not come overnight. As one interviewee put it, “there are no quick fixes if the objective is to make deep changes and turn the regulatory management framework around”. Better Regulation has to be seen as the sum of many efforts over time.

Recommendation 1.1. Build on the effective foundations that are now in place. Keep a careful watch on the speed and effectiveness with which the new framework is delivering results so as to take rapid corrective or reinforcing action as needed. Check, at regular intervals, whether there is a need for further investments to strengthen major processes such as *ex ante* impact assessment.

The regulatory simplification measures are generally well structured and go beyond administrative cost reduction. The recommendations of the 2007 OECD report have been largely implemented and there is a clear framework to tackle burdens on business and to implement a range of broader regulatory as well as other simplification processes (see Chapter 5). The quantitative net target of a 25% reduction of administrative costs on businesses by 2010 is in line with good international practice. It has also acted as an important driving-force in the Better Regulation strategy. The latest update measurement (June 2009) shows an encouraging net decrease in

regulatory burdens of 2% from the original baseline. The policy goes beyond administrative costs, and aims to address the more effective overall design of rules, processes and procedures so that they are better adapted to business needs. Proposals and actions are well documented, and transparency is good.

However, some issues with regulatory simplification tools and processes need attention if the target is to be met. The pressure on participating ministries and agencies to contribute to the 25% reduction target is weak, partly because there are no differentiated or individual targets for each ministry. Use of the *Malin* database, which brings together the results of the measurement, also needs to be encouraged, to identify actions that will help to ensure the target is met. *Malin* can also help with the *ex ante* assessment of whether identified actions will be sufficient to meet the target.

Recommendation 1.2. Increase resources in support of regulatory simplification. Ensure that each ministry has its own individual target to encourage buy in. Arrange for an evaluation of the programme to make sure that it is on course to deliver real benefits in support of competitiveness.

Sweden has also taken steps to strengthen its impact assessment processes since the 2007 report. The new policy seeks to broaden the approach and the institutional framework has been strengthened (see Chapter 4). A common framework of instructions is in place, replacing the previous disjointed approach. However, the policy remains highly business focused. Other impacts (social, environmental etc.), although they are not neglected, merit greater attention, through a more balanced approach. This will help to secure the closer engagement not only of stakeholders inside government, but also outside. An early evaluation of progress will be important.

Recommendation 1.3. Monitor the institutional framework for oversight of *ex ante* impact assessment and be ready to strengthen it quickly if impact assessments fail to improve. Address weaknesses such as quantification of costs and benefits. Ensure that the full range of impacts (not just impacts on business) is addressed in a balanced way.

Public consultation is a traditional Swedish strength, and dialogue with the business community has been boosted. Sweden has a very positive underlying commitment to openness, which frames its overall approach to consultation. Participating stakeholders are generally supportive of the system which rests, notably, on the longstanding practice of establishing Committees of Inquiry for the development of major policies and legislation. The processes established by the government as part of the Action Plan for Better Regulation include significant structures and efforts to engage in dialogue with the business community over their concerns.

The government's current policies need to be extended, if they are to address all the issues that are relevant for a comprehensive Better Regulation strategy. It was right to start with an emphasis on regulatory simplification for businesses, and to use this as a motor for pulling forward the agenda. Policies aimed at other societal groups could now be envisaged, alongside what is already in place for the business community. A broader policy on public consultation for the development of new regulations (not just with the business community), enforcement policy, the need to engage the local levels

of government in Better Regulation, and the management of EU issues would now benefit from increased attention. A broader vision would help to pull these elements together, put Swedish Better Regulation policy on a more sustainable basis, and ensure that Sweden is a front runner on Better Regulation within Europe. There has been tangible progress beyond administrative burdens since the 2007 OECD report. However there is a need to go further still.

Box 1.1. Findings from the 2007 OECD report

An effective regulatory policy has a much broader definition and reach than administrative burdens, and needs to continue over time. Regulatory policy determines how laws and regulations, which are needed for a well functioning economy and society, are developed, implemented, enforced and updated with a view to maximising their efficiency and effectiveness. It encourages the development of a legal framework that can meet public policy goals, by working to ensure that rules are fit for their policy purpose. Its scope is therefore very wide ranging, helping to define relationships between the state, the economy and society.

Different sub-elements of a Better Regulation 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. 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.

Recommendation 1.4. Address the missing links in the current Better Regulation policy (see more detailed recommendations below) and pull this together into a “whole of government” strategy for Better Regulation. Consider whether the Better Regulation Council should be formally asked to advise on further development of the policy.

Better Regulation in Sweden remains tilted towards business and neglects the engagement of other societal groups. To a number of actors, Better Regulation is currently perceived as “deregulation”, and a zero-sum game, posing a threat to other societal goals. “Citizens are forgotten”, as one interviewee put it. There is a palpable concern that “we would lose something in the process” of making things easier for business and that standards could suffer. This negative perception is aggravated by the fact that civil society does not consider itself as well represented or resourced as the business community for effective participation in Better Regulation processes such as consultation or impact assessment. Addressing perceptions of an imbalance – as well as working on the imbalances which do exist – will be important to sustain support for Better Regulation over the longer term.

Recommendation 1.5. Strengthen commitments to other societal groups and interests, beyond the business community.

Public consultation continues to follow a well established track, with a major role played by Committees of Inquiry. Public consultation with parties affected by a certain piece of legislation is a routine part of developing draft laws and subordinate regulations. Consultation is, in principle, mandatory, based on the 1974 Instrument of

Government. The system – even if this is unintentional – may lack transparency for outsiders, and it may be difficult for ordinary citizens to get into the loop. Whilst general guidelines exist to frame regulatory management, including consultation, the establishment of detailed consultation guidelines might be helpful at this stage to highlight good practice and to encourage the further use of new approaches, such as the Internet. The consultations associated with the development of regulations by government agencies may need attention.

Recommendation 1.6. Consider whether it would be helpful to establish detailed consultation guidelines covering key aspects of good practice. Encourage the use of new approaches, such as Internet consultations, when there is a real need to reach out to a broader audience. Ensure that government agencies apply best practice as well. (See also Chapter 3).

The current approach to enforcement is complex and widely acknowledged to be in need of reform, which the government has started. The government has started to take steps to rationalise and clarify responsibilities, and the issue was also highlighted in the 2007 Parliamentary Committee on Public Sector Responsibilities. Some organisations have been applying risk based approaches to enforcement (such as the use of risk analysis to determine the optimum frequency of inspections). However, a stronger and more coherent policy would encourage the more widespread uptake of new approaches. As one interviewee put it, “the problem is not just the production of regulations, but the lack of a clear steer on implementation”.

The engagement of subnational levels of government in Better Regulation needs to be strongly encouraged. There is an increasingly urgent need to bring local governments more fully into the government’s Better Regulation programme, as they are the primary interface with SMEs. The Action Plan for Better Regulation currently covers central government (the ministries within the Government Offices) and a number of government agencies, currently 39. The municipal level (the main level of local government) is not yet integrated to the same extent (see Chapter 8). They are considered by many to be a key source of burdens. Inadequate integration of this level of government weakens the proposition that the government is doing all it can to reduce burdens on business. Although this is beginning to change, the process of integrating this level of government into Better Regulation needs to be formalised and accelerated. It is increasingly urgent for local government to be further engaged, as they are the primary interface with SMEs. This would have the support of a wide range of stakeholders both within and outside government. A particular institutional issue is that there does not appear to be any specific forum for discussion between the national and subnational levels.

Recommendation 1.7. Announce a clear formal commitment to broadening participation in Better Regulation processes across all the levels of government. Strengthen discussion with local government to establish a plan for including them in the programme. Establish a forum for the regular exchange of views between central government and the municipalities on Better Regulation. (See also Chapter 7).

The management of EU regulations would benefit from more attention. There are clear formal processes for setting strategic decisions in the negotiation of EU

directives, but capacities for effective negotiation in practice may need reinforcement. The framework appears less strong once a specific negotiation has started, and external stakeholders raised a number of concerns. Public consultation by the government is not systematic. The transposition of EU directives would benefit from particular attention. A major issue raised by a number of stakeholders concerns gold plating (going further in transposition than is strictly required by a directive). It would be beneficial to carry out a wide ranging evaluation and consultation on EU aspects of Better Regulation.

Recommendation 1.8. Consider a White Paper on management of the EU dimension of Better Regulation, to capture both detailed and strategic issues that need attention at this stage. Include a review of transposition, which appears to raise issues. (See also Chapter 8).

Communication on the Better Regulation agenda

The widest range of stakeholders need to buy into the government's policy for its sustainability to be assured over the longer term. This report suggests that the Better Regulation agenda should be explicitly extended to cover societal groups beyond the business community. In any event, a more inclusive approach to communication on the government's policy and regulatory plans is important. This is complementary to the basics of everyday communication such as the right of access to official documents. Sweden is strong in these basics, but a more strategic perspective is also needed. Because of strongly rooted transparency and consensus making traditions, reforms that are tackled through public debate in Sweden are more likely to gain support.

Recommendation 1.9. A persuasive explanation of the reform agenda to the widest public needs to be articulated by the government, explaining that the objective is Better Regulation in support of societal as well as economic objectives, going beyond the creation of a better regulatory environment for business.

The management of expectations which have been encouraged by the Better Regulation programme could be enhanced through more targeted communications. Securing the continued support of key external stakeholders needs the anchor of an enhanced effort at communication. The experience of other European countries is that a critical (albeit not the only) success factor of a well run regulatory simplification programme is effective government-stakeholder communication. The business community and parliament are impatient to see results at this stage. Business said that it can and must act rapidly on its own decisions, and finds it hard to understand why the government takes longer. The Government needs to persuade them more strongly (with supporting evidence) that results are coming, and to manage expectations by a careful explanation of the processes and timescales needed, in order for a government proposal to become a concrete reality.

Ex post evaluation of Better Regulation strategy and policies

As in many other OECD countries, ex post evaluation of Better Regulation policies or strategy could be strengthened and become a systematic part of the agenda. This is especially important for Sweden, which needs to ensure that the tools and processes

now in place for Better Regulation are functioning as they should. A strategically important missing link is an overall evaluation of the Better Regulation agenda, which could be used both to pinpoint gaps, and to establish more clearly how the agenda is contributing to the reinforcement of Sweden’s competitiveness as well as citizen and other societal needs. Evaluation also supports greater transparency about progress, which encourages external pressure and support to step up efforts.

Recommendation 1.10. Ensure that all major regulatory policies and processes are evaluated. Publicise the fact that this will happen, and the results when they emerge. Consider whether to strengthen links with relevant research institutes for specific evaluations. Consider a strategic evaluation of the whole Better Regulation agenda.

E-Government in support of Better Regulation

The government’s Action Plan on e-Government is a clear signal of the commitment to regaining lost ground on the development of e-Government. A carefully elaborated Action Plan has been put in place, with a supporting high level group in the Government Offices, consisting of State Secretaries, and an e-Government Delegation (“E-delegationen”),² consisting of heads of government agencies and a representative of SALAR. This is very positive, not least for the signals that it gives of the government’s commitment. The e-Government Delegation will need to track progress continuously on an aggregate level to promote appropriate intervention from the government when necessary. It was beyond the scope of this review to go into any depth, but it appears that some good progress has been made. Some issues such as funding may need attention.

Background

Economic context and drivers of Better Regulation

Better Regulation policies in Sweden have traditionally been harnessed to the achievement of important economic goals. The country’s economic recovery from the crisis of the early 1990s was partly based on regulatory reforms which supported structural changes, opening up previously closed product markets, reinforcing international market openness. Substantial efforts were made to minimise regulatory burdens on companies engaged in international trade. Product market deregulation was tackled, and the competition law was strengthened. As recorded in the 2007 OECD report on Swedish regulatory reform,³ this yielded a considerable “productivity dividend”.

Efforts have intensified since the 2006 general election (and partly in response to the OECD’s 2007 report) to address issues which undermine a positive development of the business environment and in particular, the development of small firms. The 2007 OECD report noted that the Swedish economy depends fairly heavily on large companies, with a relatively small service sector and muted entrepreneurial activity, which could be limiting the potential number of new jobs.

The drivers of Better Regulation in Sweden are defined by the current government as a push for stronger growth, the need to sustain international competitiveness, and the

need to create jobs, which will help to prevent social exclusion (*utanförskap*) in the population. The strategy for growth and renewal, launched by the government when it came to office in September 2006, included support for entrepreneurship, including easing regulatory burdens.

The Better Regulation agenda is structured around a simple but compelling formula. Simplifying regulations will reduce burdens on business and release capacities to deal more with day-to-day business operations, which in turn could create economic growth and generate more jobs. The full baseline measurement of administrative costs carried out by the Swedish government estimates administrative costs for business at approximately SEK 97 billion.

Sweden is currently facing a deeper contraction than the crisis of the early 1990s, although many economic indicators remain favourable. Public finances are still in good shape, the national debt has been pressed back to the same level as before the financial crisis, and so far the increase of the debt has been moderate. Indeed the extensive regulatory reform of the 1990s and early 2000s, completed before the crisis, suggest that Sweden may experience a good recovery of productivity growth and overall employment. There remains scope to develop the potential for self employment and entrepreneurship, by further reducing administrative and regulatory burdens on small firms.

The Better Regulation programme, and in particular the Action Plan for Better Regulation, which was launched in late autumn 2006, after the general election in September 2006, is the centrepiece of the government's strategy. The target is to reduce the administrative costs for businesses by a net 25% by autumn 2010, and of creating a "noticeable, positive" change in day-to-day business operations. The government's 2009 Budget Bill restated the commitment to Better Regulation which had already been made in autumn 2007 and 2008, underlining that a "simple and efficient regulatory framework is urgently required". It emphasised the identification of simplification proposals that "yield substantial effects for companies in the short term". The strategy is widely supported within the central government and among the business community, which has been constructively vocal and active.

Main developments in the Better Regulation agenda

Sweden has moved from an emphasis on deregulation associated with the market liberalisation of the 1990s to the improvement and simplification of rules (Better Regulation), much on the same pattern as other European countries. The policy has also broadened from simplification and cost reduction to a renewed interest in making *ex ante* impact assessment work. A key focus throughout has been on the needs of enterprises. Regulatory quality principles have also extended their reach across different institutions, starting with the committees of inquiry which have always been subject to strong requirements (on consultation for example), even if this remains a work in progress regarding the local levels of government (Table 1.1 below).

After the 2006 election, the government announced its intention to intensify work on Better Regulation, setting a target to reduce administrative costs for businesses by a net 25% by autumn 2010, and putting in place a series of tools and measures to promote Better Regulation, including a renewal of the impact assessment process.

Table 1.1. Milestones in the development of Swedish Better regulation policies

1976	Committee of Inquiry report (SOU 1976:12) makes proposals to facilitate companies' obligations to provide information etc.
1977	Submission by the government to the Parliament the so-called small companies bill (1977/78:115), which provides foundation for SME policy, aimed at providing good conditions for SMEs.
1982	<ul style="list-style-type: none"> • Submission by the government of a second bill (1981/82:118) proposing measures to improve the conditions for SMEs, based on suggestions from ministries for changing regulations affecting companies. • Adoption of Ordinance on obligations for agencies to acquire information from business and local authorities ('Consultation Ordinance', SFS 1982:668), requiring central government authorities to consult industry and local authorities when designing new forms or systems for acquiring information.
1987	Adoption of first Government Agencies and Institutes Ordinance (SFS 1987:1100), under which agencies are obliged to analyse the consequences of new regulations and put this into an impact assessment.
1984-86	Enactment of the 'guillotine rule', nullifying hundreds of regulations that were not centrally registered. All government agencies were required to establish registries of their ordinances by July 1, 1986. Those not registered by that date were cancelled.
1994	Deregulation Delegation report "Deregulation for growth and more jobs", which set four directions: 1. Create a system for active deregulation; 2. Increase knowledge about impact of regulation; 3. Facilitate the work for SMEs; 4. Other efforts.
1995	<ul style="list-style-type: none"> • Adoption of Government Offices memorandum "Control by regulation - Checklist for legal drafters" gives officials guidance in making impact assessments when drafting new regulations. • Update of Government Agencies and Institutes Ordinance (SFS 1995:1322) on impact assessment.
1998	Adoption of Committees Ordinance (SFS 1998:1474) and <i>Simplex</i> Ordinance (SFS 1998:1820) for agencies on special impact analysis for small enterprises.
1999	Adoption of guidelines for the Government Offices, similar in content to the Committees and <i>Simplex</i> ordinances for committees of inquiry and agencies.
2004	First Action Plan for reduction of administrative burdens on businesses.
2006	<ul style="list-style-type: none"> • Launch of new Government policy for intensified work on Better Regulation in the Budget Bill for 2007 after the 2006 general election. • Government sets of net overall target to reduce administrative costs for businesses by 25 percent by 2010. • Government decision to carry out baseline measurements of the administrative costs for businesses in all legal areas that are deemed to be most relevant for businesses. • Government decision that the ministries within the Government Offices and 52 government agencies should contribute to the regulatory simplification policy with actions as part of a rolling Action Plan, to be updated annually.

2007	<ul style="list-style-type: none"> • Presentation by the government of the first step in the Action Plan end May 2007. This contained, amongst other things, a selection of 167 actions to be taken (out of a total of several hundred actions proposed). • Launch of the second step in the Action Plan. Ministries and 53 government agencies commissioned to provide new actions to update the Action Plan.
2008	<ul style="list-style-type: none"> • Adoption of new Ordinance on Regulatory Impact Assessments for agencies on 1 January 2008 (SFS 2007:1244), which lays down updated principles for when and how agencies must conduct impact assessments. • New guidelines on carrying out impact assessments for Government Offices in June 2008, on the same principles. • Amendment to the Committees Ordinance (SFS 1998:1474, Para 15a) in 2008, on the same principles. • Presentation by the government of the second step of the Action Plan in April 2008. This contained some 600 actions to be taken by ministries and government agencies. • Launch of the third step in the Action Plan in July 2008. Ministries and 44 government agencies commissioned to provide new actions to update the Action Plan.
2009	<ul style="list-style-type: none"> • Presentation of the third step in the Action Plan in July 2009. This contained 940 actions, 460 of which had been implemented during 2007 and 2008, with the remaining 480 to be implemented or subject to further inquiry. • Launch of the fourth step in the Action Plan in July 2009. Ministries and 39 government agencies commissioned to contribute with further measures. The fourth step will be presented by the end of spring 2010.

Guiding principles for the current Better Regulation policy agenda

The Better Regulation agenda is firmly linked up with policies to improve Sweden's competitiveness by improving the climate for business. The most recent Government Communication on Better Regulation (Box 1.2) explains that this is part of the larger task of improving competitiveness and innovation to cope with the changed conditions of globalisation. To this end the government emphasises that a "simple and efficient regulatory framework is urgently required". The overarching principle is to achieve a "noticeable, positive change in the day-to day operations of businesses". The government's strategy and principles are laid out in an annual Communication to the *Riksdag* on Better Regulation, which also sets out the main policies that make up the strategy, as well as achievements so far (Box 1.2). Not all EU countries have a clearly articulated strategy, and this is a very positive development for Sweden since the OECD's last report.⁴

Main Better Regulation policies

The Government is promoting its Better Regulation strategy through five key components (Box 1.2): measurement of the administrative costs to businesses; regulatory impact assessment; the Better Regulation Council; consultation with the business sector; and a rolling Action Plan for Better Regulation. As well, the

government is seeking to identify the issues requiring further development (such as inspection rules).

Box 1.2. Swedish Government Communication on Better Regulation (2008/06:206)

General context

The Swedish government submitted a Communication on Better Regulation to the *Riksdag* on 4 June 2009 (the latest in a line of annual Communications since it took office in 2006). The Communication presents the work carried out from the beginning of spring 2008 to the end of spring 2009. It emphasises the need to tackle the regulatory costs to business of fulfilling their obligations, and the need for regulatory simplification.

The objective of making a positive difference for business includes the government's target of reducing the administrative costs to business caused by government regulations by 25% by 2010. The Swedish government considers that this is an ambitious undertaking, with international comparisons showing that Sweden is already doing well (the government cites the World Bank report "Doing Business in 2009-Removing Obstacles to Growth", which puts Sweden 17th out of 181 countries for the ease of running a business). The policy is not just about reducing administrative costs. The basic aim is to design rules, processes and procedures so that they are better adapted to business conditions and reality. Waiting and processing times as well as service to and treatment of businesses at authorities constitute key components of the work. The Government notes that it is equally important to rectify rules that irritate businesses. Most important is to bring about changes to legislation which are helpful to business in the long term.

The government also notes that the Swedish regulatory system may present special challenges which can lengthen the time it takes to develop simplification proposals and bring them to conclusion. Regulations are issued on several different levels; agencies are autonomous; and the committee of inquiry procedure, based on a long tradition, may need to be followed. Many of the proposed simplification measures will not therefore show immediate results.

The policy is based on the establishment of a "cohesive structure and tools", after reviewing developments in other European countries. Institutional changes have strengthened the capacities of Government Offices to oversee the policy. These consist of an operative state secretaries group; an inter-ministerial working group of officials; overall co-ordinating responsibility with the Ministry of Enterprise which has a unit for the purpose; "simplification officers" around departments; and the support of the Agency for Economic and Regional Growth for agencies' work on simplification.

The Communication underlines the importance of the EU, with about half of regulatory burdens caused by EC rules. Simplification efforts need to be pursued at this level.

Finally, the government notes that it has begun a change management project in the government sector to support long term change. As well as the work at central level in agencies and ministries, both the regional and local levels are considered important for better regulation.

The central tools of better regulation

The Communication sets out the following tools which are being deployed for achieving better regulation:

- *Measurement of the administrative costs to businesses.* This has been performed using the Standard Cost Model. Measurement updates are carried out in order to monitor progress towards the 25% reduction target.

- *Regulatory impact assessment.* The Government has introduced rules and guidelines to ensure that impact assessments are carried out in a similar way along the regulatory chain.
- *The Better Regulation Council.* This body has been established to examine the form and content of proposals for new and amended regulations that could have a significant impact on the conditions under which businesses operate, their competitiveness or other conditions.
- *Consultation with the business sector.* The Government encourages close consultation and dialogue between ministries and agencies and their business clients.
- *An Action Plan for Better Regulation.* The work of regulatory simplification is being carried forward through a rolling action plan, which is updated annually. The Action Plan specifies completed, ongoing and planned simplification measures.

The development of Better Regulation is a priority for the government. This includes developing indicators or other monitoring instruments to take forward the simplification work, beyond what can be achieved via the SCM measurement of administrative costs. A key aim is to find ways of analysing administrative costs more closely, including irritation costs.

The government's Better Regulation policy covers the government offices and government agencies. The government has not yet actively involved subnational levels in the Better Regulation work, but there is discussion about engaging these levels in the next steps.

Regulatory simplification for business and the rolling Action Plan

The Action Plan for Better Regulation, set up by the government in 2006 when it came into office, and which is updated annually, covers a broad range of regulatory simplification measures. The government's stated overarching objective is "to achieve a noticeable, positive change in day-to-day business operations". This objective includes the government's target of reducing the administrative costs to businesses caused by government regulations by a net 25 % by 2010. It is estimated that a 25% reduction of administrative costs would represent a cost saving of approximately SEK 25 billion. A full baseline measurement of administrative costs to business has been carried out to allow progress towards the target to be evaluated, and is updated annually to take account of burdens contained in new or amended regulations. The Action Plan measures extend beyond administrative costs. For example waiting and processing times as well as better service to, and treatment of, businesses by public authorities are key components. Irritants to business are also addressed. The Action Plan is currently in its fourth phase (see Table 1.1 above).

Ex ante impact assessment

A new policy seeks to promote a more systematic and more coherent approach going beyond impacts on small firms, and a strengthened institutional framework. The centrepiece of the revised approach is a new Regulatory Impact Assessment Ordinance (SE 2007:1244) for the government agencies, which entered into force on 1 January 2008. The ordinance sets specific requirements for impact assessment. It states that when making new regulations, all relevant consequences (economic, social,

environmental etc) should be taken into account and documented in a written justification, with a level of analysis proportionate to the importance of the issue. The emphasis remains on the economic and business aspects. Impact assessment has to be done “early in the process”, and includes a checklist of twelve points, equally important, including coherence with EU regulations. The new Ordinance has been used as a template to update and strengthen requirements on ministries through guidelines issued by a group of State Secretaries with a special responsibility for the better regulation work within the Government Offices, as well as on the Committees of Inquiry through an amendment to the Committee Ordinance (SFS 1998:1474, 15a §).

Consultation with the business sector

The Government has identified this issue as a key process in its objective to “make a noticeable difference to the day to day operations of businesses”. It notes that it is important to identify the simplification measures which businesses are calling for. Simplification assignments to the Government Offices and the government agencies stress the importance of consultation with the business sector. Business sector organisations have also made an active contribution to encourage consultation. The forms of consultation differ among ministries and government agencies. Some arrange consultation meetings specifically on better regulation, and others put the topic on their agenda for their regular dialogue sessions with the business sector. It should be noted that these developments are only part of a much broader picture for Swedish public consultation on new policies and regulations, which rests on longstanding principles of transparency and public access to the activities of government, and is a routine part of developing draft laws and subordinate regulations.

Communication on the Better Regulation agenda

Internal communication has been boosted by the inter-ministerial State Secretaries Group on Better Regulation and an inter-ministerial working group with officials from different ministries, which is used to convey and discuss developments and results emerging from key programmes. The Ministry of Enterprise has also set up an extensive internal web portal for the Government Offices on the better regulation work nationally and to a certain extent at EU level, where all relevant information (regulations, guidelines and other steering documents, explanations about the better regulation work and its tools etc. and all relevant internet links are available, including relevant information regarding the work of the Better Regulation Council.

External stakeholders are kept informed through working groups, seminars and press releases. Most of this appears to flow from the Action Plan on Better Regulation, where significant efforts have been made to nurture a stronger culture of consultation and communication with the business community, albeit with uneven results (see Chapter 5). Some concerns were expressed to the OECD peer review team about the clarity, completeness and presentation of the government’s annual reports to the parliament on progress with the Action Plan, although there have been improvements with the recent report. These reports describe the work of the past year, notably a statement of the actions proposed and taken on regulatory simplification and to reduce administrative costs for businesses. The first three reports have not covered any assessment of the progress and results from the application of *ex ante* impact assessment processes and the evaluations of the Better Regulation Council, which may be explained by their relative newness.

Ex post evaluation of Better Regulation strategy and policies

Comprehensive *ex post* evaluation of policies and programmes tends to be addressed *ad hoc*, as in most other European countries. An evaluation of the work of the Better Regulation Council will be carried out. The National Audit Office performance audits, although they do not directly address Better Regulation issues, are important in identifying issues in the implementation of policies and regulations, and whether these are meeting objectives. The *NNR (Board of Swedish Industry and Commerce for Better Regulation)* provides useful (even if not that deep) evaluations on aspects of the government's Better Regulation progress, with its Regulations Indicators Report, published annually since 2002.⁵ There were several calls for more *ex post* evaluation of policies and the regulatory framework. This is perceived as an issue. No overall evaluation of Swedish better regulation contribution to policy goals has taken place in recent years. The government's annual monitoring update reports on the Action Plan are not a substitute for this kind of evaluation. A strategically important missing link is thus an overall evaluation of the Better Regulation agenda, which could be used both to pinpoint gaps, and to establish more clearly how the agenda is contributing to the reinforcement of Sweden's competitiveness, and societal welfare.

E-Government in support of Better Regulation

The current government, when it came to office in autumn 2006, decided to regain the ground lost in recent years relative to some neighbouring countries, and to get back into the lead. One of the first steps taken by the government was to appoint an e-Government group at state secretary level tasked with establishing inter-ministry consensus on strategic issues. The goal, which was expressed in an Action Plan for e-Government, was to "put Swedish public administration back among the world's elite in the field of e-Government". The Government considers that this goal has now been at least partly achieved.⁶

A core objective is to strengthen and develop the Swedish model of public administration, so that Sweden can compete more effectively in the international arena. There is an emphasis on joint initiatives to raise efficiency, including ones that link the ICT actions of businesses with those of the administration. Within the administration, the aim is to promote co-ordination between the government offices (central ministries) on their e-Government activities, including in relation to law drafting. Sweden also attaches considerable importance to ICT as a means of making progress on regulatory costs for business. A core objective is to support the government's action plan for Better Regulation for business.

Some important aspects of e-Government in Sweden work well, including generally high levels of trust among citizens towards the state which allow progress on issues such as data sharing (which can raise problems in some other countries).

A key structural issue is the decentralised architecture, with the government agencies largely responsible for delivering e-Government services. There is a need to improve co-ordination (which is partly encouraged by the government agencies themselves) and to some extent, recentralise the approach, not least to ensure effective investments that are not duplicated around the system, and to address some cross-cutting technical issues. In January 2008, the government formally adopted an e-Government Action Plan, "A new basis for IT-based organisational development in public administration".

The e-Government Action Plan specifies priority measures and targets in four areas:

- Areas 1 and 2 aim to improve the regulatory and technical conditions for e-Government deployment across the administration.
- Area 3 aims to harmonise some of the administration's support processes – the back-office.
- Area 4 aims to produce visible results for citizens and businesses in terms of simplified contact – the front office.

Under the overall co-ordinating responsibility of the Ministry of Finance, different ministries have been made responsible for the measures set out in the work plan. A high level group of State Secretaries has been set up within the government Offices, backed up by an inter-ministerial group, to track progress and set priorities towards the 2010 end date. The group of State Secretaries is chaired by a State Secretary at the Ministry of Finance and consists of State Secretaries from six other ministries and the Prime Minister's Office. Its main task is to strengthen co-ordination within the Government Offices on issues that are strategically important for the development of e-Government. Issues handled include, for instance, aspects of steering and funding of inter-agency development projects and a strategy for harvesting rationalisation gains and legal conditions. The Government has also appointed an e-Government Delegation with an operational role to take the reform programme forward until December 2014. The e-Government Delegation includes representatives of the government agencies and of *SALAR*.

Notes

1. The last OECD report, published in 2007, was based on missions to Sweden by an OECD team and information collected in 2006, and thus reflects the situation in 2006, rather than 2007.
2. <http://en.edelegationen.se>.
3. Sweden-Achieving Results for Sustained Growth, OECD 2007.
4. It should be noted that the term “Better regulation” used in the Swedish context does not have precisely the same meaning as “Better Regulation” for the EU 15 project. This report examines some of the differences, which have largely to do with scope. For example, “Better Regulation” for the EU 15 project encompasses other societal groups and interests beyond the business community.
5. The NNR Regulatory Indicators use a particular methodology. If the answer is “no” on just one of several aspects, then the overall answer is “no”.
6. It cites the most recent EU benchmarking report on E-Government, presented on 19 November 2009. The Government also notes that an important intermediate target was the Ministerial e-Government conference in Malmö 19-20 November 2009 during Sweden’s EU Presidency. At this conference, a new Ministerial Declaration was agreed on among 34 European States www.egov2009.se/wp-content/uploads/Ministerial-Declaration-on-eGovernment.pdf. It will replace the 2005 Manchester Declaration as the joint policy document for e-Government on the EU level. It will also provide the foundation for an upcoming Action Plan for the European Commission and a new Steering Group for e-Government related questions.

Chapter 2

Institutional capacities for Better Regulation

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Assessment and recommendations

Sweden has a strong and well established public governance framework characterised by a small policy making centre and a very large network of implementing government agencies. Sweden has a particularly disaggregated structure of public governance, with a few small ministries at the apex, and several hundred government agencies (some with horizontal, most with sector specific responsibilities). There is also a highly autonomous municipal level of government. Policy and rule making are carefully framed and based on clear principles which are embedded in the constitution. There is an important tradition of consensus building to meet policy and regulatory objectives involving key actors both within and outside government, including the social partners.

The breadth of the institutional structure raises challenges for rapid progress on Better Regulation. In the absence of strong and determined management, this is a system with centrifugal tendencies. There are many autonomous actors, with a constitutionally anchored independence of action with regard to some aspects of their activities. Effective steering and firm encouragement from the centre of government is therefore critical for the success of a Better Regulation strategy that needs to encompass all the relevant institutions and different levels of government. The system may also encourage a sense that issues are the responsibility of other actors, thus fragmenting collective effort and leading to uneven performance. The growing importance of the EU adds another critical dimension to the need for a strong central engine to promote regulatory quality. The issue is how to achieve change and promote a shared vision whilst respecting the character of the Swedish traditions, which have a number of strengths. There is awareness that fragmentation is an issue. An important distinction, however, needs to be made between the government agencies, which are autonomous but ultimately under the control of central government, and the municipalities, which have a constitutionally protected independence *vis-à-vis* central government.

Against this somewhat challenging background, significant progress has been made since the 2007 OECD report to set up a stronger central driver for Better Regulation, and a “whole of government” approach. The 2007 OECD report recommended that an additional process or structure may be needed to boost reform, promoting a strategic reform vision and helping to establish consensus on important issues. It recommended the establishment of an external advisory body. This has now been done, with the establishment in 2008 of the Better Regulation Council. This is rightly seen as evidence that the government is serious about Better Regulation. The Ministry of Enterprise responsibilities have also been boosted. The ministry has a team of officials responsible for the co-ordination, support and follow up of work on Better Regulation, and it chairs the cross government group of State Secretaries on Better Regulation as well as the cross government working group on Better Regulation (with officials from different ministries within the Government Offices).

Box 2.1. Recommendations from the 2007 OECD report

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

A central initiative with leadership at political level is needed to raise awareness and move the agenda of regulatory reform forward. This task could be accomplished by an external advisory body to government. 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.

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 government agencies are not clear enough, which leads to duplicity of tasks and uncertainty on the desired outcomes. There should be more focus and leadership in the regulatory process. This does not necessarily mean entrusting a specific ministry with this task, but it requires that government agencies themselves become engaged in the work, and take their own initiatives in a co-ordinated manner. A certain degree of central co-ordination is important for a successful regulatory policy.

The establishment of the Better Regulation Council has been greeted with enthusiasm by many stakeholders. Considerable expectations are vested in this body. Sweden needs independent perspectives to challenge the strength of government policies for regulatory reform and to ensure that all relevant actors buy in to Better Regulation (not just the enthusiasts). This new watchdog is a major step forward for Sweden. The Better Regulation Council is expected to play an important scrutiny role for impact assessments. Although it is an advisory body, the Council's opinions are made public through its website¹ and it is expected to provide an incentive to prepare better quality impact assessments. It published a report on its experiences in January 2010 and will publish another report at the end of its current mandate in 2010. It is too soon to comment on its success. It certainly has the potential to make a difference, but does need to find its place, and assert itself as a new player with influence. There is a need to decrease dependency on political cycles or personal commitments, which this type of institution can help to meet.

