



Annual Report

2023

Regel|rådet



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Annual Report **2023**

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Foreword

The time has come to sum up operating year 2023. The Swedish Better Regulation Council (SBRC) can look back on an eventful year in which the Council dealt with a large number of cases. The issues were frequently complex and the work often had to be carried out within tight time frames. The Council held a number of extraordinary meetings. It has become clear during the year that well-executed impact assessments can help to combat an unnecessarily increasing regulatory burden and impaired competitiveness.

The SBRC has observed that the quality of the impact assessments reviewed throughout the year has deteriorated. This shows that the Council's work remains vital. That said, the SBRC can also see that there are bright spots. For example, regulators are voluntarily referring matters to the council at an early stage of the legislative process more often than before, furthermore regulators are also choosing to rework the impact assessment and resubmit it after addressing deficiencies pointed out by the SBRC. The SBRC views this as very positive and would like to see more regulators adopt this approach.

The SBRC aims to be a source of constructive and clear support by indicating what would improve the quality of the impact assessment. As part of this, the SBRC has continued to work on the design of the overall assessment in the opinions. This year, the Council has also been clear that all parts of an impact assessment must be reported, even if the impact in the individual case is deemed to be small. It must be clear for the recipient to understand the SBRC's assessments – which parts are described sufficiently well and which parts have potential for improvement. The SBRC can also note that the increased funding for the SBRC, and thus the opportunity to recruit more personnel, has had a good effect. For example, this year there are no secretariat responses due to resource constraints, which was one of the Council's goals for the year. The SBRC has responded to all submissions that have effects of significance for businesses with an opinion, which feels important and very positive.

Due to the large number of cases that have been handled over many years, the SBRC can see in which respects impact assessments are often deficient. This is recurrent in the company-specific parts, such as the impact on costs, business activities, competitive conditions and whether special attention can be given to small businesses in regulatory design work. Similarly, there are a striking number of proposers who are unable to describe the affected business population – and particularly often the size of the businesses.

The SBRC finds it to be a worrying development when proposers do not analyse in advance why they consider that rulemaking needs to be carried out. The result of such an approach is an increasingly heavy overall regulatory burden for Swedish businesses, often with consequences that have not been sufficiently analysed and described.

During the year, the SBRC held the role of chair of RegWatchEurope (RWE). This entailed considerably more work than usual, both for me as chair representing RWE in various contexts and for the Secretariat, which contributed four people to the international work instead of two.

The SBRC can also note that it has been announced that a Simplification Council and an Implementation Council will be established. Clear assignments and division of responsibilities are required when more councils are working in the same arena. It will also be important to have collaboration – that we are all working towards the same goal – as well as coordination – how do we ensure that the councils do not contradict each other. There is important work to be done here, both within and between the councils and not least at the overarching level of responsibility. The Swedish Better Regulation Council therefore looks forward to establishing close cooperation with the other councils as soon as they are in place.

In conclusion, I would like to thank Hanna Björknäs, Hans Lindblad and Marie-Louise Strömgren, who have resigned as alternate members on the Council. I would also like to extend a warm welcome to Peter Nilsson, Hanifeh Khayyeri and Roland Sigbladh as alternate members on the Council.



Anna-Lena Bohm
Chair

Results for the year

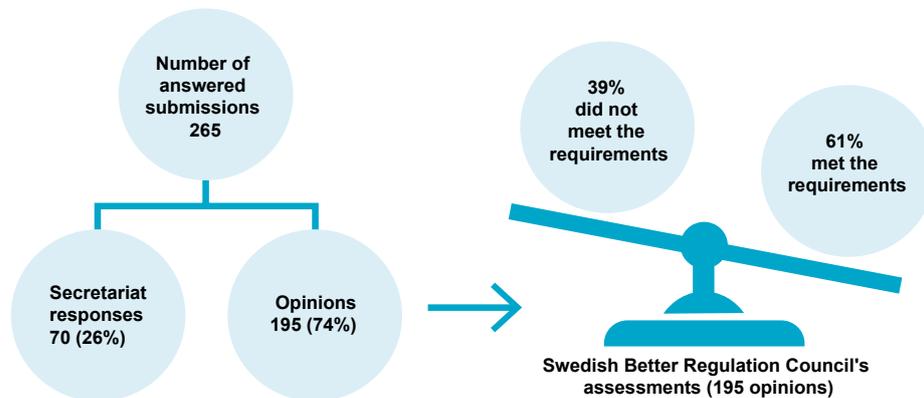
Swedish Better Regulation Council

Who? The Swedish Better Regulation Council is a designated decision-making body. The Council consists of five members appointed by the Government.

What? The role of the Swedish Better Regulation Council is to review the quality of impact assessments for proposed statutes that may have effects of significance for businesses. The assessment is based on the requirements set out in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment (2007:1244).

How? When a proposal is deemed to have effects of significance for businesses, the Swedish Better Regulation Council issues an opinion on the quality of the impact assessment. The Council may also refrain from giving its opinion and instead provide a secretariat response, for example if the proposal is not deemed to have effects of significance for businesses.

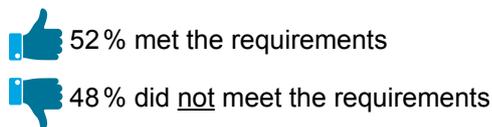
Answered submissions



Distribution of opinions 2023

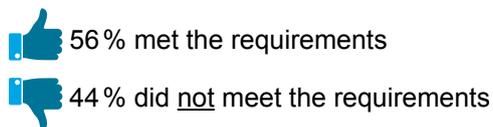
Government Offices of Sweden

61 submissions



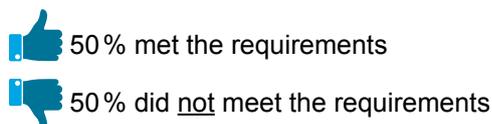
Official government reports (SOU)

