

OECD Reviews of Regulatory Reform

SWEDEN

**ACHIEVING RESULTS
FOR SUSTAINED GROWTH**



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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Foreword

The OECD Review of Regulatory Reform in Sweden is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers. Since then, the OECD has assessed regulatory policies in 22 member countries, and in Russia, the first non-member country to be reviewed. The reviews aim at assisting governments to improve regulatory quality – that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. The review draws on the 2005 Guiding Principles for Regulatory Quality and Performance, which brings the recommendations in the 1997 OECD Report on Regulatory Reform up to date, and also builds on the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, and on the regulatory framework of specific sectors against the backdrop of the medium-term macroeconomic situation.

Taken as a whole, the reviews demonstrate that a well-structured and implemented programme of regulatory reform can make a significant contribution to better economic performance and enhanced social welfare. Economic growth, job creation, innovation, investment and new industries are boosted by effective regulatory reform, which also helps to bring lower prices and more choices for consumers. Comprehensive regulatory reforms produce results more quickly than piece-meal approaches; and they help countries to adjust more quickly and easily to changing circumstances and external shocks. At the same time, a balanced reform programme must take into account the social concerns. Adjustments in some sectors have been painful, but experience shows that the costs can be reduced if reform is accompanied by support measures, including active labour market policies.

While reducing and reforming regulations are key elements of a broad programme of regulatory reform, experience also shows that in more competitive and efficient markets, new regulations and institutions may be necessary to ensure compatibility of public and private objectives, especially in the areas of environment and services to the public. Sustained and consistent political leadership is another essential element of successful reform, and a transparent and informed public dialogue on the benefits and costs of reform is necessary for building and maintaining broad public support.

The policy options presented in the reviews may pose challenges for each country. However, the in-depth nature of the reviews and the efforts made to consult with a wide range of stakeholders reflect the emphasis placed by the OECD on ensuring that the policy options presented are relevant and attainable within the specific context and policy priorities of the country.

Each review consists of two parts. Part I presents an overall assessment, set within the macroeconomic context, of regulatory achievements and challenges across a broad range of policy areas: regulatory governance, competition policy, market openness and specific issues such as multi-level regulatory governance as well as environmental policy. Part II summarises the detailed

and comprehensive background reviews prepared for each of these policy areas, and concludes with policy options for consideration which seek to identify areas for further work and policy development in the countries under review.

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The background reviews for Sweden have been posted on the OECD website:
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Summary

Key messages

- Sweden's strong economic performance and impressive productivity gains since the mid 1990s may not be sustainable over the long term, given the pressures of an ageing society. To fully reap the benefits of globalisation, and reduce the risk of job flight, a comprehensive policy response is required. Its ambitious public policy goals, including high standards of public welfare and social cohesion, could be at risk if reforms are not undertaken to further strengthen the foundations for economic growth. Sweden should not wait for a crisis of the kind that developed in the early 1990s to carry out reforms. The roots of that crisis were partly due to policy mistakes, and a failure to tackle structural issues properly in time.
- A fundamental change in policy and governance is not appropriate or necessary, but three issues require attention: the need to address labour market issues and especially the need to boost job creation, improve labour market flexibility and reduce the relatively high inactivity levels; the need to improve the management and performance of public sector service provision; and the need to develop a more resilient economy based on a stronger service sector and a greater contribution by entrepreneurs.
- Local levels of government will need to play a key role in tackling these issues. If the goals of a strong economy and high quality public services are to be sustained, this part of government cannot be neglected. Local authorities are particularly well placed to improve public sector service provision and to promote entrepreneurship. They also play an important role in meeting environmental goals.
- Sweden's high standards of environmental protection raise growing challenges, including how to take these forward in the EU context, and finding the best way to balance high standards and significant regulation with the cost to business. Although Sweden appears generally competent and innovative in this field of regulation, effective regulation of this complex sector has to be viewed as a continuous "work in progress".
- Sweden's capacities for carrying out necessary reforms and securing an effective regulatory framework in support of its goals need to be enhanced. Its current regulatory framework does not match best international practice in important respects. Three issues stand out. First, a process or structure is needed to promote a strategic reform vision. Second, there is a need to address issues arising from a complex and bureaucratic agency structure, notably its impact on local government efficiency. Third and not least, there is no framework or forum that systematically brings together the central and local levels of government to manage issues and build a common purpose.

Sweden has a generally successful, well managed economy, which has been skilfully piloted out of a major crisis

Sweden's economy has made a remarkable recovery from the major crisis of the early 1990s. The crisis triggered a wide ranging policy response, including the deregulation of a wide range of product markets, often ahead of other OECD countries. Accession to the EU in 1995 was also a major step. The upswing has been sustained since then. Sweden's GDP per capita is above the euro area average. Key factors behind this performance are:

- Impressive productivity growth, helped by policy reforms which have supported structural change in the economy including the emergence of high growth sectors such as telecommunications. A better quality labour force has also helped. The ICT industry has become the flagship of the Swedish corporate sector, but other specialist sectors such as car manufacturing and pharmaceuticals are also thriving.
- A strong policy of market openness that is linked to a high level of international trade. Sweden is a small open economy with large and successful export industries. International commerce has grown significantly faster than the national economy. The OECD's indicators of barriers to trade show that Sweden is more open than many other OECD countries.
- A highly credible monetary policy, and a financial sector which helps to underpin the economy.

Not all factors affecting Swedish performance are so positive. Flexibility in the labour market and entrepreneurial culture are major issues. Overall economic performance remains surpassed by a number of OECD countries, particularly outside Europe.

Regulatory reform made a significant contribution to the turnaround of the economy

Regulatory reform was a significant factor behind the resurgence of the economy following the early 1990s crisis. Product market deregulation was tackled quite vigorously, and the competition law strengthened. This delivered a considerable productivity "dividend". Empirical evidence gathered by the OECD suggests that deregulation since 1988 has directly added 0.45% to annual productivity growth, and more if indirect effects are taken into account. Another important area is market openness. Substantial efforts have been and continue to be made to minimise regulatory burdens on companies engaged in international trade.

There is considerable potential for building on this success. Competition remains below average in some important parts of the economy, such as the construction sector and food retailing. The infrastructure sectors offer a mixed picture, with some sectors such as electricity in need of renewed attention, and others such as aviation and the railways still very much a "work in progress". Public procurement is in need of reform, even if it is to a large extent governed by EC-Directives, with limited scope for reform in a single member state. Not least, Sweden has a relatively high level of labour market legislation, higher than the OECD average and higher than the other Nordic countries. Efforts to promote competition in the public sector remain insufficient.

Although Sweden now has a relatively robust competition agency, with a strong public presence, there are a number of areas for improvement including the need for stronger powers and greater independence.

A strong emphasis on high standards of social welfare, and a governance framework with strong and distinctive traditions

Economic success, which has enabled Sweden to develop and maintain high levels of social welfare, remains an essential support for the achievement of social goals. These include economic security including full employment, and equality through the reduction of income differences and the mitigation of poverty, as well as homogeneity of living conditions throughout the country. Swedish ambitions for a high quality environment have also grown steadily.

Swedish governance has developed around a strong and pervasive role for the state as guardian of society, and a large tax-financed public sector, reflecting citizens' traditional willingness to pay for quality social services through taxation. The welfare system is extensive and generous. Public ownership and production are substantial. Sweden is also distinguished by a political and societal culture which is particularly strong on transparency and integrity, reflected in the fact that consensus building is the cornerstone of decision making. Other important features of Swedish governance include a clear distinction between strategic policy-making and implementation, reflected in the institutional and rule-making structure which puts considerable responsibilities on a large number of implementing agencies, and a strong role for local government in the implementation of nationwide policies.

Some of these governance characteristics raise challenges for further reform, such as the consensus building traditions which have an impact on the timing of decision making. The importance of local government needs to be taken into account in order to secure a shared understanding of common goals between the different levels of government.

The challenge of sustaining a strong economy: the demographic burden, pressure on growth, and implications for the generous welfare system

Sweden's core challenge is to ensure that the current strong economic performance can be sustained so that its ambitious social goals and welfare system can be maintained, against a background of increasing demand for higher standards, especially in public services. Although important steps have been taken to counter the impact of an ageing population, Sweden's own statistics show that over the next 35 years the proportion of the population aged over 65 will increase by almost 40%, and the ratio of those over 65 to the working age population will peak at around 40%. The direct effect of these changes on labour supply can be expected to slow the rate of growth of GDP per capita.

The core targets for improving performance: addressing challenges in the labour market, and securing the sustainability of public finances

The Swedish labour market faces certain challenges despite a generally high employment rate. Labour market constraints are already an important issue. Specific issues include a total labour supply which is only average in international comparison; a relatively high incidence of sick leave and disability benefits; limited job creation in response to economic growth; room for improvement in the employment rate; and low labour market flexibility.

Although public finances are in relatively good shape compared with most other OECD countries, there is a major challenge ahead with the ageing population. Preparations to meet this challenge such as the 1999 pension reform and the fiscal surplus target need to be followed through. Complementary measures to meet possibly higher than expected public expenditure should be considered. One way to contain public expenditure is to make the provision of public services more efficient.

The contribution which can be made by regulatory reform: improving the performance of the public sector

Regulatory reform can promote a more efficient public sector by introducing competition in the provision of public services. Outsourcing via public procurement is one way of introducing greater competition. Sweden has adopted the EC Directive on public procurement, but it has proved difficult to ensure full compliance with their requirements, notably the legal remedies prescribed. Further work on implementation of the Remedies Directive is currently under way. Rules in the legislative and institutional framework set by EC Directives that may prove burdensome for some companies as well as reluctance by some municipalities and state institutions to change the way they operate and put activities out to tender, appear to hamper progress in this area.

Rationalising public sector activities in competitive markets also needs attention. Public sector entities show a growing tendency to operate in areas where private companies already exist either at the national or at the local level. This distorts the competitive playing field and impedes the creation of new small firms. Part of the explanation lies in state ownership of companies that were previously monopolies and now operate in liberalised markets. However policies to even out regional differences appear to be encouraging government agencies and municipalities into new ventures. A number of reports have challenged this practice, but firm action, such as addressing gaps in the Competition Act to tackle anti competitive behaviour by state entities, has not yet been taken.

The contribution of regulatory reform: improving economic resilience by encouraging entrepreneurship and strengthening key sectors

The economy currently depends fairly heavily on large companies, including an ICT sector that must counter the effects on its competitiveness of a decline in prices over time. The service sector, although it has been growing, remains small by OECD standards and linked to this, entrepreneurial activity is relatively muted, limiting the potential number of new jobs. A more dynamic structure would boost resilience to unpredictable shocks as well as help to create additional jobs and meet predictable future demands on the economy.

Regulatory reform can help promote structural change to improve the economy's dynamism and resilience, and to lift job creation prospects. SMEs have an important role as drivers of business development and as suppliers of new jobs, but an effective policy framework for the development of entrepreneurship in Sweden is not yet in place. Broad policy issues that hold back progress include a lack of competition in the public sector, low venture capital availability, and employment protection legislation. Although Sweden is among the better OECD countries for its efforts at reducing administrative burdens, these

burdens do not seem to be fully controlled, and a more systematic approach is needed. Lack of information about the extent and source of administrative burdens hampers progress, and makes it hard to raise the political profile of the issue. The role of local government in burden reduction has also been overlooked. The setting up of a new body in charge of reducing administrative burdens in 2006 may help in the future.

A more resilient economy calls for improving and updating the regulatory framework for important sectors. Sectors such as food retailing and housing need to operate within a regulatory framework that supports competition and in the case of housing, mobility, which is not yet the case. The infrastructure sectors are often subject to rapid change, and their regulatory frameworks need regular review. Specifically, the regulatory framework for telecommunications needs updating to sustain a high performance, and issues in the electricity market need to be addressed to boost performance.

The essential role of local governments

Swedish counties and municipalities have important delegated tasks across a wide range of public services, as well as a central role in planning and licensing. They are thus key actors in policies aimed at improving public sector efficiency and stimulating entrepreneurship. Important areas for attention at this level are procurement; the provision of services by local government entities in often competitive markets (or ones that should be competitive); and the promotion of entrepreneurship, not least through review of permit and planning processes which are often slow and may benefit from stronger competition.

Ensuring that these levels of government are helping the attainment of social and economic policy goals is an issue for urgent attention. The principle of local autonomy to tailor actions to local conditions needs to be reconciled with the expectation of homogeneity of living conditions across the country. Reaching a shared understanding of objectives at all levels of government remains a challenge and requires an effective management of corresponding trade-offs.

The importance of meeting environmental goals efficiently

Sweden's Environmental Code and Environmental Quality Objectives have established an innovative regulatory framework which promotes collaboration across all policy areas and levels of government. However attachment to high standards of environmental protection raises some challenges. This includes how to take these forward in the EU context and finding a way to balance high standards and stringent regulation against business sector costs, whether this is the competitiveness of large firms in international markets, or the burdens of SMEs at home. The cost of environmental regulation is a particular issue for SMEs, which would be helped by the application of an effective RIA process. Meeting environmental goals usually affects a large range of other policies, placing a premium on policy co-ordination, and managing trade-offs is a delicate task. Although Sweden appears quite innovative from an international perspective, effective regulation of this complex sector remains a challenging task.

Taking account of the EU in regulatory policy

EU accession had a strong impact on the regulatory framework, boosting competition in some markets. Accession opened the EU's Single Market fully to Swedish companies, and has given Sweden the opportunity to influence EU-wide developments. Some EU legislation such as the transparency directive which addresses state subsidies has also been a positive addition to Swedish policy and regulation. The EU has been a positive force for the development of Swedish competition law and policy.

EU accession has also, however, affected important Swedish traditions of consensus building and accountability. Time for consultation is limited, for example. Management of EU regulatory processes needs to be adequately resourced, within the framework of an overall strategy which identifies the most important issues. Local government is often a key stakeholder, but needs to be more involved in these processes. Special care is needed in the transposition of EU law to ensure that it does not add to existing regulatory burdens (it is estimated that 44% of such burdens stem from EU legislation). Finally, developing and applying specific tactics for issues that are especially important can be very effective, as Sweden has demonstrated, for example, in the area of acid rain.

The tools for effective reform and regulation also need attention

The most important tool is Regulatory Impact Analysis, which needs further development. Assessed against international best practice, Swedish RIA shows a number of gaps, and responsibilities for its management are fragmented, which may result in a lack of commitment to the process. Benchmarking (regulatory practices, competition between firms, or international benchmarking) is another potentially powerful tool, and opportunities to apply it should be pursued, especially at local government level. Sweden already does well at meeting environmental goals through the creative design and application of effective tools such as the refunded emission payment to reduce NO_x emissions, and these efforts need to be sustained.

Moving forward: creating a momentum for reform

Although the number of recent reports issued in Sweden suggest that awareness of the need for action is high, consensus seems hard to establish on reform issues. This is particularly the case for increasingly sensitive issues such as public procurement and health care. The absence of a major crisis also means there is no strong spur to action. A process or structure additional to traditional ones may be needed to boost reform, promoting a strategic reform vision and helping to establish consensus on important issues. Communication of this vision should not be neglected. Because of strongly rooted transparency and consensus making traditions, reforms that are tackled through public debate in Sweden are more likely to gain support.

Strengthening capacities for reform: institutions and tools

Sweden's institutional capacities for reform need development across a number of fronts:

- Tackling the issue of rule making in stovepipes, which impacts transparency, accountability and efficiency. Sweden has a strong tradition of autonomous action for the different parts of government. Co-ordinating mechanisms are important, but there is also a need for rationalisation. Agencies are responsible for the largest part of the Swedish regulatory system, and streamlining the large and growing number of agencies would reduce complexity, particularly co-ordinating their impact at the local level.
- Developing a stronger focal point for regulatory policy within government. Although there has been a steady flow of technical developments in Swedish regulatory policies, and particular attention to the needs of SMEs, this does not yet amount to a comprehensive and coherent regulatory policy. Regulatory policy is dispersed across several institutions, including agencies, which makes it hard to manage major reforms that involve a large number of potentially powerful players. For example, improving the performance of the public sector is a very broad institutional challenge.
- Addressing the issue of co-ordination between national and local levels of government, which currently undermines capacities to meet public policy goals. There is no framework or forum yet in place that systematically brings together the central and local levels of government to manage issues and build a common purpose, which is unusual relative to other similar OECD countries. There may be a tendency to over regulate local governments, with a need to move further to agree on shared objectives.
- Capitalising on the role of Parliament and the National Audit Office in promoting reform. Both institutions have played an important role in recent times drawing attention to reform issues such as competition between the public and private sector, and pushing for action.
- Strengthening the contribution to pro-competitive reform that can be made by the competition authority. Experience with the current framework reveals the need for improvements. The Competition Authority appears to need enhanced skills and competencies, more independence, and stronger enforcement.
- Reviewing the capacities of independent regulators. Although the agency model which has been adopted for Swedish regulators secures a certain independence from ministries, it falls short of international best practice in some respects, including the lack of sanctions, an unclear relationship with the Competition Authority, and a relative lack of transparency and independent status which would give regulators more clout in dealing with ex monopolies.

PART I

Regulatory Reform in Sweden

PART I
Chapter 1

Performance and Appraisal

Introduction

Sweden's well-performing economy over the last decade has been combined with strong governance traditions that set it apart from many other OECD countries. Governance is marked by consensus-based, collective decision-making underpinned by strong consultation mechanisms and a high level of transparency.

The state plays a key role in the economy and society, and public policy goals emphasise the importance of social cohesion and set high standards of welfare. Sweden's achievements are reflected in high per capita incomes (among the top third of OECD countries), but also in other measures such as the UN Human Development Index (sixth place) and income equality (second to Denmark in the OECD).

These achievements should be seen in the light of a remarkable recovery from a major economic crisis in the early 1990s which triggered important structural and regulatory reforms. Per capita incomes had at that time slipped from third highest in the OECD in 1970 to fourteenth place, and heavy budget deficits were generating a rapidly rising national debt. The crisis was overcome through strong and wide ranging policy action, which included regulatory reform to liberalise important parts of the economy. This promoted the development of high productivity firms, and spurred the growth of the ICT sector. A core feature of the Swedish economy today is the prominence of large scale manufacturing and ICT companies, most of which are major exporters that underpin significant international trade.

Sweden does not currently face a crisis, but a decade on from the upheavals of the 1990s, questions are being raised about the resilience and durability of Swedish achievements given the pressures stemming from globalisation, particularly in terms of jobs, as well as meeting the welfare demands from an ageing population. Sweden with respect to ageing is better placed than most other OECD countries, as this process and the corresponding policy responses took place earlier than in other countries. This report makes the case for further reform as a key element in sustaining a strong economic performance and high level of social well-being. It also assesses the capacities of Sweden's regulatory institutions to manage reform and sustain high standards of regulatory quality.

This part of the report is structured into four main sections. The first section sets out essential background: the macroeconomic context, Swedish public policy goals and its system of governance, as well as future economic challenges. The second section reviews the contribution which regulatory reform has made to Swedish performance so far. The third section analyses the emerging challenges for regulatory reform, identifying specific areas for action. The fourth section assesses Sweden's capacities for promoting further reform.

Section 1. The Macroeconomic Context

A generally successful and well managed economy

A major and deep seated economic crisis successfully overcome in the 1990s

The Swedish economy has undergone important changes over the last two decades, recovering from a long term decline in GDP per capita which culminated in a major crisis in the early 1990s. A combination of external shocks and policy mistakes triggered the crisis. The roots of the problem were linked to inadequate structural and macroeconomic policies, insufficient competition, rigid labour markets, and a large public sector which imposed heavy budget deficits, contributing to a rapidly rising national debt. Reflecting the deep seated malaise, Sweden's GDP per capita ranking had slipped from one of the highest in the OECD in 1970 to average by the early 1990s, before recovering somewhat in the recent period.¹

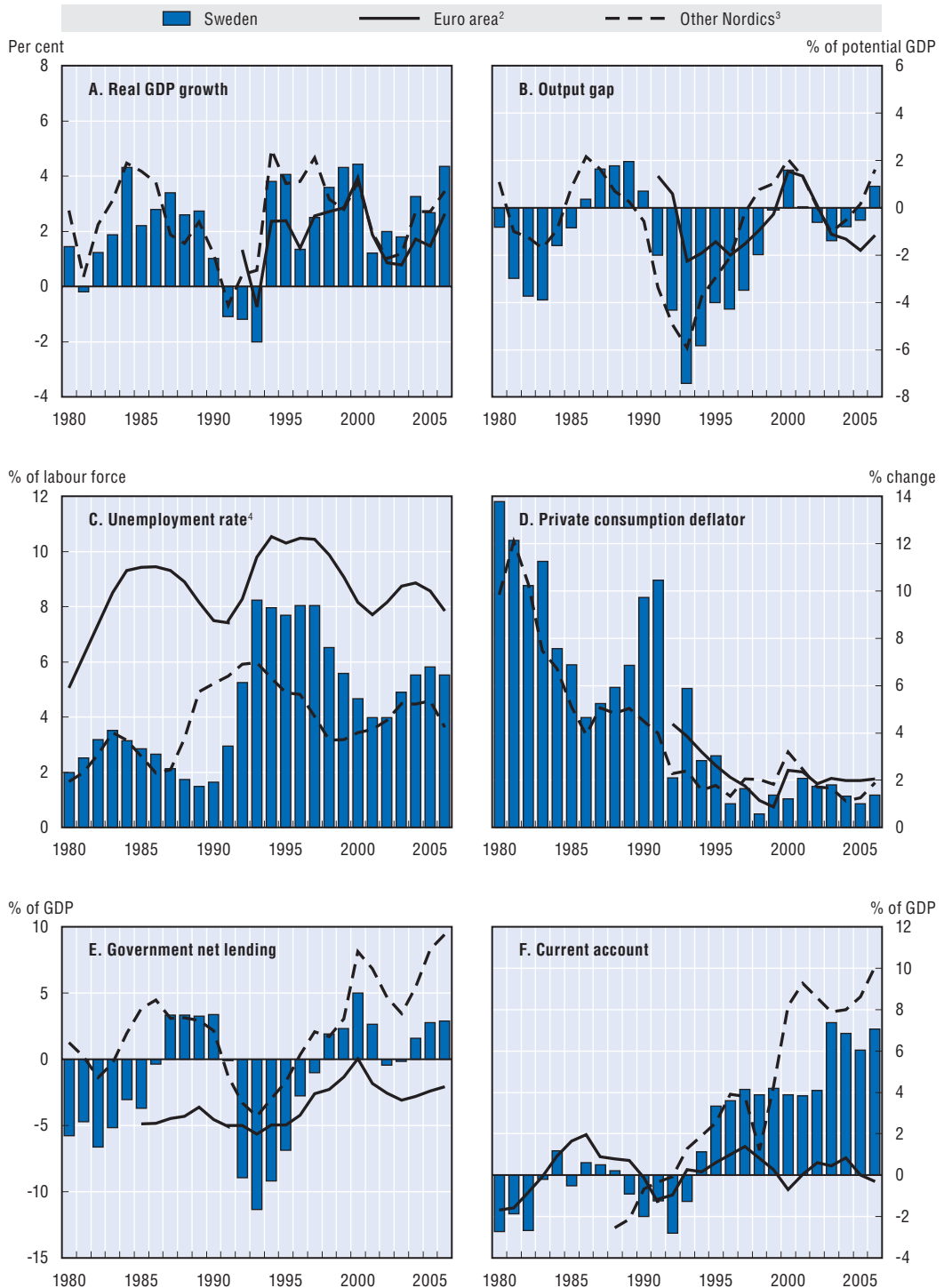
The policy response to the crisis was substantial and wide ranging. The priority was to redress public finances, which was achieved through a combination of tax increases and spending cuts, helping to make Sweden's welfare state more sustainable. The crisis pushed Sweden into early action on the reform of its welfare system and institutions compared with other OECD countries, most of which have only recently started to address the issue under pressure from ageing populations.

