

## *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 website<sup>1</sup> 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 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.*

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**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.**

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*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.*

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**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.**

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*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.*

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**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.**

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*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.*

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**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.**

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*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.*

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**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.**

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*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.*

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**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.**

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*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).

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

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*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.

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**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.**

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*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. The strengthened reporting cycle proposed in Chapter 6 on progress with the Action Plan could enhance support and understanding.

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**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).

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### 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.

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**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.

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## 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).<sup>2</sup> 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.<sup>3</sup> 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.

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.<sup>4</sup> 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 law<sup>5</sup>) 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 law<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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"> <li>• Deregulation Delegation (<i>Avregleringsdelegationen</i>) appointed with the task, among other issues, to develop impact assessments.</li> <li>• 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.</li> </ul>
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"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>
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.
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### *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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

### 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.<sup>15</sup>

### ***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).<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup>

- *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.<sup>20</sup> 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).<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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).<sup>24</sup>

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*)<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> 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*)<sup>28</sup>

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.<sup>29</sup>

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).<sup>30</sup> 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](http://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](http://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](http://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](http://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](http://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).