25 submissions



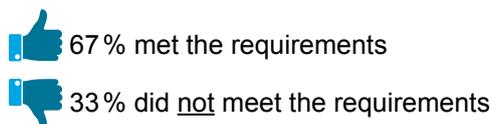
Government agency reports

8 submissions



Government agency regulations

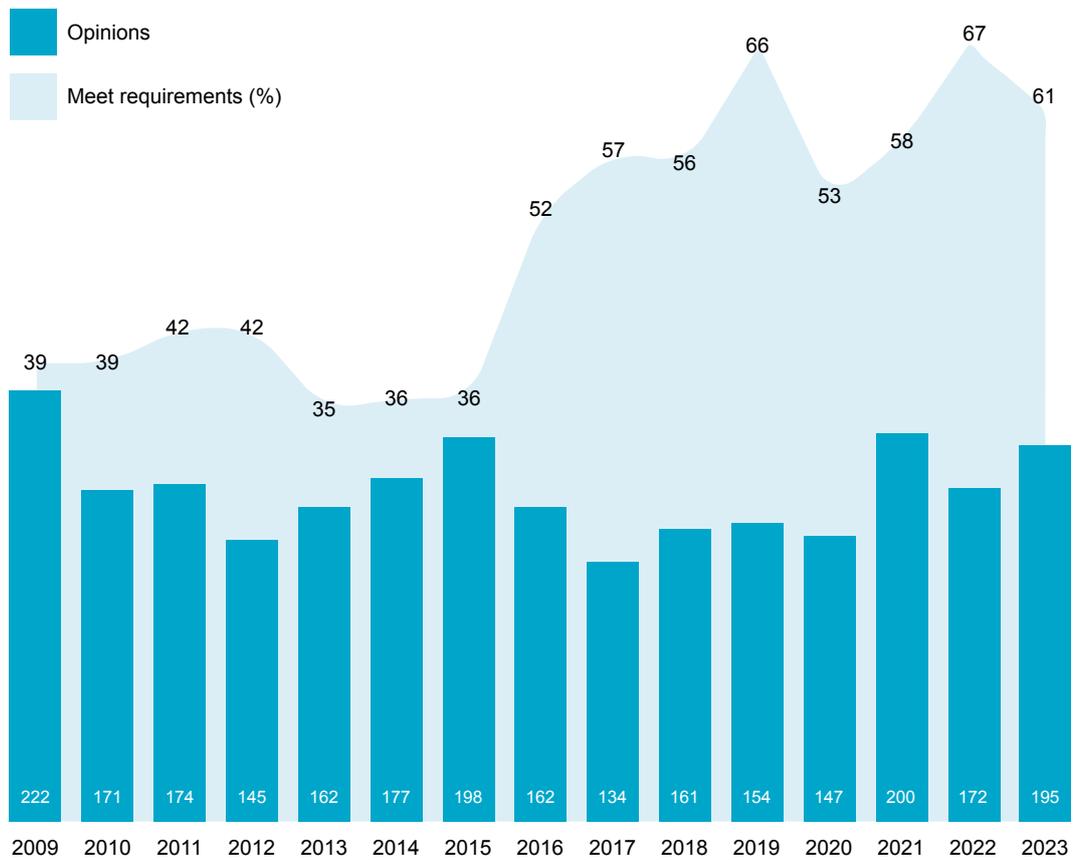
101 submissions



Results over time

The trend over time shows that the proportion of acceptable impact assessments has increased, although no significant progress has been noted in recent years. The proportion of acceptable impact assessments for all groups of regulators has varied in recent years between just over 50 per cent and up to 67 per cent. It can also be noted that the SBRC is issuing opinions in more cases in recent years.

Opinions acceptable 2009–2023



Introduction

The Swedish Better Regulation Council's mandate

The Swedish Better Regulation Council (SBRC) is a designated decision-making body tasked with reviewing impact assessments for new and amended regulations that have effects of significance for businesses. If the regulator determines that a proposed statute may have such effects, the proposal and the associated impact assessment is referred to the SBRC. The Council examines the referred impact assessments and assesses whether they meet the requirements set out in Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment (2007:1244), abbreviated below as KUF. The Council also reviews impact assessments created at the EU level, at the request of the relevant Swedish government ministry or agency. The mandate and composition of the SBRC is set out in Sections 17–19 of the Ordinance (2009:145) with instructions for the Swedish Agency for Economic and Regional Growth.

Composition and organisation of the Swedish Better Regulation Council

The SBRC was established in 2008 as part of the Government's work on regulatory simplification for businesses.

During the period 2009–2014, the Council was organised as a committee. In 2015, the activities of the Council became permanent and it has since been organised as a designated decision-making body within the activities of the Swedish Agency for Economic and Regional Growth.

The SBRC consists of a chair, a deputy chair and three ordinary members. Anna-Lena Bohm serves as chair of the Council. Lennart Renbjör is deputy chair, and Helena Fond, Hans Peter Larsson and Lars Silver are ordinary members. The alternate members are Hanifeh Khayyeri, Peter Nilsson and Roland Sigbladh.

The SBRC is assisted in its tasks, such as preparing matters for Council meetings, by the Swedish Agency for Economic and Regional Growth's staff at the Better Rules unit. The work is coordinated by a director at the Swedish Agency for Economic and Regional Growth with special powers delegated by the SBRC.

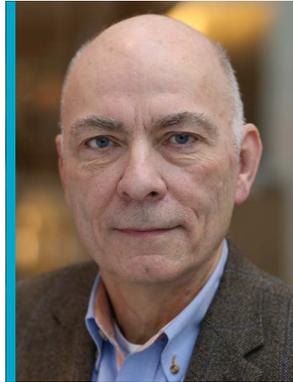
Content of the report

This is the fifteenth annual report of the SBRC that summarises the statistics on matters submitted to the Council and other activities of the Council in 2023.

Swedish Better Regulation Council



Anna-Lena Bohm
chair



Claes Norberg
deputy chair



Helena Fond
member



Hans Peter Larsson
member



Lars Silver
member

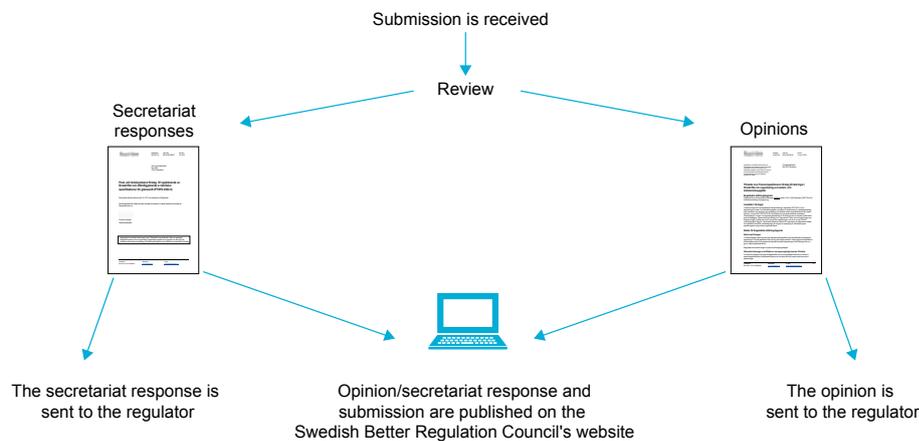


Christian Pousette
director

Reviews in practice

Government ministries and agencies shall refer proposals for new and amended regulations that may have effects of significance for businesses to the Swedish Better Regulation Council. For government agencies, this is governed by Ordinance (2011:118) about collection of statements by government agencies from the Swedish Better Regulation Council, while for government ministries it is governed in the guidelines of the Government Offices of Sweden for the submission of basic data to the Swedish Better Regulation Council.

When the Council receives a submission, the first assessment is whether the submission should be answered with an opinion or a secretariat response. A secretariat response means that the Council does not give an opinion on the submitted proposal. The secretariat response sets out the reason for this. See also the section *Secretariat responses*. The deciding factor for the assessment is whether the proposal could have effects of such significance for businesses that the Council should issue an opinion. Effects of significance for businesses include both economic and other effects. If the proposal is deemed to have effects of significance for businesses, or if the effects cannot be assessed, the Council responds to the submission with an opinion.



Opinions

The Swedish Better Regulation Council has been working for a number of years to draw up opinions with as clear assessments as possible, since the opinions of the Council are the main channel for reaching out to regulators. The elements of the impact assessment that have improvement potential therefore need to be clearly identified. The aim of this is to improve the quality of future impact assessments, which will hopefully result in making the effects of the regulations coming into force better researched and known than they would have been with a poorer quality impact assessment.

The Council's opinion first states its position on the impact assessment as a whole, i.e. whether the Council finds that the impact assessment meets or fails to meet the requirements of Sections 6 and 7 of the KUF. This is done to ensure that the reader can directly see the Council's view of the impact assessment. The contents of the submission are then described, followed by the paragraphs of Sections 6 and 7 divided into the different aspects.

For each such heading, one or more partial assessments are made of a particular section of the impact assessment. The partial assessment indicates whether the point can be considered acceptable or deficient..

After all the headings comes the Council's overall assessment. Under this heading, the outcome of all the points of the proposer's impact assessment is compiled into a final assessment. The final assessment is that the impact assessment meets or fails to meet the requirements laid out in Sections 6 and 7 of the KUF.

The aspects that the Council uses as the basis for its impact assessment reviews are described below.

Aspects of the impact assessment that the Council reviews

The Council assesses an impact assessment based on how well the proposer has presented the following aspects:

1. Purpose of the proposal
2. Alternative solutions
3. Effects if no regulation is issued
4. The proposal's consistency with EU law
5. Particular attention to the date of entry into force
6. Need for provision of special information
- 7–9. Companies affected, by number, size and industry
10. Administrative costs resulting from the proposal
11. Other costs resulting from the proposal
12. Impact on companies' business activities
13. Impact on competitive conditions
14. Effect on businesses in other respects
15. Need for special attention for small businesses

Secretariat responses

There are a number of reasons why a submission is answered with a secretariat response from the SBRC.