The macroeconomic policy framework was comprehensively overhauled, with the introduction of an inflation targeting regime, a floating exchange rate system, and expenditure ceilings and targets. The tax system was also reformed. A drive to liberalise the economy accelerated the move away from economic policies based on price controls and the use of negotiations aiming to influence firms' pricing decisions directly. A wide range of product markets were deregulated, which included allowing limited competition in the provision of publicly financed services. Key network industries, in particular, electricity and telecommunications, were liberalised and here too, Sweden was ahead of most other OECD countries. Major changes were made to the competition law and policy aimed at strengthening its capacities to promote effective markets. Accession to the EU in 1995 provided a further boost to reform (the agricultural sector excepted). Together with relatively strong R&D expenditure, these changes enabled the economy not only to recover from the crisis, but also to grow strongly from the mid-1990s onwards.

Strong and resilient economic growth since then

After the crisis, the Swedish economy came back strongly during the second half of the 1990s with GDP growth rates well above that of most other European countries (Figure 1.1). Since 2001, the Swedish economy has outperformed several euro area countries. The economy has proved relatively robust in the face of some major recent shocks, including a global slowdown and the burst of the telecoms bubble.

Figure 1.1. Key macroeconomic indicators¹



1. OECD estimates for 2006.
 2. Break in series in 1991: western Germany up to 1990, total Germany thereafter.
 3. Denmark, Finland and Norway.
 4. Labour Force Survey, i.e. open unemployment not including participants in labour market programmes.

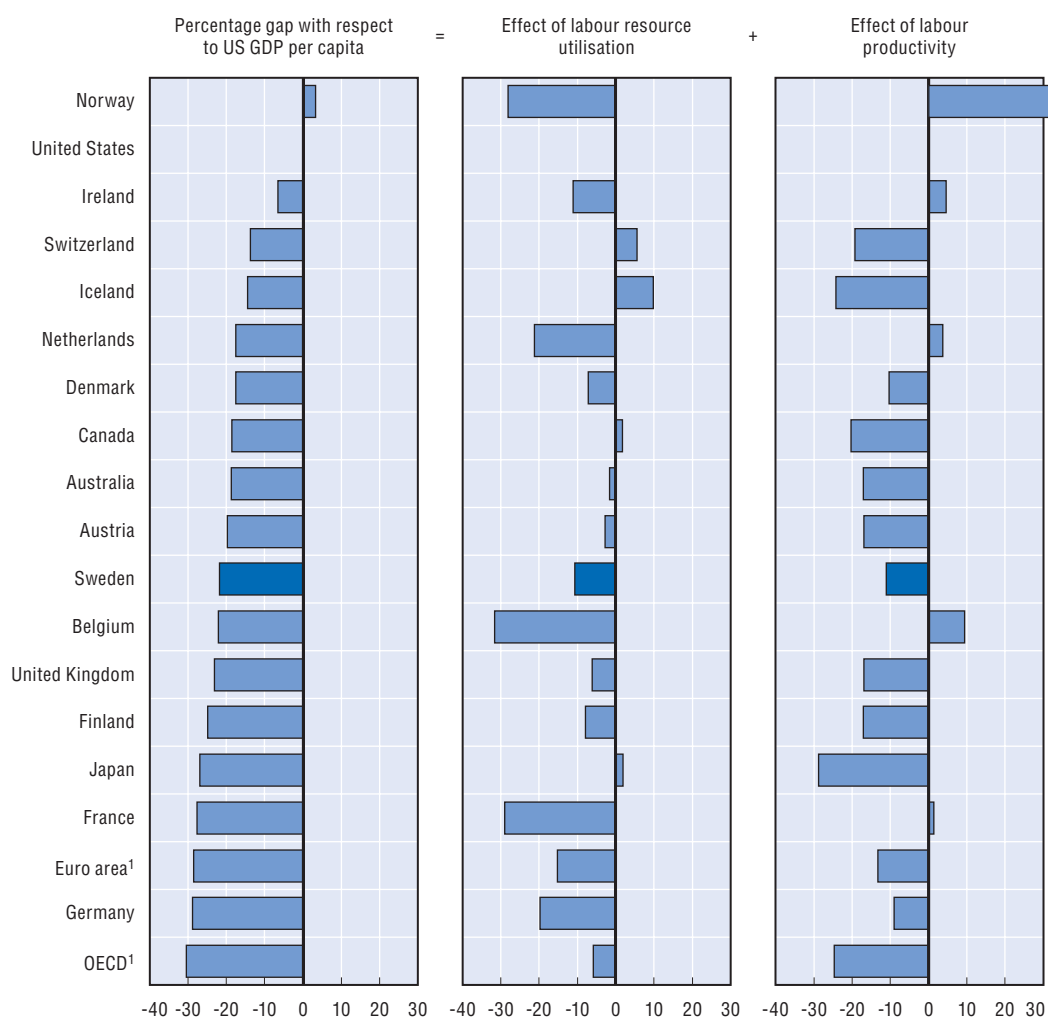
Source: OECD Economic Outlook 80 database.

The sustained upswing is reflected in key macroeconomic indicators. The economy remains competitive, with Sweden's current account moving from a pre-1993 deficit to a large and growing surplus. The fiscal accounts have also improved significantly, with a surplus (more or less) over the last eight years. Consumer price inflation has been maintained at a low level since the mid-1990s, despite the cyclical upswing, reflecting among other factors productivity gains and increased global competition (not least from China and other dynamic Asian economies).

The economic turnaround of the 1990s has brought Sweden back closer to the group of countries with the highest per capita incomes (Figure 1.2).

Figure 1.2. **Swedish per capita income in international comparison**

2005 at purchasing power parity



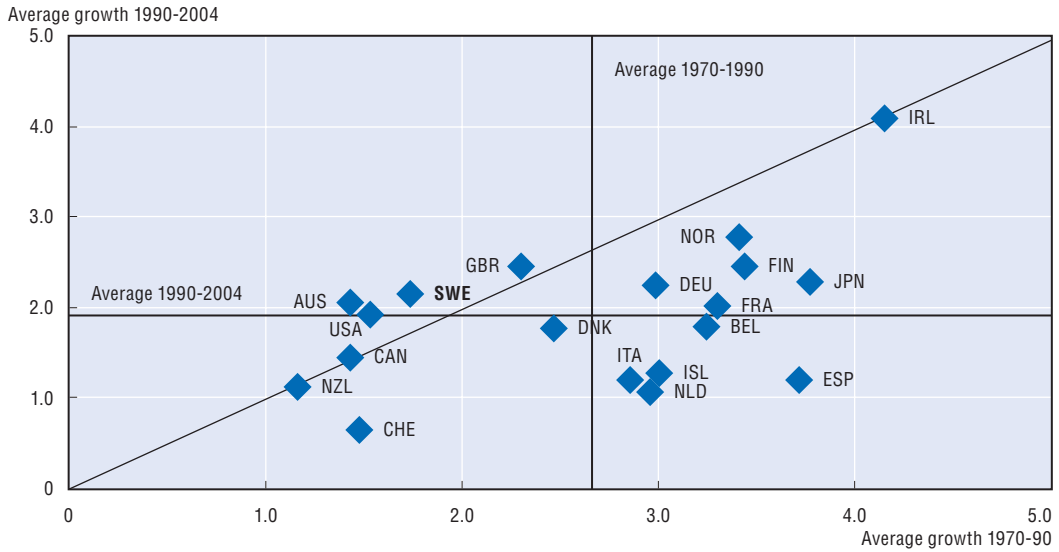
1. Excluding Luxembourg.

Source: OECD Productivity database, September 2006.

A performance supported by impressive productivity growth

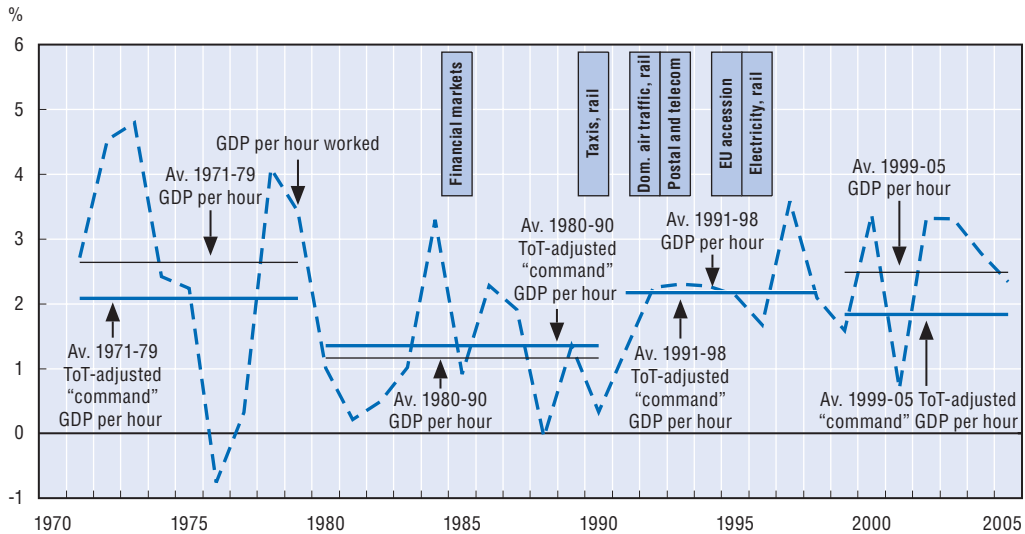
Perhaps the most striking feature about Sweden's economic performance during the last decade is the strong resurgence in labour productivity growth relative to the 1980s (when growth rates were weak by international standards). Growth in 1991-98, measured

Figure 1.3. GDP per hours worked in the OECD
Total economy, average percentage change at annual rate



Source: OECD Productivity database.

Figure 1.4. Productivity growth and the timing of regulatory reform
Whole economy, annual growth rate



Source: OECD Analytical database.

as value added in the total economy per hour worked, averaged 2.2%, compared to 1.2% in 1980-90 (Figure 1.4). From 1999 to 2005, it increased further, to 2.5% on average. The surge is apparent vis-à-vis other countries. Sweden has moved from a relatively poor performance to one that puts it in a group of countries with relatively high productivity growth (Figure 1.3).

A number of factors explain improved performance. These include:

- The macroeconomic policy reforms of the 1990s.
- The shut down of low productivity firms during the crisis.

- Structural change in the economy, including a strong expansion of the ICT industry, leading to a relatively high share of value-added produced in high growth sectors, especially in knowledge intensive services such as telecommunication services where growth has been especially strong.
- Increasing specialisation and outsourcing due to globalisation.
- Better measurement of price deflators in Swedish national accounts, leading to higher measured productivity in service sectors.
- A better quality labour force (a growing share of employees have university degrees).

Regulatory reform played an important role behind productivity improvements (Figure 1.4 and Box 1.1). The closure of low productivity firms in the crisis was followed by a boost to the emergence of more productive firms through deregulation, which promoted greater competition. Other positive effects included the liberalisation of the telecommunication market in the early 1990s, which helped to support structural change through the expansion of knowledge intensive services. Strong productivity growth in telecommunications over the past ten years suggests that regulatory reform has spurred economic performance in this sector, as is the case in many other OECD countries.

Factors driving economic performance

An economy largely structured around big manufacturing and ICT companies

The backbone of the Swedish economy has traditionally been the exploitation of natural resources (forestry and mining) and the production of manufactured products (steel, paper and pulp, machinery, motor vehicles, chemicals, pharmaceuticals and telecommunications equipment), supported by a relatively small service sector.

A small group of large companies has dominated production, and holdings of financial assets have been concentrated in a few large institutions (banks, insurance companies and investment corporations), reflecting a strong belief in economies of scale.

A key trend during the last decade has been the rising importance of the ICT industry (both in manufacturing and in communication services). This has become a flagship of the Swedish corporate sector, and Ericsson is currently one of the world's leading ICT companies. The ICT sector's importance and contribution to Swedish growth, however, needs to be kept in perspective. In the late 1990s, the sector was only slightly larger than in the EU on average, and was much smaller than in Europe's "new economy stars", Finland and Ireland. Traditional manufacturing industries still play an important role alongside ICT. The size of the Swedish manufacturing sector (measured as a share of value added in the economy) has been remarkably stable over time, in sharp contrast to other countries which have had to meet the challenge of a decline in this sector.

The resurgence in Sweden's labour productivity growth over the last decade has been strongest in the manufacturing sector, where growth in value-added per hour worked averaged 5.9% in the period 1999-2003 (Table 1.1). The ICT sector, and one telecommunications company in particular (Ericsson), accounts for a significant share of growth. Productivity also rose strongly in the auto, pharmaceutical and machinery industries.

Significant international trade, supported by a strong policy of market openness

An important factor in Sweden's prosperity is the openness of its markets. Sweden is a small open economy equipped with large and successful export industries. International commerce has grown significantly faster than the national economy. Exports as a

Table 1.1. Productivity growth by sector
Value-added per hour worked, average annual change 1999-2003

	CAN	DEN	FIN	JPN	NLD	NOR ¹	SWE	Memorandum item: Share of total Swedish value-added, %
Total²	1.9	1.8	2.0	1.7	0.7	2.7	2.4	100.0
Agricultural, hunting, forestry and fishing	3.4	2.0	5.6	-2.1	-0.3	4.3	4.8	1.9
Electricity, gas and water supply	-0.4	-1.4	6.6	3.5	3.8	9.5	2.9	2.6
Construction	1.1	1.1	-1.9	-0.5	0.0	-2.6	-0.3	4.3
Total of manufacturing	2.6	3.4	4.4	4.5	1.6	3.0	5.9	20.9
Food products, beverages and tobacco	2.1	3.3	3.3	0.1	1.0	5.5	1.3	1.4
Pulp, paper, printing and publishing	3.2	0.1	2.5	..	-0.1	2.1	3.5	2.6
Chemical, rubber, plastics and fuel products	3.5	2.9	1.4	..	4.5	1.0	7.8	2.5
Basic metals and fabricated metal products	2.1	3.2	1.5	-0.3	0.8	4.0	2.6	2.2
Machinery and equipment, including ICT	-0.4	4.1	8.4	8.3	0.9	1.2	9.3	3.9
Transport equipment	2.7	2.4	0.2	5.5	0.6	0.0	7.3	2.3
Total of services	2.0	1.4	1.0	0.9	0.6	2.8	1.5	70.0
Producer services								
Business and professional services	2.6	-0.7	-0.5	..	1.5	0.4	1.0	7.8
Financial intermediation	1.0	3.9	5.0	6.6	1.6	2.8	4.3	3.6
Real estate	2.7	-0.4	-0.1	3.8	-1.0	-0.6	0.4	8.6
Distributive services								
Wholesale and retail trade; repairs	3.3	2.1	2.6	..	0.8	5.0	3.1	10.5
Transportation	2.7	6.0	1.1	..	-0.8	1.6	2.0	4.5
Communication	4.3	4.6	10.1	..	9.1	11.5	6.4	2.0
Hotels and restaurants	0.4	-2.9	-1.0	..	-1.2	0.9	0.4	1.5
Community and personal services	1.1	0.2	-0.3	..	-0.4	1.4	0.6	25.1

1. 1999-2002.

2. Sub-sectors accounting for less than 1% of value-added in Sweden are not listed separately, but are included in the totals.

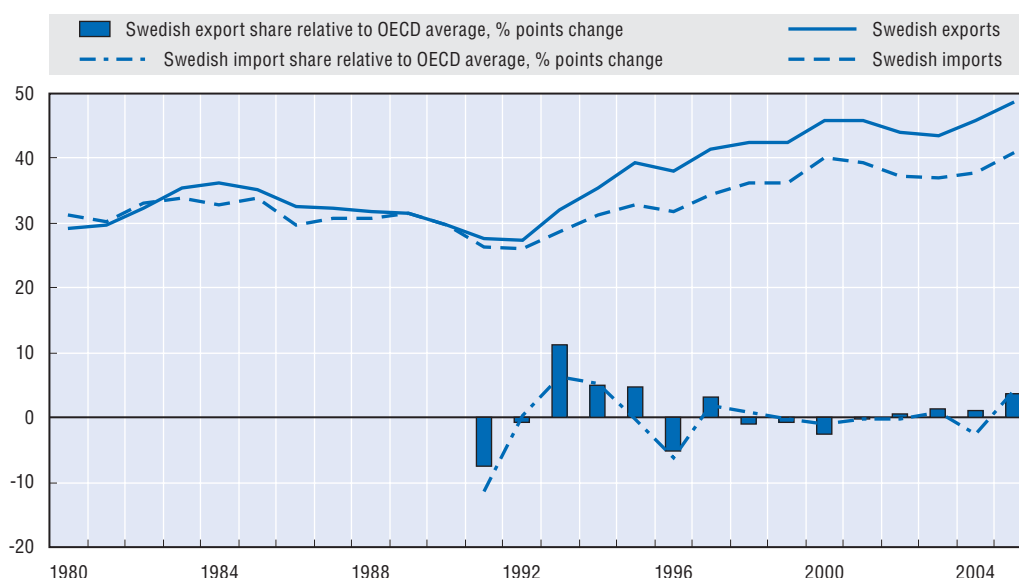
Source: STAN database; OECD calculations.

proportion of GDP have been close to 46% over the last five years on average, compared to an OECD average of a little above 44%. Important factors underpinning performance include the regulatory reforms of the 1990s combined with structural changes to the economy. The reforms of the 1990s included a strong emphasis on market openness. According to the OECD's indicators on barriers to trade, the Swedish market has been more open than that of many other OECD countries since 1998, and efforts to reduce barriers to trade continue. At the same time, technological development led to the growth of export-oriented industries such as telecommunications, and globalisation encouraged specialisation in specific industries, notably the auto industry.

Traditionally, Sweden's main trading partners have been the United States, Germany, Norway, Denmark, the United Kingdom and Finland, which together account for around 50% of total goods exports. International trade with emerging economies such as China plays a growing role. Since 1998, imports and exports with China, measured as a proportion of total Swedish imports and exports, increased from 0.9% and 1.7%, to 3.0% and 2.2%, respectively. The two largest export sectors are road vehicles and telecoms. Road vehicles accounted for 14% of merchandise exports in 2005, up from 12% in 2000. Telecommunications equipment exports fell from 16% to 10% in the same period following the ICT downturn of the early 2000s, which led to significant layoffs and structural adjustment in this sector.

The picture has changed significantly over time. For a long time Sweden's exports as a share of GDP were slightly lower than the OECD average. This changed in the first half of the 1990s, due to a significant improvement in Swedish competitiveness as well as a favourable composition of world demand (Figure 1.5). In 2004, Swedish exports amounted to 48.6% of GDP, compared to 45.5% in OECD. The export upswing has, however, not been followed by an equivalent shift in the level of imports, despite a growth in import penetration. Although export and import shares were closely linked historically, the pattern appears to have changed in recent years.

Figure 1.5. **Swedish imports and exports as a share of GDP**



Source: Economic Outlook 79 database.

Sweden is relatively open to FDI, given the size of its economy. Its share of inward and outward FDI stocks relative to GDP in 2005 was twice the OECD average. A significant share of the Swedish economy is controlled by foreign owners, and Swedish interests hold significant assets abroad. The Global Competitiveness Report's survey of business ranks Sweden 20th out of 117 countries for FDI friendliness.

The ICT industry: a double-edged sword for the economy

Although the Swedish ICT industry has made a significant contribution to GDP and productivity growth over the last decade, the long term effect on an economy of a large ICT industry is deterioration in the terms of trade as relative ICT prices typically fall over time. If Swedish GDP and productivity growth measures are adjusted to take account of this phenomenon, both measures come out a little lower than traditional measures (Box 1.1). This puts a slightly less positive slant on Sweden's productivity performance, as well as underlining the need to sustain or even improve performance over time. For Swedish companies to sustain their competitive edge in export markets, they will need to raise productivity more quickly than competitors.

Box 1.1. **Adjusting GDP and productivity trend growth measures to take account of ICT**

The long term effect of ICT on terms of trade

The ICT industry is characterised not only by rapid technological progress and high labour productivity, but also by a significant decline in prices over time. Major ICT producing and exporting countries therefore face falling export prices and a consequent deterioration in their terms of trade. ICT using countries on the other hand have, on balance, seen their terms of trade improve through lower import prices. The long term benefits of ICT are thus likely to accrue more to the users than to the producers of ICT (Bayoumi and Haacker, 2002).

The Nordic countries highlight the distinction between ICT producers and users. The differences in the composition of their exports and imports are reflected in considerable trend divergences in their terms of trade, especially since the late 1990s. Between 1991 and 2005, Sweden's terms of trade worsened by 13%. In contrast, Denmark saw an improvement of almost 9%. However, other countries with large ICT industries have seen an even larger deterioration in their terms of trade (15% for Finland and 36% for Korea).