Recommendation 2.1. Consider whether any aspects of the Better Regulation Council's mandate need to be strengthened. Ensure that its existence and advice are well publicised, for example by drawing attention wherever relevant to its website.

The National Audit Office (Riksrevisionen) is a potentially valuable external observer of the regulatory process. Its 2004 report to the Riksdag was instrumental in encouraging the development of today’s Better Regulation agenda. It carries out performance audits which, whilst they may not be directly focused on Better Regulation processes, can nevertheless raise issues relating to the effectiveness of regulatory management have a direct bearing on Better Regulation, including impact assessment. Some of its recent work points, in particular, to the “cascade” effect of regulatory development and the need to be clear not just what regulations raise issues, but who produces and implements them.

Recommendation 2.2. Ensure that any observations which emerge from the work of the National Audit Office (Riksrevisionen) that are relevant to Better Regulation are incorporated into government strategic thinking on the further development of Better Regulation.

The NNR (Board of Swedish Industry and Commerce for Better Regulation) and other business organisations also provide valuable feedback on the progress of Better Regulation. The NNR represents the views of a large part of Swedish business and is active and vocal in support of further progress. The added value of these organisations is that they are able to identify the practical issues which need attention to help the business community. Sweden is fortunate to have a business organisation of this kind, which works solely on Better Regulation issues.

Recommendation 2.3. Ensure that the surveys carried out by business organisations and feedback on business views are used in shaping the next steps for Better Regulation policies.

Within the government, the Ministry of Enterprise needs more resources and support. The Ministry of Enterprise is the most appropriate focal point for Better Regulation at this stage, but it seems to be treading a somewhat exposed path as the flag bearer for Better Regulation. Its Better Regulation team (it is not even a unit, and staff have to combine their work with other Better Regulation tasks) is under pressure, under resourced and needs to be strengthened if it is to be effective in its work with other ministries for the development of the Action Plan and more broadly to support the further development of Better Regulation. The ministry also needs the stronger support of other key central government actors – the Ministry of Finance and the Prime Minister’s Office – if it is to have the desired political impact and leverage on the range of autonomous actors that need to be part of regulatory reform. The leverage of the Ministry of Finance is needed if there is to be concrete and more rapid progress in respect of the government agencies, local government as well as the use of e-Government in support of Better Regulation (all of which it co-ordinates). The Prime Minister’s Office has a necessarily more complete view of the system, including the EU aspects, and could bring its influence to bear on potential blockages and slow movers. Its visible policy support is needed to secure the sustainability of Better Regulation.

Recommendation 2.4. Boost the resources of the Ministry of Enterprise Better Regulation team and form it into a proper unit, focused solely on Better Regulation. Consider how the Ministry of Finance and the Prime Minister’s Office can be more closely and visibly associated in support of its work.

The role of the Ministry of Justice for securing legal quality and promoting plain language remains important and the Council on Legislation may have useful input. The Ministry of Justice plays a fundamental role in support of legal quality. Care is needed to ensure that it is not sidelined in the promotion of new Better Regulation processes. It currently appears to operate somewhat apart from the other core ministries in this respect. The Council on Legislation, which vets draft legislation from a legal perspective, should not be neglected as a potentially valuable ally and source of information on regulatory quality. It may, for example, spot trends over time regarding such issues as quality of legal drafting, which is part of Better Regulation.

Recommendation 2.5. Ensure that the work of the Ministry of Justice on legal quality and plain language continues to be fully supported, and that its views on developments are integrated into strategic thinking on Better Regulation. Consider whether it would be appropriate to establish regular feedback from the Council on Legislation on its perceptions of developments.

The steps taken by ministries themselves in support of Better Regulation appear to be uneven. Support structures of different kinds have been set up in a number of ministries, ranging from a single central unit to a looser network approach. It is not clear how far this boost to internal systems has been adopted across all relevant ministries. The OECD peer review team heard that some ministries (and government agencies) are less interested in Better Regulation than others.

Recommendation 2.6. Encourage all ministries to further enhance their internal arrangements in support of the Action Plan and the preparation of *ex ante* impact assessments, and to boost these as necessary. Consider whether any incentives and sanctions can be put in place to encourage a strong performance across the board. An obvious one is to confirm individualised targets for ministries in support of the Action Plan – see Chapter 5 – but there may be other useful mechanisms to promote consistently good performance.

The Swedish institutional context puts a premium on effective internal co-ordination and communication across the different parts of government. The different parts of the institutional machinery, which comprise a range of agents who are used to working autonomously, need to be encouraged to work toward common Better Regulation goals. The State Secretaries’ Group chaired by a State Secretary at the Ministry of Enterprise and the inter-ministerial working group on Better Regulation are excellent starting points but may need a stronger mandate to address horizontal issues. One interviewee said that further horizontal co-operation was not just desirable but

essential. Better Regulation issues often cross the boundaries of individual ministries (notably regulatory simplification initiatives).

Recommendation 2.7. Consider how horizontal co-operation across ministries can be further boosted.

The government agencies are key actors in the institutional structure as regards Better Regulation, and need to play a stronger role overall. The powers delegated to the government agencies to develop secondary regulations (giving effect to primary laws, which also includes responsibility for the transposition of most EU regulations) give them a powerful and central role in Better Regulation. Government agency regulations form by far the largest part of the Swedish regulatory system. A lot of administrative burdens stem from these regulations. The underlying complexity and breadth of the agency structure is a challenge (one which is in some ways specific to Sweden), as is the fact that there is fairly continuous organisational change, even if some of these changes are intended to simplify the structure. Effective steering by central government is thus essential to reap the full benefits of agency contributions to Better Regulation. Important tools are in place for this. Beyond the traditional tools of appropriation directions etc, there are specific requirements (through decisions by the Government in November 2006, May 2007, July 2008 and August 2009) on ministries and government agencies participating in the Action Plan to identify measures and report on actions in support of regulatory simplification, which are brought together in a working plan by each ministry and submitted to the Ministry of Enterprise. Some of these tools may need reinforcement and need to be used more effectively. Some government agencies are very active as regards Better Regulation and co-operate closely with businesses. Government agencies also need to co-operate with each other where their interests converge. There is, in the words of one interviewee a “need to tackle a web of regulations which interact”. Some government agencies are clearly out in front on co-operation, but others may need to catch up.

Recommendation 2.8. Review the key levers available to parent ministries for setting agency performance, including especially the annual appropriation directions and annual reports, as well as funding. Consider, together with the Ministry of Finance, whether these can be used more strongly, for example whether there is scope through the annual budget round to apply pressure, or whether Better Regulation can be embedded as part of the performance evaluation of agency heads. Ensure that cross agency co-operation is part of the requirements that will be followed up.

Parliamentary views on the government’s Better Regulation strategy appear broadly positive but its involvement is perhaps not sufficiently encouraged. The *Riksdag* appears broadly supportive of the government’s Better Regulation efforts (more so than in some other European countries). The Trade and Industry Committee suggests that there is scope to broaden the understanding of Better Regulation and its importance to competitiveness. Much of this advocacy of course needs to be done within the parliament itself. A strengthened reporting cycle on progress with the Action Plan could enhance support and understanding.

Recommendation 2.9. Ensure that the reports to the *Riksdag* on progress with the Action Plan get a wide circulation among the parliamentary committees. Consider whether it would be appropriate to encourage the parliament to set up a Better Regulation committee (as exists in some other countries such as the United Kingdom).

Resources and training

Inadequate resources are an issue, and there is a need to accelerate training focused on Better Regulation processes to support an enhanced performance by ministries and government agencies. The number of officials working directly on Better Regulation is quite small, relative to the ambition of the Better Regulation programme and the large and fragmented institutional structure. Central government needs appear to be the most pressing (with its current assignments, the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) appears to be managing well in respect of the government agencies). As already noted, the Ministry of Enterprise capacities need to be enhanced. The ministry's plans to roll out further training and support for impact assessment are important.

Recommendation 2.10. Evaluate the current resource situation, specifically with regard to the Ministry of Enterprise (see above) and the resources of other ministries for Better Regulation, and take steps to strengthen key actors where this is needed. Prioritise the further development of training courses and supporting guidance for Better Regulation and ensure that this is offered to, and taken up by, ministries and government agencies.

Background

General institutional context

General structure

The Swedish model of government is characterised by small policy-making ministries and a much larger network of government agencies responsible for the implementation of government policy. Constitutional provisions with strong historical roots impose constraints on any changes to the underlying structure of government. Local governments are entrusted with a large number of complex tasks, reflecting an emphasis on local democracy and the need to match the provision of services to local preferences.

Box 2.2. Sweden's institutional structure

Sweden is a constitutional monarchy. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage, and is given effect through a representative and parliamentary polity and through local self government.

The Constitution

The Swedish Constitution is made up of four fundamental laws. These establish the basic rules that govern the Swedish state, and include provisions (often elaborated in further legal instruments) that define the relationship between the executive and the legislature, as well as the rights and freedoms of Swedish citizens:

The Instrument of Government. This sets out basic principles relating to 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, parliamentary control, and financial powers.

The Act of Succession. This establishes the right of succession to the Swedish throne.

The Freedom of the Press Act. This includes the right 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. It also contains the rules for public access to official documents.

The fundamental law on Freedom of Expression. This guarantees a number of rights concerning public freedom of expression and communication in certain media, such as radio, television and film. The aim is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation.

The executive

The Swedish government is based on a dualist principle which makes a clear distinction between the small policy making core (the Government Offices) and a much larger set of government agencies that implement policy, including through the development of secondary rules to give effect to framework legislation developed by the Government Offices and enacted by the parliament.

The policy making centre of government consists of the Prime Minister's Office and 12 ministries (numbers and responsibilities may vary over time).² The ministries are collectively known as the Government Offices, forming an integral authority. The Prime Minister appoints ministers. These tend to be members of the parliament, but they may also be without a seat or political affiliation (for example, independent experts). There are currently 21 ministers. Each ministry is generally headed by a minister, but some ministries are headed by more than one minister. For example, the Ministry of Enterprise, Energy and Communications is headed by the Minister for Enterprise and Energy (Mrs. Maud Olofsson, who is also Deputy Prime Minister of the current government) and the Minister for Communications (Mrs. Åsa Torstensson). The State Secretaries rank second to the ministers in directing the day-to-day business of the ministry. There are currently three State Secretaries at the Ministry of Enterprise, Energy and Communications. Furthermore, each minister has a political staff including Political Advisers and Press Secretaries. The political staff assist the ministers by preparing political issues, planning and co-ordination and contacts with the media.

Policy decisions are the collective responsibility of the Cabinet, and decisions must be unanimous.³ The great majority of staff at the Government Offices are politically neutral, retaining their posts upon a change of government. Some 4 600 officials and political appointees work in the Government Offices and on government committees.

Box 2.2. Sweden's institutional structure (cont.)

The Instrument of Government defines the tasks of the government. The main ones are:

- Development of bills for presentation to the parliament (*Riksdag*).
- Implementation of decisions by the *Riksdag*.
- Allocation of funds appropriated by the *Riksdag* for expenditure.
- Representation of Sweden in the EU, responsibility for agreements with other states.
- Direction of the activities and operations of the executive branch.
- Defining the framework for the activities of the government agencies.
- Certain competences to adopt legislation.

The government may not take decisions on matters where sole authority rests with the *Riksdag* (for example, in relation to the enactment of laws and the national budget). It also may not decide matters that are to be tried by a court of law, or determine how another authority should use its power in individual cases.

Committees of Inquiry are an important feature of the Swedish institutional landscape and a major input to decision making. Before the government can draw up a legislative proposal, the issue is analysed and evaluated by a Committee of Inquiry independent of the government, and generally made up of experts, officials and politicians. The Committee makes recommendations as well as a consequences assessment, and its report is published.

Fiscal management rests on the “fiscal stability pact” which was given effect in an important state budget law enacted in the late 1990s following the financial crisis early in that decade.⁴ This imposes budgetary caps on government spending for a cycle of three years. It also requires a surplus of 2% GDP over a five year cycle.

Regulatory (government) agencies

Government agencies are a fundamental part of the structure of Swedish government. They implement the higher level policy and regulatory decisions taken by the government and the parliament. The government agencies are instruments of the government and are under governmental control, with the exceptions set out in Chapter 11, Paragraph 7 of the Instrument of Government (decision making in a particular case concerning the exercise of public authority against a private subject or against a municipality, or concerning the application of law). Within the guidelines set by their parent ministry, many have considerable autonomy in the way they carry out their implementation tasks. There is no overarching policy on the establishment, design or functions of government agencies, whose role is based on the principle of “government administration at the service of citizens”.

In 2006, the government appointed a Committee on Public Management to review the government agencies. The Committee's final report was published in December 2008 (SOU:2008:118). The Government will present a bill to the Parliament in March 2010, covering among other things the issues raised by the Committee.

The legislature

The Swedish parliament is made up of a single directly elected chamber, the *Riksdag* (there were two chambers until 1970), with 349 members. Elections are held every four years. The Instrument of Government lays down that the *Riksdag* is the sole enactor of primary legislation, and that certain issues (such as civil law⁵) can only be regulated by primary legislation. The *Riksdag* may, however, delegate

authority to legislate on other issues to the government, via a law which enables the government to issue statutory instruments. Large areas of public law⁶ are covered in this way. The *Riksdag* also decides on state income (taxes) and spending (based on the government's annual Budget bill), scrutinises and checks the work of the government and other public authorities, and appoints the Prime Minister. There are 16 standing committees, covering the main areas of government activity. They may call for information on an issue, and arrange hearings.

The judiciary

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 precedent as in the United Kingdom and the United States. The courts may interpret the law, but they do not make it. Court decisions are not however restricted to procedural issues, and they can rule on the substance of a case.

The judiciary is politically independent, with permanent judges (appointed by the government, but politically neutral). There is no jury system, with a few exceptions.⁷ There is no constitutional court, instead all courts may ascertain whether a law is in conflict with other laws, including the constitution, to which all other laws are subordinate.

There are three types of court in Sweden: the general courts, which comprise 72 district courts, six courts of appeal and the Supreme Court; the general administrative courts, which comprise county administrative courts, administrative courts of appeal for cases dealing with the public administration, and the Supreme Administrative Court; and the special courts, which determine disputes within special areas, for example, the Labour Court and the Market Court. The Supreme Administrative Court and the Supreme Court are courts of precedent.

Local levels of government

Sweden has a long tradition of local self government, which is written into the constitution, as are their powers of taxation. A key concept in the Swedish model of public administration is decentralisation. This means that both responsibility for services and decision-making should be placed as close as possible to the people affected by the decisions. The aim is to gear activities to local conditions and to promote the most effective use of local resources. There are currently 20 elected County Councils and 290 elected municipalities.

Institutional developments

The basic institutional structure is relatively stable. Some important constitutional changes in the 1970s altered the structure of the parliament and introduced proportional representation, further underlining the importance of co-operative and consensus building processes for policy and rule making. The election cycle was changed from 3 to 4 years in 1994.

The agency structure is in a process of more or less continuous flux. At any one time, a number of government agencies are being terminated or amalgamated with other government agencies, and new government agencies are being set up. Older agencies often survive in some form. These decisions are taken by the government, not agencies themselves.⁸ There is an underlying trend towards fewer government agencies over time. The number of government agencies decreased from 1 394 in 1990 to 413 today.⁹ This is matched by a reduction over time in the number of employees in the state sector, which went from more than 350 000 in 1990 to 236 000 in 2008. Since the general election in September 2006, the number of agencies has been reduced by 61, mainly through mergers of smaller government agencies.¹⁰ The Swedish government considers there is a need to rationalise the current system (and, where appropriate, stop the creation of new government agencies), cut costs, spread best practice, and improve

efficiency. The key word is “simplification”, not least to help businesses and citizens. There is an understandable concern, against the broader context of promoting efficient public governance in support of growth and competitiveness, to ensure that the Swedish institutional structure itself is efficient.

Structures and responsibilities of the different levels of government were the subject of a wide ranging report by the parliamentary Committee on Public Sector Responsibilities (see Chapter 8), which is under discussion. Implementation of the proposals would mean a reshaping of structures at regional level, among other issues.

Developments in Better Regulation

Significant recent developments include the establishment of an independent watchdog, the Better Regulation Council, in 2008, and the establishment of the new group of State Secretaries on Better Regulation as well as the inter-ministerial working group on Better Regulation are also quite important recent developments.

Table 2.1. Milestones in the development of Swedish Better Regulation institutions

1969	Committee of Inquiry appointed to investigate regulations regarding employers' information and tax collection obligations.
1993	<ul style="list-style-type: none"> • Deregulation Delegation (<i>Avregleringsdelegationen</i>) appointed with the task, among other issues, to develop impact assessments. • Establishment of the Simplex unit to provide guidance and support on Better Regulation, specifically its business aspects, including approval of the quality of small business impacts.
1999	Group of State Secretaries established with responsibility for regulatory reform in Government Offices (sets out guidelines for the latter).
2004	Integration of the <i>Simplex</i> unit into the Business Division of the Ministry of Industry, Employment and Communications.
2006	Business Division (under the renamed Ministry of Enterprise, Energy and Communications) divided into two divisions, the Division for Entrepreneurship, and the Market and Competition Division, which besides dealing with Better Regulation also deals with competition and state aid issues.
2007	<ul style="list-style-type: none"> • New, more operative group of State Secretaries appointed to monitor and steer the better regulation work within the Government Offices, chaired by a State Secretary at the Ministry of Enterprise. • Inter-ministerial officials working group established to co-ordinate and follow-up the better regulation work within the Government Offices chaired by an official at the Ministry of Enterprise, and made up of ministry officials with responsibility for co-ordinating the better regulation work. • Establishment by the Ministry of Enterprise of a central working group with business representatives to identify areas of particular concern to business, backed up by meetings held by the ministries and government agencies with business organisations to discuss better regulation issues.

2008	Presentation by the government of the terms of reference for the Better Regulation Council in May 2008, to be established in autumn 2008 as a form of committee with a mandate until 31 December 2010.
2009	Better Regulation Council starts work in February, consisting of four members and assisted by a secretariat.

Key institutional players for Better Regulation

Executive centre of government

There are four key players:

- *The Ministry for Enterprise, Energy and Communications.* A Better Regulation team within the Market and Competition Division of this ministry is the main co-ordinator for Better Regulation, and the closest to an overall co-ordinating unit.¹¹ It evolved out of units that have existed in different forms since 1999. It currently has 8-9 staff (its predecessor unit before the 2006 election had seven staff). The Ministry of Enterprise has overall responsibility to co-ordinate the work of the Better Regulation programme. The Better Regulation team co-ordinates, supports and monitors cross-government work on better regulation, simplification of regulation and reduction of administrative costs.
- *The Ministry of Finance.* The Ministry of Finance is (and should be) a key player in matters of Better Regulation. The ministry has broad co-ordinating responsibilities for the large network of regulatory agencies, as well as for local government and e-Government.¹² Its primary concern is the fiscal management and efficiency of the government. It is interested in promoting efficiency in general terms, as well as economic growth and the reforms necessary to secure this. It sees Better Regulation as a potentially valuable contribution to the promotion of efficiency and economic growth. It is the parent ministry for the taxation agency (important for administrative burdens and ICT).
- *The Ministry of Justice.* It plays a low key but significant anchor role around the traditional basics of legal quality.¹³ There have been no significant changes in this role over the last few years. It is responsible for basic constitutional issues, and advises on principles of good quality law drafting, including plain language and other linguistic services to ministries. As in most other OECD countries, individual ministries are responsible for the development of regulations in their respective fields of competence. The Ministry of Justice reviews all proposals for a draft bill or ordinance from the legal quality and plain language perspective, as well as proposals for the terms of reference for a Committee of Inquiry.
- *The Prime Minister's Office (PMO).* The PMO plays an essentially co-ordinating function. It co-ordinates the Government Offices and liaises with the parliament. It keeps a relatively low profile and has a “fire brigade” function in the context of coalition politics. Its office of the Minister for EU Affairs (made up of political appointees) and EU co-ordination secretariat co-ordinate EU policy (the Swedish position for EU negotiations and the transposition of EU regulations). The “EU co-ordination Secretariat” also

reviews all proposals for a draft bill or ordinance from an EU law perspective. The PMO also plays a significant role in assuring legal quality (via the Office of the Director General for Legal Affairs).

Internal support units or structures for Better Regulation have been set up in several ministries and government agencies with different approaches ranging from a single central unit to a looser network, or to structured efforts to keep in touch with the business community. For example, the Ministry of Health and Social Affairs has set up a “spider in the web” unit, noting that Better Regulation has become more important in the ministry, with weekly meetings, and increased resources. The Ministry of Finance told the OECD peer review team that a number of issues are now tackled from a Better Regulation perspective including tax, statistics, public procurement and gambling. The internal co-ordination is looser than at the Ministry of Health and Social Affairs as their units are more independent, but resources have also increased.

Co-ordination

The establishment of the new Better Regulation policies following the 2006 election gave rise to specific co-ordinating structures across the government. At the political level, an inter ministerial State Secretaries group chaired by a State Secretary at the Ministry of Enterprise has been established with special responsibility for strengthening co-ordination of Better Regulation within the Government Offices. It includes representatives of the different ministries. This is supported by an inter-ministerial officials group, also chaired by an official of the Ministry of Enterprise, which prepares progress reports for the political group. The Ministry of Enterprise has also established a central working group with business representatives to identify areas of particular concern to business.

The OECD peer review team heard concerns about the strength and capacity of current co-ordination mechanisms. Processes need boosting to improve steering, promote co-ordination between ministries (as well as between ministries and their agencies), and to secure effective enforcement of the Action Plan. A stronger and better resourced Better Regulation unit is required, with a stronger input from the Ministry of Finance and the Prime Minister’s Office to increase leverage, as these are both key actors alongside the Ministry of Enterprise.

Swedish Better Regulation Council

Before the general election in September 2006, the four centre-right parties in the so-called “Alliance for Sweden”, who formed the new Government after the election, promised to establish a Better Regulation Council. After discussions and preparing the Terms of Reference (mandate for the Council) and the Ordinance on obtaining opinions from the Better Regulation Council (SFS 2008:530) as well as corresponding guidelines within the Government Offices, the government decided in May 2008 to establish an independent advisory body, the Better Regulation Council (*Regelrådet*), to reinforce Better Regulation policy, and specifically, to advise on the quality of impact assessments. The Council started its work in January 2009. It is to some extent modelled on the Dutch ACTAL and the German *Normenkontrollrat*, also taking into account the role played by the European Commission’s Impact Advisory Board. Its establishment as a form of Committee of Inquiry, alongside other Committees of Inquiry located outside the Government Offices, implies a time limited mandate. It has

a mandate to end December 2010. It would need to be put on a different footing if its mandate were to be extended for a longer period of time.¹⁴

Box 2.3. Swedish Better Regulation Council

Mission

The Better Regulation Council's core mission is to assist rule makers in their work to simplify regulations for enterprises. It will assess the general quality of impact assessments, track the overall Better Regulation agenda and provide advice and support for a cost conscious and effective regulatory framework, and to the extent possible, assist committees of inquiry in their work.

Specifically, the Council will scrutinise all proposals for new or amended regulations (laws, ordinances and other regulations) from both ministries and government agencies that could affect the working conditions, competitiveness or other issues relevant to businesses, with a view to speeding up culture change for more effective impact assessment. Draft legal/regulatory proposals/final reports from committees of inquiry and impact assessments must be submitted to the Better Regulation Council for an opinion by the Council.

The Better Regulation Council shall, according to its Terms of Reference (mandate), follow developments in the area of simpler regulation and it will be able to provide information and advice that promote cost-conscious and effective regulation, taking account of the advice provided by other actors in the area of Better Regulation.

As part of its work, the Better Regulation Council is expected to maintain continuous contacts with business organisations.

Quality check of impact assessments for administrative costs

The Better Regulation Council provides an independent scrutiny of proposals for new or amended regulations that may have significant effects on the working conditions of enterprises, their competitiveness or other conditions affecting them. It focuses primarily on the administrative costs resulting from new or amended regulations, checking that impact assessments provide an effective analysis of such costs. The Council is also to form a view of whether new and amended regulations have been formulated so as to achieve their purpose in a simple way, and at a relatively low administrative cost to enterprises. The Council is also to assess the quality of the impact analyses in other respects.

Institutional framework and reporting lines

The Council is made up of four members (including the chair and vice chair) with special experience of the impact of regulations on businesses. It is assisted by a secretariat of ten. It may engage outside experts. It will report annually to the government and is expected to keep in close touch with the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*). It will provide a written account of its work by the end of January each year, in which it shall state the number of legislative proposals received and examined, the criteria used to select these proposals, and the number of proposals that did not include an impact assessment, or included a defective one, for no obvious reason. The government will regularly evaluate the effects of the activities of the Council. The Council will provide a written account to the government at the end of its mandate, synthesising the experience gained and setting out the results achieved. The Council does not have any specific relationship to the Parliament.

Working methods

The Council is an advisory body. It cannot stop a draft proposal from being taken forward. It will, however, issue a written opinion and recommendations which are made public and are expected to provide an important indicator of the quality of impact assessments. It will form a view of whether impact

assessments meet the requirements set out in the new impact assessment framework. If it cannot make a positive recommendation, it can propose an alternative formulation. It does not reflect on the “political aspects” of proposals: it confines itself to pointing out whether a proposal has deficiencies in respect of its impact assessment and whether it can be expected to result in administrative costs for enterprises that are not justified in view of the purpose of the regulation. The large volume of proposals means that it will need to prioritise and determine the selection and assessment criteria. It has been given considerable discretion as to how it will conduct its work in practice. The Council has produced internal guidelines for its working methods.

Source: OECD peer review team interview with the secretariat. *Kommittedirektiv* (terms of reference) Dir 2008:57. *Kommittedirektiv* Dir. 2008:142 (*tilläggsdirektiv*) (additional terms of reference). The additional terms of reference (dir. 2008:142) extends the Council from 3 to 4 members and from 3 to 4 alternate members and prescribes that in the event of a tied vote, the Chair has the casting vote.

The establishment of the Better Regulation Council has been welcomed by many stakeholders. It is seen as evidence that the government is serious about Better Regulation. It is an unfamiliar concept in the Swedish institutional landscape, which makes it all the more special. The business community has high expectations, but cautioned that it will only be effective if it really does have the power to turn back inadequate proposals. It may need reinforcement. It remains politically fragile. The *NNR*, for example, told the OECD peer review team that the Council is expected to play an important scrutiny role for impact assessments (not just of administrative costs), and is confident about its capacity to do this, although it cautions about exceptions to the rule of sending impact assessments for the Council’s scrutiny, which may be invoked by some government agencies. The Council does “have to find its role”, and it is not yet clear to what extent it will be able to volunteer views on issues that are not automatically submitted to it.

The Better Regulation Council has during 2009 had meetings with regulators (including Legal Directors and Legal Secretariats within the Government Offices, besides regulators at government agencies) to discuss how the work with regulations and impact assessments can be further improved. The Council has also been in contact with several Committees of Inquiry. Advice to government agencies on how to ‘formulate regulations’ are available at the website of the Better Regulation Council.¹⁵

Regulatory agencies and Better Regulation

Box 2.4. Government agencies

General structure

There are 518 government agencies (as of November 2009), covering all sectors (this includes 108 courts, 102 embassies, the 21 regional police agencies, and four agencies directly under the parliament). Some are very old. For example the Legal, Financial and Services Agency (*Kammarkollegiet*) has a history that could be traced back to at least 1639 and the National Board of Trade (*Kommerskollegium*) was established in 1651. Parts of the Swedish Board of Agriculture are over 100 years old, and the Agency for Public Management is 300 years old (though its role has changed).¹⁶ Some other government agencies have very short lifespans (for example, VERVA).

Powers and responsibilities

The core of agency work is to implement government policy and legislation on the ground. They are extensive rule-makers but in a subsidiary relationship to the centre of government.

At the same time, the independence of public authorities is a fundamental principle of the Swedish constitution.¹⁷ Government agencies are independent in the sense that the parent ministry cannot interfere in their individual decisions in the application of the law or relating to their exercise of public authority. This limits the accountability of ministers for decisions made at agency level. Agency decisions can be appealed directly to the courts. No agency can interfere in the activity of another agency.

Powers and autonomy of individual agencies vary: for example not all have delegated rule making powers. Some government agencies therefore carry a significant weight in regulatory development and management, whilst others only play a minor role. The OECD peer review team heard that some government agencies may provide a challenge function, raising issues for the government's attention.¹⁸

The functional scope of the government agencies varies considerably, as does their geographical scope (which means that their geographical boundaries do not automatically converge either with those of other government agencies, or with those of sub national levels of government). In a diminishing number of cases, there are separate agencies for each county (for example, the police).

Government control

The government defines the missions and sets the goals for the government agencies. 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. But they are accountable to the parent ministry on the delivery of results compared with objectives, which is considered a powerful incentive for agency heads to perform well.

There is a well established framework for the operation of government agencies, and a range of levers which may be used by the government to control agencies and make them accountable.¹⁹

- *Nomination of agency heads or boards.* The government has this power. Agencies can be headed either by a single person (a Director General, with a six year mandate which may be extended another three years) or by a Board. The OECD peer review team heard that agency Director Generals are not easily removed from their posts (except for incompetence) and their decisions are "taken seriously". Since the 2006 election, the government has taken steps to reform the process of appointing agency heads, towards a greater openness.
- *Letters of instruction (Instruction Ordinances).* These ordinances fix objectives, and are the centrepiece of the agency's relationship with its parent ministry. They undergo, just like other draft proposals for laws and ordinances, a joint drafting procedure, *i.e.* consultation with other ministries, and the agency itself is also consulted. They are usually quite short, and will include some specifics, such as reporting requirements (which are also often found in appropriation directions). The trend in this respect is towards less detail, and a more performance targets based approach. During the joint drafting procedure. In 2008 the Ministry of Enterprise started a process to ensure that the letters/instructions or appropriation directions for government agencies involved in the Action Plan had a reference to support the Better Regulation programme, including the importance of a cost efficient regulatory framework. By 2009, the majority of the agencies concerned had inserted such a reference.
- *Annual appropriation directions.* Over 200 of the 447 government agencies regulated by ordinances have annual appropriation directions (*regleringsbrev*). These set out the goals of each agency, activities, the economic resources at its disposal, and how the funds are to be divided between different operational areas, as well as references to Better Regulation.

- *Government ordinances setting out the framework for agency work* (see below).
- *Agency annual reports to the government.* A report is sent to the parent ministry, containing an evaluation of activities carried out and achievements against objectives, financial data on the use of the budget.
- *Budget and financial control.* Financial restrictions are laid down in the Budget Act and in Financial Management Ordinances (see below).
- *Regular contacts with the parent ministry.* For some government agencies the contacts can be quite intensive.

Funding

Agencies send a budget request at the end of February to the parent ministry for the coming three years. The budget is debated in March, and the budget bill with appropriations is submitted to the *Riksdag* in September (this includes expenditure ceilings, targets for the coming three years, frameworks for the 27 expenditure areas, and distribution proposals for each appropriation area), and approved by the parliament by the year end. While the *Riksdag* discusses the budget bill, ministries start to develop appropriation directions for their agencies, which are issued at the end of the year.²⁰ Agency/ministry budget surpluses can be rolled over. Funding arrangements vary – some agencies collect fees, some depend entirely on ministry budgets.

Framework ordinances for government agencies

The Agencies Ordinance. The Government Agencies and Institutes Ordinance, now the “Agencies Ordinance” (*myndighetsförordningen*, SFS 2007:515).²¹ The context is modernised but the new ordinance basically contains the same rules as the old one. This ordinance establishes the general responsibilities of agency heads or boards. The most relevant are to:

- Ensure that the agency’s activities are conducted effectively and according to laws and the commitments that follow from the EU membership.
- Ensure that the activities are reliably and correctly presented and that the agency economises with the funds given.
- Continuously develop the agency’s activities.
- Make available information on the agency’s activities.
- Ensure the economic consequences are limited when they ask for information and execute supervision.

A new Ordinance on Regulatory Impact Assessments (SFS 2007:1244) updates and strengthens requirements on government agencies to carry out impact assessments (see Chapter 5 for more detail).

Agencies with supervisory responsibilities

An important sub category consists of agencies with supervisory responsibilities for other government agencies.²² This is especially relevant in the context of Better Regulation, where co-ordination and advice to government agencies on issues such as impact assessment and the reduction of administrative burdens is carried out by another agency, rather than a ministry. The three most relevant agencies in this context are the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*), for Better Regulation advice, co-ordination and support, the Swedish Agency for Public Management

(*Statskontoret*) which is the evaluation body for agencies, and the Swedish National Financial Management Authority (*Ekonomistyrningsverket – ESV*), for agency financial management.

Relationship to EU agencies

Swedish government agencies co-operate closely with EU agencies when they exist in the same policy area. The Swedish agencies may carry out assignments for their EU counterpart, for which they receive funding from the latter.²³ A 2003 report by the Swedish Agency for Public Management showed that this work is not solely based on obligations arising from EU regulations, but also on the Swedish agency's interests (Report 2003:29). As in purely national law – and rulemaking, the government agencies can supplement framework laws, decided by the parliament, with more detailed regulations (by delegation in ordinances adopted by the government).

Government agencies are crucial to Better Regulation in Sweden because of their implementing role, which involves them in the development of secondary regulations to flesh out primary laws. The scope of their regulations is, however, constrained by several instruments: the constitution, which lists the areas where agencies can issue regulations; the Government Agencies Ordinance which sets out guiding principles for what they can do; and the annual appropriation directions to each agency from the parent ministry which defines their tasks and budget for the coming year. Many administrative burdens can be found in their regulations. Their contribution to Better Regulation comes in two ways. The first is through their involvement in central government's Better Regulation policies and processes, and the second is through their own initiatives:

- Government agencies currently contribute to the government's rolling Action Plan for Better Regulation, which comprises a target of a 25% reduction of administrative burdens on business by 2010, and sets the objective of bringing about a noticeable, positive change in day to day business operations. During the period 2006-09 the number of government agencies contributing to the Action Plan for Better Regulation has varied between 53-39 agencies. Each agency is required to make simplification proposals and to account for its Better Regulation work to the parent ministry. The government agencies do not define the underlying shape of the government's Better Regulation policy, but once this has been set, they help to shape its details.
- Only those government agencies that have regulations and/or daily operations concerning business are required to have a Better Regulation agenda, although regulatory quality is not an explicit part of all of these agencies' performance evaluation. A few agencies have been very active in this regard, including in relation to the EU (Box 2.5). They do need the support of their ministries at some point for this to work, for example where simplification requires a change to the underlying law. The parent ministry's letter of instruction (Instruction Ordinance) as well as the annual appropriation directions are useful levers for encouraging Better Regulation. It is important that the Director General of an agency and its board members understand the government's Better Regulation agenda.