Reasons for a secretariat response

Limited effects for companies: The proposal is deemed to not have effects of such significance for businesses that the Council should issue an opinion. This is the most common reason for a secretariat response.

Resource constraints: It may be that the number of cases exceeds the amount that can be handled by available human resources. The Council therefore needs to prioritise commenting on the submissions with the greatest significance for businesses.

Time constraints: According to the Ordinance (2011:118) about collection of statements by government agencies from the Swedish Better Regulation Council and the guidelines of the Government Offices of Sweden for the submission of basic data to the Swedish Better Regulation Council, the Council shall be allowed a response time of at least two weeks to answer a submission. If the proposer gives a shorter time, the Council will request an extended response time. If this is not possible for the proposer, the submission is answered with a secretariat response.¹

Other reasons for a secretariat response: One example is that no statute text was submitted to the Council. This category also includes submissions covered by Section 7 of the Fee Regulation (1992:191), which means that the KUF is not applicable, as well as submissions for which decisions on regulations have been taken before the submission to the Council.

¹ There are certain exceptions to this.

Review of impact assessments drawn up at the EU level

At the request of regulators, the SBRC is also tasked with issuing opinions on impact assessments concerning proposals for regulations drawn up at the EU level that are deemed to have a major impact on businesses in Sweden. The Council's mandate in such cases differs from the mandate regarding the review of impact assessments prepared by a Swedish proposer. Opinions on EU impact assessments do not give judgments on whether or not the impact assessment meets the requirements. They instead discuss the elements included in the EU impact assessment and whether a supplementary impact assessment needs to be drawn up to highlight the effects of the proposal on businesses in Sweden and which aspects need to be specifically reviewed in this.

Communication

The SBRC has a website² that provides information about its opinions, secretariat responses and activities in general. There is also a statistics page where you can compare the results between different regulators. There were approximately 13,000 visitors to the Council's website in 2023.

The Council's newsletter, Regelrätt, is published six times a year and has approximately 800 subscribers. Subscribers may be people working in government agencies or ministries, organisations or others interested in the activities of the Council.

² www.regelradet.se



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Reviews in figures

The SBRC dealt with 265 submissions in 2023. Of these, 195² resulted in an opinion (representing 74 per cent) and 70 resulted in a secretariat response (representing 26 per cent).

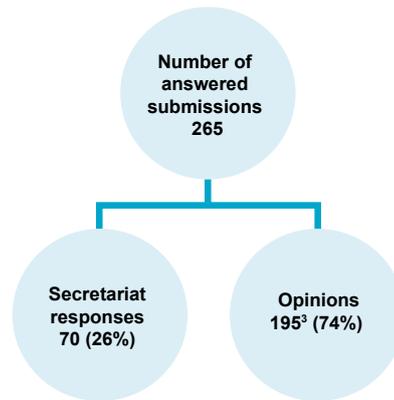


Figure 1: Answered submissions 2023.

Opinions

Of the 195 cases on which the Council issued an opinion, 119 contained an impact assessment that was deemed overall to meet the requirements of Sections 6 and 7 of the KUF, representing 61 per cent. This result is slightly poorer than that of 2022, when 67 per cent of the impact assessments were deemed to meet the requirements. See the appendix on the SBRC's website for detailed information on the results.

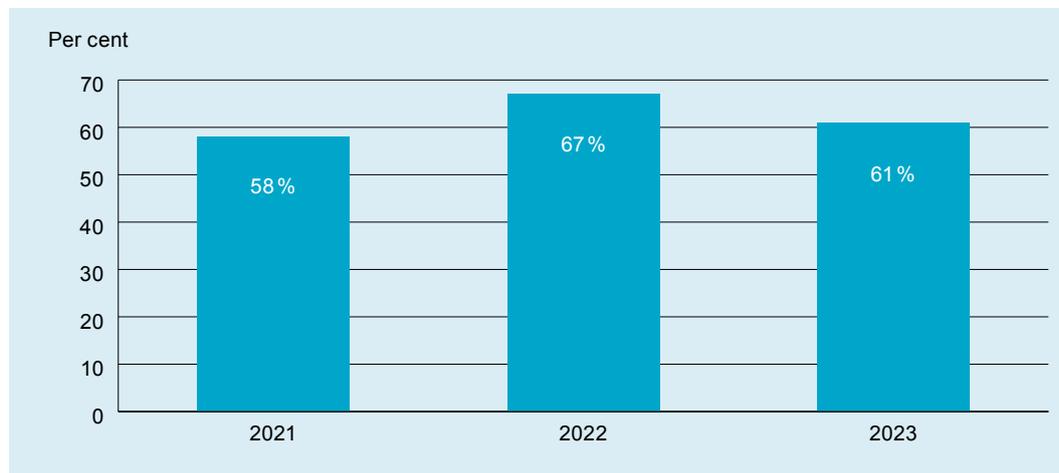


Figure 2: The Council's evaluation of impact assessments in 2021, 2022 and 2023, proportion that met the requirements.

³ In addition to these 195 opinions, 8 cases were answered with what is known as a simplified opinion. These cases are excluded here. Simplified opinions are opinions that do not contain a complete assessment of the quality of the impact assessment.

Results by aspect

Aspect	2023		
	Number		Proportion acceptable (%)
	Acceptable	Deficient	
Purpose	195	0	100%
Consistency with EU law	185	10	95%
Effects if no regulation is issued	184	11	94%
Effect in other respects	179	16	92%
Companies affected by industry	176	19	90%
Particular attention to the date of entry into force	176	19	90%
Alternative solutions	167	28	86%
Provision of special information	147	48	75%
Number of companies affected	141	54	72%
Impact on companies' business activities	135	60	69%
Other costs	129	66	66%
Special attention for small businesses	120	75	62%
Administrative costs	119	76	61%
Size of companies affected	117	78	60%
Impact on competitive conditions	114	81	58%

Figure 3: The Council's evaluation by aspect 2023, ranked by the highest proportion of acceptable.

The three points in Sections 6 and 7 of the KUF with the highest proportion of acceptable descriptions are:

- The proposer's description of the purpose and the desired objective of the regulation (100%),
- Consistency with EU law (95%), and
- Effects if no regulation is issued (94%).

The three points in Sections 6 and 7 of the KUF with the lowest proportion of acceptable descriptions are:

- Impact on competitive conditions (58%),
- Size of companies affected (60%), and
- Administrative costs (61%).

The Council performs a proportionality assessment of each individual aspect and the overall assessment. What is sufficient to reach an acceptable assessment may therefore differ between cases, based on the nature of the cases. The existence of descriptions of aspects of major importance to companies may therefore have a bearing on the whole case and whether the overall assessment will be acceptable or deficient.

Distribution of opinions – sender

The Council receives submissions from government agencies and the various ministries of the Government Offices of Sweden. The results are presented as follows:

1. Memoranda and other internally prepared submissions, referred by the Government Offices of Sweden.
2. Official government reports (SOU) produced by committees of inquiry and referred by the Government Offices of Sweden.
3. Government agency reports produced by agencies. These may be referred by the Government Offices of Sweden or by agencies. Government agency reports contain proposals for new or amended legislation that have been drawn up by agencies. Most often it is the result of a government commission, but they can also be created by the agency on its own initiative, through a so-called request to the responsible government ministry.
4. Submissions prepared and referred by Agencies containing proposals for government agency regulations.