Implications of a decline in terms of trade for GDP and productivity growth

A decline in the terms of trade means that fewer goods can be imported with the same volume of export goods. That is, the purchasing power of domestic income decreases, or put another way it reduces the volume of imports that can be bought for a given volume of exports. Traditional GDP accounting does not take this into account. To approximate effects from terms of trade changes on the purchasing power of domestic income, nominal exports can be deflated using an import price deflator. This creates an indicator called command GDP, which is in essence a measure of an economy's overall consumption potential.

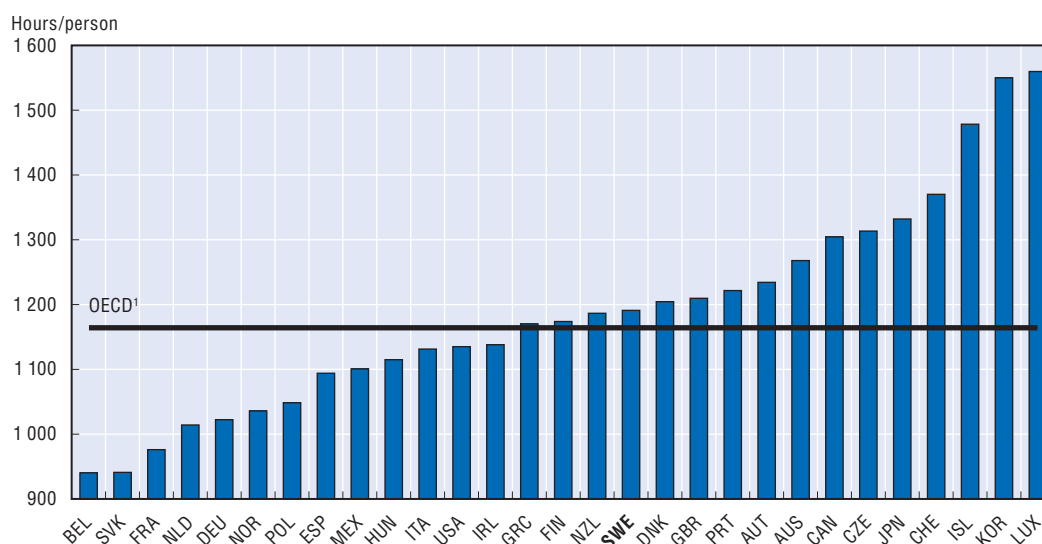
Sweden's position

Swedish terms of trade have experienced a trend deterioration with the fall in prices of ICT goods on export markets. As a result, its yearly growth in terms of command GDP has on average been 0.7% lower than traditional GDP growth in the six years to 2005. Using command GDP to calculate labour productivity growth shows a similar effect. 0.2% of the growth in labour productivity from the 1980s to the 1990s vanishes (Figure 1.4). The gap has widened in recent years to 0.4%, reflecting further worsening in the terms of trade.

Generally high employment rates but low labour market flexibility

The Swedish labour market is characterised by a combination of generally high employment rates (74.7% compared to 67.4% in OECD, 2004 figures) and low average hours of work. The effect is that total labour supply is only around average (Figure 1.6). Part of the explanation as to why working hours are low is that the "standard" working week is around one hour shorter than the European average. Most of the shortfall, however, is caused by high absence rates, with holidays, sickness and parental leave as the most common reasons. Furthermore, high marginal taxes generate incentives to reduce working hours. Taking absences into account, the "average" Swede takes almost 17 weeks off work each year, compared to the European average of 11 weeks.

In international comparison, Sweden has relatively strict employment protection rules (Figure 1.7). The most significant rule is the last-in-first-out rule that gives considerable job security to people who stay with the same employer. However, this rule may be deviated from collective agreement, making it possible to take into account the employer's need to keep certain persons in the workforce. Furthermore, an employee with

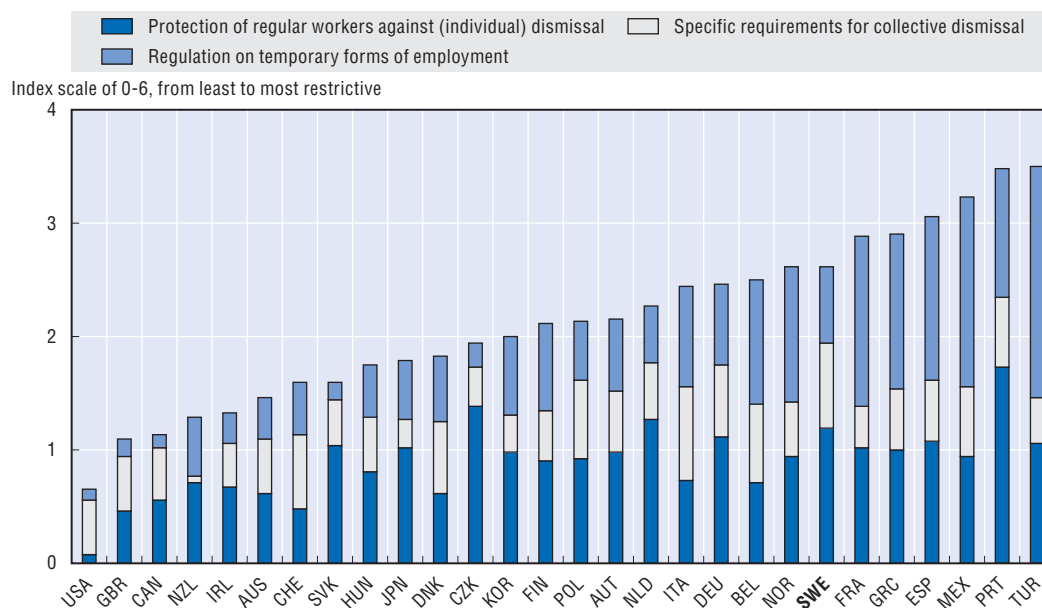
Figure 1.6. **Total hours worked annually per person of working age, 2005**

1. Considering the OECD as whole, but excluding Turkey.

Source: OECD Economic Outlook 80 database; OECD Productivity database, September 2006.

Figure 1.7. **Employment protection legislation across the OECD**

Overall summary index of EPL strictness and its three main components, 2003¹



Note: EPL = Employment protection legislation.

1. Countries are ranked from left to right in ascending order of the overall summary index.

Source: OECD Employment Outlook, 2004.

longer employment time only has priority over other employees if he or she has satisfactory qualifications for the continued work. Certain exemptions from the rule apply for companies with ten or fewer employees. Swedes tend to stay in the same job much longer than in other OECD countries. This reduced job mobility makes it harder to reallocate scarce labour supply to those areas where it is most needed.

A highly credible monetary policy

Sweden's present monetary policy framework of inflation targeting emerged from the currency crisis in late 1992. The monetary policy target is to maintain price stability, defined by the central bank since January 1993 as holding the rate of consumer price inflation at 2% \pm 1 %.

This monetary policy framework has served Sweden well. Sound inflation performance has strengthened the central bank's credibility, and inflation expectations appear to be well anchored (OECD, 2005a). The inflation targeting regime has in recent years delivered low and stable inflation and so helped to promote economic growth. This good performance is one of the factors that are likely to explain why the spread in long term interest rates has been significantly reduced during the last decade. Currently, Swedish long term interest rates are slightly lower than in Germany.

A financial sector which helps to underpin the economy

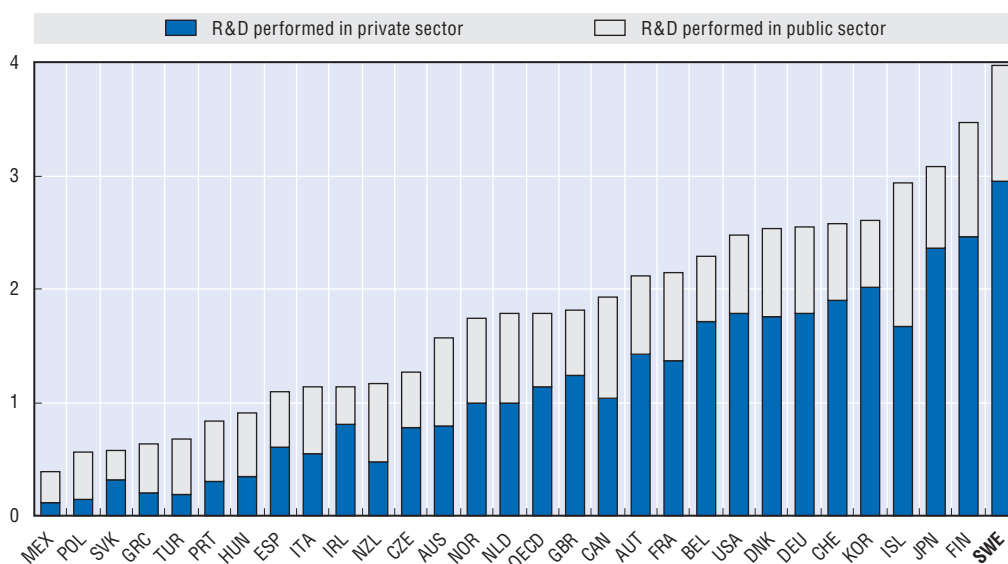
Financial and insurance-related services play an important economic role through their impact on technical infrastructure (payment systems, trading platforms, clearing and settlement of securities, pooling of risk) and through their direct and indirect effects on value added and employment. In Sweden, the financial sector's share in total value added is slightly less than 4% (compared to a little over 6% in the OECD), and its share of employment is slightly higher than 2% (compared to a little over above 3% in the OECD). The latter share has remained more or less constant over the last decade, while the former shows a significant drop since the late 1980s, when the share was around 5% (closer to the OECD average).

The development of Swedish financial markets over the past two decades has been characterised by deregulation of credit and currency markets, increased internationalisation and technological development. As a result, product variety has increased, but it has also added greater complexity. In recent years, a large number of new banking companies have been established in Sweden (including affiliates of foreign corporations). But holdings of financial assets are still concentrated in a few large domestic institutions (banks, insurance companies and investment corporations). According to the Competition Authority, there is currently an oligopoly-like market structure in the banking industry where the four major players control 73% of total assets managed. In international comparison net interest margins in the Swedish banking sector are close to the OECD average while overhead costs are slightly lower.

High R&D expenditure which promotes innovation

Innovation is a key element determining long term economic growth. In this respect, Sweden rates highly on a number of contributing factors. R&D expenditure expressed as a percentage of GDP is higher than any other OECD country (Figure 1.8). A relatively high proportion of R&D is performed by the private sector and just four large Swedish companies accounted for some 70% of all private sector R&D in the first half of the 1990s. Sweden also has a high share of researchers in the workforce, and one of the highest proportions of patent applications per head of population in the OECD. But it appears to do relatively less well in the practical translation of this effort into the market. When it comes to the number of successful innovations in manufacturing and services, Sweden is only middle ranking compared to other OECD countries.

Figure 1.8. **Expenditure on R&D across the OECD, 2003**
Percentage of GDP¹



1. 2002 for Australia, Austria, Portugal, Switzerland and Turkey; 2001 for Greece and Mexico.

Source: OECD, *Going for Growth*, 2006.

Sweden's public policies towards R&D are more neutral than those of several other OECD countries, most notably because it does not offer tax subsidies. However, direct government funding of business R&D is relatively high. In the three years to 2003, it amounted to 0.18% of GDP, compared to 0.06% in OECD on average. The main part of this is for defence purposes where government contract to industry includes R&D. Within the civil sector the government funding to industry R&D is low.

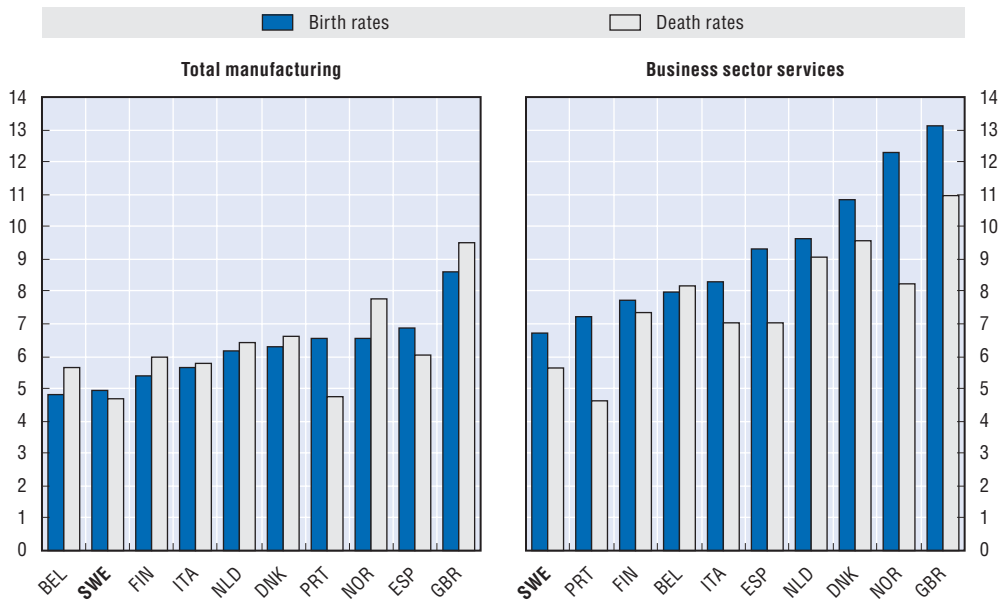
But entrepreneurship is muted

Entrepreneurial activity is another critical element for long term growth. Entrepreneurship involves seeking out and identifying potentially profitable economic opportunities and taking the risk of trying them out. New firms can act as an important bridge for the successful application of innovative developments into the marketplace, which matters in the Swedish context because this is an area where there is still scope for improvement. As well, shifts towards outsourcing, the development of new services, and demand for more differentiated products all point to a greater role for small and new firms as engines of structural change in economies. New and expanding firms have, not least, the potential to generate jobs.

However, relatively few people in Sweden have ever considered starting their own business, and a smaller proportion than elsewhere has experience of running a business. Although barriers to entrepreneurship are generally lower in Sweden than elsewhere in the OECD, the rate of start-ups and shut-downs is relatively low in international comparison, both in manufacturing and business service industries (Figure 1.9). Businesses that are started remain small with fewer than two employees on average after two years, a low figure compared to many other European countries.

Figure 1.9. **Birth and death rates of firms across the OECD, 1998-2003**

Average rate over 1998-2003



Source: Eurostat business demography data.

Public policy goals and the Swedish governance model

Ambitious public policy goals and the importance of social cohesion

Sweden has two broad targets of economic and social policy, which appear to be taken more seriously than in many other countries, and which may be summarised as the promotion of social cohesion:

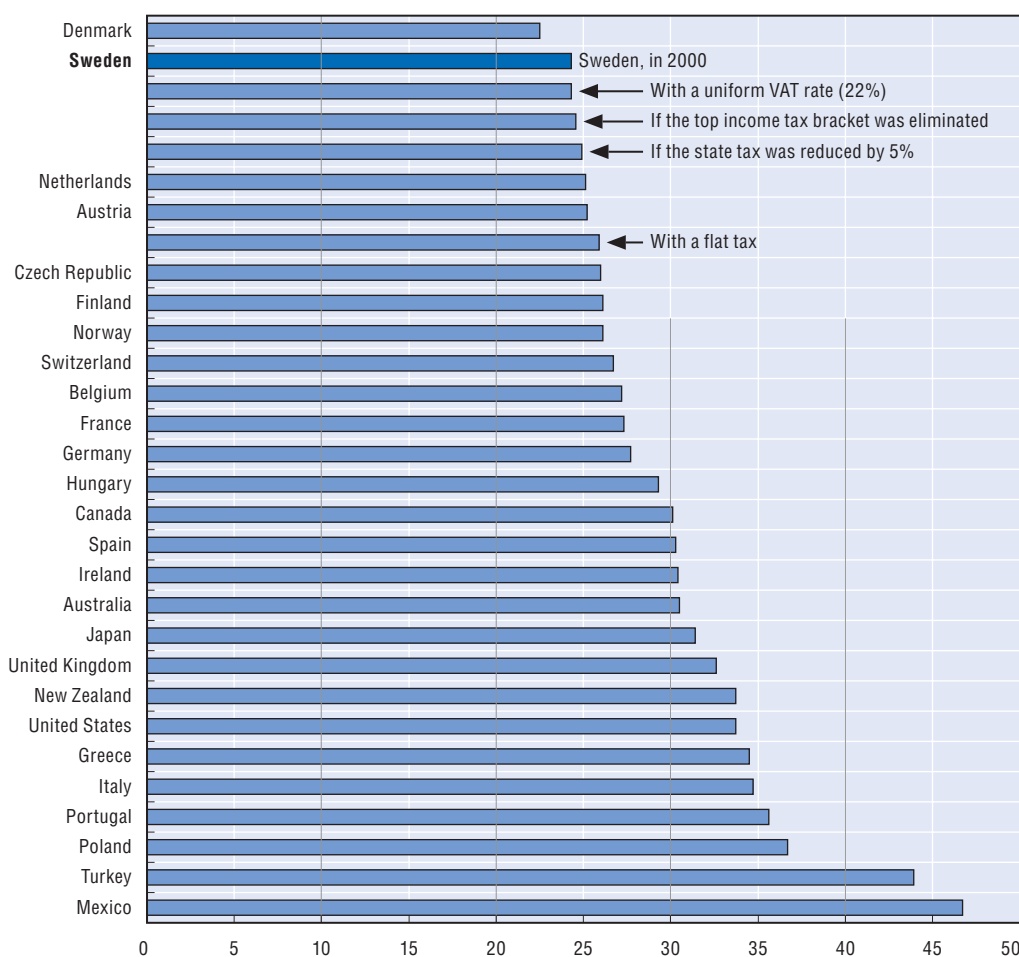
- Economic security, including full employment.
- Equality, specifically the reduction of income differences and the mitigation of poverty, as well as homogeneity of living conditions throughout the country.

The wage bargaining framework delivers considerable wage compression, reflecting a shared objective to promote an equitable society. Active labour market programmes have been developed to cope with employment problems. Policies are also geared to ensuring that different parts of the country and particular groups of society are not disadvantaged, and that high standards of universal public services and infrastructure are maintained.

Swedish support for a high quality environment has grown steadily and its environmental policy is ambitious. The concept of sustainable development is promoted through a legal and institutional framework which seeks to ensure that it permeates all policy making. Swedes also have a strong global conscience, devoting substantial resources to preserving the global environment, helping poorer nations and providing a haven for refugees.

Sweden's public policy goals and achievements are reflected in relevant OECD rankings. It ranks highly in most indicators of quality of life. The United Nations places it sixth on its Human Development Index (2005). It is second only to Denmark in the OECD in terms of income equality (Figure 1.10).

Figure 1.10. **Swedish income distribution in international comparison**
Gini coefficients in 2000¹



1. A higher GINI coefficient implies greater income inequality. It can range from 0 (everyone having the same income) to 100 (one person having all the income).

Source: OECD calculations; Swedish Ministry of Finance; Förster, Michael and Marco Mira d'Ercole (2005), "Income distribution and poverty in OECD countries in the second half of the 1990s", *OECD, Social, Employment and Migration Working Papers* No. 22.

Developing a strong economy in support of public policy goals

Sweden has, since the crisis of the early 1990s, emphasised the importance of a strong and growing economy to support the achievement of its public policy goals. This can be seen, for example, in the general emphasis on competition in markets, policies to support free trade and open international markets, and spending on education.

A system of governance which reflects and underpins these goals

Swedish governance – which shares features with other Nordic countries – reflects and supports the two broad targets of economic and social policy. At its core are a strong and pervasive role for the state, and a large tax financed public sector. The size of the public sector reflects the importance attached to the state as the main guardian of society, and a willingness to pay for extensive social services through taxation. The state – and not least the local government level – plays an important role in the organisation of families'

daily life, through provision of child and elderly care services. This has contributed to high employment rates, particularly for women and migrants. Sweden has a large and wide-ranging welfare system, characterised by generous and comprehensive social insurance, extensive income redistribution, and a preference for universal rather than means-tested benefits.

Public ownership and production are substantial (particularly in welfare-related services), albeit less than in some other European countries. This reflects historical roots, but also concerns about relying on the private sector to deliver important social objectives, even where substantial regulation is in place.

A political and societal culture which is strong on transparency, consensus and integrity

Sweden's strong culture of transparency goes back several centuries. It is rooted in a legal principle established in 1766 which gave citizens right of access to all public documents (unless an explicit confidentiality provision applies). This remains a fundamental instrument for the democratic control of government, and has helped the development of a society that respects the rule of law and is relatively free of corruption. Today, Sweden ranks as the sixth most transparent country in Transparency International's Corruption Perceptions Index (2005). The practical application of the transparency principle resonates across Sweden's approach to policy and rule making, which is marked by a strong and inclusive approach to public consultation and the widespread availability of clear information. A high level of participation in elections and a strong and independent press reinforce the democratic basis of Swedish governance.

Consensus building is an essential part of Sweden's culture of transparency. It draws its strength from the rule of formal review and consultation before legislative changes, and also from a close and informal network of contacts within government and society, based on mutual respect. It is upheld by the Instrument of Government, one of the four fundamental laws that flesh out the principles of governance in Sweden's Constitution. Many of the processes for consensus building are legally based and carefully defined (Box 1.2).

A clear distinction between strategic policy-making and implementation, reflected in the institutional and rule-making structure

Sweden makes a clear distinction between policy making and policy implementation. The Swedish central government structure is made up of nine small policy making ministries and 300 independently managed agencies responsible for the implementation of government policy. Constitutional provisions with strong historical roots impose constraints on any changes to these arrangements.

What this means in practice is that the agencies play a central role in the Swedish regulatory landscape (Box 1.3). They are responsible for the largest part of the Swedish regulatory system. Much of EU law is transposed through agency regulations. Agencies also regulate and supervise the implementation of tasks delegated to local government.