Box 2.5. The application of Better Regulation by Government agencies: three examples

The Swedish Environmental Protection Agency (EPA)

The Swedish Environmental Protection Agency has established routines for impact assessment, consultation, simplification and measures to reduce administrative burdens. For example impact assessments are carried out on all draft regulations, alternatives to regulation are always considered, and stakeholders are consulted as part of the process. These internal policies have not been communicated outside the agency (which seems to miss an opportunity to publicise the good work done by the agency).

The EPA notes that most of Sweden’s environmental legislation is developed in the context of the EU. EU work is thus a central part of the EPA’s activities, a core part of which is an ongoing process of consultation with the EPA’s parent ministry to define the Swedish negotiating position in Brussels. The Swedish EPA participates in the EPA Network, which is an informal group made up of the directors of environment protection agencies and similar bodies across Europe. The network exchanges views and experiences on issues of common interest relating to the practical implementation of environmental policy. The network published a report in April 2008 “Improving the Effectiveness of EU Environmental Regulation – A Future Vision”, which made a number of recommendations to the European Commission for a clearer and stronger strategy for environmental regulation, including the proposal that DG Environment should involve regulatory and implementing bodies in the development of policy (via a group of experts chaired by the Commission).²⁴

The EPA notes that the application of Better Regulation policy is not always straightforward and may generate perverse effects. For example, cutting administrative burdens for business can simply result in a transfer of the burdens to the authorities; excessive reporting requirements (from the EU) need to be avoided; and progress may require changes in the legal framework.

The Swedish Board of Agriculture (SBOA)

As well as contributing to the government’s target burden reduction of 25%, the SBOA has launched a number of its own initiatives. It has set up its own action plan for simplification. It has also set up a special service declaration for customers, and the provision of a range of internet services (electronic application forms, information). The SBOA makes a point of working closely with the business community as well as other agencies on its projects and considers that “all work is to be done from a company’s perspective”. It routinely analyses the consequences for administrative burdens of draft regulations, using the *MALIN* simulation facility, and the use of a special form on which the key data has to be recorded. Wherever possible it seeks to replace regulations with alternatives such as the provision of information. It systematically communicates and discusses its work with key stakeholders (farmers’ groups, food industry representatives etc). Before a new regulation is agreed, it has to be presented to the interest groups and their opinions have to be followed up.

Agriculture, like the environment, is heavily influenced by EU origin regulations. The SBOA estimates that about 80-90% of all regulations in the agriculture sector have their origin in EU regulations. Like the EPA, the SBOA works alongside the ministry in the consideration of draft EU legislation, with particular attention to simplification. It participates in an EU working group for simplification in the agricultural sector, and has made a number of proposals for simplification to the Commission.

The Swedish Companies Registration Office (SCRO)

The SCRO is very active in its contributions to the government’s action plan for Better Regulation, including:

- a project associating the SCRO, the Swedish Tax Agency and the Swedish Agency for

Economic and Regional Growth (*Tillväxtverket*), to create a web portal for businesses;

- a project to increase the use of e-service for the submission of annual accounts to the SCRO and through this, to spread the usage of XBRL as the standard format for annual accounts;
- a project to build a special e-service for proxies to help businesses in their contacts with the SCRO; and
- a project to investigate and create a register and system for business data re-use among authorities.

The SCRO notes that some actions require changes in the legal framework, which is beyond its remit. There is virtually no interface with the EU in this area.

Activities are communicated to a standing committee of customers, which meets regularly. Views and suggestions “in thousands” come from the daily telephone and e-mail contact of SBRO staff with customers and their representatives.

The capacity of government offices for steering and leverage in respect of government agencies are matters of concern, raised by several interviewees. Horizontal co-operation (across ministries and agencies) is another issue of concern, qualified as “essential” by one interviewee. Agencies may sometimes feel that they are given conflicting instructions.

The legislature and Better Regulation

The Committee on Trade and Industry is the most relevant of the 16 parliamentary committees as it “beats the drum” for Better Regulation in support of competitiveness. It deals with issues relating to industry and trade policy, state owned enterprises, prices and competition, and Better Regulation has been high on its agenda for the last decade. The Committee was instrumental following the early 1990s economic crisis in supporting the launch of simplification programmes. It underlines, however, that Better Regulation is a horizontal issue and that many important laws (covering issues such as taxation, food security, environment, healthcare) are handled by other committees and that there is a lack of co-ordination across committees. Although formal instructions from one committee to another are not appropriate, the OECD peer review team were told that there could be more informal co-operation to raise general awareness of regulatory burdens across the parliament and its relevance for areas that are not usually associated with it, such as healthcare reform. The team also heard that even if the parliament “approves” of the need to promote competitiveness and the welfare of SMEs, most politicians are from the public sector which may weaken the message that competitiveness principles should be put into legislative practice. The Trade and Industry Committee promotes this message, but there is some way to go yet in embedding awareness that there is a direct link with the competitiveness of the Swedish economy.

Another way in which parliaments can be actively engaged in Better Regulation is through the application of Better Regulation principles to specific draft laws (impact assessment, clear drafting etc). The parliament underlines the importance of effective preparation by the government of draft laws (which are mostly initiated by the latter). It has also taken steps of its own. In 2005, it agreed on guiding principles for plain and

clear language in its reports, and has engaged the support of a language expert. No particular views on impact assessment were recorded by the OECD peer review team.

The judiciary and Better Regulation

As in most other European countries, there is a hierarchy of routes for appeals against administrative decisions. These include administrative courts, ombudsmen (Sweden invented the concept, which has now spread to most of Europe), and judicial review. A structure of administrative courts sits alongside the regular court system, whose task may be described as one of maintaining due observance of the law within the public administration, and which hear appeals against administrative decisions.

The Council on Legislation (*Lagrådet*) is a special Swedish institution which has the task of ensuring conformity with the legal system and compatibility of a statute with higher level and constitutional law. It is made up of judges (active or retired, drawn from the Supreme Court and the Supreme Administrative Court), and has an important *ex ante* legal scrutiny function in respect of new regulations. Major regulatory proposals must be submitted to the Council by the government. It checks proposals against the provision of the Instrument of Government, which states that any statutes which contradict higher level laws may be struck down if the error is “manifest”. The Council also bases its opinions on precedent (its previous rulings). The Justices of the Supreme Court and of the Supreme Administrative Court occasionally serve on the Council on Legislation.

Other key players

National Audit Office (*Riksrevisionen*)

The National Audit Office is responsible for auditing the operations of the Swedish state, and promoting the optimal use of resources. Its independent status is embedded in the constitution, and it chooses the topics of its investigations (neither the government nor the parliament may instruct it). Its reports are sent to the parliament, and are made public. It is headed by three auditor-generals, and has a staff of 300. Its work focuses on central government. It may also review the work of the committees of inquiry. Its audits are of two kinds: financial audits, and performance audits (efficiency and effectiveness of policies and related regulations). This work has a direct bearing on Better Regulation, covering issues such as the effectiveness and quality of impact assessment.

Although it has not carried out any recent studies on specific Better Regulation topics, the National Audit Office was instrumental in encouraging the government to set up a structured programme for regulatory reform aimed at improving the business environment, with a report in 2004 addressed to the *Riksdag*. It had a number of comments to the OECD peer review team about the state of Better Regulation in Sweden. Its audits often reveal that policies are conducted inefficiently and that there is a need for regulatory reforms. Regulations often do not have the expected impact or effect, there is a need to reduce administrative burdens, and for clarification and simplification. Overlapping regulations are observed to hamper an efficient planning and building regulatory framework. Regulations may be ill adapted to new challenges such as the growth of private actors in elderly care (currently public and private providers are under different regimes). Regulations may be over complex, for example

in the area of social insurance benefits. The National Audit Office drew particular attention to the “cascade” effect of regulatory development and the need to be clear not just what regulations might raise issues, but who produces and implements them. An important example of the cascade effect is in planning and building, where general laws are fleshed out into secondary regulations and advice from a range of government agencies, and then enforced by municipalities which may interpret the regulations differently.

Swedish Agency for Economic and Regional Growth (*Tillväxtverket*)²⁵

This agency (its predecessor was *Nutek*) is the most important one for other government agencies as regards Better Regulation in the context of its mission to encourage a more competitive business community and strong regions.²⁶ The Agency has some 300 staff and reports to the Ministry of Enterprise. Its mission is to “work pro-actively for sustainable growth across the country by facilitating business”. It has eleven offices in nine locations.²⁷ The agency’s specific objectives are to develop enterprises (including help for start-ups); make things easier for enterprises (analysing the effects of regulations, simplifying them); co-ordinate development work (outreach to sparsely populated and rural areas); promote commercial and public service (support co operation between different players to achieve a good level of service for citizens and enterprises); and manage the programmes funded through the EU’s Regional Development Fund (*ERDF*).

The agency has a special division dedicated to Better Regulation, with some 12 staff. The responsibilities of this division are set out in the Ministry of Enterprise’s letter of instruction to the agency head. They include support and development of impact assessment methodologies; and the measurement and monitoring of administrative burdens. The agency represents Sweden in two international fora on Better Regulation, together with the Ministry of Enterprise, namely the EU Single Point of Contact – SPOC – for the measurement of administrative costs, and the SCM network.

Swedish National Financial Management Authority (*Ekonomistyrningsverket - ESV*)

ESV has horizontal responsibilities in respect of other government agencies in relation to financial management and advice, and has a staff of 150. It reports to the Ministry of Finance. It fleshes out (through further regulations) government regulations in relation to agency accounting and bookkeeping, financing (fees and charges for example), and carries out agency audits on internal management and control, which are published, and based on (which it gives them) an annual rating (A, B or C). Its responsibilities were recently explicitly extended to Better Regulation (Cf. art. 9 in the Regulatory Impact Assessment Ordinance (SFS 2007:1244). Since January 2005, it has to some extent provided support and advice on impact assessment to other agencies, together with *Tillväxtverket*.

Swedish Agency for Public Management (*Statskontoret*)

The *Statskontoret*’s parent ministry is the Ministry of Finance. It has a staff of about 70. It is a form of internal government evaluation body, although its work is made public. It supports the government in the evaluation (*ex post* and *ex ante*) of state

and state financed activities. Its work is generally based on assignments from the government and government appointed committees of inquiry, to which it reports back. It may initiate studies, but government requests are given priority.

Its mission is “to promote a public sector characterised by efficiency, equality and good service”, with a specific objective “to support the government, ministries and committees of inquiry by performing studies of high quality”. Its current objectives are to report on the effects of government programmes and reforms; to provide the basis for reviewing and improving the performance of state financed activities; and to make proposals for new programme evaluations. Aspects studied cover governance (performance management, organisation of cross sectoral policy issues); implementation of rules, methods, measures and reforms (implementation studies, process evaluation); productivity in the use of public resources (productivity measurements); and effects of public measures and reforms (impact studies). Recent studies include competition at the public/private interface, and public agencies and markets in the electronic communications sector. It is currently engaged in evaluating the new organisation of the Swedish Social Insurance Administration, and the defence cost reduction programme.

The Board of Swedish Industry and Commerce for Better Regulation (*Näringslivets Regelnämnd- NNR*)²⁸

The Board of Swedish Industry and Commerce for Better Regulation, formed in 1982, is an independent, non-political business organisation whose main mission is to advocate on behalf of the Swedish business community for simpler, more business friendly regulations both within Sweden and in the EU. The current President of *NNR*, Jens Hedström, also chairs the *BUSINESSEUROPE* Better Regulation Working Group. It can be seen as a form of external watchdog and, as a business organisation that only deals in Better Regulation issues, it has no exact counterpart in other European countries. It has a staff of five and is financed by its members, who include 15 Swedish business organisations and trade associations that together represent more than 300 000 companies in every sector and of all sizes.²⁹

The *NNR* has, since 2002, published an annual Regulation Indicators report which evaluates policy and progress on Better Regulation and makes proposals for action. The *NNR*'s work covers the whole range of Better Regulation issues, including impact assessment (co-ordinating business views on the quality of impact assessments for new or amended regulations); and administrative burden reduction (collecting proposals from business, work on the measurement of costs). The *NNR* carried out a perception survey of the government's Better Regulation work in 2006 (checking for the “noticeable effects” of government actions). It also carried out an analysis of business regulatory costs in 2006, which it plans to follow up.

The 2008 Regulation indicators report published in June 2009 is both encouraging and critical of the government's efforts. It concludes that the government's objectives are aligned with the views expressed by the business community. Many of the tools needed within government to achieve the objective of “a simple and efficient regulatory framework” are being put in place. The big challenge now is that politicians and civil servants must give priority to regulatory simplification and use the tools that are available. There is a growing impatience among many companies, since they have perceived no decrease in regulatory burdens or costs. The *NNR* concludes that results must be delivered promptly.

Resources and training

Resources

There are currently 8 officials in the Ministry of Enterprise directly involved in the Better Regulation work (they are not full time on this work, as they also have other tasks to perform). The OECD peer review team heard that this was inadequate in terms of the tasks that need to be carried out. The Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) has some 12 staff in its division dedicated to Better Regulation activities. Beyond this, the inter-ministerial group of officials for Better Regulation currently brings together 35 staff from across the Government Offices. In each ministry a designated unit/division is responsible for co-ordinating Better Regulation issues within the ministry and therefore at least one official in each ministry has a special responsibility for Better Regulation (not necessarily full time). Besides the co-ordinating unit/division in each ministry, other units that have certain responsibilities for issues relating to businesses are required to have a contact official on these matters. Agencies also have at least one official on these issues, and where Better Regulation is especially important for the agency's work (the Swedish Board of Agriculture for example), several officials are likely to be involved. There is some instability in civil service postings – the OECD peer review team were told that “people move around a lot”. It also heard concerns that resources and capacities for Better Regulation are generally in short supply.

Training

Training for drafting laws and regulations is an established part of the system, and has been developed for each of the main categories of official involved in regulatory management – government offices, government agencies, committees of inquiry and also the judiciary (Box 2.6). Courses for officials within the Government Offices, which are run on a regular basis through the year, cover the basics of drafting, as well as quality aspects and plain language requirements (see Chapter 4). Some of the courses are a requirement for new officials of the government offices whose tasks will include drafting legislation. During 2009, different forms of training course took place on 78 different occasions with a total of about 1 200 participants (some officials participating in several courses).³⁰ The courses include discussion on the importance of impact analysis and alternatives to regulation. Training is complemented by written material. The Prime Minister's Office publishes a number of guidelines and handbooks covering regulatory quality, including plain language drafting requirements, as part of its responsibility for legal quality control.

Training for government agency officials in drafting and impact assessment is provided by the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*). *Tillväxtverket's* forum of government agency representatives promotes exchanges of good practice and co-operation on Better Regulation between government agencies. There is also considerable training offered to officials who participate in committees of inquiry.

Training for judges, notably on EU law, is also provided, via the National Courts Administration (*Domstolsverket*). An academy for the judiciary (*Domarskolan*) was opened in 2009 with a view to sharpening the competence of the judiciary further and to ensuring that the training of judges is systematic as well as thorough. Swedish

judges are also given the opportunity to take part in the Judicial Exchange Programme (organised by the European Judicial Training Network, *EJTN*).

More specific Better Regulation training has started to be offered by the Ministry of Enterprise to government office officials on impact assessments, supported by an internal web portal set up in November 2008 with considerable relevant information in this regard. The ministry also participates in training for Committees of Inquiry to develop their skills in carrying out impact assessments. The Better Regulation Council has recently participated in training for the Committees of Inquiry.

Box 2.6. Training courses on regulatory quality

Drafting regulations course for government officials

The course promotes lawful, consistent and uniform legislation, and covers the practical aspects of the drafting, which include: to govern by rules; the allocation of power to legislate; different kinds of rules; the outline and language of new regulations; how to reform amendments to regulations linguistically; the technique of writing legislation (preambles, notes, provisions about entry into force and transitional provisions); and examination by the Council on Legislation. Issues discussed include: 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; and language recommendations and advice.

Courses for new committee secretaries

The Office for Administrative Affairs includes a division which services the committees of inquiry, including training courses and seminars. Topics covered in training courses include: the role of committees in the political decision-making process; the planning of the work of a committee; information about administration, registration of items and filing; purchasing rules; a Committee chairs view on how to work in a committee; how to draw up reports, disposition and language; the graphic profile; sales of reports and routines for submitting reports for comments; library service and mass media coverage in the government office; to seek and find statistics; and the quality of committee reports.

The training courses also cover Paragraphs 14-15a of the Committees Ordinance (*kommittéförordningen*, SFS 1998:1474) which each committee must consider in their proposals:

- costs or revenues for the government, municipalities, county councils, companies or others;
- national finances and consequences in general;
- how to finance proposals;
- influences on the self-governing of municipalities ;
- influences on crime and the prevention of crime;
- influences on employment and public services in different parts of Sweden;
- conditions for small companies. Competitiveness or other circumstances in comparison to bigger companies;

- equality of opportunity between women and men;
- to reach the objective of integration; and
- consequences/Impact assessment, corresponding to the requirements on impact assessments in Paragraphs 6 and 7 in the Regulatory Impact Assessment Ordinance (2007:1244).

Notes

1. www.regelradet.se/Bazment/Regelradet/sv/Yttranden.aspx.
2. Following the 2006 election, ministries were re-organised. The Government Offices currently comprise the Prime Minister's Office, twelve ministries and the Office for Administrative Affairs. The twelve ministries are : the Ministry of Justice, Ministry of Foreign Affairs , Ministry of Defence, Ministry of Health and Social Affairs, Ministry of Finance, Ministry of Education and Research, Ministry of Agriculture, Ministry of the Environment, Ministry of Enterprise, Energy and Communications, Ministry of Integration and Gender Equality, Ministry of Culture, Ministry of Employment (in order of historical seniority).
3. Government business is settled at government meetings. At least five ministers shall be present at a government meeting.
4. The State Budget Act (1996 :1059) came into force on 1 January 1997.
5. Provisions relating to the personal status or mutual personal or economic relations of private subjects.
6. Provisions concerning the relations between private subjects and public institutions.
7. Except for cases concerning freedom of the press. Lay judges take part in the handling of criminal cases as well as civil cases (only in family matters) in both the district courts and the courts of appeal.
8. It is technically possible for agencies to propose changes for consideration, although such propositions are seldom made. In most cases, the creation or closure of agencies result from a Committee of Inquiry, appointed by the government.
9. Embassies not included.
10. In 2007, for example, 32 agencies were terminated (most of them through amalgamation with other agencies) and five new agencies were established. The Swedish Administrative Development Agency (*VERVA*), responsible for public administration and human resource development, and the co-ordination and promotion of e-Government, was established in January 2006 and disbanded in 2008. Its responsibilities were shared among other agencies.

11. The ministry's portfolio comprises *i.e.* business development, entrepreneurship and enterprise, regional growth, needs-driven research, communications and IT, transport and infrastructure, tourism, energy, state ownership, competitiveness and well-functioning markets. It is responsible for 25 government agencies (See: www.sweden.gov.se/sb/d/3486) including the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*), the Swedish Competition Authority, the Swedish Companies Registration Office, the Swedish Rail Administration, the Swedish Road Administration, the Swedish Civil Aviation Authority and the Swedish Patent and Registration Office.
12. It is responsible overall for economic policy, the government budget, tax policy, financial market issues, housing and construction, lotteries and gaming, international economic co-operation, central government administration and local government finance.
13. Its responsibilities include the judicial system, and legislation regarding criminal law, civil law and legal procedure, as well as migration and asylum policy.
14. A Committee of Inquiry works for a limited period of time, usually 6 months – 1 year, though some can work for longer periods.
15. www.regelradet.se/Bazment/Regelradet/sv/skrivtips_till_myndigheter.aspx.
16. The number of government agencies with ordinances was 573 in 2004 ; 536 in 2005 ; 483 in 2006 ; 447 in 2007 (page 36, Government Office facts and figures). The *Statskontoret* reported in 2005 that Sweden had 1394 public agencies in 1990, 796 in 1995 (the big drop after was due to changes in, for example, the Swedish Armed Forces and the Customs Agency, which previously were divided in a large number of agencies), 643 in 2000.
17. The government explains that 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 (Swedish government response to OECD questionnaire).
18. For example, the competition agency recently successfully challenged the government's policy on gambling.
19. Four agencies report directly to the *Riksdag*: The Parliamentary Ombudsmen (The Ombudsmen of Justice, 'JO'), the Swedish National Audit Office, the *Riksbank* (Sweden's central bank) and the *Riksdag* Administration.
20. The Swedish system does not allow for agencies to be co-ordinated by a ministry as regards shared issues, such as Better Regulation. Any such co-ordination must be carried out by another agency. This explains why, for example, *Tillväxtverket* (an agency) has responsibility for co-ordinating

impact assessment and administrative burden issues for other agencies, rather than say, the Enterprise ministry.

21. SFS 2007:515.
22. <http://epanet.ew.eea.europa.eu/>.
23. For example, the Swedish Medical Products Agency.
24. <http://epanet.ew.eea.europa.eu/>.
25. tillvaxtverket.se.
26. It has been subject to successive structural changes over the years. In April 2009, the current agency took over the functions of *Tillväxtverket* (which had been responsible for Better Regulation among agencies), as well as those of the Swedish Rural Development Agency, and some of the functions of the Swedish Consumer Agency.
27. Eight of these are offices responsible for managing the EU regional development fund (ERDF) programmes.
28. www.nnr.se.
29. The NNR point out that this represents a third of all active enterprises in Sweden.
30. In addition, different leadership courses were organised for officials at 60 different occasions with a total of almost 350 participants. Courses ahead of the EU Presidency took place on 36 different occasions for officials within the government Offices with a total of about 1 000 participants (some officials participating in several courses).

Chapter 3

Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).¹

Assessment

Public consultation

Sweden's underlying and long established commitment to openness frames the overall approach to public consultation, which is based on a traditional, methodical approach. The establishment of Committees of Inquiry remains a cornerstone of the Swedish policy and rule making process, especially for significant issues. They must follow certain carefully established working methods, and considerable information about their work is made public, including not least the report on their findings to the government. They are required to consult widely. Sweden also has a longstanding tradition of consultation with the social partners. Beyond this, there is a general requirement on ministries to consult, and the Ministry of Justice checks that this has been done. Public consultation with policy affected by a certain piece of legislation is a routine part of developing draft laws and subordinate regulations. Consultation is in principle, mandatory, based on the 1974 Instrument of Government which sets out 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.” There is also a range of further guidelines on regulatory management which cover consultation. There seems to be a general level of satisfaction among stakeholders who engage with the system.

There have been some positive changes since the 2007 OECD report, concerning consultation with the business community. The Government’s Better Regulation policy and Action Plan have given rise to significant new developments since the 2007 OECD report, regarding consultation with the business community. The Ministry of Enterprise has established a central working group with business representatives to identify areas of particular concern to business. Several ministries and government agencies have either established similar working groups or have held meetings with business organisations and other stakeholders in their better regulation work.

Whilst generally supporting Sweden’s approach, participating stakeholders do have some issues with the system. Within the framework of guiding documents, ministries may define their own approach. With regard to major legislative changes, before the government takes a position on the recommendations of a Committee of Inquiry, its report is referred for consideration to a wide range of relevant “referral” bodies. This provides feedback and allows the government to judge the level of support it is likely to receive. If there is a significant unfavourable response, the government may try to find an alternative solution. Despite these provisions, some issues were raised with the OECD peer review team. These included “one way” consultations (more information than consultation), unhelpfully short deadlines for making comments and a tendency to accelerate the process, inadequate feedback, and the need to incorporate views at an earlier stage in the process.

The system may lack transparency for outsiders, even if this is not the intention. Public consultation is a routine part of developing draft laws and subordinate regulations and it is in principle mandatory. Nonetheless, it was suggested that ordinary citizens can be left out of the loop, the first practical opportunity for access to a draft law being when the text is submitted to the Council on Legislation. The Committees of Inquiry system appears to work well for established stakeholders (and big issues), but is less effective for the general public (where it is desirable to engage the latter), even though there is a formal right to participate in the system. The number of Committees of Inquiry set up at any one time may not help. The 2007 OECD report noted that consultation procedures seem to be effective in communicating future legislation and consolidating the participation of invited stakeholders, but had some misgivings about the extent of transparency, and heard that participation by some groups was difficult because of the resources that needed to be committed. An updated, practically oriented, consultation guide would be helpful in highlighting good practices, and in encouraging the use of new approaches, such as the Internet, as well as emphasising the importance of timelines, feedback and other issues.

Recommendation 3.1. Review the Committee of Inquiry process to check for issues that make it hard for stakeholders to participate effectively (deadlines for comments, feedback processes, starting consultation at an earlier stage). Consider whether there is a need to review the way in which the general public may access the Committee of Inquiry process in order to make its voice heard. Encourage the use of new approaches, such as Internet consultations, where there is a real need to reach out to a broad audience.

Recommendation 3.2. Consider whether it would be helpful to provide updated consultation guidelines covering key aspects of good practice such as timing, scope, methods and feedback (the United Kingdom guidelines provide a good example). Consider how to ensure that the guidelines are respected.

Box 3.1. Findings from the 2007 OECD report

The extensive consultation procedures 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. Consultation procedures during the legislative process 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 of government agencies 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.

There appears to be a specific issue regarding the development of regulations by government agencies. Regulations developed by agencies to give effect to primary laws are a key part of the Swedish regulatory infrastructure. A handbook for agencies on how to draft regulations includes consultation, and beyond this, the government agencies may develop their own procedures. It is not, however, clear to what extent agencies apply the principles of Better Regulation regarding consultation and transparency. Although government agencies are not legally obliged to comply with advice provided by the handbook, this kind of advice from the government is traditionally adhered to by the agencies. The 2007 OECD report noted that the consultation procedures of government agencies could be strengthened, as they are the implementing bodies of most of the regulations that affect stakeholders. There is no clear evidence of progress in this field.

Recommendation 3.3. Consider how to ensure that government agencies systematically apply best practice principles for public consultation, at least as regards their more significant draft regulations.

Public communication

Public communication of regulations is handled robustly with a number of access points. This is a strong feature of the Swedish system. It includes a number of well maintained websites where interested parties may consult developments in a number of different ways. The NNR has, however, noted that companies can find it hard to obtain

information on which regulations apply, and how to comply in practical terms. It also notes that more could be done to communicate on changes in regulations, as companies may not otherwise notice that regulations have been simplified.

Background

General principles

Sweden attaches considerable importance to the principle of transparency, with roots going back to the eighteenth century. It led Europe as regards the right of access to public documents. Transparency is enshrined at the highest level, in two of the four fundamental laws making up the constitution:

- **Instrument of Government.** This sets a requirement on government authorities to consult interested parties on the development of government business. Chapter 7, Article 2 states 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”.
- **Freedom of the Press Act.** This sets rules for public access to official documents. Chapter 2 contains detailed provisions on when a document becomes “public domain”, and on the modalities of right of access. The rules, however, do not apply to issues under development (working material), until the issue is “finished”. There are also exceptions to the access rule, listed in a special Act on Public Access to Information and Secrecy (*offentlighets- och sekretesslagen*, SFS 2009:400).

Principle of public access

The principle of public access guarantees the general public and the mass media an unimpeded view of activities pursued by the government and local authorities:

- everyone is allowed to read public documents held by public authorities to the extent that documents are not secret (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 outside parties what they know, to the extent that the information is not secret (freedom of expression for civil servants and others);
- civil servants also enjoy special freedoms to provide information to the media (freedom to publish for civil servants and others); and
- court proceedings are open to public, as are meetings of legislative and decision-making assemblies.

The principle thus applies to official documents held by public authorities. It is, however, subject to two restrictions. Firstly, not all documents are regarded as official documents. A document is official if it is held by a public authority and, according to

special rules, is regarded as having been received or drawn up by an authority. There are a number of rules relating to when a document is considered to have been drawn up by a public authority. A document is considered to be drawn up when it is dispatched. A document which is not dispatched is drawn up when the matter to which it relates is finally settled by the authority. If the document does not belong to any specific matter, it is drawn up when it has been finally checked or has otherwise received its final form. For certain kinds of documents other rules apply. Secondly, a number of official documents might be considered as secret, according to specific secrecy rules. Anyone who wishes to study a particular public document can address him/herself to the relevant authority. If, for example, a stakeholder wishes to access regulatory material before it is published as a bill, it can ask for this material, referring to the principle of public access.²

In keeping with the principle of public access, material related to the work of Committees of Inquiry (see below) and the opinions of the Council on Legislation are published on the relevant websites.

Public consultation on regulations

Public consultation is well embedded in the Swedish tradition and has strong roots. It is a routine part of developing draft laws and subordinate regulations. In the 1974 Instrument of Government (one of the four fundamental laws on which the Swedish Constitution is based), Chapter 7, Article 2, states 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”. Public consultation by the government with parties affected by draft legislation is in principle mandatory.³ Through its scrutiny of drafts for conformity with constitutional requirements, the Division for Legal and Linguistic Draft Revision at the Ministry of Justice checks that the requirement to consult interested parties has been fulfilled. The results of consultation are aggregated by the responsible ministry, and set out in the explanatory memorandum to a bill when it is sent to the parliament. The parliament may also hold hearings with stakeholders and experts.

The Committee of Inquiry system is a key process for all significant proposals (see below). Before significant changes are made to major legislation, a Committee of Inquiry is normally set up, which writes a report that is submitted to the Government Offices and to the relevant ministry. The report is then referred to relevant bodies for consideration. Comments may also be submitted by the general public. The public is normally informed of the decision to develop a draft government bill. Terms of reference for Committees of Inquiry are made public on the Internet, as are the committee reports and the government bills.

Beyond the Committee of Inquiry system which covers major legislation, there is a general requirement to consult. As can be observed in many other European countries, there are no explicit or shared guidelines on how to carry out this consultation. Ministries and agencies may define their own approach, including direct consultation of the public. Consultation is generally written, although special hearings can be organised. For example, the final version of a draft regulation may include a compilation of the different comments sent in and a justification of the final wording. The new regulation may be circulated more widely to the actors within a specific

branch, for example, to all companies that have licences or permits issued by the authority and would be affected by the new rules.

Committees of Inquiry

Committees of Inquiry are a fundamental part of the Swedish policy and rule making process and the means by which public consultation is usually carried out in the development of significant policies or legislation.⁴ In particular, before the government can draw up a legislative proposal, the issue is analysed and evaluated by a Committee of Inquiry. Committees are appointed *ad hoc* by the government to analyse an issue, as a basis for political discussion and decision making. The traditional view of this approach, which is unique as it can be distinguished from the more permanent advisory group arrangements of some other European countries, is that membership of a Committee allows stakeholders not only to make their views known effectively and at an early stage in the process, but also to “buy in” to the result. The Government underlines that this process provides valuable feedback to the government. In principle, referrals must be in writing and the referral bodies must be given three months in which to submit their opinions. In exceptional cases, other forms can be used, *e.g.* referral meetings (hearings). Ordinary citizens have a formal possibility to submit their comments, even if they are not specifically addressed as referral bodies.

The Committees Ordinance (*kommittéförordningen*, SFS 1998:1474) sets out general provisions for their composition and working methods. The first step in the process is for the Committee to be assigned terms of reference (letter of instruction) and a closing date for its work by the relevant ministry (responsible for the legal domain in which the committee will carry out its inquiry). The work of Committees usually spans 6 months – 1 year though some can work for longer periods. The terms of reference are circulated for internal consultation around the Government Offices, which allows ministries to propose adjustments (for example, the Ministry of Enterprise may ask that the Committee should pay special attention to avoid unnecessary administrative burdens on businesses in its proposals for regulations). The Committee’s terms of reference are made public. Committees carry out their work independently of the government, and have traditionally consisted of a chairperson and one or more members (experts, officials and politicians). “One person” committees (*utredare*) are, however, increasingly common, assisted by experts and a secretary. The secretary is normally a lawyer or an expert in a particular field. Some of those interviewed by the OECD peer review team suggested that the single person approach and shorter timescales for completion of the work may be undermining an adequately broad based and transparent analysis.

When it has completed its work, the Committee of Inquiry submits a report to the government with recommendations, which is published.⁵ Before the government takes a position on the recommendations, the report is referred for consideration to relevant “referral” bodies: government agencies, interest groups such as business or consumer organisations, trade unions, academics, courts, regional and local government authorities or other bodies whose activities may be affected by the proposals. Any member of the public may ask to participate in these consultations. This provides feedback and allows the government to judge the level of support it is likely to receive. If there is a significant unfavourable response, the government may try to find an alternative solution. In principle, referrals must be in writing and referral bodies should be given at least three months in which to submit their opinions. Only in exceptional cases can other approaches be used, *e.g.* referral meetings. Any member of the public

can choose to participate in the consultation. Committee reports are also circulated internally to ministries. The information consulted stakeholders are asked to provide varies from case to case. The views of the referral bodies are taken into account by the government in the further development of the draft regulation.

Ex ante impact assessment in Committee reports

An important development since the 2007 OECD report concerns the strengthening of *ex ante* impact assessment as part of the work of the Committees (see Chapter 5). Committee reports have always included a consequences assessment (“analysis of the impacts of proposals”). The Committees Ordinance (SFS 1998:1474) makes it clear that general cost calculations and consequences must be covered, with particular attention to SMEs, and the government usually set these out in more detail in the terms of reference establishing a committee. With the addition of Article 15a § to the Committees Ordinance, the Committees of Inquiry shall apply the same rules on how to carry out impact assessment as the government agencies (according to the Regulatory Impact Assessment Ordinance (SFS 2007:1244) and the ministries within the Government Offices (according to guidelines issued by the group of State Secretaries on Better Regulation).