The 195 submissions leading to opinions in 2023 were distributed as follows:

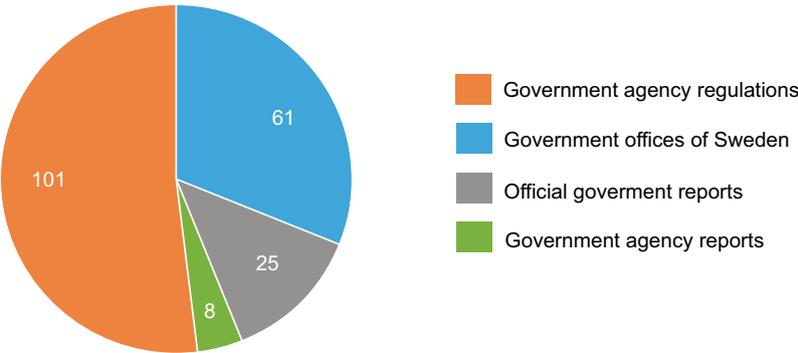


Figure 4: Distribution, number of opinions per category, 2023.

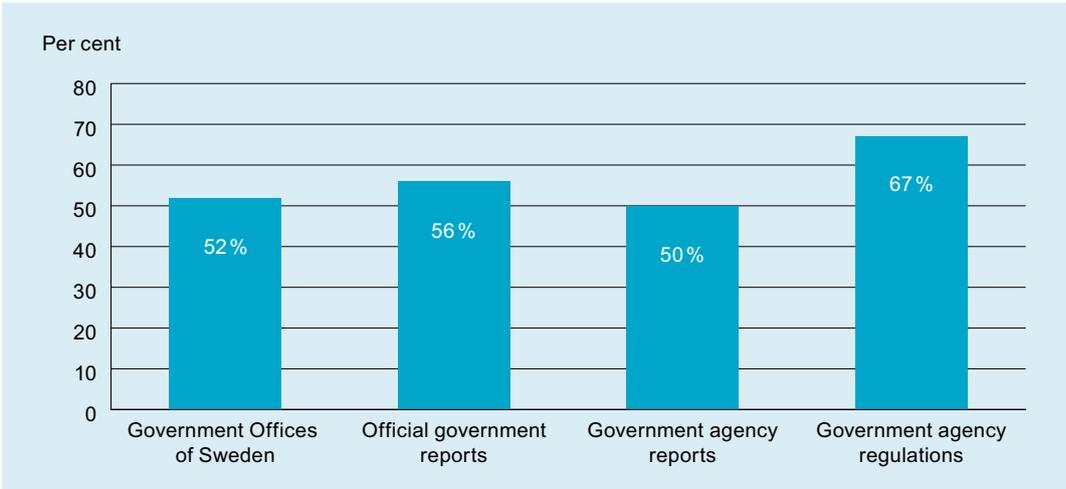


Figure 5: Distribution of opinions and proportion that met the requirements, 2023.

Government Offices of Sweden

The Council gave its opinion on the impact assessments in 61 submissions prepared internally at the Government Offices of Sweden. Of these, 32 (representing 52 per cent) were deemed to meet the KUF requirements. By comparison, 33 out of 52 (63 per cent) were deemed to meet the requirements in 2022 and 36 out of 72 (50 per cent) did so in 2021.

GOVERNMENT OFFICES OF SWEDEN Ministry	Number		
	Meet requirements	Does not meet requirements	Total
Ministry of Finance	20	11	31
Ministry of Infrastructure	0	1	1
Ministry of Justice	3	2	5
Ministry of Climate and Enterprise	5	9	14
Ministry of Rural Affairs and Infrastructure	1	1	2
Ministry of the Environment	0	1	1
Ministry of Health and Social Affairs	2	4	6
Ministry of Education and Research	1	0	1
Total	32	29	61

Figur 6: Regelrådets yttranden över Regeringskansliets internt framtagna remisser, 2023.⁴

⁴ In the annual report and the appendix, some ministries are presented at times with the name they had until autumn 2022 and at times with the name they have had from 2023. This is because the ministry has consulted the Swedish Better Regulation Council before changing and merging certain ministries.



Official government reports (SOU)

The Council gave its opinion on the impact assessments in 25 official government reports. Of these, 14 (representing 56 per cent) were deemed to meet the KUF requirements. By comparison, 11 out of 22 (50 per cent) were deemed to meet the requirements in 2022 and 21 out of 38 (55 per cent) did so in 2021.

OFFICIAL GOVERNMENTS REPORTS	Number		
	Meet requirements	Does not meet requirements	Total
Ministry of Finance	3	6	9
Ministry of Justice	5	0	5
Ministry of Climate and Enterprise	1	1	2
Ministry of Rural Affairs and Infrastructure	1	1	2
Ministry of Enterprise and Innovation	0	1	1
Ministry of Health and Social Affairs	3	2	5
Ministry of Education and Research	1	0	1
Total	14	11	25

Figure 7: The SBRC's opinions on official government reports by referring government ministries, 2023.

Government agency reports

The Council gave its opinion on the impact assessments in 8 government agency reports. Of these, 4 (representing 50 per cent) were deemed to meet the KUF requirements. By comparison, 4 out of 10 (40 per cent) were deemed to meet the requirements in 2022 and 3 out of 12 (25 per cent) did so in 2021.

GOVERNMENT AGENCY REPORTS	Number		
	Meet requirements	Does not meet requirements	Total
Referring ministry and responsible administrative agency			
Ministry of the Environment / Swedish Environmental Protection Agency	1	0	1
Ministry of Climate and Enterprise / Swedish Energy Agency	0	1	1
Ministry of Climate and Enterprise / Swedish Environmental Protection Agency	1	2	3
Ministry of Climate and Enterprise / Swedish Energy Markets Inspectorate	1	0	1
Ministry of Climate and Enterprise / Swedish National Debt Office	0	1	1
Ministry of Health and Social Affairs / Public Health Agency of Sweden	1	0	1
Total	4	4	8

Figure 8: The SBRC's opinions on government agency reports by referring ministry and responsible agency, 2023.

Government agency regulations

The Council gave its opinion on the impact assessments in 101 submissions from government agencies. Of these, 68 (representing 67 per cent) were deemed to meet the KUF requirements. By comparison, 68 out of 88 (77 per cent) were deemed to meet the requirements in 2022 and 56 out of 78 (72 per cent) did so in 2021.

GOVERNMENT AGENCIES Myndighet	Antal		Totalt
	Meet requirements	Does not meet requirements	
Swedish Public Employment Service	0	1	1
Swedish Companies Registration Office	2	0	2
National Board of Housing, Building and Planning	8	2	10
Swedish Energy Markets Inspectorate	4	0	4
Swedish Energy Agency	2	1	3
Swedish Financial Supervisory Agency	3	1	4
Public Health Agency of Sweden	1	0	1
Swedish Social Insurance Agency	1	0	1
Swedish Agency for Marine and Water Management	5	3	8
Health and Social Care Inspectorate	0	1	1
Swedish Board of Agriculture	9	9	18
Swedish Food Agency	3	1	4
Swedish Press and Broadcasting Agency	2	0	2
Swedish Civil Contingencies Agency	1	2	3
Swedish Environmental Protection Agency	1	4	5
Swedish Police Agency	2	2	4
Swedish Post and Telecom Agency	1	0	1
Sveriges Riksbank	2	0	2
Swedish National Debt Office	1	0	1
Swedish Maritime Administration	5	0	5
Swedish Forest Agency	3	0	3
National Agency for Education	1	1	2
National Board of Health and Welfare	1	0	1
Statistics Sweden	5	0	5
Swedish Radiation Safety Agency	0	1	1
Swedish National Grid	0	1	1
Dental and Pharmaceutical Benefits Agency	1	0	1
Swedish Transport Agency	2	0	2
Swedish Customs	2	2	4
National Agency for Public Procurement	0	1	1
Total	68	33	101

Figure 9: The SBRC's opinions on government agency regulations, 2023.

Secretariat responses

Pursuant to Section 17 of the Ordinance (2009:145) with instructions for the Swedish Agency for Economic and Regional Growth, the SBRC shall give its opinion on impact assessments that have been prepared in accordance with Section 15a of the Committees Ordinance (1998:1474) or Sections 6 and 7 of the Ordinance on Regulatory Impact Assessment (2007:1244) and that have formed the basis for a proposal for regulations that may have effects of significance for businesses.