A strong role for local government in the implementation of nationwide policies

Local governments are entrusted with a large number of complex tasks delegated to them by central government. Their role is to implement national policies on the ground in a number of key areas. This reflects a deeply embedded historical emphasis on the need to match the provision of public services to local conditions. Their work needs to take into

Box 1.2. Consensus building in the Swedish system

Legislative proposals must be preceded by formal review and consultation

A thorough and well established consultation process is in place for laws, of which about 150-200 bills a year are presented by the government to the Parliament, covering new legislation as well as amendments to existing laws. No legislative proposal can go forward to the Parliament for adoption unless it has been preceded by a formal review and consultative process that puts the issues to a wide audience. Before a bill is presented, the issue or topic is evaluated by a Committee of Inquiry, which operates independently of government and may include experts, public officials and politicians (the inquiry stage). The report setting out the committee's conclusions is published and available on the Internet. Before the government takes a position on the report's recommendations, the report is referred to a wide range of within and outside government including agencies, special interest groups such as business or consumer organisations, trade unions, academics, courts, and local government (the referral stage).

Government decisions require unanimity

Individual ministries are responsible for initiating and developing regulatory proposals within their remit, as is the case in most OECD countries), but they also work within a strong consensus-based framework for decision making. All formal government decisions must be taken collectively and unanimously by the members of the government. The process starts with a joint drafting procedure and circulation for comments, in which primary affected, and finally all ministries take part. Ministries must reach a shared understanding before a proposal can be taken forward as a formal government decision. Co-ordination and consensus building then resumes between the government and the political parties with which it collaborates.

Box 1.3. The origin of Swedish regulations

Central government laws and regulations can be laid down as follows:

- The Parliament enacts *laws* (of which there were 1 274 as of March 2006).
- The regulations laid down by the government are called *ordinances* (of which there were some 2 330 as of March 2006), which include the ordinances that regulate the agencies.
- The agencies lay down *regulations* (of which there were some 8 200 as of December 2005). This is by far the largest part of the Swedish regulatory system. Regulations are more extensive in content than laws and ordinances. For example the Swedish Food Act – a small law of 35 sections and some six pages – has been supplemented by more than 100 agency regulations totalling over 1 800 pages.

Local municipalities are also important players in the regulatory system. They have a wide range of tasks delegated to them by the centre, as well as some very limited direct rule-making responsibilities.

account a strong social expectation that all parts of the country have the right to enjoy the same standard of services. Mandatory tasks of municipalities cover important parts of the welfare system and public services such as social services and education, as well as housing, planning and building matters, and environmental and public health protection, refuse collection and waste management, water and sewage.

Box 1.4. Local government in Sweden's governance framework

Two levels of local government

Local government in Sweden is made up of:

- 20 elected county councils (two of which are experimenting with new regional forms of government). They carry out certain mandatory tasks delegated to them from central government (notably in health and medical care, and transport). The County Administrative Boards are state agencies in the counties and responsible for ensuring that decisions taken by central government have the best possible effects. They also act as a body for appeals for some aspects of municipal decision-making. The county councils and the County Administrative Boards are separated bodies.
- 290 elected municipalities. Their main role is the implementation of national laws, that is to say, tasks delegated to them from central government. They also have some limited rule-making powers of their own (including for public cleaning and refuse collection, health protection, management of environmentally harmful activities).

Legislative framework for local government

This consists of:

- The Constitution gives the local level certain tax raising powers to carry out their tasks. Central government decides their tax bases. Local government budgets are also made up of central government grants.
- Parliament determines the allocation of responsibilities between the three levels of government.
- The Swedish local government Act – an enabling law – regulates the basic organisation of the municipalities and the general competence of the municipalities and county councils.
- Local government tasks are regulated by specific laws, supplemented by ministry ordinances and agency regulations. In the field of health and social services, for example, the National Board of Health and Welfare issues detailed regulations, sets standards, and supervises and evaluates implementation.

Developments and challenges to the Swedish governance model

There is an enduring political and societal consensus for the maintenance of social cohesion and high standards of welfare. But a number of factors make the conditions for achieving this increasingly difficult, including:

- The growing cost of the welfare system. Apart from direct pressures of an ageing population, most welfare services are inelastic, meaning that people will demand more as productivity growth drives up average incomes.
- Increasing demand for higher regulatory standards, especially in public services.
- The growing importance of the EU as a source of regulation, which does not always fit Swedish perspectives.

Future economic challenges

Ensuring that the current strong performance can be sustained

Although recent economic performance has been relatively strong in international comparison, the Swedish economy faces a number of challenges which could jeopardise its ability to meet future public policy goals. Sweden's most important challenge to these goals

is the demographic burden. Ageing will put growing pressures on Sweden's ability to sustain a high level of economic growth and in particular its generous welfare system. Its economic performance today is better than many European countries, although not the best in the wider OECD area. Despite a catch-up in per capita incomes in Sweden relative to other countries in recent years (Figure 1.2), they are still not at the same level as before the 1990s crisis. Sweden currently lags a number of other countries, including neighbouring Denmark.

Growing pressures on Sweden's growth capacities and its generous welfare system from an ageing population

Sweden already has a relatively old population, with the largest proportion of very old people (aged 80 and over) in the OECD. The impact on public finances is therefore happening sooner than in other OECD countries. Demographic projections from Statistics Sweden show that over the next 35 years, the proportion of the population aged over 65 will increase by almost 40%. The rise in the number of old people is especially pronounced for those aged 80 or more. At the same time, the share of the working age population (the proportion of those aged 15-64 years to total population) is projected to fall by around 9%. If the current aggregate employment rate is maintained then the number of employed workers for each person aged 65 and above will drop from around 2.8 to 1.8. At this point, the old-age dependency ratio (the ratio of those over 65 to the working age population) is set to peak at around 40%. Whilst this is high, the increase in the dependency ratio is one of the lowest in OECD because Sweden is already in a mature phase of its ageing process.

Sweden has already taken action to counter the impact of its ageing population. Reforms designed to put public pensions on a robust financial basis, together with the relatively moderate increase in the dependency ratio, look set to ease future budgetary pressures, at least relative to many other OECD countries. Projections indicate that the total increase in Swedish health and long term care expenditure from 2005 to 2050 is lowest in the OECD, although this also reflects the fact that spending in these areas is already fairly high. An important factor is the participation rate of older workers in the labour market, which is one of the highest in Europe and helps to mitigate the pressures of ageing.

The increase in the dependency ratio will *ceteris paribus* slow the rate of growth in GDP per capita. The direct effect on labour supply stemming from the demographic changes indicates a slowdown of average annual growth in GDP per capita to around 1½%, which is almost ¾% lower than the average over the last 40 years. Demographic changes might affect GDP per capita even more negatively if, for example, the average immigrant continues to have a lower productivity than the native Swedish counterpart, or if there is a relative shift towards employment in the government sector.

Improving performance: addressing weaknesses in the labour market

The Swedish labour market faces certain weaknesses despite a generally high employment rate. Labour supply constraints are already an important issue and will, as explained above, matter increasingly as the population continues to age. The restated OECD Jobs Strategy provides reform avenues to address these problems (see *OECD Employment Outlook*, 2006) and the Swedish approach to labour market reform is discussed in the *OECD Economic Survey of Sweden* (OECD 2007). Job creation capacities need to be boosted. A number of specific issues can be identified in this respect:

- **Total labour supply which is only average in international comparison.** Total labour supply (hours worked per person of working age) is only average by OECD standards, and

this is part of the reason for the continuing gap with per capita income levels of the best OECD performers, despite fairly high employment rates. Part of the explanation for why working hours are low is that the “standard” working week is around one hour shorter than the European average. Most of the shortfall, however, is caused by high absence rates, with holidays, sickness and parental leave as the most common reasons. Furthermore, high marginal taxes may reduce incentives to work longer hours. Today’s average labour supply performance must be considered in the context of demographic trends, which can be expected to make matters worse. The trends show that a growing share of the population over the next 35 years will be in age groups where participation in the labour market and hours worked are typically lowest. The OECD report *Ageing and Employment Policies – Sweden*, makes specific recommendations to promote job prospects, especially among older workers.

- **Relatively high incidence of sick leave and disability benefits.** The employment rate is significantly higher than in most other OECD countries, but the unemployment rate is higher than in other Nordic countries. The trend increase in sick leave and disability benefits is a matter of significant policy concern. Open unemployment was around 6% (2005), but almost 9% if people on active labour market programmes are also included. If people who could work but are currently on sick leave, on a disability pension or a related benefit, the inactivity level would be brought up close to 15%.²
- **Limited job creation in response to economic growth.** The labour market has been slow to bounce back from the economic crisis in the early 1990s despite a strong economic performance. It has taken an unusually long time for output growth to feed through to the labour market, although this may be changing. Cross-country evidence indicates that the employment response to economic growth is relatively low in Sweden. In countries where employment reacts more strongly to GDP growth, a larger share of total employment is found in service sectors, which make extensive use of low skilled labour to produce goods and services. Labour intensive service sectors make up a relatively small share of the Swedish economy. This may be partly related to marginal tax or social contribution rates on labour income as well as to other barriers to employment. Addressing general barriers to employment, as recommended in the restated OECD Jobs Strategy, would help improve the response of the services sector to the new opportunities.
- **Room for improvement in the employment rate, which is low for prime-age men.** Although the aggregate employment rate is relatively high, it differs significantly between groups. This suggests room for improvement. Overall male employment rates have not recovered to their pre-economic crisis levels, despite economic growth. The employment rate for prime-age men has been especially low, reflecting an increase in the number of people receiving a disability benefit, combined with an increase in the number of people studying. The youth employment rate is also low, as young Swedes are spending a relatively long time in education (this in itself is an important factor in the development of human capital to underpin an R&D oriented economy). However, for older men (aged 55 and above) the employment rate is currently above its pre-economic crisis level and quite high in international comparison, probably reflecting the 1999 Swedish pension system reform which increased incentives for later retirement. The employment rate for women is also quite high in international comparison. It is also worth noting that employment rates are also relatively high for migrants.

- **Low labour market flexibility.** In international comparison, Sweden has relatively strict employment protection rules. The most significant rule is the last-in-first out rule that gives considerable job security to people who stay with the same employer. Swedes tend to stay in the same job much longer than in other OECD countries, which has implications in terms of job mobility. The restated OECD Jobs Strategy provides reform avenues for enhancing the response of labour markets to change, while ensuring adequate protection for workers.

Improving performance: securing the sustainability of public finances

Public finances in Sweden are in fairly good shape compared with most other OECD countries. The government as a whole (central and local) is currently running a surplus, and financial assets exceed financial liabilities. The main challenge lies ahead, when an ageing population will bring about a rise in public expenditure.

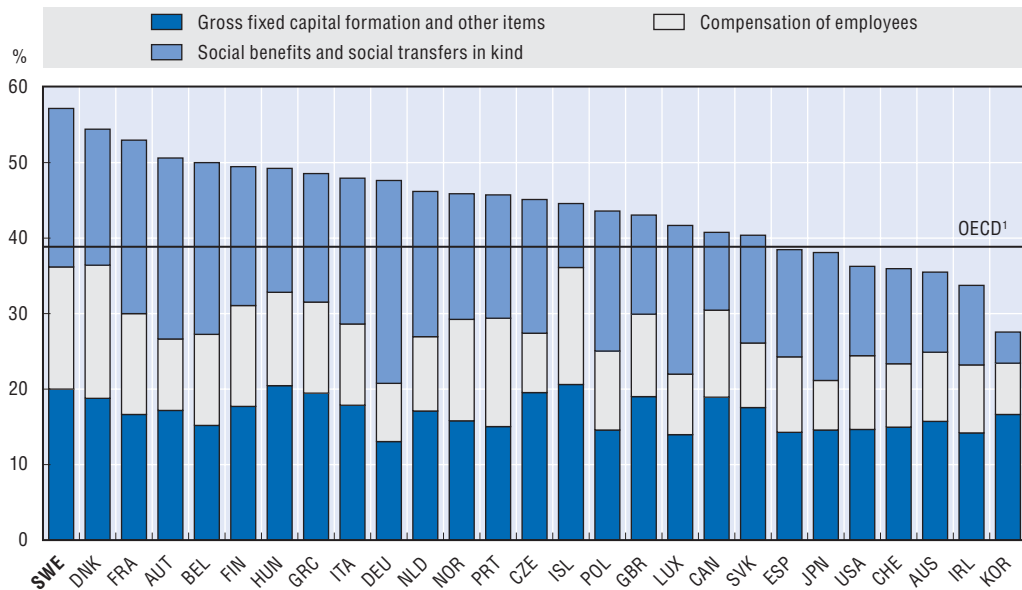
Sweden is already well prepared for this in comparison to many other OECD countries. The 1999 reform of the pension system means that the bulk of future increases in old age pension payments will be financed by a build up in assets over the next couple of decades. Preparing for the demographic pressures by reducing debt was one of the main reasons for introducing the 2% medium term fiscal surplus target for the general government in 1997. The importance of meeting this target has been recognised by the government, as the top down budget process with multi-year expenditure ceilings and a medium-term fiscal target have delivered a surplus close to the target since 2000, despite several years of economic weakness. For 2005, the fiscal surplus was 2.7% of GDP. Achieving the 2% surplus target is considered to go a long way towards what is needed to safeguard current welfare system service levels. However, if “no policy change” is assumed, on which the current demographic and labour supply outlooks are projected, a fiscal surplus of 3% of GDP may be necessary to ensure that fiscal policy is on a sustainable track.

The first conclusion that may be drawn from this analysis is that although the Swedish fiscal framework has been working well, the government needs to maintain a strong and enduring commitment to sound public finances. This includes emphasising the need to use the surplus target as a guide for policy, ensuring that the level of the expenditure ceilings is consistent with the surplus target, and ensuring that these remain binding. The government should also ensure that there is an adequate margin for business cycle fluctuations so as to avoid spending up to the limit even in good years.

A second conclusion is that if a higher fiscal surplus target than 2% cannot realistically be set, then complementary measures are needed in order to address the issue of possibly higher than expected public expenditure as incomes rise, and generally to contain pressures to breach fiscal ceilings. One option to contain public expenditure is to make provision of public sector services more efficient. Total public spending in Sweden is the highest among OECD countries (Figure 1.11). Sweden also ranks at the top (with Denmark and Iceland) if spending on social benefits are excluded. Given its size, improving public sector efficiency could have an impact on public expenditure needs, and help to secure the sustainability of current levels of welfare.

Figure 1.11. **Total public spending in Sweden**

Average 2001-05, per cent of GDP



1. Weighted average, New Zealand, Mexico and Turkey excluded.

Source: OECD Economic Outlook 79 database and OECD System of National Accounts database.

The government's strategy for growth and renewal

In 2006 the new government identified a number of major tasks for the future (Box 1.5).

Box 1.5. A strategy towards jobs, choice and economic opportunities

The major tasks ahead as outlined by the new government at a domestic level include:

- Conditions for more jobs and growing businesses, including reforms of the unemployment insurance in order to break the pattern of inactivity and exclusion and to safeguard welfare. This implies a work-first principle and restoring the value of work.
- Entrepreneurship and more opportunities to start and run a business. This includes strengthening local and regional competitiveness and creating a better climate for investment and innovation. This also includes fiscal aspects and reforms of bankruptcy legislation, and easing regulatory burdens.
- Greater equity, diminishing social and regional gaps, and fostering social cohesion for an inclusive society.
- Improving results at school, with a focus on knowledge.
- Increased opportunities to influence citizens' life, with increased accessibility, quality and freedom of choice in health care, elderly care and other areas of welfare.
- Meeting the environmental problems of the future, including the climate issue, the future of the Baltic Sea.

Source: Statement of Government Policy presented by the Prime Minister to the Parliament on 6 October 2006.

Notes

1. The issue of the relative ranking of Sweden's GDP per capita is relatively controversial. The exact ranking would place Sweden 2nd highest in the OECD in 1970 and falling to 9th position in the early 1990s, and remaining in the 8th or 9th position expressed in dollars per capita at current exchange rate. These ranking would place Sweden 4th highest in the OECD in 1970 and falling to 16th position in 1993, before recovering to 13th position in 2004, in dollars per capita expressed at purchasing power parity, as domestic prices are relatively high in Sweden.
2. Policy reform to address this issue will be examined in detail as part of a thematic review on *Sickness, Disability and Work* carried out by the OECD Directorate for Employment, Labour and Social Affairs.

Section 2. Regulatory Reform: its Contribution to Performance so far

Regulatory reform and strengthening the foundations for growth

The relationship between regulatory reform and economic growth: positive findings from OECD work

There is growing empirical evidence of a strong link between regulatory reform and economic growth, as evidenced by the OECD's growth study and analysis of the OECD database on Product Market Regulation (PMR).

The growth study seeks to establish the extent to which GDP divergences reflects differences in the effectiveness of public policies (OECD, 2006a). It develops a cross OECD benchmarking system based on a set of policy indicators (for example employment protection legislation) which are then linked to high level performance indicators (such as GDP per capita or productivity). The database seeks to measure, over time, regulatory barriers to competition in product markets (Conway *et al.*, 2005). Data collected in 1998 and 2003 on economy-wide regulation cover issues such as firm ownership and control, antitrust exclusions, and market access; regulatory and administrative policies; administrative requirements for business start ups; and discriminatory policies *vis-à-vis* foreign firms.

Labour market regulation is the other key economic factor impacting on economic performance. It has also been analysed, using the OECD's data on Employment Protection Legislation (EPL).

The main results that emerge from this work are:

- **Progress in removing regulatory barriers.** Analysis of the Product Market Regulation Database shows that there has been clear progress in removing regulatory barriers to competition since 1998, as countries with relatively restrictive policies move toward the regulatory environment of the more liberalised countries. Across countries, the largest reductions are in barriers to international flows of trade and investment, where all the specific indicators show progress. The area which shows least progress is barriers to entrepreneurship where the only significant change is a decline in the number of licence and permit systems. Despite progress, a "hard core" of regulations persists in virtually all OECD countries (Conway, Janod and Nicoletti, OECD Economics Department Working Paper 419, 2005).
- **A positive link between regulatory reform and economic performance.** There is growing evidence of this link. The effects of reform on economic performance may work through various channels. A more competitive environment tends to boost output, investment, consumer welfare, purchasing power, and – through a reduction in the scope for rent-seeking – employment, as well as overall productivity performance. Countries that have reformed their product markets by opening these to competition have experienced an acceleration of productivity over the 1990s, compared to slowdown or stagnation elsewhere.

- **A negative link between restrictive labour market legislation and economic performance.** It appears that relatively strict legislation hampers labour mobility, reduces the dynamic efficiency of the economy and restrains job creation (OECD, 2006d). This may worsen the job prospects of certain groups.
- **A correlation between labour and product market regulation.** Cross-country evidence indicates a correlation between product and labour market reforms, as evidenced through the links between EPL and PMR (Nicoletti and Scarpetta, 2005b).

The Swedish experience: the significant contribution of reform to the turnaround of the economy in the 1990s

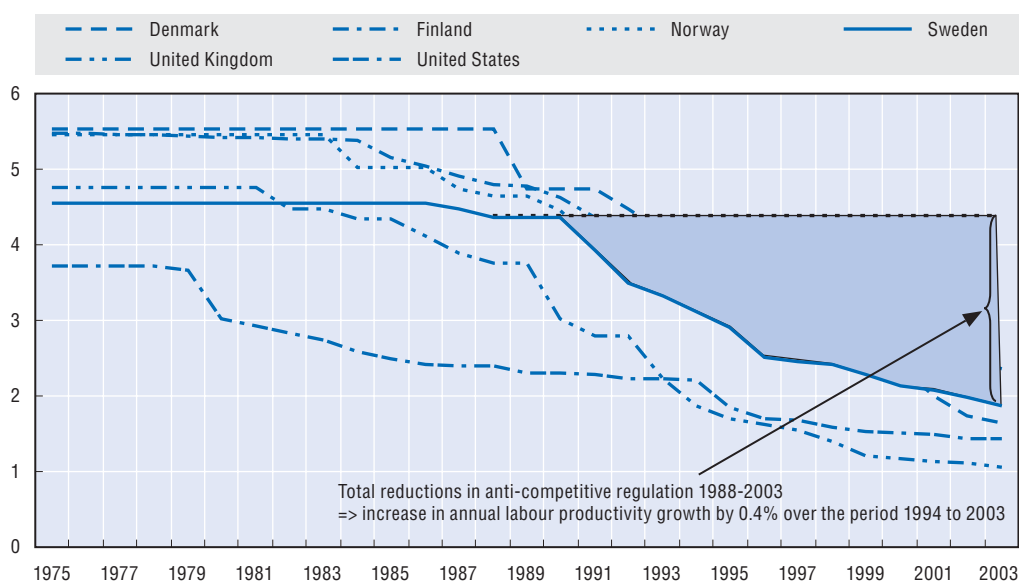
Significant progress in product market deregulation, which has delivered a considerable “productivity dividend”

Sweden was an early mover in the use of regulatory reform to open up the economy and boost competition, following countries like the United Kingdom (Figures 1.12 and 1.13). Reforms in the 1990s across a range of sectors removed barriers to market entry, dismantled price regulations and abolished controls on the number of market players. Stronger competition legislation was also introduced. In international comparison, Sweden’s product market regulation is now relatively “light touch”, and Sweden is one of the most liberalised countries in the OECD.

Regulatory reform in favour of product market competition stimulates productivity growth by fostering innovation, giving firms stronger incentives to adopt best practice. Empirical evidence suggests that the product market deregulation of the early 1990s played an important role in the recovery of the Swedish economy by boosting productivity (Box 1.6).