Developments in the framework of the Action Plan for Better Regulation

The Government’s Better Regulation policy and Action Plan have given rise to significant new developments since the 2007 OECD report, regarding consultation with the business community. The Ministry of Enterprise has established a central working group with business representatives to identify areas of particular concern to business. Several ministries and government agencies have either established similar working groups or have held meetings with business organisations and other stakeholders in their better regulation work. These groups and meetings discuss how to reduce administrative burdens and simplify the regulatory framework for business. All ministries and government agencies involved in the Action Plan must report annually on their actions in this respect, ahead of the annual report to the parliament on progress with the Action Plan.

Consultation and the social partners

The Swedish tradition is to have extensive consultation with the social partners, which is considered very much a “part of everyday life”. Union membership is high. 70% of employees belong to a union, and 70-80% are covered by a collective agreement. When relevant the social partners are consulted as referral groups for the Committees of Inquiry (see above). The Ministry of Employment noted, however, that the original tripartite arrangements for consultation have more or less disappeared since the 1980s, and there is today no formal institutional structure for discussion with social partners (for example, no structured social board or council).

Public consultation by the government agencies

There is a handbook for government agencies on how to draft regulations, including to some extent consultation.⁶ The agencies are responsible for their own regulations and the central government does not keep information on the extent to which the government agencies have developed their own handbooks for rule-making.

Stakeholder views on transparency in public consultation

The OECD peer review team heard a range of sometimes conflicting views on the strength and transparency of public consultation in practice. Many feel that the tradition of careful consultation and openness is in good shape and consultation is taken very seriously. The business organisations considered that the consultation system is well established and generally works well, noting a welcome growth in informal consultation at an earlier stage in the development of regulations. But they also underlined the scope for further improvement. Some consultations are “one way” – more information than consultation. The formal system takes time, which is a problem for EU regulations. The three month timeline is often not observed, or done in vacation. The short deadlines for responses was an issue raised by several stakeholders. The trade unions noted some deterioration as there is a tendency to “haste” in the process, with the government using hearings (which does not allow views to be captured on the record, and generally reduces the quality of comments) for potentially sensitive issues. Consumers confirmed that their views were sought on relevant issues, although more effort appeared to go into discussion with the business community. Feedback was not systematic, and varies between ministries. It was also suggested that ordinary citizens may be left out of the loop, the first real opportunity for access to a draft law being when the text is submitted to the Council on Legislation.

Public communication on regulations

There is an obligation on the government to publish acts and ordinances, including amendments, in the Swedish gazette for regulations, the Swedish Code of Statutes (*Svensk författningssamling, SFS*), which is updated weekly, every Tuesday. New regulations are usually published four weeks before their entry into force. The information is also published in a consolidated (free of charge) database on the Internet, which is updated a few days after publication of the paper version.⁷ The database contains a directory of all laws, ordinances as well as government agency regulations. Case law from the courts is also available. Most of the government agencies publish their regulations on their own websites as well. The government also publishes bi-annually general information on important new laws that will enter into force in the coming six months.

A recent report by the Committee of Inquiry on the electronic publication of acts and ordinances⁸ proposes going a step further: acts and ordinances should be published electronically in the Swedish Code of Statutes, to be made available on a special website. The Committee of Inquiry considers that it is both possible and appropriate to introduce an electronic system at this stage. It is technically possible to create a reliable and secure system with a reasonable level of resources. Electronic publication would provide greater access to the authentic version of a statute. The report proposes the introduction of the new system from 2011.

Three other websites provide further information. Two government websites contain relevant information in Swedish, English and other languages.⁹ These websites offer a large number of documents from the government, such as terms of reference for committees, committee registers, committee reports, ministerial reports, bills, international agreements and laws and ordinances as they are published. The Parliament (*Riksdag*) website also provides relevant information presented in different languages.¹⁰ This website 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 guides, fact sheets and explanatory texts. All Internet sources and databases are available free of charge.

According to custom many regulations are introduced in January and July of each year, but this is not a formal decision. It is still possible to introduce regulations at other times during the year. The *NNR* notes that companies can find it hard to obtain information on which regulations apply, and how to comply in practical terms. It would be helpful to have this kind of information available before new regulations come into force, especially for SMEs.

Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. The requested material will probably be considered as “working material” and not regarded as official documents.
3. The provision does not apply to the agencies. The expression “government business” in Chapter 7, Article 2 in the 1974 Instrument of Government (one of the four fundamental laws on which the Swedish constitution is based), includes all issues that the government has to decide upon.
4. There is no definition of what has to be reviewed by a Committee of Inquiry.
5. Swedish Government Official Report series (*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 at www.regeringen.se and www.lagrummet.se. Ongoing inquiries are also referenced.
6. *Myndigheternas föreskrifter - Handbok i författningskrivning*, Ds 1998:43.
7. www.lagrummet.se.
8. SOU 2008:88.
9. www.regeringen.se; www.sweden.gov.se.
10. www.riksdagen.se.

Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However, the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true- impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have – or should have – a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.

Assessment

Processes for making new regulations

There are several processes through which interested parties may find out about proposed new legislation, but these are scattered. Different instruments ensure that those inside and outside government can, if they wish, keep in touch with legislative plans (for example, the annual Budget bill, and information on Committees of Inquiry work). The parliament drew attention to an unhelpful “bunching” of law making activity. Forward planning could be made more transparent to those inside and outside government by publishing, on a regular basis, the list of proposals for new bills. There does not appear to be any systematic information dissemination process for the development of secondary regulations.

Recommendation 4.1. Review the processes which are currently in place for forward planning of new laws and secondary regulations, in consultation with interested parties (such as the parliament and the business community) and take steps to remedy weaknesses.

Legal quality and plain language

Processes to secure legal quality are a strong feature of the Swedish system. Law drafting benefits from a strong framework of supporting institutions, guidance and training, which have their roots in the constitution (Instrument of Government). The institutional support framework includes a Directorate General for Legal Affairs in each ministry, which is responsible for ensuring that draft bills are well prepared, legally correct and conform with requirements. The Prime Minister’s Office and the Ministry of Justice provide further support. The Council on Legislation provides a further legal check at the end of the process. Sweden also emphasises the importance of plain language, spearheaded by the Ministry of Justice. This includes work on the promotion of plain language within the EU institutions. The parliament also takes a keen interest in plain language, with the adoption of a law in 2005, where several national language policy goals were adopted, among them on plain language. This was followed in 2008 with a Swedish language law, which among other issues states that authorities should strive to use clear and comprehensible language.

Ex ante impact assessment

Sweden has taken steps to strengthen its impact assessment processes since the 2007 OECD report. The 2007 OECD report drew attention to a number of serious shortcomings. The system was fragmented (different arrangements for ministries, agencies and committees of inquiry), there was a heavy focus on SME impacts (the only mandatory part of the system) to the detriment of a broader perspective, and no integrated institutional framework to monitor compliance and challenge the quality of impact assessments. The quantitative dimension was very weak. Sweden acknowledged that it had so far failed to develop an effective system.

There was considerable support for improvement to secure a stronger evidence base for policy and rule making, not only inside the government but also with the parliament and the business community. The new policy has sought to broaden the approach and strengthen the institutional framework, not least through the establishment of the Better Regulation Council which will scrutinise draft impact assessments.

Box 4.1. Recommendation from the 2007 OECD report

Streamline the current Regulatory Impact Analysis (RIA) system and improve its quality control.

Sweden should 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 the quality control institutions: 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 (*Tillväxtverket*). The Government offices, Committees of Inquiry and agencies, should be given more resources to undertake RIAs, including staff with relevant technical competences.

The current picture is mixed. 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.

However, there is a lack of a comprehensive framework to weigh and consolidate the different RIAs carried out. No single unit is responsible for the review, support and monitoring 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. 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. The approach does not provide for systematic quality assurance. Quantification of costs and benefits is not carried out for all legislation and there is no mechanism, except for the RIA on SMEs, to evaluate quantitative assessments. As a consequence, cost-benefit analysis is rarely used. Together with the lack of a single or lead oversight body responsible for quality control of all RIAs, this means that the scrutiny of draft regulations may vary significantly. An integrated institutional approach would be beneficial.

Several agencies have requested that the requirements for impact assessments in the committee and *Tillväxtverket* ordinances shall be combined and that roles of *Tillväxtverket* and The National Financial Management Authority must be clarified.

Oversight for impact assessment has been strengthened, with the Better Regulation Council providing some integrating glue. The institutional support framework has traditionally consisted of different arrangements for ministries, government agencies and committees of inquiry. This division of responsibilities has not changed since the OECD report of 2007, with the notable exception of the Better Regulation Council. The Council will scrutinise proposals prepared by both ministries and agencies as well regulatory proposals from Committees of Inquiry (the majority of its work has so far been on proposals of government agencies and Committees of Inquiry). It criticises, in its opinions, drafts if they are not good enough, but cannot send them back. The other improvement is an enhanced status and role for the Ministry of Enterprise in respect of

ministry impact assessments, as part of its broader co-ordinating responsibilities for Better Regulation. The issue is whether these changes are going to be sufficient to secure effective and coherent oversight. It is too early to tell. However, it is clear that much depends on the Better Regulation Council, the only actor with a complete view given the continued fragmentation of other actors and their essentially advisory role. Capacities and resources is another weak spot. The Ministry of Enterprise is already short on capacities to meet its responsibilities, and its resources may well need to be strengthened.

Recommendation 4.2. Monitor closely the institutional framework for overseeing *ex ante* impact assessment and be ready to strengthen it quickly if impact assessments fail to improve.

For the government agencies, support continues to be provided by the Swedish Agency for Economic and Regional Growth (Tillväxtverket), with input from the Swedish National Financial Management Authority (Ekonomistyrningsverket, ESV). Streamlining this part of the institutional structure would likely benefit efficiency. The 2007 OECD report had already drawn attention to the issue, and Tillväxtverket continues to have some reservations about the current process.

Recommendation 4.3. Review the arrangements under which both Tillväxtverket and ESV have responsibilities for advising on agency impact assessments, and address any issues that are found.

Although the new ordinances and guidelines appear to have clarified requirements, the handling of some key issues remains weak. In some respects this seems to be a refreshment of existing policies rather than a completely new departure. Some issues need further attention. Quantification of costs and benefits is not sufficiently emphasised. The support arrangements for ministries to carry out quantification may not be adequate, given that this is new territory for many officials.

Recommendation 4.4. Reassess the quantification of costs and benefits.

The policy remains highly business focused. The new ordinances and guidelines anticipate that social and environmental impacts as well as economic and business impacts, should be addressed. Although the new approach clearly signals the need to go beyond impacts on SMEs (the main focus of the previous policy) the emphasis remains on business. The mandate for the Better Regulation Council's work requires it to focus on business, even if other aspects may be taken into account. Sweden also wants to avoid the "Christmas tree" effect. A business focus is valuable and necessary, especially post crisis and given the prominence of Sweden's Better Regulation strategy as part of a drive to enhance competitiveness. However, work on other impacts may be crowded out and this risk alienating stakeholders both inside and outside government.

Recommendation 4.5. Ensure that the full range of important impacts, costs and benefits is addressed in *ex ante* impact assessments.

Given the weaknesses that may still be in the revised ex ante impact assessment system, an early and objective evaluation will be important. The new system, is an improvement in many respects, but nonetheless contains some potential weaknesses. This means that evaluation will be important, sooner rather than later, so that the necessary steps can be taken to remedy weaknesses as quickly as possible. Two potential candidates for carrying out the evaluation are the Better Regulation Council (with hands on experience of the new system) and the National Audit Office (*Riksrevisionen*), which has previously shown interest in Better Regulation.

Recommendation 4.6. Plan for a full evaluation of the new policy in the near future.

Background

General context

The structure of regulations

The constitution takes precedence over all other laws, and no other law may conflict with its provisions.¹ The hierarchy of regulations is relatively simple- primary laws (mostly proposed by the government and always enacted by the parliament), and secondary regulations (ordinances, promulgated by the government, and regulations, promulgated by the government agencies). Generally speaking, primary legislation often takes the shape of framework laws, which are then fleshed out in secondary regulations, usually by the agencies.

There are also recommendations (*allmänna råd*). Whilst laws, ordinances and regulations are binding norms (there is an obligation to comply with a regulation and it is binding on courts of law and other adjudicating bodies), recommendations are not formally binding on the people and organisations to which they apply. There is no obligation to follow a recommendation, nor does it bind adjudicating bodies. They are however discouraged and some government agencies have stopped issuing them, in order to sustain the clarity of the basic regulatory structure.

Only the parliament and the government have the right, under the Instrument of Government, to issue legal norms. However both the parliament and the government may delegate rule- making powers to government agencies and local governments. To have legal force, a provision adopted by a public authority or by a municipality must have support in a higher statute and, in the last resort, in one of the fundamental laws. Where the government is competent to adopt legal norms, whether directly by virtue of the Instrument of Government, or indirectly by authority of the *Riksdag*, it may delegate this competence to a subordinate authority or a municipality (sub-delegation). Where the government is acting by authority of the *Riksdag*, it is necessary for the *Riksdag* to have authorised the sub-delegation in a law. As primary legislation often takes the shape of framework laws, this means that almost all laws contain provisions concerning delegation of regulatory power to the government and/or to government agencies and local governments.

The Government initiates most legislative proposals presented to the parliament, but members of Parliament and the parliamentary committees also have a right to submit new legislative proposals to Parliament.

The Instrument of Government (Article 17, Chapter 8) stipulates that “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.

Box 4.2. Structure of regulations

Chapter 8 of the Instrument of Government, under the heading “Laws and Other Regulations” sets this out. At the central level, regulations can be adopted by three bodies: the parliament, the government and agencies.

- *Primary laws (lagar)*. The parliament is the sole enactor of primary laws.
- *Ordinances (förrordningar)*. The government may lay down secondary regulations, called ordinances. A particular group of ordinances are regulations governing the agencies.
- *Regulations (föreskrifter)*. The agencies attached to central government lay down regulations.

There are also recommendations (*allmänna råd*). Whilst laws, ordinances and regulations are binding norms (there is an obligation to comply with a regulation and it is binding on courts of law and other adjudicating bodies), recommendations are not formally binding on the people and organisations to which they apply. There is no obligation to follow a recommendation, nor does it bind adjudicating bodies.

Trends in the development of regulations

Table 4.1. Stock and flow of laws and ordinances in Sweden – The Swedish Code of Statutes (SFS)¹

	2006	2007	2008	2009
Total number of new or amended laws and ordinances	1 592	1 475	1 444	1 608
New laws	59	28	49	52
New ordinances	118	319	111	155
Amended laws and ordinances*	1 415	1 128	1 284	1 401
Total number of pages in SFS²	3 085	3 123	2 870	3199
Total number of laws and ordinances that are in force by ...	3 670	3 722	3 755	3 763
	1 st Jan	1 st Jan	1 st Jan	1 st Jan

Source: Ministry of Justice, January 2010. *As from 2006, “new ordinance” includes all types of subordinate regulations.

There are about 1 000 laws in Sweden, and over 2 000 ordinances. There are over 7 000 government agency regulations, by far the largest part of the regulatory system, which are more extensive in content than laws and ordinances.

The OECD peer review team heard that it was difficult to be clear about production trends. It was pointed out that some structural reforms inevitably generate new regulation to frame the new circumstances and to manage the effects of competition (the deregulation of the pharmaceuticals market was cited).

Procedures for making regulations

The law making process

Box 4.3. 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: as primary legislation often takes the shape of framework laws, which are elaborated further in secondary regulations the bills may also contain explanations on what further regulations will be needed to fulfil the initiative.

The process for adoption of government ordinances does not follow the process described below but the provision in the Instrument of Government stipulating that the necessary information and opinions shall be obtained from the public authorities concerned and that organisations and private persons shall be afforded an opportunity to express an opinion as necessary applies in this procedure as well.

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 or 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. Proposals may not go any further in the legislative process until they have been approved.

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).

Forward planning

Work flows from the government's political agenda, based on the coalition agreement at the start of each political term. The Prime Minister's Office (PMO) submits a list of upcoming bill proposals twice a year to the parliament. The annual Budget Bill also indicates the direction of reforms. It gives significant information about the priorities, including new legislation, for the coming years. The government notes that it is not possible to make any comprehensive list regarding regulations to be adopted by government agencies. The government also informs the *Riksdag* annually about appointed Committees of Inquiry and their work (*kommittéberättelsen*, the Committee Report). These documents are available on the government's websites.² Most ministries inform others of upcoming regulations, although some could do better.

Administrative procedures

Law drafting (Box 4.3 above) is highly co-ordinated, with drafts circulated by the responsible ministry at several levels and stages before a bill is adopted by the Cabinet and tabled with the parliament. The same goes for those ordinances that are not subject to a bill. The Instrument of Government³ requires that authorities must obtain

information from and the views of other authorities, if there is a need to do so, and sets procedures for consultation between the ministries. The aim is to ensure that all points of view are captured and a consensus established before a bill is adopted.

The responsibilities and functioning of the Government Offices are set out in special rules of procedure (*Instruktion för Regeringskansliet, Arbetsordningen*). These also promote collective decision making and a consensus driven approach to policy development.

Legal quality

Fundamental provisions to secure legal quality and uniformity are stipulated in the Instrument of Government. Procedures are further developed in legislation and secondary regulations, as well as a range of guidelines and policy statements. These include the checklist for legal drafters, the Green Book guidelines for writing laws and regulations, and the Bill handbook issued by the Prime Minister's Office. The guidelines and related training (see Chapter 2) target all levels of authority involved in the development of new regulations: the Government Offices, agencies and Committees of Inquiry. They promote principles of legal quality, but also broader regulatory quality, such as 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.

Responsibility, as in most other OECD countries, starts with the individual ministries which make up the Government Offices. There is no separate body of officials for legal drafting. Special training is offered to officials on drafting and legal quality principles (see Chapter 2). Each ministry has a Directorate General for Legal Affairs responsible for ensuring that draft bills are well prepared, legally correct, consistent and conform with requirements. The Directorate also reviews bills to check that the requirements for inter-ministerial consultations have been met.

Two authorities assume a more general role in quality control:

- The *Prime Minister's Office* is responsible for legal (as well as political) co-ordination of legislative work within the Government Offices. It has a Director General of Legal Affairs who is formally responsible for co-ordinating legal and linguistic questions to promote conformity and high quality in legislation. To this end it may issue handbooks (including the Checklist for legal drafters, which 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), guidelines and other materials.
- The *Ministry of Justice* plays an important advisory and legal checking role. Its Division of Constitutional Law provides legal assistance to ministries on constitutional issues, and expert advice to Committees of Inquiry if an issue of constitutionality arises in their work. Its Division for Legal and Linguistic Draft Revision has responsibility for publication of the Swedish Code of Statutes and provides linguistic services to ministry officials (see below). The two divisions share the responsibility to review all draft government bills, ordinances and terms of reference for Committees of Inquiry, from a perspective of general quality as well as the constitution. The two divisions also scrutinise draft

legislation to check conformity with the constitution, including a check that the Government Offices have consulted externally, in conformity with the Instrument of Government. The Ministry of Justice provides assistance throughout the internal procedure. The consultation is mandatory in the second stage.

The Council on Legislation provides an important further legal check on bills at the end of the process, once the consultation process inside government has been completed. The constitution requires that the government refer major items of draft legislation to the Council for a legal opinion. Its opinion is sought, above all, to ensure conformity of a proposed new regulation with the legal system and compatibility with constitutional law (legal security, capacity to appeal). The Council explained, however, that it also scrutinises draft laws in terms of their capacity to meet stated objectives, and whether issues of compliance and enforcement are likely. It can make “drastic recommendations” such as merging two laws. The Council only considers draft laws: it does not check other forms of regulation.

The Council is a consultative body. The government, and the parliament, may ignore its advice. In practice, although its views are not always followed in every detail, it is a well respected institution and the fact that its opinions are made public lends weight to these. Its advice is generally accepted. In the first instance, if it finds against a proposal, its advice goes back to the responsible ministry and the proposal is either withdrawn or revised. If the government wants to bring a rejected proposal before the *Riksdag*, a rare event, the government has to present arguments in favour of the proposal against the opinion of the Council. The Council’s advice is also set out in the explanatory memorandum which is attached to bills laid before the parliament.

Plain language

Plain language is a statutory requirement for drafting laws, ordinances and regulations and has been promoted over a number of years. Recent years have seen specific projects designed to simplify and improve the design and drafting of official documents. The Ministry of Justice Division for Legal and Linguistic Draft Revision currently has five language experts to ensure compliance with plain language drafting requirements and has produced guidelines advising on the use of plain language. The Division for Legal and Linguistic Draft Revision offers training sessions for legal drafters; handbooks, guidelines and articles; advice by phone or e-mail; and takes part in the work of law commissions appointed by the government to redraft legislation. It may give courses on an *ad hoc* basis for special projects and for officials who ask for it.⁴

The Plain Swedish Group (*Klarspråksgruppen*) was appointed by the government in 1993 to encourage agencies to start plain language projects. It channeled knowledge, ideas and experience gained from plain language projects in Sweden and abroad. As part of its work, the group arranged conferences and visited government agencies to inform them about plain language. In 2006, this work became one of the many tasks of the newly set up Language Council (*Språkrådet*), which is a department of the official language agency, the Institute of Language and Folklore.⁵

EU and international aspects are also covered. Two of the Ministry of Justice language experts devote half their time to promoting plain language within the EU institutions. The ministry website contains guidelines and recommendations for EU texts.⁶ The Swedish documentation on plain language interestingly draws attention to the work of other bodies.⁷

The role of the parliament

The explanatory memorandum (EM) attached to a bill must include a description of stakeholders consulted (“referral bodies”, “*remissinstanserna*”), their views, and whether and how these have been taken into account. The opinion of the Council on Legislation is also recorded. The EM also contains a description of various impacts. The OECD peer review team was told that the best examples give a transparent picture of preparation and views expressed, as well as implementation.

The OECD peer review team heard that an issue is the unstable workflow, as there are “seasons” for law making. The parliament has put pressure on the government to improve the flow of information on upcoming legislation.

The parliament takes an interest in plain language. In 2005, the *Riksdag* adopted a bill for a concerted language policy with the objectives: Swedish is to be the main language; Swedish is to be a complete language, serving and uniting society; public Swedish is to be cultivated, simple and comprehensible; and everyone is to have a right to language, to develop and learn Swedish, to develop and use their own mother tongue and national minority language and to have the opportunity to learn foreign languages. This was followed by the adoption, in 2008, of a bill on a new language law. This states, among other things, that Swedish is the main language of Sweden, protects the five minority languages and states that public authorities in Sweden must strive to be express themselves clearly and comprehensibly.

Ex ante impact assessment

Policy

Initial framework

Sweden started to develop its policy for *ex ante* impact assessment over ten years ago. Given its relatively unusual institutional structure (a small core of ministries and a much larger network of agencies with significant responsibilities for the development of secondary regulations, together with a system of Committees of Inquiry that play an important role in policy and regulatory development) it rightly decided that all of these actors needed to be covered. This resulted in a three tiered system, with varying arrangements (albeit broadly with the same requirements) for each type of institution:

- For agencies, the government Agencies and Institutes Ordinance (SFS 1995:1322) laid down principles for the development of new regulations, including analysis of economic and other consequences, and consultation of other agencies and sub national levels of government as well as the Swedish National Financial Management Authority (*Ekonomistyrningsverket, ESV*) if a regulation was expected to increase costs.

- For Committees of Inquiry, the Committees Ordinance (SFS 1998:1474) made it clear that general cost calculations and consequences must be covered, with particular attention to SMEs, and the government usually set these out in more detail in the terms of reference establishing a committee.⁸
- For the Government Offices (ministries), a checklist for legal drafters was the starting point. In 1999, a group of State Secretaries appointed to promote regulatory reform established guidelines on the same principles as the Committees Ordinance, and the *Simplex* Ordinance for government agencies, to promote the special needs of for SMEs.

The so called *Simplex* Ordinance on special impact analysis of rules on small enterprises (1998:1820), which came into force in 1999 was the only mandatory requirement. It stipulated that a government authority⁹ has to undertake, as soon as possible, a special impact analysis on SMEs if new or changed rules have significant effects on small enterprises' working conditions, competitiveness, etc. The Ordinance contained a checklist with twelve questions to help understand the consequences of regulations, and indicated that there should be consultation with representatives from the business community as well as other affected authorities. They provide among other issues rules on how to consider whether public action is necessary, how to identify alternatives to solve a problem and how to make impact assessments.

Recent developments

The 2007 OECD report drew attention to a number of shortcomings in the approach. In particular, it identified as issues, the fragmentation of the system (different arrangements for ministries, government agencies and committees of inquiry), the fact that it focused heavily on SME impacts (the only mandatory part of the system) to the detriment of a broader perspective, and not least the lack of any strong and integrated institutional framework to monitor compliance with instructions to carry out impact assessments and challenge the quality of impact assessments. The report noted, for example, that there were no legal requirements for agencies or committees to submit their impact assessments for a quality check, and no procedures for handling reports that did not meet the requirements.

The Swedish government decided subsequently to give the process a significant boost, accepting that results had been disappointing so far and that there had been a relative failure to embed culture change across the administration in support of effective assessments. The new policy seeks to promote a uniform and broader approach going beyond impacts on small firms, and a strengthened institutional framework. The emphasis remains firmly on the economic and business aspects. The centre piece of the revised approach is a new Regulatory Impact Assessment Ordinance for the agencies, which entered into force on 1 January 2008.¹⁰

The ordinance, which replaces the so-called *Simplex* Ordinance (SFS 1998:1820) and Paragraphs 27 and 28 concerning impact assessments in the Government Agencies and Institutes Ordinance (SFS 1995:1322), sets specific and broader requirements for impact assessment. It states that when making new regulations, all relevant consequences (economic, social, environmental etc) should be taken into account and documented in a written justification, with a level of analysis proportionate to the importance of the issue.

The new ordinance for agencies has been used as a template to update and strengthen requirements on ministries, as well as on the Committees of Inquiry. The group of State Secretaries responsible for co-ordinating Better Regulation within the Government Offices adopted in June 2008 guidelines stating that the same principles laid down in the agency Ordinance also apply to ministries. The Committees Ordinance has also been amended to reflect the same principles.¹¹

As might be expected the development of the new system generated some discussion about the extent to which the system should encourage a broad view of impacts beyond the business and economic impacts. The current system does in fact state the need to take into account all consequences (including social and environmental). However in practice, economic consequences are the main focus of the process. For example, the Better Regulation Council does not normally scrutinise the environmental and social impacts of regulations.

Institutional framework

The institutional support framework for impact assessment has traditionally consisted of a different coverage for ministries, agencies and Committees of Inquiry. The Ministry of Enterprise has been the focal point for supporting the ministries with business related impact assessment, and has also covered the Committees of Inquiry through involvement in setting their terms of reference. The Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) has done the same for the government agencies, together with the Swedish National Financial Management Authority (*ESV*). As in most other OECD countries, ministries and agencies are individually responsible for drafting regulations and the impact assessments that go with this process (other ministries may comment upon the draft and the mandatory impact assessment for SMEs). The oversight structure has now been strengthened and to some extent integrated (albeit not wholly).¹²

Better Regulation Council

The most important development is the establishment of the Better Regulation Council, which will scrutinise proposals prepared by both ministries and agencies (and by Committees of Inquiry when their proposals are being referred for consideration). So far, the majority of proposals scrutinised by the Better Regulation Council are the final reports from Committees of Inquiry. The requirement to submit draft proposals and their impact assessments to the Council is built into the agency ordinance and ministry guidelines. The agency ordinance¹³ states that “before an agency decides on regulations that may significantly affect the operational conditions of enterprises, their competitiveness or other conditions” the Council must be given at least two weeks to comment.¹⁴ The Council will not scrutinise impact assessments carried out by the European Commission on draft EU directives (there are no current plans for the Swedish government to submit draft EU directives for national *ex ante* impact assessment).

The majority of the proposals that the Better Regulation Council scrutinises have been, until now, those which are found in the reports of the Committees of Inquiry (*i.e.* the BRC is on so-called referral body among several other referral bodies) and proposals from government agencies. Due to time constraints (as well as other reasons) not that many proposals for laws and ordinance drafted solely by the Government Offices, without involvement of a Committee of Inquiry, are sent to the BRC.

Only proposals for new or amended regulations that affect business need to be submitted. The Council's mandate refers to consequences for business, and it must take a position on whether the impact assessment makes it possible to see the effects on administrative costs for businesses. The Council does not normally scrutinise social and environmental aspects. It will emphasise the need to consider alternatives to regulation.

If an impact assessment is found to be inadequate, the Council can issue a public statement and express its opinion about the impact assessment and the proposal (the Council secretariat explained that it wants to avoid making changes itself, as it is important that ministries do this, but that it will give advice). All opinions of the Council are public and available at its homepage www.regelradet.se. The Council is advisory and cannot force the government or agencies to follow its advice (this would be against the constitution). The Council may set up its own guidelines for its work (working methods).

Ministry oversight

The Market and Competition Division of the Ministry of Enterprise supports and gives feedback, to a certain extent, on impact assessment concerning business aspects carried out by ministries, as part of its co-ordination of the business related work of Government Offices on Better Regulation. Specifically, the division carries out a quality control of ministry proposals. If a proposal affecting businesses is not accompanied by an impact assessment, the Market and Competition Division can, just like any other division at the different ministries affected by the proposal, refuse to accept it during the joint drafting procedure. The same goes if the impacts on businesses are poorly analysed or if the proposals contain unnecessary burdensome regulations or could be simplified in any other way, etc.

The Division (see also Chapter 2) has a team of about 8-9 persons for this and related work to support regulatory simplification in the Government Offices (they also have other tasks). The work is also supported by the State secretary steering group for Better Regulation, chaired by a State Secretary at the Ministry of Enterprise, and an inter-ministerial officials group, also chaired by the Ministry of Enterprise. Officials at the Ministry of Enterprise interact on a regular basis with officials responsible for business related regulations at the different ministries.

The Market and Competition Division has developed guidelines with more information on how to carry out impact assessments. These are available on a web portal of the government intranet, accessible to officials at the Government Offices. There is also a template for setting out impact assessments, consisting of twelve steps, which officials within the Government Offices are encouraged to fill in.

Government agency oversight

The new Regulatory Impact Assessment Ordinance¹⁵ states that the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) and the Swedish National Financial Authority (*Ekonomistyrningsverket, ESV*) are responsible for methodological development, training and advice, and that *Tillväxtverket* is responsible for co-ordination. *Tillväxtverket* no longer receives, as it did, the impact assessments. Its role is advisory. It has no powers to send back an impact assessment if the draft is inadequate, or to require one to be carried out if there has been a failure to do so.

Tillväxtverket has created a contact group of agency representatives. An important part of *Tillväxtverket*'s work is to train agency officials in the use of impact assessment as a practical tool. This includes group work on a case study. The training also serves as forum for exchange of experiences and is partly designed to meet each agency's individual experiences and requests. All training includes a general presentation of the situation of businesses and of Better Regulation in Sweden. The training is often co-ordinated with presentations of the measurements of administrative costs for businesses.

Box 4.4. *Tillväxtverket* checklist for Impact Assessment (IA) by government agencies

Attitudes: Is IA work considered important, supported by management? Are IAs in demand as background for decision making?

Working forms: Are there clear and well known routines for IA, early in the process?

Resources: Are sufficient time and personnel resources allocated for this task and are the correct competences available?

In house support: Is there access to in house support facilities such as training, and quality assurance?

Plus: Agency regulations are the final link in the regulatory development chain so need to look at upstream IAs, and early views from business on how they might be affected can be valuable. Use the *MALIN* database as input.

General recommendations to government agencies:

Perspectives: is the company perspective a self evident element of the design of regulations and services?

Dialogue: Is there a good dialogue with business? Is there a good dialogue within government agencies? With other agencies? Relevant ministries?

Regulations: Is it easy to find the relevant regulations? Are they easy to read, understand? Routines for follow up? Is there still a need for them? Are new or amended regulations really necessary? Can some companies be exempted? Are costs and other impacts on business adequately considered? Can the EU dimension be more actively pursued?

Matters: How can processing times be cut back? Is the language used in decisions and notices simple?

Information gathering: Is all the information required of companies necessary or can it be reduced? Is the same information requested several times? Same information from different parts of the same company? Can another agency collect the same information? Can the frequency of collection be reduced? Can forms be improved, or use electronic means?

Inspection: Could inspection be co-ordinated with other government agencies? Could they be designed to cause less of a burden? Do they have to be carried out as often as they are now?

Information and service: Can information to companies be improved? Can companies contact agencies when and how they want? What is done with proposals submitted by companies?

Tillväxtverket wants government agencies to think twice in their regulatory work, in order to help ensure that companies have time for other things than meeting administrative requirements.

Together with *ESV*, *Tillväxtverket* has developed a web-based guidance tool on impact assessments. *Tillväxtverket* raised issues about the relationship with *ESV*, which seems to stand in the way of a more streamlined approach.

Methodology

The Regulatory Impact Assessment Ordinance (SFS 2007:1244) on which the other parts of the system¹⁶ are based sets out a number of issues that must always be addressed. Before deciding on a regulation, the agency shall explore as soon as possible the costs and other impacts, to the extent necessary. Impact assessment should address social, environmental and economic impacts, where appropriate. Results shall be documented. Administrative authorities and business shall have the right to be heard. Paragraph/Article 6 specifies the content in more detail: a description of the problem to be solved, the objectives to be achieved, the alternative solutions, the effects if a proposed regulation is not adopted, costs and other impacts in relation to EU regulation, entry into force and need for information. Paragraph/Article 7 specifies that where impacts concern enterprises, a deeper description is required on different aspects *e.g.* impacts on firms of different size, competitiveness, action needed by firms, time schedules. There remains a special focus on companies, especially SMEs. The potential administrative costs for businesses of a regulatory proposal should be included. The *Tillväxtverket* database of measurements, called *Malin*, which is updated annually, should be used by officials to simulate administrative costs when drafting new regulations. Finally, impact assessments must include a provision for *ex post* review.

Quantification of costs where possible is underlined in different steering documents/guidelines. According to Article 4 in the Regulatory Impact Assessment Ordinance (SFS 2007:1244) an agency shall, as early as possible, before it decides on regulations or general advice, make an assessment of the financial impact and other consequences of the regulations or the general advice to the extent necessary in the individual case, and document this assessment in an impact assessment. The same goes for Committees of Inquiry (cf. Article 14 and 15 a in the Committee Ordinance (SFS 1998:14747)). The same goes for ministries within the Government Offices according to guidelines issued by the group of State Secretaries on Better Regulation. There are also internal guidelines for the Government Offices on how to carry out impact assessment (*Konsekvensutredning vid regelgivning – en vägledning* (“Impact Assessment when regulating – a guidance”), available on the internal web portal for Better Regulation), where it is stated that one should try to quantify the costs and other impacts.