It is not uncommon for regulations that are not considered to have effects of significance for businesses to be submitted. In such cases, the SBRC does not issue an opinion, but instead responds to the submission with what is known as a secretariat response. In addition to the impact of the proposal on businesses, there are also a number of other reasons why a submission is answered with a secretariat response. See p. 9 for more information on the different reasons for answering a submission with a secretariat response.

In 2023, the Council answered 70 submissions with secretariat responses.

- In 66 of the secretariat responses, corresponding to 94 per cent, the reason was limited effects for businesses.
- 4 of the secretariat responses, corresponding to 6 per cent, fell under the category Other.⁵

SECRETARIAT RESPONSES	2023	
	Number	Proportion (%)
Limited effects	66	94 %
Other	4	6 %
Total	70	100 %

Figure 10: Reason for secretariat response, 2023.

⁵ This category includes submissions where no statute text has been referred to the SBRC. There may also be submissions where Section 7 of the Fee Regulation (1992:191) applies, which means that the KUF does not apply, as well as submissions where the decisions on the regulations have been taken before the referral to the SBRC, which results in the SBRC not commenting on the quality of the impact assessment.



Office for 60 50 83 61 1

Review of impact assessments drawn up at the EU level

In 2017–2018, the SBRC conducted a follow-up of the task of reviewing impact assessments drawn up at the EU level⁶ The follow-up led to a request, which was prepared jointly with the Swedish Agency for Economic and Regional Growth.⁷ In the light of the findings of the Council’s follow-up, the Council maintains that the mandate for the review of impact assessments prepared at the EU level is not designed in a way that maximises benefit for regulators, while at the same time the review is very resource-intensive.

The SBRC revised its review procedure for impact assessments drawn up at the EU level, and now carries out a more cursory review than was previously the case. One focus of the review is whether a supplementary Swedish impact assessment should be prepared at this stage of the process, to further describe the effects on Swedish businesses. Generally speaking, the SBRC’s starting point is that the effects on Swedish businesses need to be described. The Council therefore usually recommends that a supplementary Swedish impact assessment be drawn up, and preferably at as early a stage in the process as possible. If necessary, the impact assessment can then be revised during the negotiations. The impact assessment then also serves as a support in the negotiation process, and can also facilitate the consultation process. With such an approach, the early impact assessment can serve as a basis for the “final” impact assessment, which is prepared in the course of the national implementation of the piece of EU legislation.

The Council issued opinions on 34 impact assessments prepared at the EU level during the year. In this context, the SBRC would like to mention in particular the European Commission’s proposal for a directive on soil health, on which the SBRC issued an opinion at the specific request of the responsible Swedish ministry. The opinion was therefore more extensive and was dealt with during the summer in an extraordinary meeting. The Council found that an in-depth Swedish impact assessment needed to be drawn up.⁸

There are exceptions to the recommendation for a Swedish supplementary impact assessment. During the year, there are examples where it has not been deemed proportionate or necessary to carry out an early supplementary investigation. It may be that the SBRC finds that the EU Commission’s impact assessment is also sufficient for Swedish conditions, or that the EU Commission’s proposal contains proposals that are likely to be struck completely or significantly amended in future negotiations. Further examples during the year are when proposed requirements at the EU level already exist at the national level, as well as when work on a supplementary Swedish impact assessment has already begun. When such special circumstances exist, the Council withdraws its recommendation that a Swedish supplementary impact assessment be prepared.

The SBRC also continues to believe that the Government needs to develop an appropriate system for the national impact assessment process for EU proposals, including when the SBRC should be involved in the process.

⁶ See Chapter 4 Follow-up (p. 28) of the SBRC’s Annual Report 2018 for more information on the follow-up.

⁷ The request was submitted to the Ministry of Enterprise and Innovation in November 2019. The request makes proposals on what each body should do or contribute, and when in the process this should be done. SBRC reference number RR 2019-283, *Consequences of EU legislation Request following completed review and evaluation of the Swedish Better Regulation Council’s assignment with regard to impact assessments drawn up at the EU level.*

⁸ See the SBRC’s opinion with reference number RR 2023-154, decision at the meeting on 24 July 2023.



3

International collaboration

The SBRC is a member of RegWatchEurope (RWE), an informal network of independent regulatory oversight bodies from eight countries. The overall objective of the network is to promote better regulation at the national and global level through exchange of experience and advocacy. The focus is on impact assessment and evaluation of regulations, and includes both support and review.

RWE has an annual rotating chairmanship and it has been decided that, to the extent possible, the RWE chairmanship should coincide with the EU equivalent. As Sweden chaired the Council of Ministers for the first half of 2023, the Swedish Better Regulation Council was therefore chair of RWE for the entire year. This entailed considerably more work than usual, both for the Chair representing RWE in various contexts and for the Secretariat, which contributed four people to the international work instead of two.

In January, the Chair of the SBRC participated in a major conference on better regulation, “Regulating Regulatory Decision-making” (Directors and Experts of Better Regulation, DEBR), organised within the framework of the official Swedish EU Presidency programme, where she took part in a panel debate on ex-post evaluation.



Ex-post evaluation was also a theme of the first of five seminars organised by RWE during the year. While ex-ante impact assessment aims to identify, analyse and estimate the effects of alternative solutions and regulatory requirements, ex-post evaluations aim to analyse whether the estimated effects were correct, whether the objectives of the initiative have been achieved and whether the requirements are still appropriate. However, many countries lack systematic evaluation processes and have been characterised by the OECD and others as the weakest link in the regulatory process, often not considered an integral part of the regulatory cycle, and with major deficiencies in both design and implementation. Conclusions include the lack of political demand and incentives for ex-post evaluation. The importance of systematic evaluation as a learning process, including data collection, was emphasised. Furthermore, an evaluation should be accompanied by recommendations, e.g. that the regulatory framework should be revised, removed altogether or kept unchanged. The need for a stronger link between ex-ante impact assessment and ex-post evaluation, e.g. by including plans and criteria for evaluation already in the impact assessment and evaluations as a starting point for impact assessment was emphasised, as was the importance of regulatory oversight bodies in ensuring high quality. The extent to which evaluations are also reviewed varies among regulatory oversight bodies at both the national and the EU level. The SBRC lacks this mandate today.

An innovation-promoting framework for strengthened competitiveness, growth and welfare has become an increasingly important political objective. Regulations should promote, or at least not hinder, innovation. The legislative process, on the other hand, is affected by rapid technological – and regulatory – innovation, with increasing reference to experimental legislation and regulatory sandboxes. But what do we mean by innovation? By innovation-friendly legislation? By experimental legislation? And how do we investigate and assess the impact of regulation on innovation, and vice versa? RWE organised two seminars on the theme of innovation and regulation. The first seminar focused on guidance, checklists, best practices and recommendations at different levels and from different perspectives. It concluded, among other things, that the legislative process has been too slow to keep up with technological developments and that it is difficult to strike a balance between flexibility and predictability. While this seminar had a more theoretical and horizontal perspective, the second seminar on the same theme had a more practical approach, focusing on assessments, conclusions, methodology and reviews of concrete cases, including electric cars, drones, radio equipment, transport services, medicines and public sector information. It was recognised that there are many different aspects of – and criteria for – innovation and that it is not easy to assess or quantify the impact of legislation on innovation, neither in the short nor the long term. Moreover, there are rarely unambiguous conclusions that can be drawn from existing studies or individual regulations, and there is therefore a clear need for further development of methods and continued exchange of experience in this area.

The fourth seminar organised under the Swedish RWE chairmanship dealt with the review, implementation and evaluation of EU legislation. The discussions were based on the results of a survey conducted on the initiative of the Norwegian Better Regulation Council on the different mandates and practices of the RWE bodies. It can be noted that the Swedish Better Regulation Council's review of the European Commission's legislative proposals and impact assessments takes place to a greater extent compared to several other RWE bodies. The seminar also launched the joint RWE project on the EU General Data Protection Regulation (GDPR).