Figure 1.12. **Sweden’s product market regulation performance in international comparison, 1998-2003**

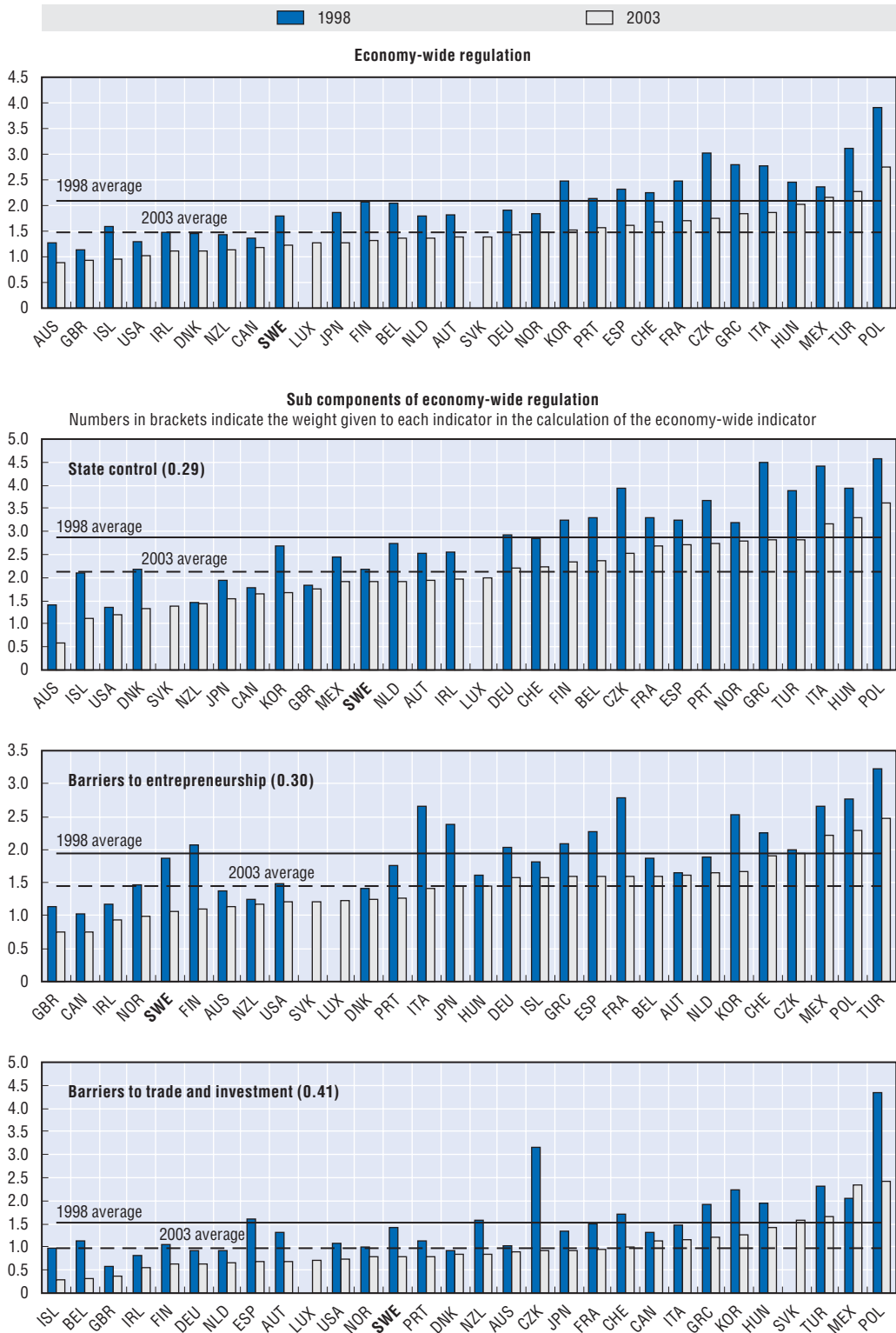
Indicator range 0 to 6, least to most restrictive



Source: OECD Product Market Regulation database; OECD calculations.

Figure 1.13. **Product market regulation indicators across the OECD, 1998-2003**

Indicator range 0 to 6, least to most restrictive



Source: OECD Product Market Regulation database.

Box 1.6. The “productivity” dividend from regulatory reform in Sweden

Testing the relationship between productivity growth and product market regulation

The extent to which product market deregulation strengthens labour productivity growth can be tested by a sector-based model which has been developed by the OECD. The model covers the period 1998 to 2003 for 21 OECD countries using the OECD’s indicators of product market regulation. The indicators cover product market regulations that hinder competition in non-manufacturing sectors (airlines, railways, and road freight), energy (electricity, gas), communications (post, telecoms), professional services (accounting, legal, engineering, architecture), retail trade, and banking. Productivity growth (measured as value added per worker employed) is linked to a country’s regulatory and other characteristics, as well as the transfer of technology from the country with the highest level of productivity. The model not only tests the direct effect on productivity growth, but also the fact that product market regulation can have an indirect effect by influencing the speed with which countries catch up with the productivity leader. Barriers to market entry and to competition in a market may reduce incentives to invest and adopt leading production techniques, and so lowers a country’s speed of convergence.

Swedish results show a significant “productivity dividend” from deregulation in the 1990s

The model was used to calculate the labour productivity dividend from deregulation in Sweden since 1988 (a year taken to reflect pre-regulatory reform conditions).¹ The model’s prediction for the average annual growth rate of labour productivity in Sweden over the period 1994 to 2003, assuming no change in product market regulation from 1988, was compared with the prediction for labour productivity growth based on actual reforms.

The result suggests that product market regulation and its reform has had both direct and indirect effects:

- Direct effects. Deregulation since 1988 has added 0.45% to annual productivity growth.
- Indirect effects. If Sweden had kept product market regulation as it was in 1988, average annual labour productivity growth in the business sector would have been 0.4% lower over the period 1994 to 2003. More than half of this indirect effect is through non-ICT intensive sectors. In most other countries the benefits of reform are typically larger in ICT-intensive sectors, which tend to suffer competition unfriendly regulation. A possible explanation is that Sweden is closer to the productivity frontier in ICT-intensive industries than most other countries. This implies that the productivity gains from faster catch-up are now more limited relative to countries further behind the frontier.

Both the direct and indirect effects capture the impact of product market regulation on productivity growth within sectors. If regulatory reform also leads to a shift of resources from less to more productive sectors, then the overall productivity dividend from reform implied by the simulations will be understated.

Aggregating the two effects suggests that deregulation of key network sectors during the 1990s lifted annual labour productivity growth in Sweden by around 0.4% (Figure 1.12).²

1. An important caveat is that all the coefficients in the model are estimated OECD-wide, and may therefore not necessarily be representative of the relationship in an individual country. This caveat is particularly relevant for Sweden because OECD productivity data for most Swedish sectors only goes back to 1994, meaning that Sweden has an even smaller effect on the OECD-wide regression results.
2. The aggregate effect was calculated by using value added shares in the economy as weights and a classification of ICT-intensive industries established by the OECD. Adding the direct and indirect effects to establish the aggregate effect is problematic as labour productivity in ICT-intensive sectors increases as the direct result of reform, and the productivity gap relative to the leading country-sector becomes smaller, implying less scope for reform to operate indirectly. However, the effect of this may be minor for Sweden, as more than half of the indirect effect of reform has been through non-ICT intensive sectors. It should also be kept in mind that the aggregate figure is based on the experiences of a large number of OECD countries, and the way reform has worked through the economy in Sweden may well have been different from elsewhere because of the economic crisis of the early 1990s.

Source: Conway et al., OECD (2006).

But competition remains inadequate in some important parts of the economy

A number of reports in recent years have highlighted inadequate competition in parts of the economy, and the need for further pro-competitive reform to enhance market efficiency. These have pointed the finger at specific sectors, but they have also highlighted cross cutting issues such as public procurement. Among the sectors that need attention are construction, housing and food retailing.

The construction sector has suffered from low productivity growth and rapid price inflation over the last decade. There is limited foreign participation in this sector and only a few national scale Swedish companies are capable of taking on large projects. Two are among the world's top 20 construction companies. Evidence from some foreign firms suggests that markets at the local level may not be sufficiently open, in particular due to the application of the Planning and Building Act, the high level of vertical integration in the sector and the lack of internationally harmonised standards for building materials on which Sweden could draw. Furthermore, food retailing suffers from limited competition and high prices by international standards. Finally, the rental housing market is heavily regulated, which hinders mobility.

The taxi market offers an example of a mixed outcome of deregulation so far. Prices for taxi journeys have increased more than prices in general and also more than production costs, but waiting time has been reduced. This may well, however, reflect the preference attached by consumers to a short waiting time, which has required an increase in the number of taxis. Special measures to maintain taxi traffic in large parts of Sweden that are scarcely populated (taxis may offer transport services funded by local government) are another complicating element of the picture.

The picture for infrastructure sectors is mixed

The picture for infrastructure sectors is also mixed. In some cases, notably telecommunications, the effect of reform has overall been very positive. Prices have fallen (prices for fixed telephony are among the lowest in the OECD) and the range of products as well as product volume have increased. The postal market was liberalised much earlier than in other EU and OECD countries. The success of reform in some other sectors, however, has been mixed and uncertain.

In the electricity market, for example, liberalisation has not automatically led to lower prices, either for consumers or for companies. Prices have increased faster than consumer prices in general. A number of factors appear to have contributed to this disappointing outcome. Generation capacity has fallen with the decommissioning of uneconomic plants, and the closure of two nuclear reactors, whilst demand has grown. At the same time, Sweden depends largely on hydro power and hydrological conditions have been unfavourable. Market concentration remains an issue. Although the Swedish electricity market is less concentrated than in many other European countries, few new firms have entered the market after liberalisation, which may partly be due to difficulties in obtaining building permits. Other factors leading to higher prices are increased market integration with other European countries and the emission trading system.

The isolated effects of specific reforms in these sectors are hard to disentangle from other factors such as technological development, globalisation and institutional changes such as accession to the EU. But at the same time, it seems that all the gains from regulatory reform have not yet been achieved, reflecting the need to look again in some sectors at what more needs to be done.

Not all infrastructure sectors have been liberalised with the same enthusiasm. Whilst Sweden has been a leader in opening up telecommunications, electricity and postal services, other sectors such as aviation and the railways are still “work in progress”.

Successful policies and reforms to promote international market openness

Sweden’s success on international markets is due in large part to the determined application of market openness policies and substantial efforts to minimise regulatory burdens on companies engaged in international trade (Box 1.7).

Box 1.7. Sweden’s structures and initiatives for market openness

- National Board of Trade. This independent government agency is the formal interface between the government, and the EC and WTO. It provides the government with background information and analysis on market openness issues. It is also involved in the referral stage of the consultation process for legislation, providing an input on issues related to market openness.
- Invest in Sweden Agency. This agency’s remit is to inform the government about factors that negatively affect FDI. There is a twice yearly inter ministerial group to discuss how to further improve conditions for FDI.
- The Customs Service. It is one of the most business-friendly in OECD, and has become a model for reducing the administrative workload, as well as for reducing the amount of time dedicated to border procedures. Only Denmark is better (World Bank, 2006). Electronic customs solutions have been applied since 1990, and automated risk analysis since 1997. To this end, various initiatives can be cited: a “Single Window” connecting seven ministries, use of EDI for customs declarations, and a special customs Internet declaration for SMEs. 96% of customs declarations were electronic in 2005 and the goal for 2006 was 100%.
- Open Trade Gate Sweden. A one-stop information centre that targets exporters in developing countries.
- SOLVIT team. This team supports those who experience problems with national rules which deviate from EU rules, and provides direct services to foreign traders.
- Stairway. An accreditation and certification system for importers, exporters, brokers, carriers, freight terminals, etc.
- Green corridor. A structure for co-operation between customs authorities in Sweden, Russia and Finland.

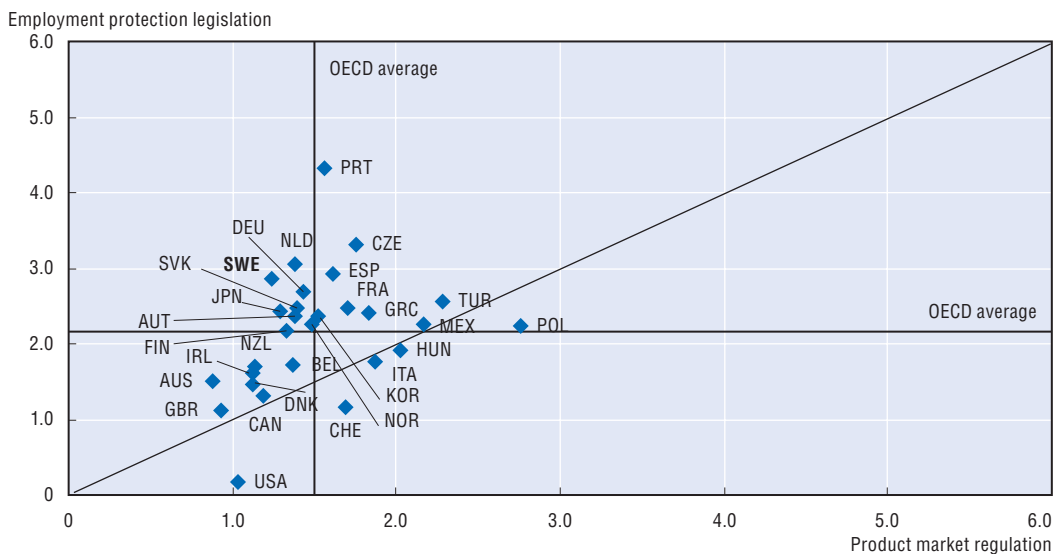
A few issues remain. The most important one is public procurement, where current processes and practices reduce the scope for successful foreign bids (domestic companies also have problems). There is considerable scope for further foreign participation and bidding in government contracts. Foreign companies are currently involved in a modest share of public procurement. The issue of mutual recognition on the EU-level warrants further attention. EU member states must recognise regulatory measures and results of conformity assessment performed in other countries if they are deemed to be equivalent, but some authorities ignore this principle.

The issue of the labour market

Sweden is a country with a low level of product market regulation, but a relatively high level of employment protection legislation. Its index for EPL is higher than the OECD average, and higher than for the other Nordic countries. Furthermore, no progress has been made since 1998, which puts Sweden close to the more restrictive countries (Figure 1.14). Reviewing labour market legislation so as to achieve greater labour market dynamism and promote entrepreneurship while providing workers with adequate protection could help to revitalise some service sector activities. Cross-country evidence indicates that flexibility in the labour market is important in facilitating growth in the service sector (Kongsrud and Wanner, 2005).

Figure 1.14. **Sweden's product market regulation and employment legislation protection in international comparison, 2003**

Index scale of 0-6 from least to most restrictive, 2003



Source: OECD, *Going for Growth*, 2005.

There is still room for improvement in the public sector

Sweden was an early mover in allowing for private initiatives in the provision of publicly funded services such as health care, schools and elderly care. But the government's efforts to promote competition appear to have faded. Restrictions have been put in place on surpluses accruing from the provision of publicly funded health care services. There has also been a debate over whether this should apply to private sector activities in the school sector. Public financing still usually means public production or delivery, and public employees still make up nearly 90% of those providing publicly funded welfare services. Sweden is still a long way from exploiting the full potential of competition in the public sector, with a level playing field which could stimulate responsiveness and increase client satisfaction.

The development of a regulatory policy and capacities to promote reform

The importance of an effective regulatory policy

The above analysis of Swedish reforms considers regulatory reforms in specific areas and over a particular period of time (the 1990s). However an effective regulatory policy has a much broader reach and definition, and needs to continue over time. Regulatory policy determines how laws and regulations, which are needed for a well-functioning economy

and society, are developed, implemented, enforced and updated with a view to maximising their efficiency and effectiveness. It encourages the development of a legal framework that can meet public policy goals, by working to ensure that rules are fit for their policy purpose. Its scope is therefore very wide ranging, helping to define relationships between the state, the economy and society.

An effective regulatory policy is, in particular, a dynamic process which involves a continuous effort to improve and reform existing regulatory frameworks, embracing re-regulation as well as deregulation. Deregulation (the removal of unnecessary, obstructive, ill-conceived, outdated and burdensome rules) is often the starting point. However an effective regulatory policy also includes re-regulation where this is necessary (for example to accompany structural reform of the infrastructure sectors in order to address residual monopoly elements and to secure public policy goals, such as equity and social support). It also covers other approaches such as the mutual recognition of rules and standards within and across national jurisdictions.

The experience of OECD countries which have moved furthest in this area confirms that the existence of a regulatory policy, backed up with appropriate institutional structures and resources, has two key benefits. First, it fosters policy coherence through a “whole-of-government” approach, with the capacity to act across the whole range of government activity, not just “one-off” reform initiatives but all law and rule-making over time. Second, regulatory policy works alongside, and in support of, other core government policies for the achievement of public policy goals, such as competition policy, international market openness, structural reforms and sound fiscal and macroeconomic management.

The OECD’s 2005 *Guiding Principles for Regulatory Quality and Performance* provide a framework for countries to assess the strength of their regulatory policy (Box 1.8).

Box 1.8. 2005 OECD Guiding Principles for Regulatory Quality and Performance

The 2005 OECD *Guiding Principles for Regulatory Quality and Performance* are based on the 1995 *Recommendation of the OECD Council on Improving the Quality of Government Regulation*, on the *Report on Regulatory Reform*, welcomed by Ministers in May 1997, and on the OECD work of country reviews and new monitoring exercises, which was reviewed in *Taking Stock of Regulatory Reform: a Multidisciplinary Synthesis* (OECD, 2005).

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

A steady flow of technical developments in Swedish regulatory policies

A steady flow of initiatives to improve the regulatory environment has emerged from the Swedish government over the last two decades (Box 1.9). Efforts have multiplied over the last five years. A core concern has been the regulatory environment for SMEs.

Box 1.9. Developments in Swedish regulatory policy

General measures and impact assessment

A deregulation delegation reported in 1984 on “Deregulation for growth and more jobs” which identified the need for action to create a system for active deregulation; increase knowledge about the impact of regulation; and facilitate the environment for SMEs. Two ordinances were promulgated by the government in 1998 – one of which addressed the special needs of SMEs – aimed at committees and agencies. The ordinances provide rules on how to establish whether public action is necessary, how to identify alternatives to solve a problem, and how to make impact assessments. At the same time, a Better Regulation Unit was established in order to co-ordinate, support and follow up the work on regulatory reform. The government also appointed a group of state secretaries with responsibility for work on regulatory reform within the government. The group produced guidelines in 1999 on how regulatory reform related work should be conducted within government offices. These guidelines reflect the content of the two above-mentioned ordinances.

The first government ordinance on impact assessment was adopted in 1987, namely the first Government Agencies and Institutes Ordinance, and the process has since been refined and extended. The above-mentioned ordinance required agencies to produce an impact assessment analysing the consequences of new regulations. In 1995 the government produced a memorandum to give officials within the government offices guidance on impact assessments for new regulations. The same year the Government Agencies and Institutes Ordinance was updated to require agencies to follow up on the impact of their activities and the consequences of their regulations.

Administrative burdens and support for SMEs

Measures to improve regulations for business and reduce administrative burdens, especially for SMEs, go back to the 1970s and are a major part of efforts so far to improve regulatory quality. A 1976 Committee of Inquiry report led to legislation that sought to improve conditions for start-ups and set the basis for SME policy. Further legislation was promulgated in 1982, based on submissions by each ministry as to what should be included to reduce regulations affecting business.

The introduction of the “guillotine rule” in the early 1980s, after the government found that it was unable to compile a list of regulations in force, led to the nullification of hundreds of regulations and to a clearer and more accountable legal structure. Agencies were required to establish registries of all their regulations by a certain date, unnecessary rules were cut out in the process of doing this, and rules that had not been registered by a certain date were automatically cancelled. The “guillotine rule” was a great success. For the first time, the government had a comprehensive picture of the Swedish regulatory structure that could be used to organise a reform programme. Subsequent rationalisations have been less drastic, with the frequent use of Committees of Inquiry to review rules in a particular area. Sun-setting rules have also been used to some extent.

Box 1.9. **Developments in Swedish regulatory policy** (cont.)

In the late 1980s, the government charged some of the agencies to issue special codes of statutes so as to rationalise regulations and make them more accessible to the public and businesses. Today there are 65 codes of statutes, which are used by 93 agencies (out of some 300 in total). In addition, each one of the 21 county Administrative Boards has its own regional code of statutes.

An Action Plan was attached to the 2004 Budget Bill setting out initiatives to reduce administration for enterprises. It contained in total 310 actions from eight ministries and 46 agencies, to be implemented between 2004 and 2006. The former government decided to measure the administrative burden on enterprises. Measurements of important parts of the regulations have already been conducted, including tax, accounting, labour market and environmental, agricultural, forest and fishing regulations, and more recently the Planning and Building Act, as well as food and statistics legislation. The new Government has recently launched a call for measures to be presented in spring 2007, as part of a new broad Action Plan. A more comprehensive measurement of administrative burdens will be completed in the coming months. Nutek will continue to measure the areas that remain. The goal is that all measurements of administrative costs for businesses be completed in 2007. A quantitative target for a reduction of the overall administrative burden has recently been announced. The government has also set a target to reduce the overall administrative costs for businesses by 25% in 2010.

Development of public administration capacities

A programme “Public Administration in the Service of Democracy” was launched in 2000. The aim is to create forms of organisation, governance and management in support of three core values: democracy, the rule of law and efficiency. Measures proposed for the long term development of the public administration included openness and accountability, better service for citizens and companies, quality and skills development, regulatory quality, focusing central government activities, agency governance adapted to activities, better documentation for decision making, relations with the EU and internationalisation of the Swedish economy.

E-government

The government initiated a long term programme in 2000 to develop the use of IT in the public sector. IT has been identified in Sweden as the core tool for developing better service for citizens and companies in the public administration. The main aim is to encourage collaboration between agencies, and between the latter and local government as well as business.

A new and stronger approach to competition policy and law

Sweden made substantial changes to its competition law and policy in the early 1990s. A broad approach is taken towards competition policy, which includes law enforcement, advocacy for pro-competitive reform, action to strengthen the competition culture and support for academic research. The new attitude towards the importance of competition was underlined in the government’s Bill to Parliament on reform which underlined that “competition is decisive for dynamic growth in the Swedish economy”. A more recent competition policy Bill (2000) said that “an active competition policy with clear rules and effective enforcement is necessary to protect competition and enhance the efficiency of

markets”, and that “the share of total economy exposed to competition should increase”. Swedish competition policy aims at well functioning markets and effective competition to the benefit of consumers and the vision of the competition authority is “economic welfare through effective markets”.

Although Sweden now has a reasonably robust competition agency with a strong public presence, there are a number of areas for improvement which are discussed later, including the need for stronger powers and greater independence.

Box 1.10. The role of competition authorities in regulatory reform

Competition agencies have often been prominent in the reform processes of OECD countries. Their contribution can take different forms: well publicised studies criticising regulatory constraints and drawing attention to their effects; behind the scenes persuasion; powers to initiate court proceedings that challenge anticompetitive actions by other agencies, or formal participation in another agency’s public hearings and deliberations; strategic policy co-ordination with potential allies. What is appropriate and effective depends on a country’s particular institutional setting. The competition law framework may also require other bodies or ministries to consult with the competition agency about specific issues, or even about all issues that might affect competition.