The new provisions require:

- Confirm as far as possible that a given regulation is really necessary and that it solves the problem it was designed to address.
- Generate comprehensive support data needed for estimating the costs and other effects, such as environmental and social impacts, that comes with the regulation.
- New or amended regulations must be simple and appropriate.
- Impact assessments must also serve to improve the quality of regulations and reduce the need for interpretation, help restrict costs of compliance and reduce the number and extent of regulatory provisions, *i.e.* the total corpus of regulations.

- Scope must match the needs of each individual case. Description of problem to be solved, objectives to be achieved, alternative solutions and the effects when a proposed regulation is not adopted.
- Impact in terms of cost and other factors.
- Whether the regulation is in conformity with or goes beyond EU obligations.
- Special clause (Article/Paragraph 7) addresses the case where the proposed regulation affects the conditions under which an enterprise operates, its competitiveness or other conditions. Whether special consideration needs to be given to the needs of small enterprises.

The Board of Swedish Industry and Commerce for Better Regulation (*NNR*) notes that *ex ante* assessments of impacts are necessarily imprecise. Paragraph/Article 8 of the Regulatory Impact Assessment Ordinance is very important in this respect. It states that government agencies must monitor the consequences of their regulations and general recommendations, and that if the basic preconditions for a regulation have changed, it must be reviewed and a new impact assessment introduced.

Consultation and communication

There is strong encouragement (and sometimes a requirement) to consult as part of the process. The Regulatory Impact Assessment Ordinance states very clearly that government agencies are expected to consult.¹⁷ Committees of Inquiry are subject to clear procedures in this regard. The terms of reference for Committees of Inquiry usually contain instructions for them to interact with stakeholders to gather information which will form a basis for impact assessments. Since 2001, terms of reference for committees dealing with issues of interest for the business community often include an obligation to consult with the Board of Swedish Industry and Commerce for Better Regulation (*NNR*) on administrative consequences for the businesses. Stakeholders may later comment on the committee report and the impact analysis during the consultation procedure. This external consultation provides feedback on the report (if the reaction is negative, the proposal may be dropped, or an alternative approach identified). A final stage may be that the responsible ministry opts for further consultation on the draft law, to which comments received and a justification of the course adopted may be attached. This consultation may be specifically targeted at the entities (such as companies) most affected by the proposed law.

The Swedish government draws attention to the principle of public access to official documents, which guarantees all individuals and the press access to official documents held by public authorities (see Chapter 3). Anyone who wishes to study a public document can address themselves to the relevant authority in order to get a copy of the document. When proposals regarding new acts are made official, the impact assessment is a part of the proposal and can be found at the government's website. Bills containing legislative proposals and submitted by the Government Offices to the Parliament traditionally contains a special section with impact analysis. However, it is not mandatory to make impact assessments official for proposals regarding ordinances that are not part of a bill that is submitted to the Parliament. If an impact assessment has been carried out, it should then be kept in a file at the ministry. It can then be made available to the public upon request.

Views on the process

The OECD peer review team heard a range of comments on the new system. The Ministry of Enterprise notes that the key challenge is to change attitudes and work habits, and that this takes time.¹⁸ Some stakeholders noted that the new framework is clearer in setting out requirements. The Better Regulation Council should be a useful check, as in practice, ministries expect to have to redo their assessments if these are not good enough. There are concerns about capacities for carrying out detailed economic analysis in a system that has been largely driven so far by a legal perspective. The Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) fears that the approach of basing the ministry guidelines on an agency ordinance is not very transparent and may weaken ministry resolve to follow them. There is a need to educate ministries and raise awareness of the importance of *ex ante* impact assessment.

An issue raised by several stakeholders with the OECD peer review team was the scope of impact assessments, which in practice (even though in principle, according the government, all kinds of impact should be given the same weight) remains largely confined to the business and especially, simplification, dimension. There is, for example, concern that other issues (such as consumer protection or environmental impacts) are crowded out by the emphasis on business impacts. The environmental dimension especially is not adequately highlighted. Business organisations would for their part like to see impact assessment address the full range of compliance costs rather than focus the main effort on regulatory simplification and administrative burdens.

The Board of Swedish Industry and Commerce for Better Regulation (*NNR*) has reported on the quality of impact assessments since 2002 (Box 4.5). Overall, the *NNR* concludes that the quality of impact assessments remains unacceptably low. The National Audit Office is also critical of current impact assessment quality, which needs to move beyond legal quality. *Tillväxtverket's* review of impact assessments in the course of its work suggests variable quality, both between government agencies and within them. It notes that quantification has some way to go, even at the simple level of the number of companies affected, time needed and costs.

Box 4.5. *NNR* reports on the quality of impact assessments

Each regulatory proposal and its impact assessment are assessed against quality factors registered in a database. 2008 was a transition year, with the establishment of the government's new impact assessment system. Quality factors now reflect the new rules. The 2008 results show that too few impact assessments comply with the adjusted quality factors. A comparative analysis of developments over time (2002-2008) shows however that most quality factors show a favourable trend. For example, different options are described in 46% of cases compared with 26%; the number of companies affected in 54% of cases compared with 6%; total costs are reported in 16% of cases compared with 4%; and the effect on business competitiveness is recorded in 37% of cases compared with 9%.

It should be noted that the *NNR* Regulatory Indicators use a rather simple and inflexible methodology. If the answer is "no" on just one of several aspects, then the overall answer is "no".

Alternatives

This review was not able to go into this issue in any detail. Paragraph 6 of the Ordinance on Regulatory Impact Assessment requires, among other things, the consideration of alternative solutions to regulation, including consideration of the effects of a “no-action alternative”. From a business perspective, the *NNR* notes the importance of choosing the option that is the least costly for companies, whilst achieving the purpose of the regulation. It has not noted any significant development in this area, and does not consider that the issue has been adequately highlighted in the government’s Better Regulation plans.

Notes

1. EU law takes precedence in the areas where transfer of rights of decision-making has been made by the *Riksdag*.
2. www.sou.gov.se or www.regeringen.se.
3. Chapter 7, Article 2.
4. The focus on this issue is considered important because Sweden is an increasingly multilingual country with over 150 languages spoken and over a million people have a non-Swedish background. English is used increasingly, and in the year 2000, five languages were given the status of national minority languages.
5. For further information, see: www.sprakradet.se/international.
6. www.regeringen.se/klarsprak.
7. Clarity is a worldwide organisation of lawyers and other interested parties. Fight the Fog is a campaign run by the English translators at the European Commission, to get rid of EU jargon. The UK has a Plain English Commission and a Plain English Campaign.
8. The basic requirements are supplemented by guidelines. For example, the Committee Handbook (*Kommittéhandboken*) outlines how to carry out an impact analysis. 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 Regelrådet*, *NNR*) on the consequences for the business sector and businesses.

9. The Simplex Ordinance applied to government agencies. According to guidelines issued by the group of State Secretaries, the same kind of checklist was expected to be applied by the Government Offices.
10. *Förordningen om konsekvensutredning vid regelgivning*, SFS 2007:1244.
11. By adding a new Paragraph/Article to the Ordinance, 15 a §.
12. There is a constitutionally based reason why it is hard to integrate the institutional oversight of ministry and agency impact assessments.
13. See Annex B.
14. The agency ordinance does, however, specify a number of cases where an agency may refrain from providing the Better Regulation Council with an opportunity to give its advice. These are : review would be “irrelevant” ; the agency, for reasons of secrecy, is not able to provide the Better Regulation Council with the information it would need to be able to state its opinion ; it would cause significant inconvenience if the information that the Swedish Better Regulation Council needs to enable it to state its opinion were made public ; it would delay the processing of the case in such a way as to cause significant inconvenience ; or the agency, pursuant to the provisions of Articles/Paragraphs 2 or 5 of the Regulatory Impact Assessment Ordinance (2007 :1244) has not conducted an impact analysis.
15. SFS 2007:1244, last Paragraph/Article 9 §.
16. Paragraph/Article 15 a § in the Committees Ordinance (SFS 1998:1474) and the guidelines on how to carry out impact assessment, issued by the group of State Secretaries with special responsibility for the better regulation work within the Government Offices.
17. Paragraph/Article 4 in the Regulatory Impact Assessment Ordinance (SFS 2007:1244) states: “As early as possible, before an agency decides on regulations or general advice, the agency shall: 1. make an assessment of the financial impact and other consequences of the regulations or the general advice to the extent necessary in the individual case, and document this assessment in an impact analysis; and 2. provide central government agencies, municipalities, county councils, organisations, the business sector and other parties that will be significantly affected financially or otherwise with an opportunity to state their opinion on the issue and on the impact analysis” The ministries and the government agencies may also undertake, and some of them do so, public consultation on a voluntary basis.
18. Response to OECD questionnaire.

Chapter 5

The management and rationalisation of existing regulations

This chapter covers two areas of regulatory policy. The first is simplification of regulations. The large stock of regulations and administrative formalities accumulated over time needs regular review and updating to remove obsolete or inefficient material. Approaches vary from consolidation, codification, recasting, repeal, *ad hoc* reviews of the regulations covering specific sectors, and sun setting mechanisms for the automatic review or cancellation of regulations past a certain date.

The second area concerns the reduction of administrative burdens and has gained considerable momentum over the last few years. Government formalities are important tools to support public policies, and can help businesses by setting a level playing field for commercial activity. But they may also represent an administrative burden as well as an irritation factor for business and citizens, and one which tends to grow over time. Difficult areas include employment regulations, environmental standards, tax regulations, and planning regulations. Permits and licences can also be a major potential burden on businesses, especially SMEs. A lack of clear information about the sources of and extent of administrative burdens is the first issue for most countries. Burden measurement has been improved with the application by a growing number of countries of variants on the standard cost model (SCM) analysis to information obligations imposed by laws, which also helps to sustain political momentum for regulatory reform by quantifying the burden.¹

A number of governments have started to consider the issue of administrative burdens inside government, with the aim of improving the quality and efficiency of internal regulation in order to reduce costs and free up resources for improved public service delivery. Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example government agencies or local government service providers). Fiscal restraints may preclude the allocation of increased resources to the bureaucracy, and a better approach is to improve the efficiency and effectiveness of the regulations imposed on administrators and public service providers.

The effective deployment of e-Government is of increasing importance as a tool for reducing the costs and burdens of regulation on businesses and citizens, as well as inside government.

Assessment

Simplification of regulations

Sweden has a good track record of deploying processes to clean up the regulatory stock. Over time, Sweden has been active in the use of different processes aimed directly at ensuring that the regulatory stock remains clean and clear, including codification, the enactment of a guillotine rule in the 1980s, through the work of Committees of Inquiry, and most recently, via some of the work which is being taken forward under the Action Plan for Better Regulation.

Recommendation 5.1. Ensure that efforts at codification and spring cleaning of the regulatory stock continue, in support of and alongside the strategy for regulatory simplification.

Regulatory simplification for businesses

Recommendations of the OECD's 2007 report have been largely implemented and there is clear progress. The key recommendations of the last OECD report on administrative burden reduction for business have been acted on. In particular, Sweden has set a quantitative net target for the reduction of burdens on business (25% by end 2010), in line with good international practice, and has integrated *ex ante* burden measurement into its recently updated policy on impact assessment. The latest update measurement (June 2009) shows the good news of a net decrease of 2% in regulatory costs on business compared with the original baseline.

Box 5.1. Recommendations from the 2007 OECD report

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

Sweden should integrate the assessment of administrative impacts that result from new or amended regulation. Governments are increasingly anchoring simplification strategies on factual evidence of burdens. This work should be oriented not only towards simplification and improved methods, but also quantitative reductions. The use of ICT mechanisms for administrative simplification should be strengthened. Sweden should consider setting a quantitative target for a reduction in the overall administrative burden to indicate strong political commitment to the process.

Reinforce efforts in the measurement of administrative burdens

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. But this is not enough. Sweden should consider setting a quantitative target for a reduction in the overall administrative burden, which has been done by other OECD countries, such as the Netherlands and Denmark, to indicate strong political commitment to the process.

This part of the Swedish Better Regulation agenda is benefiting from the institutional framework set up for the agenda as a whole. The establishment of an external body, the Better Regulation Council and the stronger co-ordinating role of the Ministry of Enterprise are particularly important developments. The Ministry of Enterprise now has a prominent co-ordinating role in encouraging efforts to meet the target. It is backed up by a State Secretaries steering group (chaired by the ministry), and the inter-ministerial officials working group to spread best practice and prepare progress reports. The keynote in this context is encouragement and sharing of best practice, rather than “name and shame”. The Better Regulation Council strikes an altogether stronger note, at least potentially. This recently established external body scrutinises all proposals for new or amended regulations that could affect business competitiveness and its views are made public. Its role may well be crucial in assuring the overall success of burden reduction.

The institutional framework and resources to drive the programme need, however, to be further strengthened. Sweden recognises that key challenges include consolidating official and political “buy in” to the programme. This will not happen if steering and support capacities are inadequate. Currently, the co-ordinating Ministry of Enterprise deploys a small team of fewer than ten officials (not full time). The ministry is strongly committed to and enthusiastic about the programme but struggles because of capacity constraints. Key implementing ministries may also need to upgrade their resources, especially where it is proving difficult to take forward sufficient proposals to meet their “share” of the target, ensure that goals are translated into concrete measures, and secure timely implementation of the measures. The OECD peer review team were told that in general, there are difficulties of time and resources, and that “people do their best”. That said, some ministries are doing better than others.

Recommendation 5.2. Increase the resources available to the Ministry of Enterprise for its co-ordination and support role. Encourage key contributing ministries to review whether they are adequately structured and resourced to make an effective contribution to the Action Plan.

The decision to have a net target is critical to long term success. This is especially the case in a context of likely pressures, post economic crisis, to step up regulation in some areas. It is also important in the specific Swedish context of concern for sustaining high regulatory quality standards. The issue is not to question that concern, but to ensure that regulations do not come with unnecessary burdens attached.

The pressure on participating ministries and agencies to contribute to the target is, however, weak. There are few obvious incentives to encourage a consistently high performance across participating ministries and agencies. The 25% target for 2010 is an overall target for the whole government and there are no individualised targets, which would put greater pressure on individual ministries. This means that a lesser commitment by some has to be compensated by an above average commitment by others. There is a limit to this. Evidence of considerable variability in performance suggests that unless firm action is taken soon, there is a real danger of failing to meet the overall target. Overall commitment and the chances of success would gain a considerable boost from the establishment of individualised targets.

Recommendation 5.3. Individual, or even differentiated targets should be defined for each participating ministry. Alternatively, it should be stated explicitly that every ministry will have to deliver 25% unless stated otherwise and confirmed by the Cabinet. Consider also other measures to encourage buy in, such as a link to the budget setting process for government offices, and acknowledgment of individual contributions to the success of the Action Plan through the performance appraisal system.

The reduction of administrative burdens is technically well supported by the establishment of a zero base measurement and the Malin database. Sources and inspiration for the measures which are being taken forward in the Action Plan are the baseline measurement carried out by *Tillväxtverket* and stored in the *Malin* database, and the simplification proposals made by the business community, which are also loaded into the database. The zero base measurement, completed in February 2008 with a baseline year of 2006, is updated annually by *Tillväxtverket* to take account of new burdens. *Malin* also includes a simulation facility which can be used by government offices and government agencies to calculate the potential administrative costs of new regulations and changes to existing regulations. The success of Sweden's simplification policy rests on an effective use of these instruments. Zero base measurements provide in-depth insight in the government wide composition of administrative burdens – insights which can be used to identify concrete proposals for burden reduction. They are also an essential starting point for effective monitoring of progress.

It seems, however that these instruments are under-used and that the user-friendliness of the Malin database needs improvement. An updated version of the *Malin* database was launched in Spring 2009, with some improvements as regards the user friendliness. This is important. The OECD peer review team heard from a number of stakeholders that the *Malin* database tends to be under used for the purpose of identifying simplification actions. The result is that the measurement of burdens on the one hand, and the reduction of burdens on the other hand, are two separate processes in practice, instead of the first adding value to the second. It seems, in short, that the measurements are only loosely linked with the policy. A more user-friendly database would also remove any excuses from reluctant ministries that they are having difficulty identifying burdens. If *Malin* is under used, this also implies that the simulation facility for forecasting burdens in new regulations is not exploited to its full potential. If the facility is not used, then the extent of expected reductions from new regulations will not be known. It will not therefore be possible to identify in a timely manner whether and to what extent the measures are going to be sufficient to meet the target, or whether more will need to be done. A more systematic use of *Malin*, which appears well constructed, would help to identify further possibilities for reductions, as there is some concern at this stage that not enough actions have been identified to meet the target. *Malin* is also especially relevant to the co-ordinating Ministry of Enterprise, which needs to have a detailed understanding of burdens (what burdens, who is responsible etc), not least for monitoring purposes, as well as to back up the efforts of individual ministries to make their contributions to the Action Plan. Work is underway to make *Malin* more user-friendly – this is important. It should be noted that an updated version of *Malin* was launched in spring 2009, with some improvements as regards the user-friendliness.

Recommendation 5.4. Require the systematic use by ministries and government agencies of the *Malin* database for identifying simplification actions, and for forecasting burdens in new regulations. Ensure that *Malin* is exploited fully for monitoring purposes.

Agencies are critical to success, and despite excellent work by Tillväxtverket, the framework for securing this needs reinforcement. The serious involvement of government agencies is critical to the success of the Action Plan as the secondary regulations which they produce contain many of the burdens that the government needs to cut. *Tillväxtverket* plays an important and effective central role as co-ordinator and adviser. However, this needs to be systematically backed up by the parent ministries, as the depth of agencies' engagement depends in many cases on the interest of their parent ministry. The OECD peer review team heard that some ministries did not take an especially close interest in the actions of their agencies in this regard. It is important that agencies are given clear instructions on what is expected of them as regards their contribution to the parent ministry's Action Plan.

Recommendation 5.5. Ensure that parent ministries' instruction ordinance and/or the annual appropriation direction to agencies contains clear objectives for a contribution to the Action Plan and what is expected of government agencies in this regard. Back this up with other actions such as regular update meetings based on ongoing and transparent monitoring of activities, where these do not already take place.

Horizontal co-operation between agencies and ministries is also important, for those issues which require shared solutions. More shared working is needed across and between agencies and ministries, in order to identify issues that individual ministries/agencies cannot address alone, to share best practice, to eliminate overlap (for example, multiple requests for the same information), and not least, to prevent the syndrome of expecting someone else to take responsibility for action. Co-operation is happening where ministries and agencies are motivated, but the OECD peer review team heard that it was, overall, a weakness.

Local governments need to be encouraged into making a contribution to the programme. A successful Better Regulation policy requires the involvement of all relevant actors. The municipalities, which are the primary interface for SMEs and responsible for licences and planning, are not sufficiently integrated into the policy. This is a significant weakness. The process is, however, at an early stage, and in the Swedish context of autonomous local government (a situation that is similar to that of several other European countries), making progress is inevitably slow and complicated. An important institutional issue slowing progress is the lack of resources within the Government Offices, and the fact that no government agency has a clear mission to support the process (see also Chapter 8).

Recommendation 5.6. Develop discussions with local government to establish a plan for strengthening their involvement in the efforts at regulatory simplification. Consider, as part of efforts to increase central resources for Better Regulation, how resources could be made available for this work, and whether a government agency could be given a mission to support it. Encourage the involvement of the Ministry of Finance.

The Riksdag is a key source of support as well as an increasingly necessary partner in securing the changes that need to be made. As in other countries, once the low hanging fruit have been picked, progress is likely to depend increasingly on legislative changes. The government already makes annual reports available to the Riksdag, albeit with a certain time lag. The parliament seems well disposed to offer support. It was instrumental in encouraging the government to step up work on regulatory simplification in the first place (with public requests in 1999 and 2002). It is aware of the fact that part of the programme requires changes in legislation.

Recommendation 5.7. If possible and subject to resources (see Chapter 2 recommendations) move from annual to bi-annual reports to the Riksdag. Ensure that the reports are available quickly. Review the content and presentation of the reports, to ensure that relevant information is presented that distinguishes plans from achievements, and explains clearly what is required of different actors including government agencies. Ensure that the information is clearly set in the broader context of what the government is seeking to achieve for the economy and society.

The government has encouraged regular communication with the business community, and a number of ministries and government agencies have established robust consultation arrangements. In setting up the programme, the government has promoted the development of structures to gather the views of the business community. So called reference groups were set up to help establish the baseline measurement. The Ministry of Enterprise has established a central working group with business representatives and this is flanked by the working groups of a number of ministries and agencies (who have to report on what they have done). A majority of ministries now engage in a “continual dialogue” with the business sector, although approaches differ, and the quality of the interaction appears to vary. Around half of the government agencies now arrange consultation devoted to Better Regulation. The experience of other European countries is that a critical success factor of a well run regulatory simplification programme is effective government-business communication, which instills mutual trust.

Recommendation 5.8. Ensure that all participating ministries and agencies have established robust structures for communicating with the business community, and that the latter is provided with regular feedback on developments.

Securing the continued support of key external stakeholders needs the anchor of an enhanced effort in communication. The timely presentation and communication of developments and results from the Action Plan needs to be boosted. Although the roots

of the current Action Plan go back a number of years, it is only with the current government, from 2006, that the programme has taken serious shape and obtained effective political support. As in other European countries, the results of this kind of programme can be frustratingly slow to take effect. The business community has been quite patient so far. The main current vehicle for communicating results seems to be the annual report to the *Riksdag*. This may not be enough. Perceptions of progress matter. The Better Regulation Council could be helpful in this regard.

Recommendation 5.9. Develop a communication strategy, in order to draw attention to the progress and emerging results of the Action Plan.

The current programme addresses a wide range of issues and is on the right track in its scope. The Action Plan for Better Regulation extends a considerable way beyond measures to reduce administrative burdens, covering issues such as simpler regulations, improved service and accessibility, and shorter processing times. Its scope reflects the feedback from the business community on what is important for them. The next step might be to consider broadening the programme's targets to cover areas other than administrative burdens, against which progress could be more effectively measured and evaluated.

Recommendation 5.10. Consider whether it would make sense to define specific targets for actions, to add to the target already set for administrative burdens, drawing on the experiences of other European countries such as the Netherlands.

Evaluation of the Action Plan is important, to check that it is on course to deliver real benefits in support of competitiveness. The NNR has drawn attention to the need for systematic evaluation of progress and results, not least to check that the latter are of real use to business. It plans some evaluation work of its own. The Swedish National Audit Office was pro-active at an early stage, presenting a report to the government in 2004 (Regulatory Reform for Enterprises) in support of the *Riksdag*'s own pressures for government action. Could it be persuaded to do more and to evaluate the programme on a regular basis?

Recommendation 5.11. Consider how the programme could be evaluated (objectively), and by whom, on a regular basis. Use the results to guide adjustments to the programme in order to maximise its impact.

The EU dimension is important. About 50% of the administrative burdens are of EU origin. Swedish efforts (as in other EU countries) depend in large part on corresponding efforts at the EU level and the EU's own administrative burden reduction programme. Burdens stemming from EU origin regulations may take longer to unwind than ones generated entirely within Sweden.

Administrative burden reduction for citizens

So far, the Swedish regulatory simplification programme only covers business needs. There was no evidence picked up by the OECD peer review team that Swedes are demanding more. The effective deployment of e-Government may be a reason for

this. Area 4 of the e-Government project aims to produce visible results for citizens as well as businesses in terms of simplified contact with the public administration, and Sweden ranks well in international comparisons. Nevertheless, some other European countries have set up specific programmes aimed at simplifying life for citizens. Should one be considered for Sweden?

Administrative burden reduction for the administration

There is no specific programme for the reduction of administrative burdens inside government, although there are several initiatives. Sweden might usefully consider strengthening its work on regulation inside government, given the public policy challenge of sustaining high levels of social welfare against the background of an ageing population, and the significant role of the state in the economy. Consideration might be given to developing a specific programme, as several other European countries have done (such as the United Kingdom). A stronger policy in this area could release public sector employees from unnecessary tasks so that they can focus on service delivery. This may be an issue of interest at the local government level.

Background

Simplification of regulations

Simplification of regulations has been pursued through a variety of routes, mainly aimed at the regulations produced by government agencies (which are the most numerous):

- *Codification.* From the late 1970s onwards, there have been efforts at rationalising the regulations issued by government agencies into codes of statutes, improving accessibility to citizens and businesses. There are now 65 codes of statutes covering 104 agencies. In addition, each of the County Administrative Boards (*länsstyrelse*) has its own regional code of statutes.
- *Guillotine rule.* In the 1980s, Sweden enacted the “guillotine rule”, nullifying hundreds of agency regulations that were not centrally registered by a due date, after the government found that it was unable to compile a list of regulations in force due to the accumulation over time of regulations issued by agencies. To establish a clear and accountable legal structure, the government and the *Riksdag* decided to take action. The government instructed all government agencies to establish registries of their regulations by a certain date (July 1986). The process of doing this enabled agencies to cut out unnecessary regulations. Any regulation that was not registered by the due date was automatically cancelled. Once this registry had been established, all new regulations and amendments to existing regulations had to be entered within a day of adoption. The “guillotine rule” was a 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 dropped substantially.

- *Committees of Inquiry.* Committees of Inquiry have been used to carry out comprehensive reviews of regulatory frameworks such as the field of taxation. Committees are often used to review whole areas of policy including their regulatory frameworks.² Commissions may also be asked to follow developments in a specific field.
- *Action Plan for Better Regulation.* The Swedish Action Plan includes some measures which are leading to a simplification of important areas of the regulatory stock (a similar process is at work in many other EU countries with regulatory simplification programmes).

Administrative burden reduction for businesses

Early policy steps

Regulatory simplification has been on the agenda in Sweden for more than three decades. Since the 1970s the aim has been to limit the cost-generating effects of regulations in both the public and the private sectors. During the 1980s, the problems generated by regulations for business came into sharper focus. In the 1990s different government commissions tackled the issue. The parliament stepped in at the end of the decade. In 1999 and 2002, the *Riksdag* publicly requested the government to step up its work on regulatory simplification. It passed resolutions asking the government to review business regulations in their entirety so as to eliminate unnecessary and burdensome regulations, and to set a quantitative target to reduce administrative costs, with a view to creating better working conditions for small businesses and hence to promote economic growth.

In 2004, the National Audit Office presented a report, *Regulatory Reform for Enterprises*, in support of the *Riksdag*'s requests.³ The report made five recommendations to the government:

- step up the work to amend existing regulations in order to simplify the business environment – a review of the regulatory reform work undertaken by the government offices should be carried out to bring about this change;
- investigate more closely the roots of regulatory burdens and whether they arise at the level of laws, government ordinances or agency regulations;
- clarify the division of responsibilities between the Swedish Agency for Economic and Regional Growth (*Tillväxtverket*) and the Swedish National Financial Management Authority (*ESV*) as regards supervision of agency work on regulatory reform;
- consider the scope for starting development work on the measurement of administrative burdens, taking other regulatory burdens into account; and
- highlight in the annual communication to the *Riksdag* how the total flow of amended laws and ordinances impacts on enterprises, what laws and ordinances have been amended during the year in support of regulatory reform, and the difficulties encountered in work on amending the existing regulatory framework.

The 2004 Action Plan

A first Action Plan to tackle business administrative burdens started to emerge in 2003, when the government instructed ministries to examine their laws and ordinances affecting enterprises. 46 agencies were also instructed to examine their regulations. Ministries and agencies were instructed to consult business in the process. Based on these findings, an Action Plan was presented in 2004. The Ministry of Industry, Employment and Communications led the process. The Action Plan contained 310 actions from eight ministries and 46 agencies, to be implemented between 2004 and 2006, and including general actions affecting all businesses, as well as actions for specific sectors.

Current policy: Regulatory simplification and the rolling Action Plan for Better regulation

When it took office in 2006, the current Government reviewed the policy in order to intensify Better Regulation work. The Government's overall stated aim is "to bring about a noticeable, positive change in the day-to-day operations of businesses including reducing administrative cost". As a core part of its policy the government announced a national net reduction target of 25% by 2010 of business administrative costs stemming from compliance with Information Obligations (IOs) in legislation, as defined by application of the Standard Cost Model for measuring administrative burdens. This was given effect in November 2006, when the government decided that the Government Offices and 53 government agencies should contribute to a rolling Action Plan for Better Regulation to be updated annually until 2010 (the aim being to track the measures planned, underway and implemented). The updated Action Plan is presented annually in a written communication to the *Riksdag*. Responsibility for identifying the proposals for inclusion in the Action Plan rests with the ministries and their agencies. The 2009 update comprises some 940 actions (460 of which have been implemented), involving 12 ministries and 44 government agencies (Box 5.2). The fourth step in the Action Plan, which was launched in August 2009, comprises the ministries and 39 agencies.

The basic aim of the policy extends well beyond the reduction of administrative costs (Box 5.2). It is to design rules, processes and procedures so that they are better adapted to business conditions and reality. Waiting and processing times as well as service to and treatment of businesses at authorities constitute key components of the work. Rules that irritate businesses are also addressed.

The approach to identifying actions for regulatory simplification is two pronged:

- Proposals for regulatory simplification are collected from the business community and other stakeholders.
- As regards information obligations, a zero base measurement has been established, which is updated annually to take account of new administrative burdens, and which serves as a key source of ideas for actions (Box 5.3).

Business proposals for simplification cover three broad areas:

- *Tax regulations, financial market statistics.* Most of the tax proposals related to VAT, income tax and corporation tax. Company law, auditing and accounting.

- *Agricultural industry (fishing, farming, forestry).* There is a broad range of concerns but the recurring theme is information reporting in accordance with EU Common Agricultural Policy (CAP) regulations.
- *Labour market related regulations.* The working environment and documentation feature strongly, as well as working hours, leave and employment protection.

Progress towards achieving the 25% reduction target is monitored with the support of the annual baseline measurement updates. The team were told that the first update of the baseline measurement (which showed that burdens had in fact increased by 2%) acted as a “wake up” call, and gave ministries a clear signal that they had work to do. The measurement results are logged into a database (*Malin*) run by *Tillväxtverket*, so that ministries and agencies can consider where and how to target their efforts in support of the 25% reduction target. Based on this analysis and on discussions with the business community, the government offices and agencies identify actions as contributions to the overall Action Plan, and report on progress.

Box 5.2. Definition of regulatory costs

The Swedish Government Communication on Better Regulation (2008/06:206) notes that regulatory costs can be divided into three main types:

- Material costs as a result of demands on companies to make investments in facilities or personnel, adapt their products or costs to implement different measures, such as rehabilitation.
- Financial costs as a result of having to pay taxes and charges.
- Administrative costs, which primarily relate to costs for generating, storing or transferring information required by acts and ordinances and by regulations or guidelines issued by central agencies.

An example cited is the compliance costs for business in the field of taxation, where compliance costs can involve finding out which rules apply, the time it takes to fill in tax returns and other forms and finding, organising and saving information needed to be able to fill in the returns, possible compensation to tax advisers, unexpected costs such as travel to visit a tax lawyer or the Swedish Tax Agency, costs generated as a result of various enquiries or audits by the tax authorities, etc. The concept of compliance costs can be said to include administrative costs in the wide sense and material costs, though not financial costs.

Government Offices and government agencies are annually through decisions by the government (in November 2006, May 2007, July 2008 and August 2009) commissioned to prepare contributions to the overall Action Plan. Action plan reports must include an account of the direction of activities, ongoing and planned simplification measures (including a clear description of the measure, aim, effects and date of implementation), identification of regulations at EU level that might be simplified, and a report on consultations with the business sector. Important sources for the proposed actions are the baseline measurement of administrative costs and business proposals. The co-ordinating Ministry of Enterprise aggregates the reports into a common Action Plan which is rolled over on an annual basis.

Agencies play a crucial role in the Action Plan, and are of central importance to achieve targets and results. They are more familiar with day-to-day business operations, have regular contact with businesses and can therefore identify concrete options for simplifications and the reduction of administrative burdens. In certain regulatory areas, for example agriculture, food and statistics, the legislation requires many simplification measures to be implemented at the agency level.

ICT is a key support tool for regulatory simplification, linked to the government's policy on ICT for the public sector. The Action Plan implies an extensive deployment of ICT, for example electronic filing of documents, one-stop shops, and forms for downloading from agency homepages.

There are resource issues, and there appear to be some issues of commitment to the programme. The OECD peer review team were told that although regulatory simplification is high on the agenda, other priorities often prevail when a simplification proposal clashes with these priorities. Ministries are not always fully engaged, and government agencies themselves vary in their enthusiasm (they need encouragement). Project leaders within ministries are often only part time on the programme (it comes on top of other tasks).

Box 5.3. Action Plan for Better Regulation

An action plan for better regulation is one of the main tools used by the government to promote regulatory simplification for business (see also Box 1.2 in Chapter 1). The work of regulatory simplification is being carried forward through a rolling action plan, which is updated annually. The action plan specifies completed, ongoing and planned regulatory simplification measures.

Steps in the Action Plan so far

2006: Government decision that the ministries within the Government Offices and 53 government agencies should contribute to the regulatory simplification policy with actions as part of a rolling Action Plan, to be updated annually.

Government sets net overall target to reduce administrative costs for businesses by 25% by 2010.

Government decision to carry out baseline measurements of the administrative costs for businesses in all legal areas that are deemed to be most relevant for businesses.

2007: Presentation by the government of the first step in the Action Plan end May 2007. This contained a list of 167 actions to be taken (out of a total of several hundred actions proposed).

Launch of the second step of the Action Plan. Ministries and 52 government agencies commissioned to provide new actions to update the Action Plan.

2008: Presentation by the government of the second step of the Action Plan in April 2008. This contained some 600 actions to be taken.

Launch of the third step of the Action Plan in July 2008. Ministries and 44 government agencies commissioned to provide new actions to update the Action Plan.

2009: Presentation of the third step of the Action Plan in June 2009. This contained 940 actions, 460 of which had been implemented during 2007 and 2008, with the remaining 480 to be implemented or subject to further enquiry.

Launch of the fourth step of the Action Plan in August 2009. Ministries and 39 government agencies commissioned to contribute with further measures.