The fifth and final seminar discussed the different experiences and practices of the RWE bodies in terms of supporting regulators in their impact assessment work. Here it can be noted that the Swedish system and practice differs from those of several other RWE countries. The SBRC lacks an explicit mandate to provide advice and support in the usual sense and interprets its mandate narrowly in this respect, as the Government has instead given such an assignment to the Swedish Agency for Economic and Regional Growth. Admittedly, it can be argued that the SBRC's opinions, which are advisory, constitute some support in the sense that the Council points out what is missing and what can be improved in an impact assessment. However, advice and support usually means assisting regulators with general and specific training and concrete guidance before and during specific impact assessments, rather than in the usual referral to all referral bodies, including the SBRC, when the impact assessment is in principle complete. In comparison with the activities of RWE countries in this area, however, it appears that advice and support in the usual sense takes place to a lesser extent in Sweden.

In May, the European Commission’s Regulatory Scrutiny Board (RSB) organised its fifth annual regulatory scrutiny conference. The starting point for this year’s conference was the conclusions of the RSB’s report for 2022, which places particular focus on cost-benefit analysis, as this type of analysis in the European Commission’s impact assessments is often deemed inadequate by the RSB. Despite many remaining deficiencies, the RSB believes that there is a trend towards better impact assessments and that the RSB has contributed to this, as evidenced by continuous improvements between the draft impact assessments and the final versions. RWE participated in both of the conference’s panel discussions through the chairs of the Finnish and Dutch councils. In the context of the conference, the chair of the SBRC and other RWE members met with their RSB counterparts for more in-depth discussions. In December, the RSB organised another regulatory scrutiny conference, which was attended by the chair of SBRC and other RWE members. This conference highlighted challenges in the review of impact assessments related to consumers and competitiveness.

The chair of the SBRC led the RWE delegation that met with European Commission Vice-President Maros Sefcovic and members of his cabinet in May to discuss current issues related to the EU legislative process, including political commitments on growth-enhancing regulation in the Communication on long-term competitiveness. RWE welcomed the European Commission’s initiative to simplify legislation and reduce regulatory burdens, but also emphasised the importance of not limiting this to reporting requirements, or mere administrative burdens. RWE regretted the absence of impact assessments for several recent major legislative proposals, citing the urgency of the matter. RWE emphasised that the lack of impact assessment at the EU level could lead to longer and more complicated negotiations and to more poorly designed regulations. Moreover, the absence of an impact assessment at the EU level creates increased burdens for Member States, both in the negotiation phase and in the later implementation phase.



During the year, RWE adopted two joint opinions, the first on the European Commission’s competitiveness communication “Long-term competitiveness of the EU: looking beyond 2030” (COM(2023) 168 final). The opinion focuses on the section on how to achieve a better regulatory framework and includes reflections on the new competitiveness check, methodology for assessing cumulative effects, the “one in, one out” principle, reduced reporting obligations, evaluation clauses, implementation of EU legislation in Member States and key indicators to measure the achievement of objectives.

RWE also gave its opinion on the European Commission’s Annual Burden Survey 2022, in which it welcomes the Commission’s ambition to reduce reporting costs by 25 per cent and the fact that the “one in, one out” principle has an increased focus on the presentation of quantitative data in impact assessments. RWE emphasises the importance of all compliance costs being covered by this principle and calls for greater clarity in future reports on how the administrative burden objective is distributed between agencies and companies. In the opinion, RWE questions how compensation measures are described in the report. RWE also agrees with the Commission’s statement that the Council, the European Parliament and the Member States must also contribute to achieving the overall objectives of reducing burdens, both during negotiations and in the implementation of EU legislation.

At a meeting of the Council working group on competitiveness and growth, sub-group on better regulation, RWE presented its activities. RWE proposed collaboration to achieve an improvement in the legislative process at the EU level, emphasising, among other things, the importance of preparing national complementary impact assessments for negotiations in the Council.

During the year, two board meetings and two secretariat meetings were also held in Stockholm. At the last meeting in December, the gavel was passed to the Dutch independent regulatory oversight body ATR, which will lead the work of RWE in 2024. An ambitious work programme for the next year was presented at the meeting. Given that most of the RWE bodies have actually received increased resources and, in some cases, strengthened mandates in 2023, it is hoped that RWE will contribute to better regulatory design at the national and the EU level.

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 Swedish Better Regulation Council The Swedish Better Regulation Council, SBRC	 Adviescollege Toetsing Regeldruk The Dutch Advisory Board on Regulatory Burden, ATR
 The German Regulatory Control Council, NKR	 The Regulatory Policy Committee, RPC
 The Norwegian Better Regulation Council, NBRC	 The Czech Regulatory Impact Assessment Board, RIAB
 The Finnish Council of Regulatory Impact Assessment, FCRIA	 The Danish Business Regulations Forum, DBRF

4

Reflections on the year of operation 2023

Statistics for the year

In 2023, the proportion of opinions represented 74 per cent of the total number of responses, which is a higher proportion than in previous years.⁹ The statistics show that the proportion of acceptable impact assessments amounts to 61 per cent, which is a deterioration of 6 percentage points compared with 2022.¹⁰ As usual, the result varies between the referring regulators. For the Government Offices of Sweden, the proportion of acceptable impact assessment prepared internally was 52 per cent, which is a poorer result than in 2022.¹¹ Official government reports have a result of 56 per cent acceptable impact assessments this year.¹² For government agencies, the result is the second lowest in the past five years of operation.¹³ The category government agency reports¹⁴ saw a relatively significant improvement – but it is a difficult category to assess as the number of submissions in this category remains low (8 submissions). It is therefore difficult to draw any far-reaching conclusions from the results.

The SBRC can note that this year both the aforementioned difficult-to-assess category of government agency reports and official government reports saw somewhat improved results, while the Government Offices of Sweden (internal) and government agency regulations saw poorer results in terms of the quality of impact assessments. The SBRC can also note that while government agency regulations as a collective only exceptionally show a result of less than 70 per cent acceptable impact assessments, the loss for the ministries occurs from lower levels. The SBRC considers this a serious matter, especially since the ministries' rulemaking work often includes proposals with significant effects on businesses – and not infrequently across sectors for large groups of businesses. The effects of regulations need to be investigated at an early stage in the process – and for each statute submitted throughout the regulatory chain. The SBRC often sees that, in both official government reports and ministry memoranda, there is a desire to postpone such investigations until a later stage in the process. When it is time for the responsible agency to submit a proposal for a regulation, all the effects have not yet been investigated, which creates a difficult starting point for the agency. It can also be mentioned in this respect that it is early in the regulatory chain that the framework is set. If a sub-optimal solution is only recognised when it is time to draw up regulations, it is often difficult for the agency to succeed in achieving more appropriate management, as they need to relate to the framework that has already been set.

The SBRC notes that part of the challenge with impact assessment work is that the conditions vary depending on the proposer. In government inquiries, the committee works for a limited time in a special constellation with certain limited issues, after which the committee is dissolved. In government agencies, it is possible to achieve continuity in relation to impact assessment work. The agency's staff build up their expertise in impact assessment work over time, as they often prepare them on more than just a few occasions. As shown by the statistics, this is noticeable in the impact assessments on which the SBRC issues opinions. Over time, government agencies achieve a better result than ministries, government inquiries and government agency reports. It is not only the staff drawing up the impact assessments that are important – but also the leadership as such – that there is a commitment to investigating the effects of regulations, that time and resources are allocated to this work, and that there is a learning culture that focuses on both good examples and areas with potential for improvement.