Section 3. Regulatory Reform: Emerging Challenges

Where and how can regulatory policy help meet economic and public policy goals?

Sweden's core priorities for securing a strong economic performance into the future are the need to address labour market issues, and to ensure that public finances are sufficiently robust to support its generous welfare system. It also faces a structural challenge. The economy depends fairly heavily on large companies, including a significant ICT sector that must counter the effect on its competitiveness of a decline in prices over time. The service sector (although it has been growing) remains small by OECD standards, and linked to this, entrepreneurial activity is relatively muted, limiting the potential number of new jobs. Sweden has so far done well with its large scale companies, but a more dynamic structure would boost resilience to unpredictable shocks as well as helping to meet more predictable future demands on the economy and improving job opportunities.

Two linked challenges: improving the performance of the public sector, and developing a more resilient economy

Regulatory reform and a strong regulatory policy are both needed to address two linked challenges:

- **Improving the performance of public sector service provision.** Regulatory reform can promote a more productive public sector by introducing competition in the provision of public services to improve efficiency. It also needs to be applied to the public/private interface. Public sector crowding out private sector firms not only weakens efficiency, but also negatively affects creation of new small firms, especially in the service sector. Local government plays a key role here, via procurement (rules for fair procurement have in several cases been ignored) and the provision of services in often competitive markets (or ones that should be competitive).
- **Supporting structural change through SME and service sector growth.** Regulatory reform can help promote structural change to improve the economy's dynamism and resilience, counter the ICT effect of falling prices, and improve job creation prospects. SMEs have an important role to play as drivers of business development and as suppliers of new jobs. Issues that hold back progress include a policy framework with gaps and limited incentives for entrepreneurship, especially as regards taxation, public sector crowding out of private service provision, and administrative burdens that do not seem to be fully controlled. Again, local government plays a key role, which is not always captured in national policies to address the issues.

A more resilient economy will also be helped by improving and updating the regulatory framework for sectors with a broad impact on the economy. There is a need to ensure that important sectors such as construction, food retailing and housing operate within a regulatory framework that supports competition, which is not yet the case. The

infrastructure sectors are often subject to rapid change, and the regulatory framework for these sectors needs to be effective and up to date. There are some areas for further improvement, such as the lack of sanctioning powers for the competition authority as well as for sectoral regulators and the lack of a unified system of appeals to the regulators and the competition authority, underlining the need to strengthen the authority of both.

The importance of meeting environmental goals efficiently

Meeting environmental policy goals efficiently and without compromising economic performance is another important challenge. Sweden's attachment to high standards of environmental protection raises some challenges, such as how to take these forward in the EU context, and finding a way to balance high standards and stringent regulation against business sector costs, whether this is the competitiveness of large firms in international markets, or the burdens on SMEs at home. Meeting environmental goals usually affects a large range of other policies, placing a premium on policy co-ordination. In addition, the pursuit of environmental objectives can have economic and social impacts, and managing associated trade-offs is a delicate task. Although Sweden appears generally competent and innovative, effective regulation of this complex sector has to be viewed as a continuous "work in progress".

The critical contribution which local government needs to make in meeting these challenges

If the goals of a strong economy and high quality social services are to be sustained, the role of local government cannot be neglected. Swedish counties and municipalities have important delegated tasks in provision of health, social services and education, as well as a central role in planning and licensing. Local authorities therefore play a crucial role in policies aimed at improving public sector efficiency and stimulating entrepreneurship.

The issue of municipalities acting as an entrepreneur in competition with local firms or potential local businesses, and its ambivalent attitude towards public procurement, has already been challenged. There are other trouble spots. Most permit decisions are taken at the regional or local level, which gives the municipalities and counties considerable market influence. Planning and building processes can be slow and costly with little attention devoted to competition aspects. Food retailing remains concentrated in Sweden and municipalities have tended to favour the three large retailers when selling pieces of land.¹ In one case, a municipality decided to sell a piece of land for the establishment of a food store by a Swedish retailer for SEK 1 million, rather than accept a bid of SEK 6.6 million offered by a German retailer. Some efforts are being made to address these issues. For example, the Swedish agency NUTEK reports that in 2003, 71% of local municipalities were developing programmes aimed at improving or simplifying the permit process for business.

Underlying these difficulties is a confusion of objectives that may not be possible to meet all at once – between the local and national levels, but also within the local government itself. Promoting competitive markets does not appear to be high on the agenda of local government, but at the same time, many if not most municipalities want to encourage job creation and growth in their area. Some of their actions are therefore contradictory, and as regards competition, many are in conflict with the national policy of promoting competitive markets. To complicate the picture further, some national policies such as the promotion of environmental quality can be adversely affected at local level, with a "race to the bottom" competition between municipalities for lax regulation or easy permitting, so as

to attract jobs. Policy and regulatory decisions are not always well grounded in a careful analysis of the best approach that takes account of conflicting goals. Another issue is the potential conflict of interest for local governments, in their role as owners of local service entities, and as authorities enforcing the national rules and regulations.

The principle of local autonomy to tailor actions to local conditions needs to be reconciled with the strong social expectation that all citizens should receive equal service, wherever they live. This may be a factor in the governance system's difficulties in tackling different local and national agendas effectively. Swedish law strives to delineate the areas within which local government must follow national legislation and standards to guarantee uniformity, but important "grey zones" exist, and local governments are not always supervised effectively. The case of permits is especially difficult. Local governments promote, licence, inspect, sanction, and sometimes even run affected firms (e.g. waste management). The law requires supervision to be with a body that is distinct from the one carrying out the regulated activity, but a large number of the municipalities do not have a separate body.

The former government's initiative to set up two pilot regions (Vastra Götaland and Skåne) shows an appreciation of the importance of looking beyond the national level for policies that will help to stimulate economic growth and meet social goals. The initiative has apparently been successful, with stronger economic growth and additional development programmes. The economic development of some urban centres has also been examined, with debates about how to strengthen the competitiveness of key centres such as Stockholm. But a more strategic approach is not yet evident.

All policy making can benefit from the application of regulatory quality principles

The broad and determined application of regulatory quality principles to all policy making will help to ensure that policy decisions aimed at dealing with economic issues have a better chance of success. Many of the issues affecting Sweden's labour market are related to regulations that are primarily dealt with by the social partners. Addressing labour market issues will therefore require a policy change involving deregulation and a revision of the overall regulatory framework. Applying regulatory quality principles to such policy change will help to ensure that it has the desired effect. The same applies for fiscal management. Applying regulatory quality principles and effective regulatory management to spending plans will help to ensure that fiscal policy targets are achieved in the most cost efficient way.

Improving the performance of the public sector

Further reforms of the public sector have considerable potential to boost performance

Opening up the public sector to competition in the provision of publicly funded services can be expected to generate significant savings and boost public sector productivity. Studies in Sweden and abroad have shown that the production and provision of public goods and services tend to become significantly more efficient when they are opened up to competition, while quality has been maintained or improved (OECD, 2005a).

Encouraging more competition in the provision of public services

Outsourcing via public procurement is one way of introducing greater competition (Box 1.12). Sweden has implemented the existing EC-Directives on public procurement and is in the process of implementing the two new current EC Directives on public procurement,

Box 1.11. Improving efficiency in the public sector**Efficiency gains from competition**

Improving public sector efficiency can stimulate general economic performance (for example through lower taxes because the state's financial needs are reduced) as well as promoting public policy objectives (more can be achieved with the same or even with less funding). The basic problem with public services which are provided to the public by the state in the absence of competition is that their value (i.e. the amount that the users would be willing to pay for the services) cannot be measured. Introducing competitive elements in service provision provides a greater scope for performance measurement. It then becomes possible to relate inputs (the cost of services) to outputs, using different management techniques, including budgeting and performance measurement systems. Benchmarking services (for example between municipalities, or between public and private providers) also becomes possible. Innovation in the provision of services is thus encouraged, and efficiency gains.

Competition and state control

Provision of publicly funded services can be opened up to competition whilst retaining direct state control. Under this approach, the services continue to be financed by the public sector (via taxes), while competition is introduced by allowing tenders from private sector providers. The state agency which used to provide the services may also compete for their provision under the new arrangements. In this case competitive neutrality – making sure that the state agency does not enjoy an unfair competitive advantage over private sector competitors, for example ensuring that prices reflect costs – is essential.

Alternatively, the state may withdraw entirely from the direct provision of services to the public. Users of these services will then decide on the provider. Regulation is likely to be necessary to ensure that service standards and other public policy objectives continue to be met.

Box 1.12. Issues with public procurement in Sweden**Burdensome rules**

Burdensome rules are the main reason why many companies choose not to bid for public contracts in openly advertised public procurements, even if for Sweden these rules are largely determined at the EU level. The increasing complexity of procurement rules reflects both the impact of increasing EU requirements as well as the wish to meet different societal goals at the national level. This affects in particular foreign companies and SMEs.

Compliance and sanctions

The National Board of Public Procurement – an independent central agency under the responsibility of the Ministry of Finance – supervises compliance with legislation including the WTO agreement, and disseminates information on public procurement. A recent study by the National Audit Office (*Riksrevisionen*) concluded that the Board has not had the necessary prerequisites to monitor procurement by state-owned enterprises (SOEs) leading the agency to leave many SOEs out of its monitoring exercises. As well, SOEs breaking procurement rules were unlikely to be caught, and even if found guilty, there were no effective sanctions against them to enforce court rulings.

but it has proved difficult to ensure full compliance with their requirements, as is the case in other EU countries. Openly advertised public procurement amounted to slightly less than 5% of GDP in 2004,² which was higher than the EU average. However, the total value of public procurement in Sweden is 17% of GDP, which is relatively high in international comparison. Public consumption is also higher in Sweden than in most other countries, and the scope for further openly advertised public procurement (or other forms of exposure to competition) has been estimated at 11-12% of GDP (OECD, 2004). In international comparison, Sweden has a relatively low share of private institutions in early childhood education and care, and in long-term care for the elderly (Lundsgaard, 2002). It seems that there is significant scope for improvement in this area.

Issues in the legislative and institutional framework, burdensome rules, as well as reluctance by some municipalities and state institutions to change the way they operate and put activities out to tender, appear to hamper progress in this area (Box 1.11). There have been cases of municipalities breaching public procurement rules and a few even ignoring subsequent court rulings (OECD, 2005a). Municipal waste management is an important example. Municipal companies tend to be favoured, as the methods are capital intensive and local governments want to ensure a return on their investment.³ In areas where the private sector has tried to gain a foothold, the playing field has sometimes been tilted in favour of the public providers by explicit or implicit regulatory barriers or competition-unfriendly practices. Local governments need to be encouraged to allow more competition in the provision of local services, which would not only help to lift their productivity but also provide better conditions for local business development.

Rationalising public sector activity in competitive markets

Swedish government at all levels shows a growing tendency to operate in areas where private companies already exist. Part, but not all, of the explanation lies in state ownership of companies that were previously monopolies and now operate in liberalised markets (e.g. telecommunications and postal services). But at the same time, policies to even out regional differences with respect to the capacity of the private sector to operate in this market appear to be encouraging government agencies and municipalities into new ventures. Examples can be found of municipalities operating bakeries, gymnasiums, garden centres, sun-bed centres and privately financed health care, either as part of the municipal administration or through municipal enterprises.

This practice has been reviewed and challenged in a number of reports, including from the Swedish Competition Authority, the National Audit Office, and government committees. In a number of cases it has been found that there is no legitimate reason for the government to engage in activities on competitive markets. In addition, such engagement reduces market effectiveness by distorting the competitive playing field. These activities are not well policed, state entities often have a head-start on private firms through privileged access to essential infrastructure, and they may well be large buyers in a small market. Clearer mandates for the agencies' core activities could help, as well a clear limit on expansion beyond the core. It also needs to ensure that local governments agree and respect clear guidance on the scope of their local activities. In short, the legal framework governing the market activities of public institutions should be strengthened.

Issues that need to be tackled regarding public sector activity in competitive markets include government cross-subsidisation of competitive by non-competitive activities, and enhancing opportunities for competitors to seek redress so as to reduce the likelihood of

unfair competition. There is also a need to address weaknesses in the practical application of the Competition Act to state entities. Although the Act applies to all enterprises, private or public, and irrespective of legal or organisational status (Sweden has adopted a definition equivalent to “undertaking” in EU law), it has so far not proved very effective when applied to such entities, especially at the local government level.

Developing a more resilient economy: encouraging entrepreneurial activity

Establishing an effective policy framework for the development of entrepreneurship

Entrepreneurial activity is an important element of a dynamic economy, through its impact on economic growth, innovation and job creation (Henrekson, 2005). The main lesson from the OECD’s policy guidelines for promoting entrepreneurship is the importance of an integrated institutional and economic framework which brings together a number of well conceived programmes to encourage entrepreneurship (Box 1.13). Without this framework, individual programmes are likely to generate weak results (OECD, 2004).

Areas for action in Sweden

Swedish indicators for start-ups and entrepreneurial activities reflect significant gaps, despite the fact that government policies have become more favourable in recent years (OECD, 2004). The former government endorsed entrepreneurship as an important element of its Action Plan for Employment which is linked to the EU’s Lisbon Strategy. Initiatives included plans to reduce the administrative burden for companies, provision of grants to people either unemployed or employed in regional development support who wish to start their own businesses, and courses offered in entrepreneurship and business skills. The new Government has put entrepreneurship very high in the list of its policy priorities as a way of creating new jobs and offering citizens more control and choice over their lives.

The roots of the difficulty, however, go deeper:

- **Inadequate product market competition in the public sector.** Sweden has one of largest public sectors in the world measured as total public employment as a share of total employment, but competition in major areas is inadequate or does not exist. Opening up a greater proportion of public services to competition would increase the opportunities available to potential entrepreneurs and stimulate innovative business ventures. International experience suggests a snowball effect: the presence of entrepreneurs encourages others to try it too.
- **Low venture capital availability.** Both savings and equity sources of finance appear to be weak. A recent study which looked at the impact of welfare provisions on entrepreneurship suggests that the Swedish tax and savings systems act as a disincentive to entrepreneurs. Most entrepreneurs start out by drawing on their own savings. But the Swedish system discourages the accumulation of wealth outside institutional savings such as pension plans. Equity financing is another issue. Growing firms can expand by seeking private equity financing from “business angels” or venture capital firms. Sweden has a relatively high proportion of venture capital aimed at early stage and expansion activities compared to other European countries, but the pool of potential “angels” is low due to the relatively small number of successful entrepreneurs (OECD, 2004).
- **Employment protection legislation.** Reviewing employment protection legislation and the unemployment insurance system so as to reduce the risk of shifting from secure employment to self-employment could also help foster entrepreneurship. Currently,

Box 1.13. OECD policy guidelines for fostering entrepreneurship

The OECD's policy guidelines for fostering entrepreneurship emphasise the importance of developing an adapted overall institutional framework covering the development of specific programmes. Entrepreneurship programmes can improve their effectiveness by drawing on the knowledge of sub-national levels of government. Main elements of the framework are:

- Ensuring that product markets are as open and accessible as possible to new entrants. This means promoting competition in all sectors of the economy where competition is feasible, including the provision of public services. Legal impediments to the entry of new firms should be removed, and barriers, which limit the incentive on enterprises to innovate and grow should be dismantled. Administrative and financial burdens on business start-ups should be reduced, via lower start-up costs and simplified administrative procedures. Encouraging more open international trade and investment in goods and services further enhances competition in product markets.
- Adapting employment protection legislation to be more flexible. This includes allowing flexible employment contracts to be negotiated, with remuneration arrangements and working conditions (including leave of absence rules) that are adapted to the needs of dynamic enterprises, and easing of employment protection measures that inhibit restructuring or discourage entrepreneurs from taking on new workers. Particular features in the tax system, which act to discourage entrepreneurs or financing of entrepreneurial activity should be mitigated, and social insurance provisions may need to be readjusted in cases where they discourage would-be entrepreneurs.
- Reshaping financial regulations to facilitate financing of entrepreneurs. Regulations governing financial institutions and/or financial markets should be shaped in a way that facilitates the availability and optimal allocation of finance for entrepreneurial activities. Personal bankruptcy legislation should provide an appropriate balance between encouraging risk-taking and protecting creditors. Financial barriers could be reduced by facilitating the development of market mechanisms for equity financing and related services, especially for start-ups.
- Encouraging networking among firms in order to foster a culture of co-operation and risk-taking. Efforts to foster the growth of clusters are generally recognised to stimulate entrepreneurship. They can be promoted by improved access to accommodation and efficient communications and transport infrastructures, as well as by facilitating university/industry linkages.

Source: OECD, 1998, 2005d, 2006d.

Swedish law requires employers to allow their workers to take up to six months leave of absence to establish a new business under certain conditions. This is helpful but at the same time, employment protection rules are based on a “first in – last out” principle: the longer the service the more secure the post. Starting an enterprise, however, is typically risky and may generate very little net income for some years. Entrepreneurs cannot be sure that they will be able to get back, and their situation is exacerbated by the high earnings-related component of the unemployment insurance system (OECD, 2004).

Although much effort has been devoted to developing policies and programmes in support of SMEs, the relative lack of entrepreneurship has historical, cultural and political origins, which reinforce each other. Entrepreneurship does not have great appeal in a country where people traditionally look to large companies and state entities for

employment, and political consensus in decision making may reflect alliances among insiders in the social system, which may exclude outsiders such as SMEs or new industries. The issue has been the subject of considerable political debate in Sweden.

Reducing administrative burdens

Sweden is among the better OECD countries for its efforts at reducing administrative burdens. Sweden ranked 14th in the World Bank report “Doing Business in 2006” which measured the ease with which business was conducted in some 155 economies.

However, the situation could be further improved, and a more systematic and strategic approach is needed. There are areas where progress has been weak or has even gone into reverse (Figure 1.13). For example the OECD’s product market regulation indicator on sole proprietor firms suggests that administrative burdens actually increased from 1998 to 2003. The Board of Swedish Industry and Commerce for Better Regulation has estimated that the administration of government regulations costs business approximately EUR 5.5 billion per year. Employment protection legislation, environmental and health standards, building permits and tax regulation are particular trouble spots. Although Swedish regulations are perceived as fair and transparent, they are also often considered to be too stringent.

Lack of information about the extent and source of administrative burdens hampers progress, as well as the lack of a systematic approach to burden reduction. These information gaps make it hard to raise the political profile of this issue. The success of the “guillotine rule” in the 1980s has not been followed up by a systematic attempt to come to grips with burdensome and unnecessary rules. The Swedish National Audit Office’s 2004 report on Simplification of Rules for Companies notes that more effort has been devoted to amending administrative provisions than to amending rules themselves, which stems from a lack of knowledge about the real source of regulatory burdens. The former government’s 2004 Action Plan to Reduce Administration for Enterprises did set out specific steps to measure burdens and to reduce them. The new government might also consider alternative tools like sunset clauses (the automatic expiry of rules beyond a certain date) and use a strengthened RIA process to assess more carefully costs and other impacts of legislation.

The role of local government in burden reduction has tended to be overlooked by policies set at the national level. This is exemplified by the Action Plan to reduce administrative burdens, which does not extend beyond central government to the local levels.

Currently, no specific national-local co-ordination mechanism exists to address the issue of administrative burdens. Local governments are responsible for planning and permits, a potential source of burdens on businesses. Decision making delegated to the local level can also make the process more efficient and shorter.

Developing a more resilient economy: further reform of key sectors

The construction sector remains relatively closed

Relatively high entry barriers continue to exist in the construction sector, both for housing and civil engineering. In spite of performance building regulations, procurement of construction services should strike a balance between preserving transparency through publication of above-threshold tenders and avoiding disadvantaging SMEs and foreign companies by prohibiting separation of contracts into sub-elements. Around a third of the Competition Authority’s cartel investigations have targeted the construction industry. The construction sector appears to be an obvious case for tougher enforcement of the competition law.

Food retailing also suffers from a lack of competition

Competition in food retailing is impeded by domination of the market by a small handful of vertically integrated food chains. Three groups control more than 90% of the market. The application of the Planning and Building Act, which affords municipalities with considerable discretionary power over licences, also creates some entry barriers to potential new entrants, in particular foreign companies and domestic SMEs.

Tackling heavy regulation of the rental housing market, which hinders mobility

A well-functioning rental housing market is important in order not to distort the basis on which people make their choices. It improves overall mobility by making it easier for households to find housing according to changing needs. However, rent regulation can be seen as a way of meeting distributional objectives as it implies a transfer of resources from landlords to tenants. Another way of doing this is to use taxation of rental income to subsidise rent payers. It may also be seen as a protection against excessive rent increases imposed by monopolist landlords. Most countries have regulation that limits rent increases for sitting tenants, but practices differ for new tenants. Overall, the redistributive effects of such policies across the OECD are uncertain and inconsistent. It is not clear that the most needy households reap the largest benefits. Also, there are more efficient ways of achieving equity objectives (i.e. that citizens obtain proper housing at a reasonable price) in this area. From an efficiency point of view, letting tenants in rental housing pay rents that better reflect differences in quality, location and demand would considerably improve the functioning of the housing market, in addition to promoting the flexibility and mobility which is important to sustain economic growth.

The Swedish rental market, however, falls well short of this objective. A large part of the rental housing stock is subject to comprehensive rent regulation and extensive rights of tenure. This means that prices cannot fulfil their role of helping the market to allocate housing efficiently and of providing signals to expand the housing stock. The result is a very segregated market and limited turnover as tenants stay with low rent apartments, even if these no longer suit their needs or preferences. An analysis of housing market issues in Sweden is presented as the in-depth topic of the *OECD Economic Survey of Sweden* (OECD, 2007).

The need to complete and reinforce the infrastructure liberalisations of the 1990s

A Regulatory Reform Commission has recently evaluated the effects of reform in the infrastructure sectors liberalised in the 1990s (SOU 2005:4). The Commission was given two tasks: to evaluate the long term effects of regulatory reform of infrastructure sectors, and to propose measures to enhance the positive effects of implemented reforms. It found positive effects such as lower prices, but also higher prices in cases where consumers preferred higher quality, increased productivity, improved market structure, and increased efficiency. The Commission also identified several transition problems and regulatory shortcomings, and proposed measures to deal with these. The Regulatory Reform Commission report presents a large number of detailed proposals to improve regulation of liberalised markets, including assignments to the Competition Authority to monitor the railway and electricity infrastructures. It also proposes that the independence of regulators and the Competition Authority should be strengthened by more secure employment terms for their heads.