The fourth step will be presented by the end of spring 2010.

The Action Plan and EU origin regulations

The government notes that Swedish efforts partly depend on the EU's own administrative burden reduction programme (25% reduction by 2012 in priority areas). In many areas, ministries and agencies have no direct influence over administrative costs, since these stem from legislation based on EU legal requirements. These burdens take longer to “unwind” than if only national legislation were involved. The *Riksdag* echoed this concern to the OECD peer review team, noting that the rise in regulations appears to come largely from the EU. It underlined that the issue required joint working of the government and the parliament, and a concerted effort to work with the EU institutions. As of January 2008, 100 measures involved the simplification of EU origin regulations. Some EU regulatory developments have not helped (tax regulations). However the government also notes that the EU target offers new opportunities to influence developments which will help to achieve the Swedish target. *Tillväxtverket* points out that there is a need in the negotiating context to look closely at the possibility of exemptions for very small enterprises from some requirements. The government is also seeking to establish the principle of EU “primacy” in cases where there is a higher Swedish standard as well as the EU standard, so that Swedish business is not disadvantaged.⁴ There is an interest in benchmarking Sweden with the performance and practices of other EU member states, including how transposition is done, and whether goldplating is an issue elsewhere.

Institutional framework

Government Offices

As in other European countries, the responsibility for practical implementation of the Action Plan (identifying issues and implementing them) is with the individual ministries. A network of responsible officials has been established across the ministries which have business related regulations. Participating ministries are collectively responsible for meeting the target. There are no targets for individual ministries. This raises issues for meeting the target overall and may also make it difficult for individual ministries to know where they stand.

The Ministry for Enterprise, Energy and Communications is the co-ordinating ministry for the Action Plan. It supports and monitors progress. It collects data on progress in each ministry and prepares an annual report. It notes that there is a need for balance between collecting data to measure progress and putting over burdensome reporting requirements on ministries. It has drawn up detailed advice and instructions for ministries and government agencies which are engaged in the Action Plan.

To support the Action Plan at political level, a State Secretaries steering group chaired by a State Secretary at the Ministry of Enterprise was established in April 2007, with members from the relevant ministries (see Chapter 2). From the middle of 2008 all 12 ministries have been represented by a State Secretary. The current State Secretary Group has meetings on a continuous basis. The State Secretaries that are members of the group also deal ‘hands on’ with Better Regulation issues on a regular basis in their ministries. They are continuously updated on and informed about progress and the results of the Better Regulation work in their own ministries and overall.⁵ Political support appears to be strong (the Enterprise minister is one of the four key members of the coalition). The State Secretaries Group is supported by an inter ministerial officials group, also chaired by the Ministry of Enterprise, which

prepares progress reports for the political group, and which comprises one to four officials from each ministry.

Whilst the Ministry of Enterprise officials lead, there is considerable input from the other ministries. Individual ministries prepare reports for their State Secretaries, which are also used to put together the joint reports. For example, the Ministry of Health and Social Affairs prepares a weekly report for its State Secretary, and holds meetings with the latter to prepare the inter-ministerial group meetings. The OECD peer review team were told that there is also considerable co-ordination between ministries and with the Ministry of Enterprise on an informal basis. Ministries with good experiences are keen to share these with others. The keynote is encouragement rather than “name and shame”. The Ministry of Enterprise uses ministry “champions” to promote Better Regulation with other ministries. At the same time the team were told that there is a need to be “stronger with action” to follow up the political lead. Although the momentum is positive and awareness of the burden issue when developing new regulations is high, ministries now need to be more specific about proposed reductions. For example, the ministries should make better use of the *Malin* database for identification of measures to reduce the administrative burdens.

Government agencies

Tillväxtverket works in close partnership with the Ministry of Enterprise to oversee, advise on and co-ordinate the input of government agencies to the Action Plan. It is also responsible for the measurement of burdens (see below).

Participating agencies develop their own action/working plan as input to the action/working plan of their parent ministry. Their action plan is reported to their parent ministry with a copy to the Ministry of Enterprise and is a public document that usually published. There are no specific burden reduction targets for each agency. However some government agencies has set their own targets in certain areas, for example targets for reducing the processing times for obtaining permits.

The OECD peer review team was told that the relationship between a ministry and its agencies was the key to a good overall Better Regulation performance. The *NNR* has drawn attention to this, and the importance of clear and comprehensive government instructions to agencies on contributions to the Action Plan.⁶

Better Regulation Council

This internal framework is now supported by an external watchdog, the Better Regulation Council, which has the task of scrutinising all proposals for new or amended regulations (laws, ordinances and other regulations) from both ministries and agencies that could affect the working conditions, competitiveness or other issues relevant to businesses. The Council thus takes a view (which is made public) on potential burdens for business contained in the flow of new regulations.

Interviewed government agencies confirm that they follow the new Regulatory Impact Assessment Ordinance (SFS 2007:1244) which requires *ex ante* measurement of burdens. They note that the focus is on measurable burdens, and that it is important for the simplification objective to guide the earliest stages of drafting, as influence may be lost at the “political stage”.

Methodology

Measurement of administrative costs

A large part of the programme addresses information obligations. These have been measured and are being followed up using the Standard Cost Model. Information obligations can include cancelling regulations, or using alternatives such as voluntary agreements or standards. Simplification may also be achieved by merging information streams to different government agencies (data re-use), rewriting complicated regulations, improving the design of forms, the development of electronic services, and improvements in processing times (especially, as *Tillväxtverket* points out, for decisions which companies need to know about sooner rather than later).

The OECD peer review team heard, however, from several stakeholders that the *Malin* database was “not user-friendly” and tends to be underused for the purpose of identifying simplification actions. The Ministry of Enterprise is aware of the need for all ministries to use their baseline measurements.

The *NNR* notes extensive information reporting to government (“please can companies not have to submit the same information twice”). In 2006, it published a summary of the extent of companies’ information submission to government. This showed that 90 government agencies demand 94 million forms from companies annually (there are just over one million registered companies), 29% up on 1999.

It is estimated that 90-95% of the total administrative burdens for businesses have been measured) by using the Standard Cost Model (SCM).

The Government has stated that the development of indicators or other monitoring instruments for the remainder of the programme is a priority. The lack of adequate indicators or other instruments for this part of the policy have made it difficult to highlight other costs (e.g. compliance costs) and systematically capture irritating regulatory burdens.

Box 5.4. Baseline measurement of administrative costs

First steps

In June 2002, the government commissioned the Institute of Growth Policy Studies (*Institutet för Tillväxtpolitiska Studier*, ITPS) to develop a method of measuring administrative burdens. A proposal was presented to the government in March 2003. The ITPS found that the method used in the Netherlands (SCM) was the most reliable, but also the most challenging and expensive. In November 2003, the government commissioned *Nutek* (the predecessor to *Tillväxtverket*) to carry out trial measurements using the SCM measurement method. *Nutek* produced a report in May 2004. The trial measurement, in the area of value added tax (VAT), showed that the administrative costs of this tax for enterprises totaled SEK 2.8 billion annually.

Development of the baseline

The current government decided in 2006 to extend the measurement to all key areas of importance for business. This was completed by *Nutek* in February 2008, with a baseline year of 2006. Some 90-95% of total administrative burdens for businesses were measured, focusing on 17 key areas of business regulations. The baseline includes Business As Usual (BAU) costs, that is, the costs of actions that businesses would carry out whether or not there is a requirement (accounting is a good example). An extensive analysis of the BAU costs on Swedish business has yet to be carried out.

Table 5.1 below shows the 2006 baseline to be approximately SEK 97 billion, and that (as in other countries) a few sectors/regulations account for most of the burdens.

Use of the SCM methodology

The measurement process involved setting up a reference group in each of the 17 selected focus areas, headed by *Nutek* (now *Tillväxtverket*), and including consultants, business organisations, ministries and agencies.⁷ The approach only covers administrative costs.⁸ The measurement follows the SCM format: the time needed to carry out the activity, the cost of doing so (staff and consultancy costs), and the frequency with which the activity has to be carried out.

Baseline updates⁹

The original measurement will be updated annually until autumn 2010, based on developments in the previous year.¹⁰ New or changed requirements adopted during the year will be measured. For example, in 2009, the government will assess costs associated with regulatory changes in 2008. The first stage of updating is to identify the new or amended information requirements. Interviews are then carried out with companies, which provide information on how they perceive and manage the new obligations. Quality assurance is carried out via consultations with government agencies, ministries and business organisations. An update report is established, and changes are registered in *Tillväxtverket's Malin* database.

With effect from 2007, the baseline measurements are updated annually. Since the original measurement, there have been two *ex post* update measurements, showing the change in regulations in 2007 and in 2008. The latest update measurement, presented in June 2009, shows a net decrease of 2% in the zero baseline (4% decrease in total). The decrease was mainly the result of a change in the area of food safety. The next update measurement is scheduled for spring 2010, when an *ex ante* measurement will also be performed in order to show the results for changes implemented in 2010, in time for the end of the current government's term of office.

The full baseline measurement was completed in February 2008 taking account of 973 laws, ordinances and agency regulations, and 4,600 information obligations. It was based on 2958 interviews with business representatives and experts.¹¹ The first update measurement was completed in June 2008 and showed that costs had increased by SEK 2 billion compared with the 2006 baseline. The main increases are in the areas of tax, VAT and financial services, and communication. Small decreases are recorded for costs related to changes in agriculture and in the Annual Accounts Act.

The *Malin* database

The measurements are fed into a database run by *Tillväxtverket*, called *Malin*.¹² The database also includes all the proposals for simplification collected during interviews. The aim is to help ministries and agencies identify key areas for reduction and specific measures to reduce administrative costs. It does not include data on local administrative burdens.

Malin includes a simulation facility which can be used by government offices and government agencies to calculate the potential administrative costs of new regulations and changes to existing regulations, as well as to determine how many companies are subject to a given requirement. The simulation function thus allows the authority to test changes in the key variables (time, cost, frequency and population) and hence obtain a picture of how changes to a draft regulation would affect administrative costs.

Table 5.1. Administrative costs to the business sector as a result of government legislation by regulatory area (SEK 1000 = ca EUR 103 159 (6 May 2010))

Area	Total costs in 2006 in tSEK	Total costs in 2007 in tSEK	Total costs in 2008 in tSEK	Percentage change	Percentage change
				2007-08	2006-08
Labour law	6 343 100	6 347 000	6 220 800	-1.99%	-1.93%
Right of association	24 631 300	24 689 600	24 691 200	0.01%	0.24%
Accounting	22 894 600	22 931 600	22 931 600	0.00%	0.16%
Building and property	7 229 000	7 229 100	7 228 900	0.00%	0.00%
Energy	1 132 700	1 142 200	1 152 200	0.88%	1.72%
Finance	2 570 900	2 915 500	2 917 000	0.05%	13.46%
Health	1 024 300	1 026 800	1 345 300	31.02%	31.33%
Agriculture, forestry and fishing	623 400	606 600	598 200	-1.40%	-4.04%
Communications	230 100	365 300	354 200	-3.04%	53.95%
Food	8 400 300	8 400 000	5 399 700	-35.72%	-35.72%
Environment	3 640 500	3 622 100	3 548 700	-2.03%	-2.52%
Products and consumers	4 520 300	4 519 300	4 449 800	-1.54%	-1.56%
Taxation	6 346 100	7 815 000	6 840 800	-12.47%	7.80%
Statistics	299 200	299 300	300 100	0.24%	0.30%
Transport	2 976 100	2 975 900	2 975 900	0.00%	-0.01%
Customs and foreign trade	1 929 400	1 929 400	1 929 400	0.00%	0.00%
Annual reporting	1 913 900	1 815 100	1 815 100	0.00%	-5.16%
Total	96 705 200	98 630 000	94 699 000	-3.99%	-2.07%

Source: Government report to the parliament, RSKR. 2008/09:206, p. 30.

Consultation and communication

Consultation

The government strongly acknowledges the importance of consultation with business. When it entered office it invited the business community to make simplification proposals. More than 400 proposals were handed in by business organisations and an additional 500 proposals came in through a web campaign directly from independent business owners. These proposals were circulated to the relevant ministries for consideration as part of the Action Plan. The reference groups set up to help establish the baseline (see above) provided further opportunities for business input. Interviews are carried out with business for the baseline updates to ensure that the “right” simplification proposals are captured. The consultation carried out by ministries with the business sector and other stakeholders on draft regulations is also used to identify possible measures for simplification.

Swedish business does not wait to be asked for its opinion. A Swedish asset is a proactive business sector, which is putting considerable efforts into simplification proposals and advice. Beyond the *NNR*, other business organisations have also been active. For example an attitude survey was carried out by the Swedish Trade Federation (*Svensk Handel*) representing SMEs in May-June 2008, culminating in a report entitled *Värsta Reglerna* (The Worst Regulations).

The Ministry of Enterprise has established a central working group with business representatives to identify areas of particular concern to business. Four meetings have been held to date. The group is made up of representatives of *Almega* (forum for service companies), the Swedish Association of Free Entrepreneurs, the Board of Swedish Industry and Commerce for Better Regulation (*NNR*), the Swedish Trade Federation, the Confederation of Swedish Enterprise, the Swedish Bankers' Association and the Association of Swedish Engineering Industries.

The Action Plan requires that individual ministries also establish their own working groups with stakeholders (ministries have to provide evidence of what they have done to work with the business community). Beyond this core requirement, ministries are free to choose how they go about consultation, and a range of approaches is deployed. A majority of ministries engage in a "continual dialogue" with industry. The third step of the Action Plan notes that 7 out of 12 ministries have made structured efforts to consult with the business community.

Box 5.5. Public consultations by government agencies on Better Regulation

A more detailed account of agency consultation is given in their own action plans. The following best practice examples are, however, worth mentioning.

The National Food Administration has a special reference group for better regulation that has had two meetings in 2008.

The Swedish Board of Agriculture has implemented a major better regulation project in 2007-08 with 11 sub-groups in which ministries and the business sector were also represented. Examples also include the Swedish Companies Registration Office which keeps up a dialogue via formal contacts (a contact committee meets twice a year, includes its major customers) as well as *ad hoc* initiatives, as well as through its advisory council.

The Swedish Tax Agency consults with special interest organisations in the business sector. The Swedish Environmental Protection Agency has introduced changes in internal procedures aimed at ensuring that simplification is taken into account in all of its work, and more systematic collaboration with stakeholders, as well as providing advice to help companies meet regulatory requirements.

The Swedish Work Environment Authority co-operates with the social partners when drafting regulations, but also sends new regulatory proposals to the Federation of Private Enterprises. The Swedish Social Insurance Agency has a customer council for consultation with the business sector, and proposes to set up additional working groups to discuss different aspects of Better Regulation.

Source: Making a Difference in Day to Day Business - the Government Action Plan for Better Regulation 2008/09.

Around half of the agencies said in the third step of the Action Plan that they arrange consultation devoted to better regulation and just over 40% consult when issues are processed. Less than 10% of the government agencies did not have any consultation at all during this reporting period. As for the ministries, the forms of consultation vary. The ministries are sometimes represented at the agencies' meeting with the business sector. See Box 5.5 and Table 5.2.

This open approach is reflected in official advice on consultation. Thus *Tillväxtverket* advises government agencies that the most suitable form varies from situation to situation. It could take the form of organised meetings with several participants such as reference group meetings, hearings, workshops, or with individual stakeholders. Written consultation may sometimes be appropriate.

Table 5.2. Consultation undertaken by ministries regarding Better Regulation

Ministry	Consultation
Ministry of Employment	Regular consultations with the social partners. Two meetings have been convened during the reporting period devoted especially to better regulation. A broad circle of business sector representatives have participated in these meetings.
Ministry of Finance	The various departments at <i>Fi</i> have held three consultation meetings during the period devoted especially to better regulation in <i>e.g.</i> the taxation and financial market sector.
Ministry of Defence	Has not arranged consultation meetings on its own. The agencies under <i>De</i> , primarily the Swedish Civil Contingencies Agency, pursue a regular dialogue with the business sector.
Ministry of Integration and Gender Equality	Has not arranged its own consultation specifically on better regulation during the reporting period. Regular meetings with the business sector are held at which better regulation can be discussed should the need arise.
Ministry of Agriculture	The ministry participates in the consultation meetings held by its agencies. The Swedish Board of Agriculture has set up 11 simplification groups in which the business sector and the ministry are represented. In addition to this, the ministry has met representatives of the agricultural sector to discuss separate issues.
Ministry of Justice	Has a regular dialogue with the business sector and holds separate consultation on different regulatory proposals being discussed within the ministry. Two special consultation meetings on better regulation have been arranged during the period.
Ministry of Culture	Has invited the business sector to submit communications to the ministry containing proposals for simplification measures.
Ministry of the Environment	Established two special consultation groups for better regulation in 2007, comprising representatives from business sector organisations and agencies. The environmental consultation group has met on two occasions in 2008, whilst the planning and building group has met once. Meetings in both consultation groups have been held during spring of 2009.

Ministry of Enterprise, Energy and Communications	Responsible for the Central Consultation Group for Better regulation. Has also held consultation meetings especially devoted to better regulation in the energy and transport sector.
Ministry of Education and Research	Has had written consultation with <i>e.g.</i> the Swedish Association of Independent Schools. Other representatives of the education sector have also been called upon to submit simplification proposals.
Ministry for Foreign Affairs	Has not arranged consultation focusing especially on better regulation with the business sector during the reporting period. The Ministry's activities require continuous co-operation with the business sector, however.
Ministry of Health and Social Affairs	Has had one consultation meeting during the reporting period and called on the business sector to submit simplification proposals in writing.

Source: Government report to the parliament, RSKR. 2008/09:206, p. 21.

As might be expected, ministries and agencies are often building on existing structures for consultation. Some are doing well, others less so. Consultation performance appears to vary. In its 2009 Regulation Indicators report, the *NNR* suggests that despite the government's clear instruction to ministries and agencies to consult business, only about half of all ministries and agencies had invited business to consultation meetings in 2008. The OECD peer review team heard that there were welcome moves to go beyond the restricted circle of the social partners (where this is the usual approach) but that this could be reinforced.

Communication

The Ministry of Enterprise web campaign to prepare the Action Plan was also the first major communication on the programme. From 2007, the ministry has provided annual public reports to the parliament, jointly signed by the Prime Minister and the Minister for Enterprise. These reports explain the government's approach, work in progress, planned measures, and include a big section setting out specific initiatives being taken forward by the relevant ministries.¹³ An important incentive for ministries to make progress appears to be the publication of these reports. The team was told that stakeholders are important for putting pressure on ministries. The Ministry of Enterprise has also developed a web portal in which all the measures and proposals for regulatory simplification in the Action Plan are presented, in conjunction with the communication to the *Riksdag*.

Some concerns were expressed to the OECD peer review team about the presentation and communication of results of burden reduction (and other Better Regulation) work, especially where this is qualitative, as the 2010 elections approach, which is also the end date for meeting the target. The reports to the parliament are produced late, do not clearly distinguish between measures already achieved, work in progress measures and those that are planned, and do not cover all the relevant ground (for example what is happening with permits and planning).

The *NNR* notes that feedback on what has been done with proposals submitted is inadequate. It has analysed the "fate" of simplification proposals from business, and

notes that over half of proposals submitted have an “unclear outcome”, and only a small proportion of measures being taken forward are based on proposals from business. Feedback is essential if business is to have confidence in the system. The experience of other European countries is that a critical (albeit not the only) success factor of a well run administrative burden reduction programme is effective government-business communication.

Achievements so far

The experience of many European countries that have developed regulatory burden reduction programmes is that results take time to materialise, and Sweden is no exception. Considerable effort has to be put into preparatory work (such as measuring the stock and identifying reduction possibilities) so that the largest results often emerge at the end of a government term of office. The Swedish Action Plan also took some time to put in place. Sweden considers that it will only have a “first proper indication of where we are heading” with the finalisation of the next round of updates in May/June 2009. Nevertheless, some significant issues have already been tackled, which were detailed in the 2007 and 2008 reports (Box 5.5).

The *NNR* is pleased that the government has included many of its reduction proposals in the Action Plan, and considers the actions underway to be promising.¹⁴ The rise in burdens stemming from new legislation is, however, a concern. The *NNR* Regulation Indicators 2009 report notes that costs have risen compared with the baseline.

Box 5.6. Reported results from the rolling Action Plan in 2007, 2008 and 2009

2007 Action Plan

The first results of the Action Plan were presented in June 2007. Just over 50 simplification measures were fully implemented by ministries and agencies recorded 120 completed measures. Examples included: easing of restrictions governing fixed term contracts; easing of notification requirements for environmental permits; clarification of the planning and building act; agency collaboration on new business start ups; and abolition of requirements to keep separate herd records.

2008 Action Plan

The results of the second step of the Action Plan were presented in April 2008. A total of 600 implemented and planned measures were reported (some 200 by ministries, and the remainder by government agencies). They included simplification of the Environmental Code and the Planning and Building Act, simplification of regulations requiring companies to draw up gender equality plans and pay surveys, simplified accounting regulations, abolition of the mandatory auditing requirement for small enterprises, extension of the accounting period for value-added tax, modernisation of customs legislation, a review of the Annual Leave Act with a view to its simplification, simplification of the rules on fixed term employment, simplifying and streamlining information reporting, and a review of current alcohol legislation. They included actions that bear directly on the reduction of administrative costs (such as data reporting, accounting requirements, simplification of permit procedures), others that aimed to improve customer service and accessibility, and shorten processing times, and a number of measures involving electronic services (*e.g.* improving websites, downloading forms etc., together with more fundamental changes such as the filing of reports on the Internet).

2009 Action Plan

The third step in the Action Plan for Better Regulation was reported to the Parliament in June 2009. It includes a total of 940 measures. Around 240 measures have been implemented, are planned or under investigation by the government, and almost 700 measures by the government agencies. Just over 460 were implemented in 2007 and 2008. Of the remaining 480 measures, some can be implemented in the short term, whilst others must be further analysed, investigated and possibly circulated for comments before a final position is adopted and any decision taken. It showed that administrative costs for businesses had been reduced by almost 4 % during the period 1 January 2008 – 31 December 2008, and that the total net reduction in comparison with the baseline measurement (2006) was about 2 %.

Most of the measures focus on reducing administrative costs, but a considerable number could lead to simpler regulations, improved service and accessibility, shorter processing times, and co-ordination of data collection and inter-agency co-operation.

There is a mix of general and specific measures. The measures also differ in terms of their effects, scope and the time it takes to implement them. Some are very limited, whilst others can include a review of a large number of acts, ordinances or regulations. Examples of the latter include a national procurement support programme (which provides practical help and guidance to both public procurers and suppliers). In addition, tools, methods and coherent procurement documents are being developed for a more efficient public procurement. The other proposals simplify the existing Public Procurement Act (SFS 2007:1091). Other measures include simpler accounting provisions in the Annual Reports Act on annual reports and consolidated accounts. The work also includes a review of a large number of acts, ordinances or regulations.

The performance of ministries (and their government agencies) appears to be highly variable. Good performance seems to be linked to a number of factors, some of which may be easier to address than others: the relationship of the parent ministry with its agencies; the enthusiasm and support of external stakeholders (or the reverse); the establishment of structures and tailored action plans to move work forward within ministries and agencies, beyond the general requirements set by the government; strong political support from the minister; and the extent to which new laws and regulations are being generated, including at the EU level.

The Ministry of Agriculture for example, has its own internal structures for taking forward the Action Plan. Keys to its success are that it works closely with its agencies, with the shared purpose of influencing EU regulations which loom large in this sector, that its Better Regulation efforts predate the current Action Plan as the sector is so highly regulated, and the fact that there are clearly identifiable, motivated and united stakeholders (the farmer's organisations). The Swedish Board of Agriculture provides strong support to its parent ministry. It has set up 11 simplification groups to help develop its own action plan, as well its own internal system for *ex ante* impact assessment of burdens. Some issues predate the government's current initiative but the requirement to report on progress in meeting the 25% target is a compelling driver.

The Ministry of Environment has strong political support and again, a close relationship with its five agencies, which are a major source of regulation and close to the realities. It uses the *Malin* database to identify burdens and to measure the expected impact of new proposals. The Environmental Protection Agency has set up its own action plan. The Ministry of Employment has also been active, in dialogue with the social partners. The latter were asked for proposals and the ministry focused work on a few areas (work environment, annual leave). Simplification initiatives predate the current Action Plan. The discussions with the social partners were very controversial,

and the target has generated tensions concerning employee protections. On the positive side, the project has helped to improve co-operation with the government agencies.

Some ministries are now experiencing problems with the fact that the “low hanging fruit” are already picked. Going further, as they see it, implies moving into actions that question the underlying purpose of a regulation. The Ministry of Environment notes that some proposals are politically rejected, and that there are not yet enough projects to meet the target, as it is hard to find areas of simplification without reducing the level of environmental protection. The Ministry of Employment points to looming conflicts with labour laws: the reduction target may not be met without changing the basis of labour law or reforming the “Swedish model”.

At the same time, the *NNR* considers that there are serious limitations to confining the programme to information obligations. Other compliance costs to business, including financial regulatory costs due to taxes and charges, and material costs due to investment requirements, are not covered. The 2006 *NNR* survey “The Total Cost of Regulations to Businesses in Sweden”, shows that for all companies, administrative regulatory costs were below 30% of the total. The government (like some other governments) does not consider that financial costs should be covered. Measures relating to financial costs are presented in the annual Budget Bill, not in the Action Plan for Better Regulation. The government also notes that financial regulatory costs have been considerably lowered during the current Government’s mandate.

Perceptions of progress are an issue, and the time lag between starting the programme and achieving results has not gone unnoticed by the business community. As in other countries with regulatory simplification programmes, Sweden faces a range of different issues, many of them presentational and relating to communication, that need to be actively managed, if business is to remain positive overall to the government’s efforts. “Cultural” misunderstandings about how government works and the time it takes to make changes, especially if legislation is required, need to be addressed (the government needs to explain why it cannot work as fast as business). There is a need to ensure that the issues tackled are the ones of most interest to business, which includes irritants. Too much rhetoric is damaging to the government’s credibility if this does not match results.

The *NNR* draws attention to the need for systematic evaluation of progress and results, with a view to checking that the outcome is really helpful for businesses and their competitiveness, and to sustaining the credibility of the government’s explicit ambition to bring about a “significant change in day to day business operations”. The *NNR* itself plans to build on its own evaluation work, with a follow up to its 2006 survey of regulatory costs, and this will also assess whether simplification measures have had noticeable effects.

Other measures for business

Websites and one-stop shops for business formalities

The Swedish Agency for Economic and Regional Growth (*Tillväxtverket*), the Swedish Tax Agency and the Swedish Companies Registration Office, which are involved in the start-up process for businesses, have created a website (www.verksam.se) that make the process more coherent and easier to overview by entrepreneurs. The website provides information and tools, and is an entry point to relevant government agency information for enterprises. Its main focus is to integrate

and co-ordinate the information and e-services provided by government agencies, and to provide an overview for business start up processes, but the site also covers running, developing and closing down a business. The website *verksam.se* is also the operative place for the Swedish Single Point of Contact and a part of the EUGO network, which gathers all national point of single contacts in accordance with the EU Services Directive.

At the local level, authorities are playing a more active role, and some have started to provide ‘one-stop shops’, where those who are about to start a business only have to contact one person initially when dealing with the local authority. The website *verksam.se* is an effective support tool for employees in these local one-stop shops.

The “Entrepreneur’s guide” on the website¹⁵ of *Tillväxtverkets* (Swedish Agency for Economic and regional Growth) 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 may need to take. Some are measures which must be taken before start-up, such as applying for permits and required registration, but the database also includes the steps that need to be taken in the running of the business. The database is regularly updated.

Administrative burden reduction for citizens

The main focus of Better Regulation policy at this stage has been on businesses. There is no specific programme addressed to citizens, as is increasingly the case in other EU countries. However Sweden’s e-Government initiatives (see Chapter 1) are helpful and relevant.

Administrative burden reduction for the administration

Whilst there is no specific programme for the reduction of administrative burdens inside government, several relevant initiatives and processes are in place.

- The burdens imposed on government agencies related to their management by the government have been picked up in a recent report by a commission of inquiry. This evaluated the performance based government management of agencies. Key findings were that the management system lacked the flexibility to take account of the many differences between agencies, and that the government “sent too many signals” to them. The government responded in its 2008 Budget Law by setting out new directions for a more long term and strategic management of government agencies, which would make fewer detailed reporting demands on them.
- An Action Plan for the development of e-Government is in place, linked to the government’s policy to create a more efficient public sector.
- Officials in the Government Offices can get information about administrative internal regulations and governance documents from a range of websites. The Government Offices shared internal website gives access to documents relating to issues such as working methods, guidelines for administrative management, rules of procedure and processes. In addition, each ministry has its own internal

website, accessible to all the ministries, with specific information about that ministry's documents. Similar information can be accessed on agency websites.

Notes

1. Programmes to reduce administrative burdens may include the review and simplification of whole regulatory frameworks or laws, so there can be some overlap with policies aimed at simplification *via* consolidation etc. There may also be some overlap with the previous chapter on the development of new regulations, as administrative burden reduction programmes are often conducted on a net basis, that is, taking account of the impact of new regulations in meeting target reductions.
2. Examples are: the Committee on Public Sector Responsibilities (Fi 2003:02); the Commission on Supervision (Ju 2000:06); and the Regulatory Reform Commission (N 2004:2).
3. RIR 2004:23.
4. An example cited in the most recent Action Plan report is that of farmers required to comply with EU legislation on a range of issues (public health, plant protection etc) in order to qualify for the full amount of EU funding. Under previous Swedish legislation, farmers had their funding reduced when they failed to meet Swedish standards where these were more far reaching than the EU level.
5. The former State Secretary Group established in 1999 was not as operative as the current group and only had meetings when necessary. It did not meet during (at least) 2003-2006 and was not at all active in recent years.
6. A good example is the September 2008 government instruction to the Swedish Companies Registration Office to draft a proposal on how the amount of information that companies are required to submit to central government can be reduced. The SCRO reported on this by end April 2009.
7. Unlike in some other countries, the cost of consultants has not (yet) been an issue.
8. This means that, as in most other European countries, full compliance costs are not covered. Thus material costs (plant and equipment) to comply with the underlying regulatory requirement, and financial costs (taxes and charges) are not covered, nor are irritation factors (what annoys business but is not costly). However, these costs will to some extent be described qualitatively in the report that describes the development of administrative burdens during the year.
9. A number of efforts towards Better Regulation are more difficult to measure when carrying out an *ex post* measurement. This applies for example to efforts such as setting up a test panel for businesses. Information efforts such as new information brochures or a more user friendly website are also difficult to measure. General efforts of this type which cannot be linked to individual information requirements,

are not included in an *ex post* measurement. However, these efforts will be described qualitatively in the report that describes the development of administrative burdens during the year.

10. In other words the updates look at new or changed or removed information obligations. Measurements include all the changes that have come into force that year, so these could be regulations adopted in earlier years.
11. 2001 for the baseline measurement; 439 for the first update; and 318 for the second update.
12. www.tillväxtverket.se/malin.
13. For the 2008 report these were: Justice, Foreign Affairs, Defence, Health and Social Affairs, Finance, Education and Research, Agriculture, Environment, Integration and Gender Equality, Enterprise, Energy and Communications, Culture and Employment.
14. Especially burdensome regulatory areas identified by the NNR include Environment (Swedish Environmental Code and waste); health and safety; labour market (Swedish Employment Protection Act); auditing issues; tax regulations; value added tax rules; requirements to draw up plans such as gender equality and salary schedules; and submission of information/reporting obligations, especially statistics.
15. The Entrepreneur's Guide (*Företagarguiden*) has been replaced by *Verksamt.se* (www.verksamt.se).

Chapter 6

Compliance, enforcement, appeals

Whilst adoption and communication of a law sets the framework for achieving a policy objective, effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance and enforcement prospects is increasingly a part of the regulatory process in OECD countries. Within the EU's institutional context these processes include the correct transposition of EU rules into national legislation (this aspect will be considered in Chapter 7).

The issue of proportionality in enforcement, linked to risk assessment, is attracting growing attention. The aim is to ensure that resources for enforcement should be proportionately higher for those activities, actions or entities where the risks of regulatory failure are more damaging to society and the economy (and conversely, proportionately lower in situations assessed as lower risk).

Rule-makers must apply and enforce regulations systematically and fairly, and regulated citizens and businesses need access to administrative and judicial review procedures for raising issues related to the rules that bind them, as well as timely decisions on their appeals. Tools that may be deployed include administrative procedures acts, the use of independent and standardised appeals processes¹, and the adoption of rules to promote responsiveness, such as “silence is consent”.² Access to review procedures ensures that rule-makers are held accountable.

Review by the judiciary of administrative decisions can also be an important instrument of quality control. For example, scrutiny by the judiciary may capture whether subordinate rules are consistent with the primary laws, and may help to assess whether rules are proportional to their objective.

Assessment

Data on compliance with regulations is not collected on an aggregate basis, however the compliance record is assessed to be good. Sweden, like most other European countries, does not monitor compliance rates, yet this could be important in order to evaluate the effectiveness of the current regulatory system in this regard, and to guide next steps in enforcement policy. The issue could also be built into to the

impact assessment process, via a requirement to review *ex post* the actual effectiveness of adopted regulations compared with expectations, as well as an emphasis in *ex ante* impact assessment to consider likely compliance and enforcement issues downstream.

Recommendation 6.1. Consider a review of compliance rates, based as far as possible on data that is already available, in order to guide further steps for enforcement policy, and to feed back into the framework for *ex ante* impact analysis (paying more attention to issues of compliance and enforcement when a new regulation is under development).

The current approach to enforcement is complex and widely acknowledged to be in need of reform. Enforcement responsibilities are spread across a range of bodies, and regulated in different ways through more than 230 laws. This makes it hard to identify the best from the “not so good” performers and to promote new, more efficient and streamlined approaches to enforcement. The issue has also been highlighted in the 2007 Parliamentary Committee on Public Sector Responsibilities. The government has started to take steps to rationalise and clarify responsibilities, through organisational changes in some specific sectors. The general direction of further reforms has been expressed in a report by the government to Parliament in December 2009. Reform would, in particular, lay the groundwork for encouraging the further deployment of approaches such as the use of risk analysis to determine the optimum frequency of inspections.