9 In 2023, 265 submissions were answered, of which 195 (corresponding to 74%) were with an opinion. In 2022, 285 submissions were answered, of which 164 (corresponding to 58%) were with an opinion. In 2021, 343 submissions were answered, of which 183 (corresponding to 53%) were with an opinion. In 2020, 390 submissions were answered, of which 147 (corresponding to 38%) were with an opinion. In 2019, 311 submissions were answered, of which 154 (corresponding to 50%) were with an opinion.

10 Proportion of acceptable impact assessments 2023: 61%. 2022: 67%. 2021: 58%. 2020: 53%. 2019: 66%.

11 Government Offices of Sweden, proportion of acceptable impact assessments prepared internally 2023: 52%. 2022: 63%. 2021: 50%. 2020: 45%. 2019: 60%.

12 Official government reports, proportion of acceptable impact assessments 2023: 56%. 2022: 50%. 2021: 55%. 2020: 42%. 2019: 41%.

13 Government agency regulations, proportion of acceptable impact assessments 2023: 67%. 2022: 77%. 2021: 72%. 2020: 64%. 2019: 77%.

14 Government agency reports, proportion of acceptable impact assessments 2023: 50%. 2022: 44%. 2021: 25%. 2020: 57%. 2019: 50%.

It should be noted that government agency regulations are often more limited to a specific industry. This in itself is a factor that means that the agency’s work is usually more transparent. It does not, however, explain the major differences in the quality of impact assessments between government inquiries and ministries versus government agency regulations. The SBRC argues that greater focus needs to be placed on the impact assessment work of government inquiries and ministries.

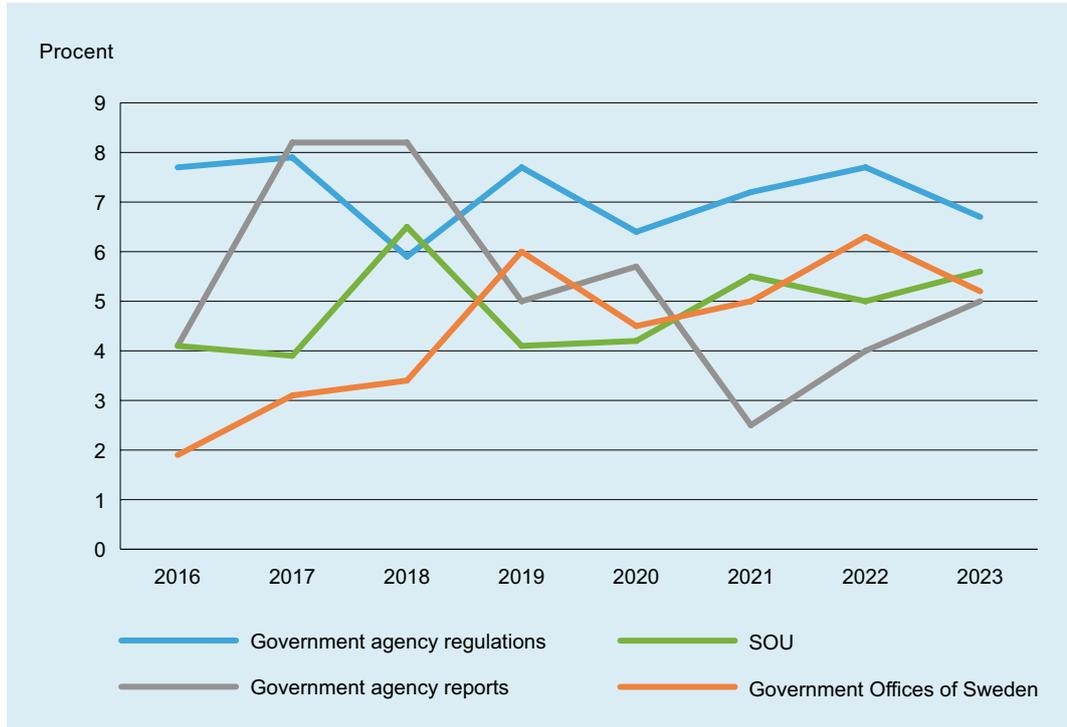


Figure 11: Distribution of opinions and proportion that met the requirements by category, 2016–2023.

The SBRC’s reflections on the description of specific aspects in the impact assessments

The SBRC is pleased that certain aspects in the impact assessments are described in an acceptable manner, and at a high level that is relatively stable over time. The SBRC can also note that over time it is these same aspects that are easiest for regulators to describe, and similarly it is repeatedly the same aspects that are most difficult for regulators to describe.

The SBRC wants the impact assessment to show that the proposer has reflected on the businesses affected by the proposal and that there are descriptions of these. In the event that a proposal affects both larger and smaller companies, it is also valuable to have at least an overall description of the distribution of companies – how many companies can be considered larger and how many smaller? Is there a predominance of one or the other? This information is relevant to understanding the extent of a proposal’s effects, as well as the recipient’s ability to adapt to the regulations. The most difficult task for regulators is to describe affected companies in terms of size. Closely linked to this aspect is the description of whether special attention needs to be given to small businesses when designing the regulations. In many cases, no special attention can be paid to small businesses. This needs to be stated and justified – the description cannot be omitted. Omitted or overly general descriptions are problematic, not least because small businesses make up such a large proportion of all businesses. Moreover, in many cases a solution that works well for a small company will also work well for a larger one – while a solution based on the conditions of a larger company is more challenging for small companies to adapt to. It is therefore preferable for the proposer to think small-scale first.

The SBRC finds that there are still challenges in describing the cost and competition impact of a proposal. With regard to costs, the SBRC would like to see both qualitative and quantitative descriptions. The SBRC notes that some proponents describe costs too broadly and in general terms. The fact that a cost is not significant does not actually give any indication of the cost effects of the proposal, either for an individual company or for all companies affected. A similar challenge exists with respect to the description of a proposal’s impact on competitive conditions. The SBRC is often wary of claims such as, since the regulations apply to all companies, there is no impact on competitive conditions. Here too, the conditions of the companies, based on factors such as size or geography, are important for their ability to adapt their operations and comply with new and amended regulations. The issue of impact on competitive conditions is often multidimensional, as an impact can arise locally and nationally as well as on the European and the global market. Similarly, changes in market conditions affect the competitive conditions of companies, as long-term, stable conditions are needed for companies to grow and invest. The issue of impact on competitive conditions is multifaceted, and regulators therefore need to reflect on and highlight this in a comprehensive manner in the impact assessment.

Overall, the SBRC finds that in many impact assessments it can be assumed that there is no understanding of the actual expected impact on companies, not least regarding the conditions of smaller companies. Even if a regulatory change in and of itself does not always have significant effects for those affected, it often contributes to an increased regulatory burden that inhibits the ability of companies to develop their operations. The impact assessments therefore need to be transparent and contain clear descriptions of the effects that are expected to arise, as well as clear positions with reasons if effects are not expected to arise. This means that each part of the impact assessment needs to be commented on and justified.