Updating the regulatory framework for telecommunications to sustain a high performance

The liberalised telecommunication market has, over the past decade, played an increasingly important role in the Swedish economy through its positive impact on productivity growth and technological diffusion. Given the sector's importance to the economy and the fact that regulatory frameworks for infrastructure sectors need regular adaptation to keep up with technological developments, it would be helpful to review current arrangements with a view to fine tuning where necessary. The Regulatory Reform Commission raises the issue of vertical separation of the major incumbent operator in the fixed telephony segment (Telia Sonera AB), as this may help competition. It also recommends that the regulator (PTS) should take a stronger lead in monitoring price developments, and that the government should investigate how Sweden could achieve a more effective spectrum use through a system based on market-determined allocation of spectrum rights. Other regulatory challenges are emerging in the light of technological development and the growing integration of fixed and mobile services.

Addressing issues in the electricity market to boost performance

The outcome of liberalisation in the electricity sector has so far been mixed, which may reflect issues with the regulatory framework. The Regulatory Reform Commission has pointed out several areas in the regulatory framework which need to be improved. These include stronger monitoring by the Competition Authority of market concentration among power generators, a stronger and clearer policy for mergers and acquisitions, tighter regulation of the grid companies including stronger supervision of regional grid companies, and strengthening the role of consumers.

Meeting environmental goals efficiently

Meeting environmental goals in a market economy raises multiple challenges

The objectives of environmental policy (sustainable natural resource use and environmental preservation) are akin to some other public policy goals such as social or equity goals. Its main purpose is not to promote competition, but to address market failures that generate undesirable pollution, and this requires the application of direct regulation or other environmental policy instruments. Effective environmental regulation involves a balancing act between meeting environmental goals, and minimising potentially negative economic effects, including impacts on the degree of competition in affected markets.⁴

The introduction of many environmental policies can have significant implications for competition, either because the instrument itself generates a new market such as tradable permits, or because the means by which the policy is implemented affects competition in an existing market (eco-labels, producer responsibility schemes). Perhaps more significantly, in practice many existing regulations can favour existing firms, thus serving as a barrier to entry.

Environmental rules and instruments can also have a significant impact on international competitiveness. A good example is the imposition of environmentally related taxes when other countries do not impose such taxes, which can disadvantage companies in "exposed" sectors, although this in the end will depend upon the means by which the revenue is recycled. The viability and competitiveness of small, domestically-based firms can also be affected by environmental regulation. The cost of compliance with permits and administrative burdens can weigh more heavily on such companies relative to larger firms.

Finally, environmental policy and regulation are also marked by the fact that it links to a large number of responsibilities which belong to other ministries (transport, health, industry, finance, agriculture, trade etc). Different layers of government are also deeply engaged, because efficient environmental policy must reflect local environmental conditions. Effective management of trade-offs between different policy objectives and co-ordination of different levels of government is, therefore, especially important.

The Swedish experience has some interesting lessons for other countries

Swedish environmental policy is ambitious, and has a long history. Its prominence has risen steadily over the last few decades. The Swedish Environmental Protection Agency (SEPA) was founded in 1967. Today the Ministry of Environment and Sustainable Development has an important watchdog and advocacy role at the centre of government, and the concept of sustainable development permeates all levels of policy making. A major regulatory development of recent years is the Environmental Code and its Environmental Quality Objectives (EQOs), adopted in 1999 (Box 1.14). Together these form a unique and constructive

Box 1.14. The Swedish Environmental Code and Environmental Quality Objectives (EQOs)

The Environmental Code

The Environmental Code is an attempt to establish a uniform and unified body of law for the environment, and to spell out key general principles of environmental policy. It seeks to consolidate previous legislation, as well as transposing a number of important EU directives (including the Water Framework directive and Integrated Pollution Prevention and Control (IPPC) directives). It introduces quality standards, sanctions and clarifies the role of Environmental Impact Assessment (EPA).

Environmental Quality Objectives (EQOs)

EQOs are rooted in an ecosystem view of the relationship between man and nature. There are 16 EQOs that cover a very broad range of issues, including EQOs for clean air, a protective ozone layer, a varied agricultural landscape, sustainable forests, and a good built environment. Interim targets for medium term planning – intended to be quantifiable and achievable – are established on the basis of the EQOs. Examples include ambient targets for SO₂, action programmes for priority threatened forest species, goals for traffic noise, and waste recycling goals.

The process of developing and adjusting the EQOs and their targets over time is as important as the idea of EQOs in themselves. The targets are not static but change over time, as knowledge is gained, new technology is developed, and not least, as a result of a broad society wide dialogue. This includes discussion on trade-offs, timing and the implementation of specific goals at the sectoral and local levels. EQOs provide a focus and forum for dialogue and consensus building, which is especially important in Sweden due to the highly decentralised implementation of environmental (and other) policies through autonomous agencies at the national level and through a powerful local level with its own multiple agenda.

Progress toward meeting the EQOs is evaluated annually by the state agency SEPA, with a more comprehensive evaluation every four years. A large number of other specialised agencies such as the Chemicals Inspectorate (KEMI) have important monitoring and enforcement roles, as do the agencies and local governments.

approach for promoting a whole-of-government environmental policy. They establish guiding principles reflecting environmental goals to be applied in all policy making, and have led to a much broader participation in environmental rule making by stakeholders at all levels, leading to greater acceptance and accountability in implementation. Perhaps this holds lessons for the management of other complex policy areas.

Some critical voices claim that the system has not in fact helped as much with clarity and simplicity as intended. For instance, by bringing together a number of pre-existing laws under a single umbrella, the Environmental Code has brought into focus some contradictions. As an example, the rules for compensation are quite different in Chapters 9 and 11 of the Code, which reflect the respective origins of these chapters in the old Water Act and Environmental Law respectively. In addition, it has been argued that SMEs need to employ consultants to know what rules apply to them. The National Audit Office has reviewed the system and reserves judgement on whether goals have been met – there is not enough information to reach a definitive conclusion. It found some issues with the process of reporting progress with targets.

Some issues in Swedish environmental rule making need attention

Administrative burdens and the cost of environmental regulation remain an issue, especially hampering development of SMEs. The permitting process is complicated and a one-stop shop would help. The agency NUTEK has estimated that total administrative costs of complying with all environmental laws, regulations and monitoring, including purchased consultancy services, amounted approximately to EUR 400 million (2006). The estimate was carried out to serve as a baseline for future measurements, and the government is aware of the cost issue.

The process of building consensus and managing trade-offs in this politically sensitive area is always likely to raise challenges for which there is no simple answer. Lobbying by large companies is powerful and not always effectively resisted. The application of an effective RIA process would help to establish more systematic information about costs and benefits of proposed actions, including for SMEs which tend to be the losers.

Notes

1. According to a number of national experts, including contacts during the official OECD mission to Stockholm.
2. According to the advertisements in the EU-Database Tender Electronic Daily, which only records advertisements above the EU-threshold values. For procurement under these values, national rules in Chapter 6 of the Public Procurement Act do apply. Therefore, the total of public procurement advertised as a share of GDP would be higher.
3. According to the interviews with the OECD team during their official visit.
4. Note that environmental policies can be regressive, implying that there can also be a trade-off between environmental and social objectives. (See Serret and Nick Johnstone, *The Distributional Effects of Environmental Policy*, OECD/Edward Elgar).

Section 4. Moving Forward: Regulatory Capacities for Promoting further Reform

Creating a momentum for reform

Consensus seems hard to establish on emerging reform issues

The number of reports issued by Swedish institutions on different aspects of further reform that have come out in recent years suggests that awareness of the need for action is high. Some of the reports have been commissioned by the government as part of the legislative process, which requires that a committee investigate an issue before it can be taken further in the law-making process. Others have emerged independently from different parts of the institutional structure, including the Competition Authority, the National Audit Office and the Parliament. A certain frustration is evident in some of the reports. For example the report by the Statskontoret (2005) "Competition at the public/private interface" stated that "We found that the objectives defined by politicians... were unclear and sometimes contradictory... with such unclear objectives, monitoring whether the policy has been successful or not is difficult".

It seems that consensus on action to follow up some of the reports is hard to achieve. This may be because action has already been taken on softer reform targets and the reports are now highlighting increasingly sensitive issues. It is also hard to muster enthusiasm for a further major round of reforms in the absence of any obvious crisis. The Competition Authority's efforts at reform advocacy, for example, only seem to work where they propose concrete solutions in non-controversial areas. They are less effective in politically sensitive areas like public procurement, the commercial activities of local government, state monopolies, or health care.

Sometimes there is an accumulation of reports on the same issue, and still no action is taken. Public procurement is an important example, even if it is also affected by EU-wide developments. The absence of effective sanctions against violations of procurement rules is a major problem which has been observed by several government committees as well as the Competition Authority and the Competition Committee (an NGO competition watch-dog). A system based on administrative fines was proposed as long ago as 1999. Another important example is the provision of public services in competitive markets. The government has long recognised that this is an important issue, and solutions have been discussed for several years by government committees, ministerial working groups, the Agency for Public Management and the Competition Authority. But it is highly sensitive, highlighting as it does the need to identify public sector core tasks.

Box 1.15. Swedish reports on regulatory reform

Sweden has a strong capacity to produce well argued, thoughtful reports on what to do next in policy and rule making. The reports reflect and support the culture of transparency and widespread consultation.

Reports can emerge from a number of different sources across the institutional framework. Apart from the reports that are commissioned by the government directly when it is planning new legislation, reports are prepared by the Competition Authority as part of its advocacy role, the National Audit Office as part of its audit responsibilities, the Agency for Public Management as part of its regulatory responsibilities, Parliament when it takes the initiative and asks the government to consider an issue (some bills are based on proposals by Parliament), and state agencies.

Recent reports include (this is not a complete list, but gives a flavour of the breadth and ambition of potential Swedish interest in reform):

- The 2005 report by the National Audit Office on administrative burdens.
- The 2005 *Statskontoret* report “Competition at the public/private interface”.
- The 2005 report by the Regulatory Reform Commission.
- The 2005 report by the Competition Authority on competition in markets. This presents policy options for the government which relates to a large number of markets.
- Both the Competition Authority and the Agency for Public Management have made proposals on “domestic” state aid (state aid below certain thresholds and subsidies that do not affect trade between member states are not touched by EC rules, but may still seriously distort competition in the domestic market, especially at the local level and to the detriment of small business). The reports propose measures to create a more level playing field between public and private actors in competitive markets.
- A government committee is currently reviewing various aspects of the Competition Act to enhance the efficiency of enforcement, as there is currently a lack of sanctioning powers. The committee is studying a variety of measures in order to render the enforcement of the Competition Act more effective, including *inter alia* the issue of sanctions.
- A government committee has reviewed entry barriers flowing from application of the Planning and Building Act, and proposed legal modifications.
- A government committee has recently reviewed a number of issues related to public procurement.

An additional process or structure may be needed to boost reform, promoting a strategic reform vision and helping to establish consensus on important issues

Consensus building is inevitably a lengthy process, and Sweden is not the only country to face the issue of staying faithful to its governance traditions, whilst finding a way to take timely action. Switzerland, for example, works through a system of referenda that may take years to yield a final policy result.

To regain reform momentum and break through deadlocks, Sweden would appear to require some new process or structure. An external advisory body for reform might help to bring consensus building to a decision point. Far from replacing current processes, it might help to reinforce the traditions of consultation and participation by stakeholders. With representation at the local level, it would also help to ensure that local and national levels

are pulling in the same direction. The new Government has stressed in its 2007 Budget that it will establish an official body charged with the task of reviewing all new regulations concerning enterprises.

The new process or structure needs to be strong at communication. A persuasive explanation of the reform agenda to the widest public is important and needs to be articulated by the government. This is complementary to the basics of every day communication such as the right of access to official documents, clear procedures for getting hold of them, plain language drafting of rules, and effective consultation procedures for specific new rules. Sweden is strong in these basics, but a more strategic perspective is also needed. Because of strongly rooted transparency and consensus-making traditions, reforms that are tackled through public debate in Sweden are more likely to gain support.

Institutional capacities to promote reform

The issue of fragmentation and its impact on efficiency

Sweden's rule-making process may be suffering from a fragmented institutional environment which is to some extent primed to create rules in a decentralised manner. There are traditions of autonomous action for the different parts of government. Ministries are independent from each other except where the issue involves other ministries. In this context, the government works in a collective way, and regulations are circulated among the various ministries for opinions and cannot be presented to the Government for decision unless all ministries have agreed to do so. This fosters consensus but may also result in significant delays and a reluctance to act on certain issues. Beyond the ministerial level, agencies are assigned with the tasks of policy implementation within a decentralised organisation. While the agencies receive strategic guidance from the government, they are autonomous for matters related to the exercise of public authority *vis-à-vis* a private subject or a local authority.* Agencies are independent one from each other and do not always have a concerted approach based on an assessment of the consequences of their action at the local level. The local level, including municipalities, also has a significant autonomy when implementing policy.

While some co-ordination mechanisms exist at the national level between ministries, these may not be enough to ensure the efficiency and policy coherence of the overall institutional framework, which reflects a fragmented and compartmentalised approach to rule making. It can also be argued that streamlining is necessary. There are probably too many agencies, and certainly no need to create new ones. The current system generates regulatory complexity. This may have implications in terms of efficiency, particularly with regard to lower level regulations issued by a large number of state agencies. The new government has announced its intention to make a comprehensive review of the organisation of the state administration, which will include central agencies. A streamlining of the system could also contribute to enhancing transparency and accountability, including in the public sector.

The role of the agencies is especially important in its impact on rule making and rule management. They are the main source of rules and their regulatory footprint appears to be large, growing and unwieldy. The difficulties experienced in managing administrative

* Chapter 7, Articles 1 and 3, Chapter 11, Articles 6 and 7 of the Instrument of Government.

burdens and rule inflation (and the government's lack of adequate information about burdens) may be symptomatic of the problem.

Developing a stronger focal point for regulatory policy within government

Managing the issues generated by a compartmentalised, autonomous set of institutions should be an important Swedish regulatory objective, and might usefully start with a more coherent regulatory policy. Important elements of a regulatory policy are evident in Sweden, and are embedded in core legal documents such as the Constitution and the Instrument of Government law which sets out basic principles of governance. There has been a steady development of regulatory policy over the last twenty years via initiatives to develop RIA, reduce administrative burdens for business and improve support for SMEs, promote e-government, and develop public administration capacities.

But no “whole-of-government” policy has yet emerged from specific initiatives. This is in part because regulatory policy has so far been contained within broader public sector reform, and has not yet fully emerged as a policy in its own right. Regulatory policy is also dispersed across different institutions and structures (Box 1.16). It is not only spread among several ministries but also among four state agencies charged with a regulatory role. This dispersion harms the attainment of public policy objectives. The question could be asked whether agencies – as implementers of policy – should have the main or key responsibilities for regulatory policy.

Box 1.16. The institutional structures that support Swedish rule making and regulatory policy

A large number of institutions play a role in rule making at the centre of the Swedish government. Some of these echo the structures that would be found elsewhere in the OECD. They include the Prime Minister's Office responsible for the political and legal co-ordination of legislative work, which includes a Legal secretariat and (as from 2005, in recognition of the fact that “EU affairs are no longer external affairs”) an EU co-ordination secretariat; the Ministry of Finance; the Ministry of Justice; the National Audit Office (responsible for auditing the accounts of government agencies through annual financial audits, and for performance auditing); and a special role for the Ministry of Industry, Employment and Communications and its Better Regulation Unit, which approves the quality of small business impact assessments.

Four agencies also have specialist responsibilities for regulatory issues:

- The Swedish Agency for Economic and Regional Growth (NUTEK) has had special responsibility as a better regulation agency since 2005, with a remit to provide support and advice on impact assessments.
- The Swedish Agency for Public Management (Statskontoret) supports the government by carrying out evaluations, on request, of public management issues.
- The Swedish Administrative Development Agency (VERVA) was established in 2006 to oversee public administration and human resource development as well as e-government, within the government.
- The Swedish National Financial Management Authority (ESV) is charged with monitoring agencies' application of impact analysis, although this work has lost prominence in recent years.

In the recent past, regulatory policy did not appear to be very high on the political agenda. This may have reflected a lack of understanding of how it might support other policy goals. Sweden still lacks an overarching and strategic regulatory policy that can bind all levels of government and all players to a common purpose (implementing reforms that need the co-operation of all institutions) and to common principles that might assure high regulatory quality whatever the policy or reform envisaged and at whatever level of government (e.g. via RIA).

These gaps in regulatory policy and management may make it very hard for Sweden to launch and carry forward major reforms that messily involve a large number of the institutional players. Most of the reforms that Sweden needs to envisage are of this kind. For example, improving the performance of the public sector is a very broad institutional challenge.

The issue of co-ordination between national and local levels of government – undermining capacities to meet public policy goals

Sweden needs to find a way of reconciling the confusion of objectives and different agendas that often surface between the centre and local levels of government. Linking the different levels of government more strongly for the shared achievement of public policy goals will help to ensure that these goals will be met in the future.

Currently, there is no framework or forum that systematically brings together the central and local levels of government to manage issues and build a common purpose, as exists in Switzerland and Italy for example. The lack of any such framework stands out in contrast to many other OECD countries, and its absence may explain an apparent contradiction – local governments are both over- and under-regulated at the same time:

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

Over-regulation and inflexible regulation therefore appear to sit alongside a failure to provide stronger and sharper strategic guidance with local levels and to agree shared objectives so that important public policy goals are not compromised by action at the lower level. Difficulties of effective co-ordination between ministries and agencies, and especially between agencies – the stovepipe syndrome under which each entity follows its own regulatory track without looking around at what others are doing – plays an important part in this respect. Less “command and control” regulation and more of a “set goals and steer” approach, based on more flexible performance-based regulation and more managerial autonomy for the local level would appear to be needed. However, in a number of cases, it is not possible to have a more flexible performance-based regulation due to detailed EU regulation.

An important secondary issue is the level of regulatory competence at local level. Are local governments well enough equipped for their tasks? Resources and training may be inadequate, given the major responsibilities of local governments for public service delivery.

Capitalising on the role of Parliament and the National Audit Office in promoting reform

Parliament has responsibility for approving – via a system of scrutinising committees – all new (or amended) legislation. Some bills are based on suggestions made by the Parliament. It therefore plays a crucial formal role in rule making, as in other OECD countries. But it has also been active in promoting a reform agenda, with a strong pro-reform contingent in the Committee on Industry and Trade, which has advocated a more pro-competitive stance, arguing that the share of the economy exposed to competition should increase. The Committee, notably, asked the former government in June 2005 to propose measures to solve the problems related to competition between the public and private sector. This raises the question whether a stronger role might be possible for the Parliament in the reform process, since it appears to be a driver of reform. The role of the National Audit Office (elected by the Parliament and reporting to Parliament and to the cabinet) is also important, with recent reports advising on business burdens, public procurement and the effectiveness of environmental regulation (among others), though it only covers the national level of government (Box 1.17).

Box 1.17. The role of the Parliament and the National Audit Office in triggering the Action Plan to Reduce Administration for Enterprises

This reform might not have been launched without the Parliament pushing for it, supported by the analysis of the Swedish National Audit Office.

In 1999 and 2002 the *Riksdagen* passed public resolutions requesting the government to increase the speed and scope of its work on rule simplification. It requested a review of business regulations in their entirety to eliminate those that were unnecessary and burdensome, and for setting of a quantitative target to reduce the cost of administering the rules. In 2004 the National Audit Office presented the report “Regulatory Reform for Enterprises”, following an audit carried out in support of the *Riksdagen*’s request. The National Audit Office used this opportunity to take a broad view of regulatory management, and made five recommendations to the government:

- Action to amend and simplify existing rules should be increased, and to underpin this, the regulatory reform work carried out by government offices should be reviewed.
- The government should investigate the roots of the regulatory burden, and whether these arise at the level of laws, ordinances or agency regulations.
- The division of responsibilities between NUTEK and the National Financial Management Authority as regards supervision of agency work on regulatory reform should be clarified.
- The government should consider the scope for starting development work to take other regulatory burdens into account, not just administrative burdens.
- The annual communication to the *Riksdagen* should include a more strategic focus, such as how changes to the total flow of amended rules affect business, and the difficulties of amending the current framework.

Strengthening the contribution to pro competitive reform that can be made by the competition authority

A major strengthening of the competition law and policy in the early 1990s has been followed by a period of relative quietness and the emergence of some gaps, despite important

developments such as the introduction of a leniency programme and EU inspired procedural changes. Experience with the existing law reveals the need for some improvements.

A few important gaps have emerged over the last decade. The Competition Authority's success rate in court is low and could be improved, cases take a long time from initiation to last instance ruling, sanctions are not sufficiently deterrent, the share of resources on advocacy is high but advocacy efforts have limited impact, and there are limited powers of enforcement. The Competition Authority appears to need enhanced skills and competencies, and the employment terms of the head of the competition authority and the president of market court raise concerns about independence. An authority with sharper teeth, more independence, armed with sanctions, and which is fully in the loop for consultation on rule making would have a greater impact on key reform issues such as the public/private interface and the effective development of infrastructure sectors. As regards the latter, for example, competition law enforcement has been more effective in preventing customer lock-in (i.e. tackling dominant firms' practices aimed at preventing small rivals from taking over customers) than in enforcing third party access to infrastructure. In the electricity sector, there is a need for stronger monitoring by the Competition Authority of market concentration among power generators, and a stronger and clearer policy for mergers and acquisitions. Other sectors may benefit from a stronger stance. In financial services, the Competition Authority reckons that there is currently an oligopoly-like market structure in the banking industry, where the four major players control 73% of assets.

Reviewing the capacities of independent regulators

The Swedish institutional tradition gives agencies a central role in regulation and distinguishes this function from policy making, which is vested in ministries. The question therefore arises of the difference between an agency and a regulator in the Swedish context, which hardly exists. Agencies are essentially independent of ministries in the execution of their duties, for law enforcement, once their strategic mission has been defined by the responsible ministry, to which they have to report in terms of their strategic objectives. In terms of rule making, these agencies cannot go beyond the limits established by the Parliament and the Government when delegating the possibility to adopt provisions.