Recommendation 6.2. Continue the efforts at reform in order to streamline the enforcement system and improve efficiency. As part of this, consider how to encourage the spread of risk based approaches to inspection, as a means of minimising burdens on companies and improving public sector efficiency, using the experience of other European countries such as the Netherlands as a guide.

The Swedish appeal system is strongly rooted in a culture that protects citizens’ rights, and an issue with appeal delays is being tackled with noticeable effects. Swedish appeal processes for contesting administrative decisions are well established and well structured. The government is aware that there is an issue of delays in reaching decisions on appeals, partly due to a rise in the number of cases, and it is taking action.

Background

Compliance and enforcement

Compliance

There are no aggregate statistics on the level of compliance with regulations, and compliance rates are not monitored on an aggregate level. However, “the general level of compliance with regulations must be assessed as good”.³ The lack of appropriate sanctions for non-compliance with regulations was raised with the OECD peer review

team. The *NNR* underlines that efficient regulations must be easy to understand and comply with, and that this needs attention when regulations are developed.

Enforcement (supervision)

The task of enforcement (supervision) is currently shared between more than 90 government agencies (including the 21 County Administrative Boards) and the 290 municipalities. The county councils have no supervisory responsibilities. There are also, in few cases, private bodies with a delegated responsibility for enforcement/supervision.⁴ Enforcement is regulated and organised, in different ways, through more than 230 laws issued by the *Riksdag*, along with ordinances issued by the central government and regulations issued by the government agencies. The different models of organisation has so far developed *ad hoc*, with recent changes mostly towards greater clarity, centralisation and rationalisation, *i.e.* moving responsibility for supervision in a sector from municipalities to County Administrative boards or from County Administrative Boards to an agency covering the whole country. Some important changes have been made, for example, in the transport, nuclear safety and discrimination sectors, where government agencies have been merged, and animal safety, where responsibility has been moved from 290 municipalities to 21 County Administrative Boards.

The current system is widely acknowledged to require further reform. Until recently a generally applicable definition of what is meant by “inspection” in the legal system did not exist (although in some areas of legislation there has been a definition for some time). The report 2009/10:79 now includes a general definition. The problem was a lack of distinction between the drafting of a regulation, and its execution through information activities and inspection. This can cause problems both for “inspectors” and the “inspected”. It can also complicate the evaluation of the results and efficiency of supervisory authorities. Another issue is the cumulative effect for companies of inspections which may be required by a range of government agencies relating to the same activity.

The government has initiated an analysis of inspection and supervision activities in order to make inspections more distinct and efficient as an instrument for better compliance. A new framework has been put in place for the execution of inspections which also addresses financing principles and the role of the municipalities in inspection. The general direction of further reforms has been expressed in a report by the government to Parliament in December 2009 (skr. 2009/10:79). This report notes that municipalities’ role in supervision has many positive aspects, but also some drawbacks. The municipalities are numerous and some are small. The state will in future need to take a greater part in guidance and follow-up of the supervision carried out by municipalities. In future decisions on the organisational model of supervision in a sector, the government notes that the advantages of municipalities’ proximity to citizens and businesses should be assessed against the risks of spreading responsibility to 290 separate actors.

A report issued in 2007 by a committee of the *Riksdag* also proposed change. It recommended that supervisory activities be rationalised (Box 6.1).

Box 6.1. Parliamentary Committee on Public Sector Responsibilities: enforcement/supervision proposals

The Parliamentary Committee on Public Sector Responsibilities released a report in February 2007 which recommended (among other issues) a new approach to enforcement (supervision), moving responsibilities to the level of central government. Currently municipalities are responsible for the enforcement of regulations in a number of areas. However, it is not always easy to isolate the enforcement responsibility, as some supervisory activities are linked to other activities of the municipalities, and the current system is complex (3 levels where distribution of responsibilities is not always easy to understand). The Committee recommends promoting co-ordination through the County Administrative Boards, for greater coherence and transparency (21 regional levels instead of 300 municipalities). See also Box 8.2 Chapter 8.

External stakeholders have also raised issues. The *NNR* records that many companies testify to variations in the approach to enforcement and the cost of compliance, which may vary considerably depending on the municipality to which a company is attached. Problems also arise where responsibilities are shared between government agencies and municipalities. The *NNR* suggests that enforcement should become more uniform, more cost effective (albeit with adequate resources), and less arbitrary. Inspectors should receive more support and training.

As in most other EU countries, there is no regular collection of statistics on the aggregate resources devoted to enforcement. In 2000, the total cost of inspection activities was roughly estimated at SEK 4.2 million. The cost is shared in approximately equal parts between government agencies and municipalities. Inspections by government agencies were financed 75% by charges and 25% by taxes (through appropriations). In the municipalities 30% is financed by charges and 70% by taxes. Municipalities usually make their own decisions on how to finance their activities. The trend is towards more supervision. The Parliamentary Commission did not comment on this, but proposed a wider use of financing through fees.

Enforcement and risk based approaches

Regulations are usually enforced via inspections and administrative sanctions. A risk based approach is not yet used to a large extent, but the trend is “upwards”. Enforcement authorities generally have some flexibility to decide whether they want to adopt a more risk based approach. That said, there are concerns about sustaining high standards, which could be jeopardised if inspections were risk based. Consumer representatives told the OECD peer review team that they consider that there is not in fact enough market surveillance, due to a reduction in resources for inspections over the past decade, and that municipalities are less active.

There are some effective examples of the deployment of a risk based approach to enforcement (Box 6.2).

Box 6.2. Risk-based approaches to enforcement

The Agriculture Board use risk analysis for inspections, based on a minimum frequency. The Board is active in providing information and guidance to help farmers comply with the rules, including the development of “self control” procedures (though these will not eliminate the need for inspections). The Tax Authority said that it was going in the same direction.

Another example where a risk based approach was a part of a project, is the review of the provisions regarding the necessity of a permit application or a notification for environmentally hazardous activities. The aim was to ensure that the rules and regulations are not more demanding and complicated than what is motivated in order to achieve a sufficient protection of the environment and people’s health. Environmentally hazardous activities are in Swedish law divided into A, B, and C - activities, where an A - activity requires a permit by an Environmental Court, B requires a permit by a County Administrative Board and C only requires a notification to the municipality where the activity are to be carried out.

The grounds on how different activities should be categorised has now been reviewed and changed. The Swedish Environmental Protection Agency initiated the review, which was conducted in close co-operation with Environmental Authorities (such as County Administrative Boards and municipalities), business organisations and other relevant stakeholders. A report with suggestions for new grounds of categorisation and new descriptions of the hazardous activities was then submitted to the Swedish Ministry of Environment. After a referral of an initial proposal for public hearing, the work continued for more than a year at the Ministry and within the Swedish Government Offices, and it involved many fruitful contacts with representatives from business organisations and Environmental Authorities when trying to find the best possible solutions. (The contacts with and feedback from business organisations were also very useful for Sweden/the Ministry of Environment in the spring negotiations of the IPPC Directive.) The result is that approx. 50 environmentally hazardous activities have now been categorised as B-activities instead of A-activities and 1 000-1 200 activities have been categorised as C-activities instead of B-activities. A few activities have been “upgraded” from C to B or from B to A, with the aim to better protect the environment and peoples health. The overall effect on businesses is less burdensome administrative work, resulting in a reduction of the administrative costs estimated to approx. 6.4 million euro per year.

Appeals

The overall Swedish approach is guided by a clear and strong statement of citizens’ rights. 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. The Administrative Procedure Act sets the general context. Part of its aim is to safeguard citizens’ legal rights in their dealings with public authorities and to improve service to the public (see also Chapter 4). According to the Administrative Procedure Act, “a person whom the decision concerns may appeal against it, provided that the decision affects him/her and is subject to appeal”.

There are a number of processes for appeals against administrative decisions: administrative courts; judicial review by the regular courts; and ombudsmen. Sanctions against public authorities can consist of damages decided by a court or by the Chancellor of Justice. It may also consist of criticism from the Ombudsman of Justice or the Chancellor of Justice.

The administrative court system

Decisions that flow from the application of a statute may be appealed to the administrative courts. Courts may agree a stay of execution on a decision, pending the result of the appeal. Such cases cover a large part of the activities of the public administration, but not all of them.

There are three levels of administrative court:

- The county administrative court (*länsrätten*) was previously the court of first instance. There were 23 county administrative courts, at least one in each county. Like the district courts, they varied substantially in size. From 15 February 2010 the 23 county administrative courts have merged into 12 courts, which are named *Förvaltningsrätter*. The purpose of the reorganisation is to ensure high judicial quality and efficiency. Most cases are adjudicated by a legally trained judge with three lay judges.
- The administrative court of appeal (*kammarrätten*) is the court of second instance. There are four of these. In most cases a leave to appeal is required for a full review by an administrative court of appeal. These courts may hear appeals as a court of first instance, but they mainly deal with appeals against the rulings of the county administrative courts. Cases before the administrative court of appeal are generally adjudicated by three legally trained judges.
- The Supreme Administrative Court (*Regeringsrätten*) is the court of last resort. It consists, currently, of 19 justices. Its primary task is to create precedents. Leave to appeal is required in most cases. It consists of 17 members, at least two-thirds of whom must be legally trained. The rules governing its work are substantially the same as those applicable to the Supreme Court. Leave to appeal is granted if it is important to guide the application of law, or if there are serious problems with the decision handed down by the lower court.

Judicial review

Judicial review is governed by Chapter 11, Paragraph/Article 14 of the Instrument of Government. This states that if a court or another public body finds that a provision conflicts with a rule of fundamental law or other superior statute, or finds that a procedure laid down in law has been disregarded in any important respect when the provision was made, the provision shall not be applied. If the provision has been approved by the *Riksdag* or by the government, however, it shall be waived only if the error is “manifest”. A court can thus strike down a law on grounds of manifest incompatibility with higher order statutes, although this seldom happens. A Working Committee on Constitutional Reform⁵ has carried out a review of Chapter 11, Paragraph/Article 14 as part of a broader review of the use of the Instrument of Government from 1974. The Committee reported its findings at the end of December 2008.

According to the 2006 Act on Judicial Review of certain Governmental Decisions, citizens are entitled to apply for judicial review of a decision made by the government, if this decision contains a determination against a 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 examines whether the decision infringes any legal rule as adduced by the applicant. If so, the decision is repealed. Otherwise, the decision stands.

Ombudsmen

The Ombudsmen of Justice (also called the Parliamentary Ombudsmen), established under the Instrument of Government, are elected by the *Riksdag* to ensure that public authorities 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 authorities and by conducting other forms of inquiry that they initiate themselves. The Parliamentary Ombudsmen report annually to the *Riksdag*.⁶

A complaint to the Parliamentary Ombudsmen can be made by anybody who feels that s/he or someone else has been treated wrongly or unjustly by a public authority or an official employed by central or local government.⁷ They have 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 their ambit. 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/her duties can be classified in six main groups:

- state representative in trials and other legal disputes;
- receive complaints and claims for damages directed to the State and decide on financial compensation for such damages;
- government counsellor in legal matters;
- government Ombudsman in the supervision of the authorities and the civil servants, and to take action in cases of abuse;
- 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
- 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.

Issues with the appeal system

The number of appeal cases has risen in recent years, both in the ordinary courts and the administrative courts, with average delays of eleven months in the latter in 2007.⁸ The average delay for reaching decisions on appeals in most cases in the Supreme Administrative Court was between 15 and 18 months in 2007. Measures have been taken to address the issue of delays through changes in organisation and work processes. Delays have been significantly reduced over the past year. In 2008 the aggregate number of pending cases in the courts was reduced by 20 000 despite an increase of 11 000 in the number of filed cases. In 2008 the number of pending cases was reduced by 25% in the county administrative courts (*länsrätterna*) and by 5 percent in the Administrative Court of Appeals (*kammarrätterna*). The number of pending cases in the Supreme Administrative Court (*Regeringsrätten*) was reduced from 8 000 cases in 2006 to 5 000 cases in 2008. Currently, the number of pending cases in the Supreme Administrative Court is below 4 000.

The OECD peer review team were told that sanctions are also an issue needing attention, and that it is hard to appeal a municipal decision. Public procurement is a particular issue at this level.

Notes

1. Administrative review by the regulatory enforcement body, administrative review by an independent body, judicial review, ombudsman.
2. Some of these aspects are covered elsewhere in the report.
3. One example of data collected on this issue relates to taxes. In the annual Budget Bill, the government reports on “the missing taxes”. The Taxation Board estimated in 2007 that missing taxes account for around 10% of total taxes.
4. For example, the Swedish Bar Association and the Swedish Motor Vehicle Inspection Company.
5. Ju 2004:11.
6. See the website of the Parliamentary Ombudsmen: www.jo.se/Page.aspx?Language=en, where the annual reports are available, www.jo.se/Page.aspx?MenuId=17&ObjectClass=DynamX_Links&Language=en.
7. There are therefore no restrictions related to age or nationality: anyone can complain, not just adult Swedes.
8. 2007, excluding migration cases and other cases dealt with as a priority.

Chapter 7

The interface between member states and the European Union

An increasing proportion of national regulations originate at EU level. Whilst EU regulations¹ have direct application in member states and do not have to be transposed into national regulations, EU directives need to be transposed, raising the issue of how to ensure that the regulations implementing EU legislation are fully coherent with the underlying policy objectives, do not create new barriers to the smooth functioning of the EU Single Market and avoid “gold plating” and the placing of unnecessary burdens on business and citizens. Transposition also needs to be timely, to minimise the risk of uncertainty as regards the state of the law, especially for business.

The national (and subnational) perspective on how the production of regulations is managed in Brussels itself is important. Better Regulation policies, including impact assessment, have been put in place by the European Commission to improve the quality of EU law. The view from “below” on the effectiveness of these policies may be a valuable input to improving them further.

Assessment

The EU dimension is a prominent aspect of Swedish preoccupations over Better Regulation. The EU was a prominent topic of discussion with the OECD peer review team at most of its meetings with Swedish stakeholders. In Sweden, as in other EU countries, and a high and rising proportion of regulation is of EU origin, and is estimated to account for at least half of administrative burdens. The EU dimension is perceived to be growing in importance, with a corresponding need to manage issues more effectively at all stages of the process.

Recommendation 7.1. Consider a White Paper on management of the EU dimension in Better Regulation, to capture both the detailed and strategic issues which need attention at this stage.

There are clear formal processes for setting strategic decisions in the negotiation of EU directives, but capacities for effective negotiation in practice may need reinforcement. There are clear formal processes for allocating and managing

responsibilities for negotiation, and for setting negotiating positions (which also engage the parliament). But the framework appears less strong once a specific negotiation has started, and external stakeholders raised a number of concerns. Public consultation by the government is not systematic. Adopted directives may raise a range of problems. These include the level of detail and specificity of many directives, leaving little room for adaptation to the Swedish context, unclear language, and the frequent requirements in directives for the provision of reports, which adds to bureaucracy. Although these are issues which are beyond the capacity of one member state to resolve, they do suggest that more could be done in negotiation to minimise the problems. A requirement for the *ex ante* impact assessment of draft EU directives (at least the key ones) would also help to identify important issues for the attention of negotiators.

Recommendation 7.2. Carry out a wide ranging consultation of both internal and external stakeholders over the issues raised by draft EU directives, as part of the White Paper proposed above. Consider how current mechanisms, such as the role of the Prime Minister's Office and its guidance on negotiations, might be strengthened to provide more active support to negotiating ministries and agencies. Consider whether key ministries and agencies have adequate capacities for effective negotiation. Prioritise efforts on key issues for Sweden, and make impact assessments a requirement for draft directives that fall within these priority areas (the Better Regulation Council could play a prominent role here). Develop contacts with like minded member states to address issues such as potentially excessive reporting requirements.

The transposition of EU directives also raises some issues. Transposition deadlines are monitored by the Prime Minister's Office but there are no formal or systematic mechanisms for requiring timely and effective transposition by responsible ministries. An issue raised by a number of stakeholders concerns gold plating (going further in transposition than is strictly required by a directive). It was difficult to form a clear view of whether, or why, goldplating does occur. Factors which obscure the picture include the fact that transposition may be used as an opportunity to review a range of related national regulations, efforts to maintain Swedish standards, and a clash between EU and Swedish legal frameworks.

Recommendation 7.3. Include, as part of the proposed White Paper, a review of transposition, including oversight provisions to ensure that transposition is timely, and potential issues arising in the transposition of directives.

Local governments, through their responsibilities for implementing EU origin regulations in a range of important policy areas, are important actors. The EU regulatory influence on local governments is significant due to their role in the enforcement and execution of regulations in key policy areas such as the environment, food policy, public procurement and regional development. Although there are formal processes for involving them in the development and transposition of EU regulations, there appears to be a deficit of resources and capacities for effective participation by this level of government.

Recommendation 7.4. This too could be part of a White Paper. Establish whether there is an issue of effective input by local governments to the negotiation and transposition of EU directives, and if so, consider what action could be taken to facilitate their input, perhaps by targeting the key areas for this level. Encourage *SALAR*, the local government representative association, to include EU issues in its annual list of priority areas.

Sweden attaches importance to the interface with EU Better Regulation processes, and puts significant effort into supporting the development of these processes. Some Swedish ministries and agencies are very active in their own policy areas. Efforts have been made to support the EU administrative burden reduction programme with Swedish measurement inputs, and significant progress on the EU's impact assessments is acknowledged. The *NNR* (Board of Swedish Industry and Commerce for Better Regulation) which advocates for a large part of the business community, has been especially active in developing and presenting proposals, both strategic and detailed, for improvement. The general consensus is that there is important further work to be done at EU level, for example ensuring that all significant draft directives are the subject of an impact assessment and that this is updated to capture the effects of major amendments on the way to adoption.

Recommendation 7.5. Continue the efforts to support and influence the development of EU level Better Regulation processes.

Background

General context

As in other EU countries, a significant proportion of regulations are of EU origin. They are estimated to account for some 50% of the administrative burdens on business, according to estimates carried out by responsible ministries and government agencies.² The *NNR* has come up with a higher figure of 59%. It was noted that the current EU regulatory agenda implies new burdens (the new accounting directive was cited, for example). The *Riksdag* suggested that the rise in regulations could largely be traced to the EU level, and that the solution required EU level action as well as joint working by the government and the parliament. Other stakeholders confirmed the growing importance of EU legislation and told the OECD peer review team that EU management is becoming more complex, with the need to manage issues more effectively at all stages of the process.

The government is collectively responsible for all policy decisions, including EU policy decisions. Government ministers have the lead in drafting decisions for their respective policy areas in EU work, but decisions are confirmed collectively by the government as a whole. The EU Secretariat in the Prime Minister's Office is responsible for the management and co-ordination of EU-related activities at the government offices. It "oils the machine" and (like the PMOs of some other European countries) plays a procedural rather than a substantive role. It will not give a strong lead on a given issue, but provides an independent view. It checks the negotiating position and proposals for transposition of EU directives, monitors transposition deadlines, and provides guidance to ministries on EU legislative matters. The Prime

Minister's Office is also the strategic think tank and co-ordinator for long term and "big picture" EU issues, for example as regards the long term development of the EU, Treaty issues, the Lisbon process and the EU budget.

The PMO role is relatively recent, and the unit for the EU is growing (it currently comprises some 35 staff). Responsibility was with the Ministry for Foreign Affairs until 2006, and was moved because EU matters are no longer "foreign affairs", together with the perception that the importance of the EU merited a central place in government. However internal market issues have remained with the Ministry for Foreign Affairs. Court proceedings and the final stages of infringement proceedings also lie with the Ministry for Foreign Affairs.

Local governments and the EU

The EU regulatory influence on local governments, as in other EU countries, is significant. Local authorities have an important implementing role for EU origin regulations, through their responsibilities for the delivery of public services, and their enforcement and supervisory responsibilities for environmental and food policy regulations, public procurement and regional development. The impact of EU issues on local service delivery, notably through transposition of the EU services directive and the requirement for one-stop shops, is significant. The government agencies are responsible for supporting them in this task, *e.g.* through education and training, information about regulations, development of methodology or through guidelines. For example, the Swedish Board of Agriculture has a central co-ordinating role among the central and regional authorities involved in the EU's Common Agricultural Policy. The Board's main activities are concerned with administering and implementing EU legislation and support measures.

SALAR has a small office in Brussels and has been particularly involved in the services directive and public procurement discussions. The largest municipalities also have their own EU office. The processes for debating EU matters stipulate that relevant stakeholders must be consulted, and this includes the local authorities. Input from local government can be either direct (from a specific municipality or council) or via *SALAR*. It usually participates in the reference groups set up by the central government for this purpose, which is supplemented by informal contacts. The Committees of Inquiry which are often set up to advise on the transposition of EU directives into Swedish law may include *SALAR* and other local government experts or representatives. The latter are also invited to comment on the Committee's report. Direct discussions between elected members at both local and national levels and through political party linkages are another channel of input. The overall framework is fairly complete. The main challenge, from what the OECD peer review team heard, is one of resources and capacities of local government to participate effectively.

Negotiating EU regulations

Responsible ministries prepare the government position, prior to negotiation in the EU Council of Ministers, and they follow up on EU decisions. The process is set out in official (publicly available) guidelines (*cirkulär*). It normally involves prior consultation with relevant stakeholders, and co-ordination with other interested ministries. Draft EU regulations are circulated to stakeholders. The process is normally carried out in writing, but hearings can also be arranged. If there is a conflict, the issue is solved politically. Consensus can be difficult to reach. Before a ministry presents its

view to the *Riksdag*, and subsequently to the EU, it must first consult with the Prime Minister's Office, the Department for Internal Market Matters of the Ministry for Foreign Affairs, and the Budget Department of the Ministry of Finance. Before each Working Party at EU level, the responsible division at a certain ministry within the Government Offices sends out to all relevant divisions at different ministries in a joint draft procedure an instruction on how Sweden should act during the negotiation in the Working Party, which gives the other ministries the possibility to make changes or amendments to the instruction. The responsible division at a ministry may also work closely with one or more government agencies and consult with other stakeholders (business organisations etc) to obtain information of importance for the negotiations.

The OECD peer review team heard that the framework for managing EU negotiations is reasonably effective, but raised some issues. The government should pay particular attention to the importance of early stage informal consultation with stakeholders; once a draft directive goes into the formal and political process, lobbying is less effective. It was noted that the government's invitations to stakeholders to give their views on EU drafts was not systematic and seems to have become more limited in recent years, perhaps because of the complications of coalition politics. Some ministries, however, pointed out despite their best efforts to engage effective consultation, the EU's own short deadlines for consultation imposed constraints on the national room for manoeuvre. It was suggested that prioritisation – focusing efforts on the most important proposals – would help.

The need for effective and timely consultation may have some link with concerns that EU directives, when they emerge, are often very detailed (contradicting the principle that they should set the framework for actions that need to be fleshed out at the national level): “We are used to the framework style – setting the goals and leaving agencies to work out how to meet them”. They are also often hard to understand: “In many cases EU directives are impossible to understand. We have to translate them into understandable language. But we can have problems doing so”. Another issue raised was the requirement embedded in many directives to provide reports: “Many directives require a lot of reports which take a lot of time from ministries and agencies. What are they doing with these reports? It is difficult to reduce burdens as a result”. It was pointed out that this contradicts efforts to reduce bureaucracy.

Role of Parliament

The parliament's EU Committee meets weekly, informed by the government, so that it can give its views on the proposed negotiating position. If the majority of the committee disagrees with the position, the government must amend its position accordingly. The EU Committee consults the other relevant sector parliamentary committees. There can be extended consultation/hearings if an issue is important. The relevant ministry is responsible for assembling the necessary material for the parliament to consider. It collects information from ministries and prepares a fact sheet. It also provides updates on the negotiations through weekly meetings with the parliament. The OECD peer review team heard that the parliament is increasingly active on EU issues, partly because of the network of contacts between the EU committee and the other committees, which spreads awareness. The *Riksdag* itself notes that EU issues can be difficult to follow as they often take years to come to closure, and that it is a challenge to keep up with the details.

Ex ante impact assessment

There is no formal requirement to carry out *ex ante* impact assessments of draft EU regulations. The new impact assessment arrangements merely include an obligation to consider whether a proposed EU regulation is in line with the obligations that flow from being a member of the EU.

Transposition of EU regulations

A Committee of Inquiry is often appointed to transpose an EU directive into Swedish law (see Chapter 3). A proposal for transposition is circulated to stakeholders and interested parties for a period of some three months, and their views on the proposal will be reflected in the further development of the draft.

Institutional framework

The ministry responsible for the policy area handles transposition. A lead ministry is designated when an issue cuts across different ministries. This is generally the one whose responsibilities are the most affected and normally the ministry responsible for negotiating the directive. Transposition planning takes account of actions needed at regional or municipal level as well as at central level.

The PMO checks compatibility with EU rules in general and the Unit for the Internal Market in the Ministry for Foreign Affairs advises and helps other ministries on matters regarding EU internal market principles in particular. The checks are procedural rather than substantive. The PMO's EU Co-ordination Secretariat provides general guidance on transposition, such as the avoidance of gold plating. Gold plating may be raised in the inter-ministerial dialogue on transposition.

Legal provisions and the role of Parliament

Proposed legislation for transposition goes through the relevant parliamentary committees. There are no special legal instruments for the transposition of EU regulations. EU law is given effect by laws, ordinances and agency regulations. Government agency regulations are an important vehicle for the transposition of EU legislation into the Swedish regulatory framework.

Ex ante impact assessment

Bills containing legislative proposals and submitted by the Government Offices to the Parliament traditionally contains a special section with impact analysis. Furthermore, when implementing legal acts originating from the EU, the same requirements apply as with respect to purely 'domestic' proposals.

Monitoring transposition

Monitoring and correlation tables

The PMO monitors transposition deadlines. There are no official transposition rates for each ministry, but lists of directives are broken down at ministry level, which can be used to draw conclusions on transposition performance. Correlation tables are

drawn up to the extent required in the legal instrument that gives effect to transposition, and are publicly available if requested through the National Board of Trade (*Kommerskollegium*),³ the Swedish government agency for foreign trade and trade policy. The National Board of Trade also provides Internet-based information on transposition into Swedish law of EU legislative acts. There are no statistics on the overall speed of transposition.

The speed of transposition depends on the legal instrument used. It takes longer if a primary law is required. The lead ministry determines the instrument to be used. Delays may be linked to resource issues in some ministries. It may also be linked to the fact that the opportunity is taken to review the whole area of relevant legislation.

The Swedish government underlines the importance of a correct and timely transposition and implementation of Community directives in terms of “[...] creating equal conditions and healthy competition in the internal market”.⁴

Box 7.1. Sweden’s performance in the transposition of EU Directives

Internal Market Directives transposition deficit

In the July 2009 Internal Market Scoreboard, Sweden performs comparatively well being ranked 3rd together with the Netherlands. Its transposition deficit here only amounts to 0.6%. After the initiation of the Scoreboard procedure, Sweden was comparatively quickly able to obtain a low transposition deficit rate of for instance only 2% in May 1998. Showing minor increases of the deficit at times Sweden was rather consistently found in the leading part of the ranking.

Performance in specific policy areas

Most recently, the policy areas with a comparatively high transposition deficit rate have been Justice, Freedom and Security, Environment and Taxation and Customs unions.

Table 8.1. Sweden’s performance in transposition of Internal Market Directives over time

SE	Nov-97	May-98	Nov-98	May-99	Nov-99	May-00	Nov-00	May-01	Nov-01	May-02	Nov-02
Transposition deficit as % in terms of Internal Market Directives	6.2	2	1.5	2.1	2.1	1.5	1.2	0.5	0.9	0.7	0.4
	May-03	Jul-04	Jul-05	Dec-05	Jul-06	Nov-06	Jul-07	Nov-07	Jul-08	Nov-08	Jul-09
	1	1.8	1.4	0.9	1.4	1.3	1.4	1	0.8	0.9	0.6

Source: European Commission, Internal Market Scoreboard.⁵

Goldplating (going further in transposition than is strictly required by a directive) was raised by a number of stakeholders, including the parliament and business organisations. Business appears to be concerned that goldplating takes place at all levels down the line (from the initial transposition into a higher level statute, to the further development of transposition through agency regulations, down to execution and enforcement by local authorities). The *NVR*’s 2008 evaluation of impact assessments of new regulations (which shows that 41% of proposals were based on

new or amended EU regulations), noted that 13% of these go further than the EU directive, introducing special Swedish requirements. It notes that this contradicts the principle of a harmonised EU internal market.

The real extent of goldplating appears hard to pin down. It may be complicated by the fact that a law may seek to address both the transposition of an EU directive and a review of existing national regulations. The problem may also be linked with efforts to maintain “high Swedish standards”. Another factor is that Sweden refuses exceptions for SMEs, and there are no specific laws for SMEs. A number of stakeholders drew attention to the fact that EU regulations do not always fit Swedish legal traditions.⁶ At the same time, the OECD peer review team also heard that Sweden was sometimes required to implement directives, *i.e.* re-regulate, on issues where they had previously deregulated. The concerns about goldplating may be exaggerated. For example, the Ministry of Environment reviewed several of its EU-related regulations in autumn 2007. The result of this review showed that more far reaching requirements than those of the directive were imposed only in exceptional cases.

Interface with EU Better Regulation

Sweden is active at the EU level in the promotion of Better Regulation. This includes active participation in the High Level Group on Better regulation as well as taking part in the fora and networks relating to administrative burden reduction. During its Presidency of the EU in the second half of 2009, it vigorously promoted the Better Regulation agenda.

A number of issues were raised by stakeholders in discussion with the OECD peer review team. There is considerable interest in the interface between national and EU initiatives, and in the need to build an EU wide Better Regulation vision for the coming years. Some concern was raised about future Better Regulation strategy and the EU Commission’s capacity to sustain momentum beyond 2010, the endpoint of the Lisbon Strategy.

Issues were raised about the interface of national efforts with the EU’s own programme for the reduction of administrative burdens. As with other EU countries, the Swedish burden reduction process is not fully co-ordinated with the EU programme. However synergies are exploited where possible. The best example is the use of the Swedish measurement results as a contribution to the EU measurement exercise. Several ministries and agencies emphasised that simplification proposals require the active input of the EU level, if they are to work. The impact of the EU burden reduction programme is not yet clear and it was suggested that it should be extended beyond the current 13 focus areas.

The issue of the EU’s own impact assessments was also raised. There has been significant progress both in quality and the number of directives covered. However, not all significant EU directives are yet the subject of an impact assessment. Many of the “big fish” seem to escape. The performance of Directorates-General is variable. An impact assessment board, more at arm’s length from the Commission, would exert stronger leverage for improvement. Last but not least, it was important to try and update impact assessments as a draft directive is developed and amended. Amendments to EU directives can be quite drastic when a directive goes to the European Parliament and the Council, but the consequences are not captured.

Consultation was also raised as an issue. The OECD peer review team heard that the EU is becoming much better at consultation. But there is room for improvement. Issues cited included consultation questions set to justify the text, rather than to invite more open comments, and the need to provide enough time for responses.

Some parts of the Swedish government are very active in the EU debates. For example the Swedish Environmental Protection Agency and the Swedish Board of Agriculture play an active part in shaping EU discussions, alongside their parent ministries (see Box 2.5, Chapter 2).

There is also significant Swedish business input to the EU agenda. For example, the *NNR* is very active. In May 2008 it published 27 proposals from Swedish business for the simplification of EU legislation, following a call from European Commission. These were presented to the Secretariat General. They included concrete suggestions for how the existing Community stock of regulations could be made more business friendly, together with suggestions on how aspects of the EU legislative process could be improved to ensure that new legislation is efficient from the start.

Box 7.2. *NNR* proposals for more effective EU Better Regulation, May 2008

General aspects

Difficulties experienced by business when complying with EU legislation are often symptoms of the complex EU legislative process. Impact assessments should be a natural part of the policy development process, helping to provide a good evidence base for policy decisions. To deal with a problem, it is important to identify its source. EU legislative process must be improved to secure business friendly legislation from the start. Some positive changes in the last few years – improved consultation, better use of impact assessments and the establishment of the Impact Assessment Board. But more is needed. “The private sector is, above all, looking for clarity, consistency and stability in the regulatory environment and thus, lower compliance costs”.

The *NNR* also notes that the European Parliament has a role to play.

Impact assessment

An impact assessment should be carried out for each policy option considered, involving stakeholders in their development. The following aspects should always be discussed: the need for action in a particular area; the rationale for action being taken at EU level; the basis for the choice of a particular legislative instrument; what would happen if no action were taken, or the “do nothing option”; how new legislation might be enforced; and the potential impact of a policy option on business, including the total compliance cost.

An impact assessment should take into account how a new policy might affect companies of different sizes and sectors. The “think small first” principle should guide all decisions about new legislation.

Impact assessments should inform the development of new policies. They should be an integral part of Green and White papers and therefore of consultation documents presented to stakeholders. Too often they are developed as separate documents once decisions have been made on a proposal.

Consultation, formal and informal, should take place when officials in the Directorate-Generals are formulating proposals and before proposals go to the Commissioners and their cabinets. A draft policy should not mean a prior commitment to legislate.

Administrative burden reduction

The Commission's Administrative Burden reduction programme should be extended to include measurement of all legislation that imposes administrative costs on business, not only the 13 priority areas. It should look beyond the administrative costs that are linked to information obligations, at full compliance costs. So called policy and financial costs are substantially higher than administrative costs.

Simplification proposals should set out very clearly in the form of "fact sheets" for each proposal, including the relevant EU legislation, the responsible directorate-general, a short summary para explaining the proposal, and a contact point for further information. Including areas such as agriculture, employment, SME exemptions, environment, consumers, food safety, accounting requirements (very diverse).

Source: NNR- Proposals from Swedish Business for Simplification of EU Legislation, May 2008.

Finally, the Swedish government drew attention to an important interface with the EU regarding technical regulations. Draft national technical regulations must be notified to the EU and the WTO in accordance with the 98/34 EC procedure and the SPS- and TBT-agreements, and with the Ordinance on Technical Rules (SFS 1994:2029, 20 §). These procedures require national measures falling outside the scope of specific EU legislation to be reviewed in order to detect potential trade barriers in contradiction of general EU rules on the free movement of goods. This means that notified national measures can be reviewed and commented upon by stakeholders at a stage where the rules are not nationally adopted. The notification procedures therefore work as a tool for increased transparency as well as for better regulation. The National Board of Trade (*Kommerskollegium*) is responsible for checking that the other government authorities observe these obligations. The Board is a government authority among others and has no power to force other government authorities to notify their drafts. The so-called *Securitel Judgement* of the EC Court of Justice⁷ entails that non-notified technical regulations cannot be applied. This, combined with the possibility for damages when breaching EU rules, gives an incentive for regulating authorities to notify national measures.