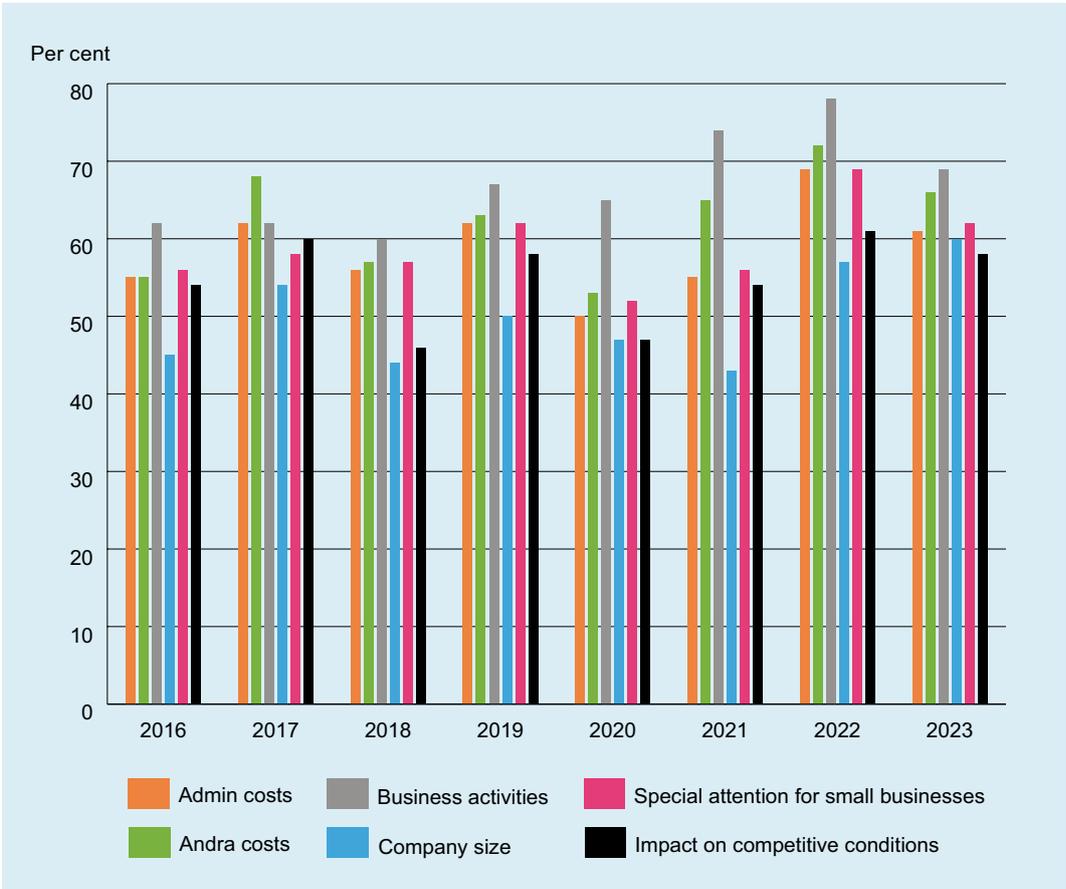


Figure 12: Proportion that met the requirements by aspect, 2016–2023.

The SBRC's reflections on the regulatory framework

The Ordinance on Regulatory Impact Assessment (2007:1244) is the applicable regulatory framework when impact assessments are drawn up. The Council's review is based on Sections 6 and 7 of the Ordinance. The Ordinance was adopted in 2007, and many issues are larger and more multifaceted today than they were in 2007. A majority of the new and amended regulations adopted today have their origin in EU law, as well as regulations initiated by the OECD or the UN. Standardisation as such looks different, which is one reason why the Ordinance should be further developed and adapted to it. When this has not been done – and the SBRC's review is thus based on an ordinance that was designed primarily based on national processes – the result is more likely to be deficient. There would therefore be a need for a new governing regulatory framework for impact assessments.

Proposals and ongoing work that can lead to improved impact assessment work

In recent years, the SBRC has seen certain steps, at a general level, that could lead to improved impact assessment work. The inquiry on a simpler regulatory framework for micro-enterprises and a more modern Bookkeeping Act submitted its report in 2021.¹⁵ In addition, the previous government submitted written communication to the Riksdag with new simplification targets.¹⁶ In 2022, proposals were made in the memorandum Better impact assessments.¹⁷ It should be noted that the SBRC submitted specific opinions on both of these submissions.¹⁸ In 2023, the SBRC received increased funding, which made it possible to hire additional staff resources. This is particularly evident in the fact that there are no secretariat responses owing to resource constraints this year. The SBRC has been able to respond to all submissions that have effects of significance for businesses with an opinion.

During the year, it was also announced that both a Simplification Council and an Implementation Council will be established. The SBRC notes that the greater the number of independent councils – the more parts there are to coordinate and tasks to clarify. The system needs to be structured in such a way that all councils work together towards the same overarching goal, based on their respective mandates.

Once again this year, the SBRC reviewed the reflections submitted in previous annual reports, and can conclude that there are positive aspects in some areas, while in other areas there is great potential for improvement. The SBRC maintains the importance of the previous reflections and intends to continue the qualitative follow-up in future annual reports.

¹⁵ Simplification for micro-enterprises and modernisation of the Bookkeeping Act (SOU 2021:60).

¹⁶ Government written communication 2021/22:3, A simplification policy for increased competitiveness, growth and innovation capacity.

¹⁷ Ministry of Finance memorandum Better impact assessments (Ds 2022:22).

¹⁸ RR 2022-4, decision at the Council meeting on 26 January 2022, and RR 2022-207, decision at the Council meeting on 21 December 2022

Follow-up of previous years' reflections

The quality of official government reports needs to be improved

The Council has previously recommended that significant weight, commitment and time needs to be given to the impact assessment work of committees. The Council reiterates this recommendation. The Council regards a result where just over half of the impact assessments meet the requirements as too low.

The terms of reference should be formulated more openly

The Council has previously noted that the terms of reference submitted to committees of inquiry as well as the inquiries carried out by the ministries themselves or submitted to government agencies are often narrow and restrictively defined. The Council argues that such terms of reference and assignments need to be formulated in such a way as to allow the committee or government agency to investigate a particular issue without preconditions. A few years ago, the Council noted progress in some terms of reference. However, the Council finds that there has been a decline in this area, and that the terms of reference often make clear what type of proposals are to be made. This means that other possible solutions to identified problems are not investigated. The recommendation in this respect therefore stands.

Resources and competences are necessary for thorough impact assessments

The Council argues that sufficient time and resources need to be allocated to the impact assessment work. The Council has previously stressed the importance of a secretariat with experts such as statisticians and economists, who can assist the committees in their work. The Council has also stressed how large a role that lack of coordination between ministries plays in the committees not achieving better results. As the Council cannot see that any changes in working methods or processes have been implemented in this area, the recommendations previously made still stand.

Impact assessments must be carried out early for good impact in the regulatory process

The Council has long argued that there should be an opportunity to review the quality of impact assessments at an earlier stage. Such a procedure would allow the regulator to take on board the views of the Council and, if necessary, supplement the impact assessment before the regular consultation round. The Council notes and takes a positive view of the fact that some government agencies choose to send submissions to the SBRC before the regular consultation round, thereby voluntarily applying what the Council recommends. However, no formal development of the regulatory process has taken place to date. The Council's recommendation therefore still stands.

The EU impact assessment process needs to be revamped

In previous annual reports, the Council made recommendations in line with the above-mentioned request. To date, the Council's mandate in this respect has not changed. The Council's recommendation therefore still stands.

Digital tools for standardised information need to be developed

The Council has previously stated that digital tools need to be developed to enable regulators to easily access the relevant information needed in the impact assessment process. This would lead to a more efficient inquiry process and more well-researched proposals. No such development has taken place to date, so the Council's recommendation still stands.

The impact assessment process needs to be reviewed

The Council has previously requested an objective review of the impact assessment work in Sweden by the OECD to ensure that this work is carried out effectively through the regulatory process. No such review has been carried out. As stated earlier in the annual report, the Council sees some steps in the right direction, but wishes for more concrete decisions. The Council's recommendation therefore still stands.

Review of the description of regulatory costs for companies in impact assessments

The Council has previously recommended that a necessary review of the regulatory costs for companies be conducted, in terms of how such costs should be described and calculated in impact assessments. The Council further stated that it is important that cost changes described in impact assessments reflect the actual conditions of companies and that the descriptions are not too theoretical. No such review has been initiated. The Council's recommendation therefore still stands.

 ACTION NOT PERFORMED

 UNDER REMEDIAL ACTION

 ACTION PERFORMED





The Swedish Better Regulation Council (SBRC) is a designated decision-making body within the Swedish Agency for Economic and Regional Growth whose members are appointed by the Government. The SBRC is responsible for its own decisions. The role of the SBRC is to review and express an opinion on the quality of impact assessments for proposed statutes that may have effects of significance for businesses.

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