Notes

1. Not to be confused with the generic use of the term “regulation” for this project.
2. The most recent Government Communication to the *Riksdag* on the Action Plan for Better regulation (Appendix 2) explains that just over 52% of administrative costs to business stem from EC regulations (all costs in the areas of food and communications).
3. *www.kommers.se*.
4. Cf. *www.sweden.gov.se/sb/d/9625/a/88956*.
5. Cf. *http://ec.europa.eu/internal_market/score/index_en.htm*.
6. Examples cited were in the energy/environmental sphere, and social/labour regulations.
7. Judgment C-194/94 CIA Security International, REG 1996, p. 2201.

Chapter 8

The interface between national and subnational levels of government

Multilevel regulatory governance - that is to say, taking into account the rule-making and rule-enforcement activities of all the different levels of government, not just the national level – is another core element of effective regulatory management. The OECD's 2005 Guiding Principles for Regulatory Quality and Performance “encourage Better Regulation at all levels of government, improved co-ordination, and the avoidance of overlapping responsibilities among regulatory authorities and levels of government”. It is relevant to all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between.

In many countries local governments are entrusted with a large number of complex tasks, covering important parts of the welfare system and public services such as social services, health care and education, as well as housing, planning and building issues, and environmental protection. Licensing can be a key activity at this level. These issues have a direct impact on the welfare of businesses and citizens. Local governments within the boundaries of a state need increasing flexibility to meet economic, social and environmental goals in their particular geographical and cultural setting. At the same time, they may be taking on a growing responsibility for the implementation of EC regulations. All of this requires a pro active consideration of:

- The allocation/sharing of regulatory responsibilities at the different levels of government (which can be primary rule-making responsibilities; secondary rule-making responsibilities based on primary legislation, or the transposition of EC regulations; responsibilities for supervision/enforcement of national or subnational regulations; or responsibilities for service delivery).
- The capacities of these different levels to produce quality regulation.
- The co-ordination mechanisms between the different levels, and across the same levels.

Assessment

Strong traditions with deep historical, legal and cultural roots define the interface between central and local government. There is a considerable degree of constitutionally protected decentralisation and municipal autonomy to reflect local conditions, compared with many other European countries. This sits alongside the principle of homogeneity in living conditions across the Swedish territory. The two principles are a challenge to reconcile. In the same way, significant independent powers of taxation are mitigated by a tax equalisation scheme to even out inequalities. Regulatory effects on local governments can be contradictory as a result, as the result may be a mix of detailed regulation from the centre for some areas, and no central direction in other areas. This is further reinforced by the traditional autonomy of central government ministries and of their agencies, meaning that a very large number of players are taking regulatory actions in relative isolation from each other. The 2007 Parliamentary Committee on Public Sector Responsibilities report put it this way: “Little consideration is given to the aggregate effect of individual measures on each other, and approaches can be contradictory... central government should develop a complete and coherent strategy for governance of the local government sector... there is a great need to reunite the state”.

This framework, together with other structural factors, presents challenges for the effective and timely roll out of Better Regulation at the local level. There is also a complex subnational geography, highlighted by the 2007 Parliamentary Committee report. The structure of government and agency offices in the regions is a complicating factor (each government agency, for example, is organised to fit the needs of its own functionality). The inefficiency of the current geography is recognised by the government. Another deep seated structural factor is the traditionally significant role of the state in the economy and society, which is also reflected at the local level. Municipalities are major providers of public services, and may compete with private entrepreneurs, undermining efforts to promote SMEs.

Yet municipalities play a critical role in the interface with citizens as well as businesses, which necessitates the application of Better Regulation principles. Municipalities have a broad range of tasks, mostly concerned with the execution and enforcement of national regulations, which includes the delivery of public services, the management of planning, and the allocation of a range of permits and licences. Fundamental decisions about how to use “soil and water” are made by the municipalities. A number of stakeholders, including the business community and *Tillväxtverket*, underlined the growing need for this level of government to engage in the Better Regulation agenda, despite the difficulties. Municipalities are not yet firmly linked up with Better Regulation, compared with the situation in a number of other European countries.

The central level of government needs to consider how to develop a stronger integrated framework and vision for the management of policies and regulations affecting municipalities. The conclusions of the Parliamentary Committee in this regard are highly relevant, and were already picked up in the 2007 OECD report. The Ministry of Finance, as overall co-ordinator for local government issues, has a potentially important role to play in this regard.

Box 8.1. Findings from the 2007 OECD report

The 2007 OECD report noted an apparent contradiction – local governments are both over and under regulated at the same time. Overregulation and inflexible regulation appears to sit alongside a failure to provide stronger and sharper strategic guidance with local levels and to agree shared objectives so that important public policy goals are not compromised by action at the lower level.

- Local government appears to be exploiting a grey zone where supervision of its activities is weak, and national rules are unclear or sometimes disregarded (such as public procurement). The implementation and enforcement by local governments of national policies can be ambiguous and differ from area to area.
- At the same time, local government appears to be at the receiving end of a heavy flow of low level regulations coming from central government, facing a cascade of rules from ministries and agencies.

The autonomy of municipalities means that central Better Regulation policies do not automatically apply directly at this level, yet some are highly relevant. For example, municipalities are not directly involved in the central government’s Action Plan for regulatory simplification, despite being a major source of burdens on business through their application of higher level rules, according to the measurements carried out by Tillväxtverket.

Recommendation 8.1. Consider, in discussion with the Swedish Association of Local Authorities and Regions (SALAR) and interested individual municipalities, how to bring the local level into the Action Plan for Better Regulation, and other relevant initiatives by central government (such as impact assessment of draft regulations that will have significant consequences for municipalities in terms of enforcement). Consider how issues of capacity and resources can be addressed.

Locally generated Better Regulation is also important, and efforts are being made, but there is some way to go. Efforts, mainly orchestrated by SALAR, are being made by the local level itself to adopt Better Regulation best practices. SALAR is increasingly active, for example seeking to encourage its members to standardise on approaches to the interpretation and enforcement of regulations. This review was not able to go into detail about the actions of specific municipalities but the overall sense is of very uneven progress, and some reluctance to adopt best practices. Yet sharing best practice is proving a powerful lever in some other European countries such as the Netherlands, the United Kingdom and Denmark. Benchmarking is used in some countries to encourage change, such as in Germany.

Recommendation 8.2. Encourage SALAR and interested municipalities to pursue their own efforts at developing and sharing best practice, drawing on the experience of other European countries.

There is no specific framework or forum that would provide a mechanism for discussion between the national and local levels on Better Regulation. There does not appear to be any change since the 2007 OECD report, which recorded the unusual absence of such a mechanism “to manage issues and build a common purpose”. There is no forum, as exists in many other European countries, to bring together the national and local levels of government for regular debate on issues of shared interest. This might aid progress in a number of directions such as the integration of the local level into the Action Plan for business burdens, and the best way to ensure that the local level is effectively consulted on draft regulations of special importance to that level, given capacity constraints.

Recommendation 8.3. Establish a forum for the regular exchange of views between central government (including key government agencies) and the municipalities on Better Regulation.

Background

Structure, responsibilities and funding of local governments

Structure

There are currently 20 elected County Councils (the *Landsting*) and 290 elected municipalities. The central government is also represented at regional level, via 21 County Administrative Boards. These Boards ensure that “national decisions have the best possible effects in each county”. They have certain supervision powers in relation to local government, some environmental responsibilities (issuing permits for some environmentally harmful activities), and they are a forum for appeal against certain municipal decisions. Regional government is also represented by the *Landsting*, which are directly elected at the county level. The *Landsting* is responsible for the health care.

Changes under discussion

A considerable degree of decentralisation is the tradition, and reforms in the 1990s encouraged this trend, for example as regards education. But the idea is growing that there should be critical mass in some areas such as e-Government and enforcement, and need for co-ordinated steering on important issues. Structures and responsibilities of the different levels of government were the subject of a wide ranging report by a Parliamentary Committee (the Committee on Public Sector Responsibilities), which deliberated for 4 years and consulted widely before releasing its report in February 2007 (Box 8.2). The Committee was asked to look at the current structures of public administration (including government agencies and local governments), against the background of future challenges for the delivery of public services.

No decision on the recommendations has yet been taken. Municipalities’ autonomy as well the wider political implications of a reconfiguration makes change a slow process. The constitution protects the autonomy of local governments, and their responsibilities and powers are defined by law. Aspects of the Committee’s recommendations are being developed, but piecemeal. For example the co-ordination of enforcement activities is being promoted, and some activities have been removed from municipalities.

Box 8.2. Committee on Public Sector Responsibilities: 2007 report

Background

The Committee on Public Sector Responsibilities was set up by the last government after the mid 1990 crisis. It also followed a decades long debate about the need for structural change. The last reform of this type was in 1841, and there has been virtually no change since then. The Committee was commissioned to analyse the current system of public administration and advise on whether any changes are needed in structures and responsibilities of the different levels of government to meet future public service challenges and secure an efficient public administration. The core assumption is that taxes cannot increase, but welfare state demands will rise, with the consequent need to increase productivity. How then to reorganise the public sector to sustain the welfare state?

In 2003, the Committee presented a first analysis of these challenges “Innovation Capacity for Sustainable Welfare” (SOU 2003:123). This report identified four pre-requisites for meeting the challenges: innovation capacity; greater creative participation; a comprehensive approach and reduced sectorisation; and a clearer division of responsibilities. It also identified six principles for the division of responsibilities among different levels of the administrative system: democracy and legitimacy; financing; legal security; equivalence; economic use of resources and efficiency; and the lowest effective level.

The 2007 report: main diagnosis and conclusions

The Committee identified “sectorisation” (fragmentation) as the main issue. Sectorisation is the result of a necessary and ongoing specialisation of public sector services, but raises problems for the citizen interface, local governance, and development policy. The government is too fragmented, and not rationally organised (*e.g.* the regional geography of agencies varies). Central government has little capacity to co-ordinate. Central government co-ordination is complex because there are board, elected regional body and territorial board co-ordinators *i.e.* lots of regional co-ordinators. Healthcare is a major issue, with increasing demand from central government on the regions. There is no vision on future healthcare organisation.

The regional level was pinpointed as the focal point to improve matters. The Committee proposes a new regional system of public administration with a clearer division of responsibilities, and a new regional geography that is the same for the state as for the local government sector. This would be based around a rationalised set of new style regional authorities (6-9), on to which agency and hospital/research institute boundaries should be mapped, and based on a standard population size and the expected shape of the labour market. The new county administrative boards would be given the task of co-ordinating central government activities, supervising these, and spreading knowledge. This could be implemented gradually.

Specific Committee findings

The state and local government

The Committee notes that a large degree of local self government is important for securing public welfare long term, so that local priorities and considerations can be taken into account. At the same time the “equivalence” of service provision is important, which implies a role for the centre. But the centre is currently weak in its approach- fragmented (sectoralised), and poorly co-ordinated – and the issue is given a low priority. Little consideration is given to the aggregate effect of individual measures on each other, and approaches can be contradictory. It is proposed that central government focus on setting standards, limiting the use of other instruments. Central government should also enhance its “knowledge management” role. It should develop a complete and coherent strategy for governance of the local government sector. This should include new set procedures for consultation between central

and local government, based on examples in Denmark and Norway (a move away from the current informal procedures), and covering key issues such as the relationship between the levels, local government funding and legislation.

The Committee also made a number of recommendations on the rationalisation of enforcement (supervision) activities (see Chapter 6).

Health and medical care

The Committee notes that a balance needs to be struck between decentralisation (which fosters innovation) and the need for economies of scale to meet the challenges of development. It proposes that the new regional authorities should take over county councils' responsibilities for health and medical care. Again, standard setting should be central government's main task, as well as knowledge management.

Regional development

The Committee notes that tasks are currently highly fragmented among players, the division of responsibilities varies between counties, and that the county division is not best suited for regional development. The regional public administration is both weak and complex. It proposes the establishment of an overarching regional development mandate for the new regional authorities. Among other responsibilities they would draw up a regional development programme for each county, proposals for regional programmes under the EU's cohesion policy and in due course take over the management of EU structural fund grant applications. The county administrative boards would for their part take on a more targeted government agency style mandate covering the interface with local government including co-ordination, supervision, permits etc.

The state

The Committee considers that there is a great need to "reunite the state", given that specialisation is the current organising principle. The citizen's perspective and "equivalence" need to be taken into account. A balance needs to be struck between the whole picture and intersectoral decision-making, and the territorial perspective. A new model for central government co-ordination is needed, based on the regional level and on better developed interaction between ministries, the county administrative boards and sectoral agencies. Public sector supervision (control of legally binding regulations) must be the responsibility of central government, in order to reduce variations between different parts of Sweden.

The local government sector

The Committee recommends that in the long term, municipalities' mandate focuses on the heavyweight welfare services and core planning functions. Over time, complicated welfare services may prove hard for the smaller municipalities to deliver effectively. This should be monitored, mergers should be facilitated, and inter municipal co-operation encouraged, as a necessity.

For the county councils, far reaching changes are proposed. The Committee recommends that they be replaced by the new regional authorities, which would take over their tasks.

Source: Interview and SOU 2007:10.

Powers and responsibilities

The constitution does not specify the division of responsibilities between national and local government. The system works as follows:

- The parliament determines the allocation of responsibilities between levels of government.

- A framework statute, the Swedish Local Government Act, sets out the legal basis for the organisation and functioning of the municipalities and county councils, including their assembly and committees.
- Most of the specific tasks of local governments are regulated in special legislation adopted by central government. The government or government agencies may supplement framework laws through ordinances or regulations. For instance, the National Board of Health and Welfare issues regulations for health and medical services that contain more detailed provisions than the Health and Medical Services Act.
- The powers of local governments are generally associated with a defined territory. For example municipal business operations are limited in principle to the provision of public services to their own members.
- Central government control over local government is based on the principle that citizens throughout the country must be provided with equally effective social services. The principle is enshrined in the Instrument of Government and its application is regulated by special legislation.
- The tasks of municipalities and county councils are either mandatory or voluntary. They have gradually been given greater freedom to carry out their tasks so that these can be adapted to local conditions.
- Municipalities have a broad range of tasks, which are mostly concerned with the execution and enforcement of national regulations.
- As in most other European countries based on the unitary principle, municipalities have some limited delegated regulatory powers to issue their own regulations (for example to promote public order, for public cleaning and refuse collection, for health protection and local traffic regulations).

Municipalities and county councils between them are responsible for a significant part of the management and delivery of public services, and they are therefore crucial to the interface with citizens. The tasks include health and medical services, social services and education. County councils carry out mandatory tasks in relation to healthcare and (shared with the municipalities) public transport. Municipalities may also decide to carry out voluntary tasks such as leisure, culture or tourism.

Municipalities also have an important role as regards planning which is a key interface with business.

The fundamental decisions about how to “use land and water” are made by the municipalities. The main legislation governing planning and building processes consist of the Planning and Building Act (SFS 1987:10), the Act on Technical Requirements for Construction Works (SFS 1994:847) and the Environmental Code (SFS 1998:808), and other related regulations. The Planning and Building Act provides a regulatory framework for the planning of land and water areas as well as construction and building. The law also sets out certain requirements for the siting of buildings and appropriate design with regard to urban areas or landscape and natural and cultural values. It also sets out technical requirements for construction, facilities and construction products. The Environmental Code applies to land, water and the natural

environment in general so that the ecological, social, cultural and socio-economic point of view of long-term good housekeeping is secured. Planning and building legislation is currently under review, and a bill is scheduled for 2010.

A number of permits and licences are required from the municipalities, another key interface with business. The most important examples are: building permits; permits for outdoor signage; excavation permits; licences for some environmentally harmful activities; licenses for restaurants to sell spirits, wine and beer; permits to use some inflammable goods; permits to have an own sewage system; permits to arrange a local lottery; and permits for companies that run a pre-school.

As a rule, the central government supervises the work of local governments in the mandatory sphere, through national authorities such as the National Board of Health and Welfare, the County Administrative Boards and the Parliamentary Ombudsmen. National authorities cannot invalidate local government decisions. However, they may be able to require amendments to these decisions.

Funding

Swedish local government is funded relatively autonomously through independent powers of taxation, compared with many other European countries. The right to levy taxes for the management of local government tasks is stipulated in the Instrument of Government. Approximately 70% of local government funding is via local taxes. Central government, however, exerts a significant financial influence over local government through the design and size of central government grants; through provisions whereby central and local governments share a common budget; through national action plans which specify centrally determined projects and timelines; through rules requiring local governments to balance their budgets; and through rules determining the operation of taxes and fees.

Better Regulation at the local level

Application of the central Better Regulation agenda

The constitutionally protected autonomy of local levels of government means that they have traditionally been out of reach of the central Better Regulation agenda. But this is beginning to change. The most recent Government Communication to the parliament on the Action Plan for Better regulation refers to a change management project involving initiatives that will stimulate Better regulation at the regional and local levels. Although the subnational levels of government are not yet directly involved in the Action Plan to reduce administrative burdens on business, some measures have an effect on them. Central government reforms for regulatory simplification may be included in broader programmes aimed at improving regional and local economic growth. *Tillväxtverket* has undertaken to map the problems experienced by enterprises in their contacts with regional authorities and municipalities and possible solutions, in close co-operation with *SALAR*.¹ *Tillväxtverket* notes that there is no systematic effort, as yet, to include local government in Better Regulation policy and to promote Better Regulation at this level. It is increasingly urgent for local government to be “put in the frame”. The *Tillväxtverket* burden measurements suggest that some key issues are at this level. The parliament said that closer co-operation with local government was now needed, on a more formal basis than hitherto. The business community is also anxious that Better Regulation principles should start to be promoted in the regulatory work of local governments.

Local government own initiatives

The Swedish Association of Local Government (*SALAR* – see below) is increasingly active in the promotion of Better Regulation by local governments themselves. A key task for municipalities is the execution of national regulations and linked enforcement (supervisory) responsibilities. Work is underway within *SALAR* to identify dysfunctional or unnecessary regulations created at the national level which impact on the local level. *SALAR* recognises that the implementation of laws should ideally be tackled in tandem with the national authorities when a regulation is under development. It notes, however, that the capacities and expertise to be fully engaged in consultation exercises on central regulatory developments are limited. Municipalities are likely to be involved in the development of the individual regulations that affect them most directly (such as building permits), but broader involvement in Committees of Inquiry that shape whole policy or regulatory areas tends to be beyond their reach.

SALAR has also tried to encourage the standardisation of often diverging municipal approaches to the interpretation and enforcement of regulations. The OECD peer review team were told that considerable regulatory burdens are generated at municipal level through their application of higher level rules. Municipalities interpret regulations differently, which is hard on companies.² But this is proving a challenge. *SALAR* cannot tell its members what to do, and such a policy runs up against the deeply ingrained principle of self government and the adaptation of rules to fit local conditions. *SALAR* defends the principle of self government, though it is aware that the implications for rule making and implementation are important. Other perceived issues at the local level relate to inadequate service and communication, long handling times, and difficulties in obtaining information about what regulations apply and what compliance requires.³

This review also heard, however, that the issue raised in the 2007 OECD report about regulation from above remains, with municipalities feeling that they are as much the “regulated” as the “regulators”. The need to execute detailed and sometimes ill adapted EU regulations is also an issue in this context (see Chapter 8).

Box 8.3. Findings from the 2007 OECD report

Local governments feel under pressure from a cascade of regulations, often of a “command and control” nature, which prevents the development of performance based regulation and managerial autonomy. They consider that this reflects inadequate co-ordination between ministries and government agencies over the development of regulations that will affect municipalities. Difficulties of effective co-ordination between ministries and agencies, and especially between agencies – the stovepipe syndrome under which each entity follows its own regulatory track without looking around at what others are doing – plays an important role. Less command and control regulation and more of set goals and steer regulation needed.

Overall performance

Overall, the performance of municipalities as regards better regulation is variable, especially as regards the business interface and support for SMEs. Some deep seated structural and cultural issues appear to stand in the way of change:

- The preservation of local autonomy to reflect local conditions must also reconcile the principle of homogeneity in living conditions across the Swedish territory (see Box 8.4). The complex sub national geography highlighted by the

- Parliamentary Committee on Public Sector Responsibilities is an impediment to efficiency.⁴
- Unfair private/public sector competition, picked up in the 2007 OECD report,⁵ where municipalities compete with private entrepreneurs for the provision of goods and services. The issues also arise because of the way that central regulation is applied at the local level. There has been some recent progress, and more is in the pipeline. The Ministry of Finance is preparing legislation in order to implement the EU procurement directives on remedies. The current proposal entails empowering the Swedish Competition Authority to sanction procuring entities if they award contracts without using a public procurement procedure. A new law has recently been decided by the *Riksdag*. This has enabled the Competition Authority to challenge municipalities and to a lesser extent state authorities in cases where their sales activities are conducted without a legal mandate in a manner which distorts competition.

Box 8.4. Regional development and policies for equalisation

The impact of equalisation policy on regional development is twofold. On the one hand, equalisation contributes to equity, through more balanced territorial distribution of public services, in particular health and education, which are crucial components of regional growth. On the other hand, they may create disincentives to economic development (OECD, 2008; Wurzel, 2003). Because municipalities are fiscally compensated for slow growth or for a decline in their fiscal capacity, poorer localities may have less incentive to increase the tax base through economic development initiatives. The same may happen in rich localities: as subnational governments are fiscally “punished” for having a high tax base, they may be disinclined to engage in activities that lead to an increase in the tax base. The new view on regional development in Sweden, like in all OECD countries which have adopted the same ‘paradigm shift’, requires equalisation policy be complemented by active regional policies aimed at productivity increases in sectors such as research and education, as equalisation policy will always remain a passive fiscal policy, with no explicit growth strategy behind it (OECD, 2008).

Stockholm’s region (Sweden’s most dynamic economic area) is the main contributor to equalisation. Due to the potential disincentive effect of equalisation, there is a risk that it will affect the agglomeration’s competitiveness in the longer term (OECD, 2006a). So far, the equalisation system does not seem to have had a demonstrably negative aggregate effect on the competitiveness of Stockholm region, which has remained a magnet for youth migration and the fastest growing region in Sweden, and among the fastest in the OECD. Additionally, the introduction in 2008 of wage levels as a cost factor of the equalisation system has mitigated the extent of interregional transfers from Stockholm to the rest of the country (Chernick, 2009). Overall, fiscal disincentives seem to have been overcome in the 2000s by the general advantages of economic growth and agglomeration economies. Although the disincentive effect seems to have been limited so far in the Stockholm region, the inherent disincentives relating to economic growth will be more strongly felt in an economic slowdown and as the cost of public services rises.

In the longer term, the continuing commitment to a high degree of equalisation combined with a trend towards centralised financing of equalisation implies a strong claim on national fiscal resources, which may become more difficult to sustain when facing challenges with a strong territorial dimension, such as ageing and integration of immigrants.

The national government has set up a Committee to review the equalisation system to find out if there are any growth deterring factors in the system. The Committee is to make concrete proposals to deal with these challenges by the end of 2011.

Source: Swedish Government.

However, attitudes toward business are improving, as municipalities need companies in their community, and an emerging priority for many of them is to increase their population via jobs. A recent review by the Confederation of Swedish Enterprise of the business climate in municipalities (which gave them a ranking) has helped to trigger change.

Co-ordination

National-local

According to the Swedish Constitution the government shall, in preparing its proposals, consult the public authorities concerned. Normally a proposal for a new regulation is formed by a Commission of Inquiry, in which *SALAR* can take part (if the issue at stake concerns the local level). The Government refers the report of the Commission of Inquiry to various government agencies, organisations, municipalities and county councils, etc in order to obtain their opinion. The standpoints of the referral bodies are taken into consideration by the government when formulating the proposal for the new law. Reference groups between different ministries and *SALAR* on special subjects can sometimes be established. The OECD peer review team were told that there are also significant informal contacts between the ministries and *SALAR*. It is important to note that there are considerable informal political contacts between the central government level and the municipalities.

There is, however, no specific formal co-ordination mechanism between the national and sub national levels of government on Better Regulation. However, the conclusions of the 2007 OECD review would appear still to be valid. There is no framework or forum that systematically brings together the central and local levels of government to manage issues and build a common purpose.

The Swedish government does however draw attention to the existence of a specific forum between the national and regional level on regional competitiveness, entrepreneurship and employment, originally created as a formal setting for the discussions that took place in the preparation of the National Strategic Reference Framework (NSRF) for the use of EU funds for 2007-13. The forum now serves as a platform for ongoing political dialogue among national and regional representatives, for which the NSRF and the Regional Development Programmes were the starting points. This form of co-operation is also expected to facilitate Swedish discussions with the European Commission. The forum has met nine times since 2007 and the debates have focused on themes related to the priorities of the NSRF, such as regional enlargement, regional innovation systems, cross-border integration as well as the future cohesion policy, local and regional ownership of the Lisbon strategy, and rural development issues. So far, the forum seems well appreciated by the national and regional representatives.

In the absence of a formal mechanism embedded within the government structures on Better Regulation, *SALAR* takes on a particularly prominent role in the interface between national and local levels. This is formally reflected in certain provisions for regulatory management. For example, Committees of inquiry usually include *SALAR* to represent the views of the municipalities and county councils.

Same level

The Swedish Association of Local Authorities and Regions (*SALAR*) represents both the county councils and the municipalities.⁶ It comprises 7 departments and 450 employees. *SALAR* also serves as an employers organisation (one third of employees are with local government). Its work is based on the annual development of a list of priority issues. As explained above, *SALAR* makes efforts to rally local governments around common approaches to regulatory management.

**Box 8.5. The Swedish Association of Local Authorities and Regions (*SALAR*):
Priorities for 2008**

- Form powerful regions.
- Invest in infrastructure.
- Increased safety and security.
- Increased efficiency in the sector.
- More E-services.
- Attractive jobs.
- Responsible collective agreements with the trade unions.
- Better results in the schools.
- Better care of old people that are ill.
- Better support for vulnerable children.
- Equitable health care.
- Limiting climate impact. Regional and local levels will need to make big efforts, with preventive measures, more environment friendly energy supply and more investment in public transport. Change.
- Academic performance in schools. Too many students continue to fail.
- Better business.

Notes

1. It underlines that this was its own initiative, and not part of its letter of instruction from the Ministry of Enterprise.
2. The 2007 OECD report had already recorded this issue, with reference to ‘stovepipe’ approaches to regulation at the local as well as higher levels.
3. A 2009 review by SALAR shows progress, with over 80% of municipalities working to improve their communication with businesses and three out of four municipalities working to improve their case handling related to business. Two SALAR priorities are directly connected to these issues: “More e-services” and “Better business climate”. SALAR cooperates in this work with *Tillväxtverket* to spread best practices from municipalities in the management of regulations, services and communication.
4. SALAR supports the recommendations of the Committee for significant changes to the structure and geography of the sub national network.
5. OECD report said: rationalising public sector activities in competitive markets needs attention. Public sector entities show a growing tendency to operate in areas where private companies already exist either at the national or the local level. This distorts the competitive playing field and impedes the creation of new small firms. Part of the explanation lies in state ownership of companies that were previously monopolies and now operate in liberalised markets. However policies to even out regional differences appear to be encouraging government agencies and municipalities into new ventures. A number of reports have challenged this practice, but firm action, such as addressing gaps in the Competition Act to tackle anti competitive behaviour by state entities, has not yet been taken.
6. It is over 100 years old although its current form reflects a merger between two previous separate organisations for municipalities and counties.

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Annex A: The e-Government Delegation

The government has appointed an e-Government delegation with an operational role that will press the government's reform programme forward until December 2014. (see <http://en.edelegationen.se>) with an operational role that will press the government's reform programme forward until December 2014. The e-Government Delegation includes representatives of the government agencies and of SALAR. The Terms of Reference (Dir. 2009:19) are available at http://en.edelegationen.se/sites/default/files/tor_2009_19_0.pdf. The e-Government Delegation consists of the Directors-General of the most IT-intensive government agencies as well as the Director of SALAR and it will co-ordinate the development of e-Government at inter-agency level. This will involve both co-ordination of e-Government projects of a strategic nature, *i.e.* individual projects that affect the overall direction of the development of central government administration, and co-ordination of the government agencies that have their own responsibility for developing work or a sector so that each sector takes account of the interest for the whole of central government in its development work.

The main remit of the e-Government Delegation is to:

- Shape a strategy for agency work on e-Government that includes:
 1. providing the public sector with e- Identification;
 2. technical interoperability at both government-wide and sectoral level;
 3. the development of e-services supporting the transition to new technologies, such as IPv6;
 4. the concentration of administrative support services;
 5. the development of integrated e-services; and
 6. better services for citizens and businesses in rural areas.
- co-ordinate IT-based development projects in central government agencies;
- monitor and follow up the effects for citizens, business operators and staff;
- co-ordinate certain IT standardisation matters; and
- assist the government in international co-operation in the area.

The e-Government Delegation submitted proposals for a strategy for the government agencies work on e-Government (SOU 2009:86) in October 2009. The needs of citizens and businesses will manage the development of e-services. Better technical and legal conditions will facilitate the agencies to develop common e-services. A new regulated regime will increase the use of e-identification and e-services. A summary of this report

from the e-Government Delegation is available at: http://en.edelegationen.se/sites/default/files/SOU2009_86_Summary_0.pdf.

The strategy proposed by the e-Government Delegation sets out specific recommendations on how agencies can enhance their productivity and efficiency and boost the development capacity and innovative potential of society through e-Government applications. The e-Government Delegation suggests that these objectives can be achieved by means of the measures detailed in the strategy. The strategy can to a great extent be implemented with immediate effect, as the e-Government Delegation will be expected under its terms of reference to play a key role in the development of e-Government until the end of 2014. Accordingly, the strategy also contains the e-Government Delegation's stated intentions regarding the execution of its assignment as a whole, as well as proposals requiring Government decisions.

In the e-Government Delegation's view, the Action Plan's stated aim – as simple as possible for as many as possible – should be broadened to include an objective which refers to society's overall development capacity and innovative potential. By focusing on the needs of society, objectives such as reducing the administrative burden on enterprises and simplifying the everyday lives of ordinary people can be achieved. In other words, e-Government should no longer be regarded as an internal agency concern but as a tool capable of having a major potential impact on society as a whole. Moreover, the creation of a clearly defined, standardised environment for eservices will allow actors in society to take an active part in a collaborative effort with government agencies to develop e-services that generate further benefits for society at large. The strategy lays the groundwork for phased, demand-driven development of Swedish e-Government. A more broadly defined objective and a higher level of ambition will, in the Delegation's view, help the strategy progress to the third generation of e-Government.

To ensure the provision of demand-driven e-Government services, the e-Government Delegation proposes that the government assign special responsibility for e-Government development to the following government agencies: the Swedish Companies Registration Office (*Bolagsverket*), the Swedish Tax Agency (*Skatteverket*), the National Land Survey of Sweden (*Lantmäteriet*) and the Swedish Transport Agency (*Transportstyrelsen*). The government agencies would take a leading role in initiating collaboration and development in the following stakeholder and target group areas: business and enterprise, private individuals, geographic information and property information, and vehicles and drivers. The above agencies would also be required to provide basic services for information maintenance. The e-Government Delegation will regularly identify and submit proposals to the government regarding further stakeholder and target group areas, prioritise among them and assess appropriate government agencies to determine whether they should be assigned related development responsibilities. The e-Government Delegation will co-ordinate this process in accordance with the terms of its assignment. In addition, the e-Government Delegation will establish and run electronic forums as a means of capturing needs and promoting exchanges of experience between e-service developers in the public sector, the business world and citizens. The e-Government Delegation will also initiate a process involving collaboration and agreements with relevant actors, including representatives of the business community and the Swedish Association of Local Authorities and Regions, with a view to ensuring demand-driven, flexible e-Government services.

Agencies require a basic infrastructure specifically designed to allow collaboration between independent entities. If the e-Government Delegation's proposals are adopted, government agencies will largely be able to determine their own processes and architecture. At the same time, the proposed standardised, message-based solution would clearly delimit

responsibility for information exchange. Thus, the proposals would also serve to enhance information security. The e-Government Delegation proposes that a board at the Swedish Tax Agency be empowered to issue regulations in a number of areas, including common standards for electronic information exchange between government agencies, and that the Legal, Financial and Administrative Services Agency be tasked with ensuring that framework agreements on standardised message processing are in place. The e-Government Delegation is to draw up a guidance on automated collaboration and proposes that it serve as the basis for a statutory regulation. The guidance will stipulate that disparities in respect of data, concepts and semantics be dealt with as they arise. It will also provide for the re-use of existing solutions and recommend that open standards be the preferred option, and that open applications should always be considered when choosing technological solutions.

The government further intends to establish a clear and simple legal framework for the growing market for services based on public information, based on the PSI-Directive. A draft proposal for new PSI-legislation was presented on 30 June 2009. The law comprises rules *e.g.* on non-discrimination, charges for information and redress. The law is planned to enter into force on 1 July 2010. The proposed PSI-Law will establish a level playing field for commercial as well as non-commercial re-users. However, this will not be the end of the work: ministries, government agencies and municipalities will then have to work jointly and intensively to ensure that the legislation is fully implemented and has an impact on actual activities.

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Better Regulation in Europe

SWEDEN

The importance of effective regulation has never been so clear as it is today, in the wake of the worst economic downturn since the Great Depression. But how exactly can Better Regulation policy improve countries' economic and social welfare prospects, underpin sustained growth and strengthen their resilience? What, in fact, is effective regulation? What should be the shape and direction of Better Regulation policy over the next decade? To respond to these questions, the OECD has launched, in partnership with the European Commission, a major project examining Better Regulation developments in 15 OECD countries in the EU, including Sweden. Each report maps and analyses the core issues which together make up effective regulatory management, laying down a framework of what should be driving regulatory policy and reform in the future.

Issues examined include:

- Strategy and policies for improving regulatory management.
- Institutional capacities for effective regulation and the broader policy making context.
- Transparency and processes for effective public consultation and communication.
- Processes for the development of new regulations, including impact assessment, and for the management of the regulatory stock, including administrative burdens.
- Compliance rates, enforcement policy and appeal processes.
- The multilevel dimension: interface between different levels of government and interface between national processes and those of the EU.

The participating countries are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

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