In some respects, however, the agency model falls short of best practice for effective independent regulators. Appointment procedures and governing structures fall short of best practice elsewhere in terms of transparency and independence. Contrary to independent regulators in some other countries, Swedish regulators are generally headed by a single individual and do not have a governing board, with staggered terms, which would ensure strong independence. As a result, they also lack a number of powers, particularly quasi jurisdictional powers. Sensitive areas include sanctions, and the relationship with the competition authority. Most Swedish agencies do not have direct sanctioning powers and must rely on the court system. The system of appeals covering agencies and the Competition Authority is not unified, which is problematic in terms of ensuring legal certainty. There is often a mismatch of competences and resources between the regulators and the ex incumbent monopolies which they regulate. This puts the latter in a powerful position to decide the extent of competition that will emerge in practice. In its recent report, the Regulatory Reform Commission concluded that "strong, separate and independent regulatory authorities are often a condition for successful liberalisation".

The Swedish approach does not rest on a core framework. Different approaches have been taken across the network sectors. Every agency has its own design, and the result is that

regulators in Sweden look very different from one another. Sweden has not sought to invent a new and perhaps unnecessary institutional form for sectoral regulators. But the lack of core framework does raise some issues. The case of the electricity regulator (which sits within its parent agency) can be contrasted with the bolder approach taken for telecommunications (where the regulator has a much clearer separate identity and explicit powers to promote competition). These differences may help to explain why telecommunications has thrived more than the power sector since market opening. An explicit checklist of core attributes for independent regulators would be a way of addressing weaknesses such as the lack of sanctions. It would also strengthen transparency in this important area of regulation.

Tools for the promotion of regulatory quality and reform

Developing a stronger RIA process to support a shared regulatory policy

Sweden faces many of the challenges of other OECD countries in the successful application of RIA as a useful and influential tool for high quality rule making (Box 1.18). Strong foundations exist in principle for the successful application of RIA in Sweden, including good training and clear guidance, especially as regards SMEs. But assessed against best practice, the Swedish system shows a number of gaps, reflecting at its roots a lack of political commitment to the process. Fragmented responsibilities – three entities are involved – can mean that two RIAs are prepared for the same proposal. There is no advice on

Box 1.18. **The RIA challenge**

Regulatory Impact Analysis (RIA) is one of the most important regulatory tools available to governments. Its aim is to influence policy makers to adopt the most efficient and effective regulatory options, using evidence-based techniques to justify the best option. Much of the OECD's regulation checklist relates to RIA good practice.

The OECD has been recommending the use of RIA for some years, starting in 1995 with a Council Recommendation on Improving the Quality of Government Regulation. The 1997 *OECD Report on Regulatory Impact Analysis: Best Practice in OECD Countries* sets out a list of RIA best practices. The 2005 *Guiding Principles for Regulatory Quality and Performance* re-emphasises the use of RIA.

RIA represents a challenging process that needs to be built up over time. Practice varies widely across OECD countries but issues encountered in its application include:

- Omissions. Parts of the regulatory structure may not be covered, especially at sub central level.
- Inadequate use of evaluation techniques. Cost-benefit analysis and other techniques are often not adequately applied.
- Poor compliance. Poorly prepared regulations often remain unchallenged.
- Complexity and fragmentation. Too many checklists can cover a bewildering range of issues.
- Failure to target the most important rules. To avoid administrative overload, RIA needs to be targeted at regulations with the largest potential impacts and the best prospects for changing outcomes.
- Poor integration with other consultation processes. RIA is often separate from or not included in traditional consultation processes, which waters down its influence on decision making.

targeting RIA efforts at the most important rules (apart from the focus on SMEs). Quality control is inadequate: there are no formal powers to enforce minimum standards. Guidance does not include how to carry out an effective cost-benefit analysis or to ensure effective data collection and analysis. Missing too is any systematic assessment of the sub-national dimension when reviewing a draft rule. What impact and issues are raised for the local level, and how best can different regulatory tasks be allocated across the levels of government? All rule-making entities are not yet subject to similar high quality RIA disciplines.

Measurements taken by the Board of Swedish Industry and Commerce for Better Regulation since 2002 suggest that the overall quality of RIAs has been improving. But it also identifies areas for improvement, for example in relation to reviewing alternatives to rules, and the lack of early consultation in many of the cases examined.

A review of the impact assessment system is currently underway. RIA needs to work more effectively in Sweden to help secure high quality rules across all areas of government activity. The effects of regulation on competition, business and consumers need to be captured so that the regulatory framework can support a strong economic performance.

Identifying further opportunities to benchmark activities and learn from best practice

There are considerable advantages from benchmarking (Box 1.19) and scope for Sweden to make use of this tool more systematically. This is especially relevant for local government. Very little information is currently collected about comparative service and regulatory delivery inputs or outcomes among the municipalities. Some league tables exist on health care and education but not for most services. Further detailed data across the local authorities would help benchmarking performance.

Box 1.19. Advantages of benchmarking

Benchmarking can take different forms:

- Benchmarking regulatory practices. This can help to spread best practice in regulatory quality as well as convergence across all the levels of government. It can use the fact that different entities within government may be experimenting with different approaches, and turns this into an advantage.
- Benchmarking competition between firms. Competition between public and private sector providers of publicly funded services is an example.
- International benchmarking. The OECD's Product Market Regulation database for international regulatory benchmarking is a prime example.

Meeting environmental goals: designing efficient and effective tools

Considerable experience has accumulated around the OECD on the most effective way to design tools and instruments for environmental policy. This area of regulation is in many ways ahead of others, perhaps most strikingly in terms of experimenting with alternatives to regulation such as market-based instruments. In addition, considerable attention has been paid to the design of instruments which address the specific conditions and interests of those affected. This is perhaps because the political economy aspects of environmental policy and rule making loom quite large (role of industry, rent seeking, first mover advantage, gaming), but it may simply reflect a more advanced understanding of how to design effective tools and instruments than has been achieved in many other sectors.

Environmental regulators appear more likely to ask themselves, for example, whether a measure can be enforced, what is the likely degree of compliance, and how a tool can be designed so that it will be respected without undermining the environmental intent. These are useful questions to ask of any regulatory framework. There appears to be a better appreciation of the need for a dynamic and holistic approach to rule making that considers all levels of the regulatory framework, to take account of the possibility of gaming. For example, industry may first fight local or national legislation. But once this is introduced, they may then lobby for the extension of similar legislation to other countries (becoming an ally of NGOs in the process) because it thus acquires first mover advantage. Regulators need to be able to match those they regulate in this process, by being prepared at all times to review and adjust their regulatory policy for achieving an environmental goal, and by co-operating closely across the different levels of regulation.

Box 1.20. **Designing instruments to meet environmental policy goals**

A conceptual framework for assessing different instruments

A useful framework for assessing the relative merits of different instruments has been devised (Goulder *et al.*, 1999). This takes into account:

- Abatement effect (incentives to use less of an input).
- Input substitution effect (substitution among inputs).
- Output substitution effect (higher product prices lead to less use of embodied emissions).
- Revenue recycling effect (budgetary effect of environmental taxes collected).

Most instruments have a fifth non – desirable effect – the tax interaction effect. A perfect tool takes into account all these effects, so that a given target can be achieved at least cost.

Innovative market-based instruments, not necessarily rules

Tradable permits, environmental taxes, deposit refund schemes, and labelling are examples of such measures. Well designed, they have proven as effective as direct regulation, as well as being more economically efficient *i.e.* meeting objectives at lower cost. Market-based instruments also remove discretionary power downstream at the permitting and enforcement stages, and so reduce rent-seeking potential (they sidestep or minimise the role of local governments).

Sustaining creativity and diversity in Sweden's regulation for the environment

Sweden does well, deploying varied economic instruments to meet environmental policy goals compared with most other OECD countries. A distinguishing feature is the broad acceptance of the use of environmental taxes, which are often set at a high level. Some measures, such as the Refunded Emission Payment (REP) scheme for NO_x emissions, are unique and successful designs that take account of practical constraints and the problem of acceptability by industry, which can be generally expected to resist environmental regulation, while retaining appropriate incentives for emitters. As Box 1.21 also shows, Sweden takes a pragmatic stance – preferring to limit its ambitions or to offer a deal, rather than to risk no progress at all – in order to move environmental ambitions forward.

Box 1.21. **Some of the approaches taken by Sweden to meet environmental goals**

- Taxation to fight climate change. Sweden has the highest carbon taxes in the world. As part of a general tax reform in the early 1990's, a former system of tax reductions originally granted to the most energy intensive energy users (steel and paper pulp) was extended to all of industry. However, an increasingly high tax in the heating and household sectors has had a marked effect in these sectors where dependency on fossil fuels has been more or less eliminated, replaced by biomass. As a result of a combination of industry advocacy and concerns raised with respect to the EU state aid rules, the lower tax level has been maintained for the industry, even if also this tax level has been increased over the years. Sweden has a long history of environmental taxes (electricity, CO₂, landfill and gravel). The taxes have been raised during the last few years as part of a political agreement under which the taxes were offset by reductions in other taxes such as labour taxation and employers' social contributions.
- Refunded Emission Payment (REP) to reduce NO_x emissions. This is a unique Swedish instrument which addresses both the technical challenge of regulating NO_x emissions (NO_x is hard to measure as it comes from the atmosphere), and the acceptability to industry. The REP scheme gets round these problems by imposing a (high) unit fee on emissions, and by refunding revenues to firms proportional to output. This has the effect that the incentives for abatement and input substitution are similar to a tax. But since 46% of firms have net returns instead of paying a fee, resistance is much weaker than for a tax as there is no clear mandate for the whole industry to resist it. Administrative costs of REP are also low.
- Subsidy schemes – KLIMP and LIP – to fight climate change. These schemes to combat climate change were designed to encourage local government mobilisation for sustainability. They involve competition among municipalities for the money available, which has also promoted the schemes' efficiency.

Taking account of the EU in regulatory policy

EU accession has provided a boost for better regulation and more competitive markets...

Sweden acceded to the EU in 1995. The Single Market agenda involves a mix of deregulation and market opening alongside rule harmonisation and mutual recognition of standards so that goods and services can be freely traded within the region. Accession opened the EU's Single Market fully to Swedish companies, and has given Sweden the opportunity to influence developments. Sweden pursues an agenda encompassing more thorough environmental regulation, market openness and the removal of anti dumping measures, reform of the Common Agricultural Policy, as well as more trade and development friendly policies toward the least developed countries.

EU regulation complements Swedish regulation. An important example is the "farm gate to plate" regulatory chain in the food industry. Rule making and surveillance needs to be at all the front lines of food production, especially today with the threat of terrorism. The implementation of EU regulation encourages the clarification of the roles and responsibilities of different actors across the different levels of government. This is especially helpful to local government.

The EU has been and continues to be a positive force for the evolution of Swedish competition law and policy (introduction of a leniency programme, implementing procedural changes following from the EC modernisation programme, pressure for a stronger sanctions regime). Specific directives have strengthened important aspects of the Swedish regulatory framework and enhanced transparency (Box 1.22).

Box 1.22. The transparency directive and the mutual recognition directive

The transparency directive

The transparency directive addresses the transparency of financial relations between member states and public enterprises, requires separate accounting for private and public undertakings active in both the reserved and the competitive sector, and aims at facilitating the EU Commission's analysis of state subsidies that might distort competition. It has given rise to a new law on public control of financial links and a requirement for the open accounting for public funds transferred to economic activities performed by public agencies or companies under the control of a government agency. Companies performing activities both in a competitive market and under monopoly or other special or exclusive rights are obliged to report costs and revenues for the two sectors separately. The competition authority monitors the reporting requirements and may request information from companies to be forwarded to the EU Commission.

The directive on technical regulations and standards

This directive, incorporated into a Swedish ordinance, has enhanced transparency as regards market openness. Trading partners as well as the EU can comment on proposed regulatory measures in this area, based on a procedure for the exchange of information on national measures derogating from the principle of free movement of goods within the EU.

... but it affects Swedish traditions of consensus building, as well as accountability

It is hard to operate traditional Swedish consensus building processes alongside EU decision-making processes. There is often too little time for consultation. Other governance traditions are difficult to maintain. The deep rooted Swedish policy on availability of public documents is controversial within the EU, as a document may be confidential in other EU member states, and there is pressure for Sweden to be more restrictive. Decisions taken in Brussels may contradict decisions taken nationally, and there may be a lack of clarity over how and by whom a decision has been taken, which reduces accountability.

Dealing effectively with EU regulatory issues

Management of EU regulatory processes, from the early discussions on an issue before it takes shape in a draft law, to transposition of agreed legislation into the Swedish regulatory framework, needs to involve key stakeholders at all stages and be adequately resourced. This will help to minimise regulatory burdens as well as helping to ensure an outcome that is acceptable to Sweden. A strong overall strategy that identifies the most important issues is also important.

Local government is often a key stakeholder, but is currently neglected in these processes. It is deeply affected by policy and rule making across a number of specific issues such as the environment and food chain, as well as the more general issues such as public

procurement and regional development, in which the EU plays a central role. It needs to be more involved, via input at the negotiation stage and later with the implementation of EU rules into Swedish law through agency ordinances and rules.

Special care is needed in the transposition of EU law to ensure that it does not add to existing regulatory burdens. A Swedish study of the source of business regulations and administrative burdens found that 44% of these stem from the adoption of EU regulation.

Finally, developing and applying specific tactics for policy and regulatory issues that are important to Sweden can be very effective (Box 1.23).

**Box 1.23. Dealing effectively with the EU:
two Swedish environmental examples**

Chemicals

The use of alternatives to CFCs (which damage the ozone layer) has a controversial history in Sweden, because the alternatives carry dangers for human health. When the EU decided to legislate on these substances via its REACH programme, Sweden negotiated for flexible basic control instruments such as registration and testing which would allow it to retain some domestic control. A Swedish proposal was tabled and Swedish experts were seconded to the EU Commission to assist in development of the EU legislation.

Acid rain

Leverage exerted by Sweden from international work (the Gothenburg Protocol and the Transboundary Protocol) enabled it to put acid rain on the EU agenda, even though only a few EU member states were affected. This was done largely by linking acid rain with other air quality issues such as ground level ozone, and with cultural heritage/health issues, in order to broaden interest.

Conclusion

Sweden is doing well in most respects and relative to a number of other OECD countries. Growth has been quite strong and resilient since the mid-1990s, spurred by an impressive growth in labour productivity. The economy is relatively competitive, with a large and growing current account surplus. Sweden's per capita income is above the level in the Euro area, and in major economies such as the United Kingdom, France, Germany and Japan.

Although performance in the past has been impressive, the Swedish economy has not yet regained its pre-crisis per capita income ranking. It still lags a number of countries in this respect, including neighbouring Denmark. Thus, living standards could still be improved. Sweden's public policy goals are ambitious and demanding in terms of the economy's capacity to support them. They emphasise the importance of social cohesion through a reduction of income differences and equality of living conditions across the country, based on an unusually generous welfare system. High standards for the environment are also part of Swedish goals. Failure to achieve the current strong performance would therefore make it increasingly difficult for Sweden to achieve its public policy goals.

Sustaining a strong – and preferably enhanced – economic performance is therefore very important. The issue of new jobs offering sufficient opportunities for the youth as well as new generations is also a crucial one. Without appropriate action, Sweden would face a

non-negligible risk that this could not be achieved over the long run. The roots of the economic crisis in the early 1990s lay in a long term decline, but also in a failure to tackle important issues in time. The pressure of ageing also remains, even if Sweden is already better prepared than many other OECD countries. Important steps have already been taken to ensure that public finances are sufficiently robust to meet this challenge, but more may be needed to secure a sustainable future economic performance. Two key areas for attention are labour market issues and the structure of the economy.

This analysis raises two linked regulatory challenges. The first is to improve public services and their delivery, by defining clear public policy objectives for the public sector. The state has a stronger influence on the role of the state in the economy compared with many other OECD countries, and Sweden's large tax financed public sector reflects the importance that continues to be attached to the state as main guardian of society. The role of the public sector in commercial activities appears to be significant. Further reforms are needed to encourage more competition in the provision of publicly funded services, so as to improve efficiency, and rationalise public sector activity in competitive markets, which is crowding out the private sector and particularly new small firms. More broadly, the share of the economy exposed to competition needs to increase.

The second challenge for regulatory reform is to promote a more dynamic economic structure, which would strengthen resilience to economic shocks as well as help to meet more predictable future demands. The economy currently depends heavily on a few large scale companies, including a significant ICT sector (that must counter the effect on its competitiveness of a decline in prices over time). The service sector remains small by OECD standards, and linked to this, entrepreneurial activity is insufficiently developed. Factors that hamper progress in this area are lack of incentives for entrepreneurship, administrative burdens that do not seem to be fully controlled, and public sector crowding out of private sector activity.

Improving the regulatory framework for key sectors, such as housing, food retailing and construction will also improve economic resilience. Due to a variety of factors, these sectors currently remain relatively sheltered from competition, despite their importance to the economy. There is also a need to complete and reinforce the infrastructure liberalisations which took place during the 1990s. Sustaining a high performance for the telecommunications sector means ensuring that the regulatory framework is up to date, and power sector regulation needs review to boost a disappointing performance.

Neither challenge can be met successfully without fully engaging the local levels of government. Municipalities are well placed and a crucial partner in the search for public service efficiency measures, and for improving prospects for the development of new firms.

A further challenge lies with environmental regulation. Sweden's attachment to high standards of environmental protection raises the issue of finding an optimal balance between high standards and significant regulation with associated costs for firms. This balance applies whether the concern is reduced competitiveness of large firms in international markets or burdens on SMEs at home.

The biggest challenge may be to sustain reform momentum in the absence of a large scale crisis, without major regulatory failures, and a well-performing economy. But how well would the government be prepared for an unexpected shock, or a rapid deterioration in economic performance? As it takes time for most reforms to show results, how can essential reforms be taken forward more rapidly? The number of reports on different

aspects of regulatory reform that have come out in recent years in Sweden suggests that awareness of the need for action is high. However, it seems that consensus to take action can be hard to achieve. The last major reforms rode on the back of the economic crisis of the early 1990s. This pushed Sweden into wide ranging reforms ahead of most other OECD countries. With one or two important exceptions such as the 1999 pension reform, no major reforms have been carried out over the last decade, but rather a succession of smaller initiatives. The momentum for reform is not as strong as it used to be. Sweden is now at risk of falling behind best practice in some areas.

An important part of the answer lies partly in Sweden's regulatory structures and institutions, and the need to strengthen their capacities for reform. There is a need to streamline the implementation of regulatory tools, and to pay increasing attention to quality assessment mechanisms such as RIA. Perhaps the most urgent need is for stronger leadership from central government, in order help to bring Sweden's consensus building to decision points and to break through deadlocks.

At the same time, a stronger regulatory policy would help to address the issues raised by a governance system which gives different regulatory institutions a high level of autonomy. It would also encourage the large number of institutional players to pull in the same direction. Improving the performance of the public sector requires co-operation of a large number of stakeholders. The need to improve co-ordination between national and local levels of government is therefore urgent, as is the need to ensure that Sweden's numerous agencies implement policy in the most efficient way. Sweden's turnaround in the early 1990s suggests that it has a robust and adaptable governance system. Important aspects of Sweden's regulatory governance need adaptation today, if it is to provide effective and timely support for policies aimed at securing a strong economic performance in the decades to come.

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PART II

**Regulatory Policies
and Outcomes**

PART II
Chapter 2

Regulatory Governance

Introduction and context

Sweden ranks highly in most indicators of quality of life. Its social and economic model is based on a large welfare state, and the public sector makes up a large part of the economy. The administrative and legal environment is characterised by a decision-making process traditionally based on consensus, active involvement of the population, a significant role for the social partners, ministerial autonomy relative to other OECD countries and decentralised political power. Overall, this is conducive to consultation, transparency and accountability.

A number of measures have been taken since the end of the 1970s to develop regulatory quality, alongside reforms that have opened up the economy and given renewed impetus for growth. The Swedish economy today shows an impressive performance. A dynamic growth rate continues to be important, to underpin the welfare system and meet the challenge of an ageing population.

Further reform needs to take account of Sweden's economic and institutional characteristics. An important aspect of central government is the distinction made between policy making currently vested in nine small ministries, and policy implementation vested in a large number of independently managed agencies. Constitutional provisions impose constraints on changes to these arrangements. The Instrument of Government, which is one of the fundamental laws that constitute the Swedish Constitution, provides for regulations to be adopted, at the level of central government, by Parliament (laws); the government (ordinances); and agencies (regulations). Non-binding recommendations may also be issued. Over time the number of laws and ordinances has come down. The introduction of the "guillotine rule" in the early 1980s (under which a rule was nullified if it was not centrally registered by a deadline) helped towards this.

Agencies have a key role in rule making, fleshing out in their regulations – which can be very detailed – the laws enacted by Parliament. They account for the largest part, by far, of the Swedish regulatory system. The independence of public authorities is a fundamental principle of Swedish administrative culture set out in the Constitution. Agencies are thus substantially independent in their work, and ministries cannot interfere in their individual decisions relating to the exercise of public authority *vis-à-vis* a private subject or a local authority, or relating to the application of law. Control and accountability mechanisms, however, include the government's power to nominate agency heads, financial control, the government's mission statement to each agency, and government ordinances setting out guidelines for their work.

Another important factor for future reform is the role of the state in the economy. The reforms of the 1990s did not make any big changes to the boundaries of state activity in the economy. The state is the largest company owner, and the largest single owner on the Stockholm Stock Exchange. A key challenge is to improve public sector efficiency, which raises the issue of "regulation inside government" and of the "regulatory state" which requires a clear separation of policy making, ownership and regulatory enforcement

functions. Exposing the public sector to greater competition is important for improving efficiency, but significant barriers to competition remain, and to a large extent public financing still implies public production or delivery.

A further factor relates to the composition of Sweden's business sector. Sweden's large, successful companies with a strong export orientation sit alongside a relatively muted performance as regards new and smaller firms. The deregulation of the 1990s strengthened competition and business opportunities, but entrepreneurship still struggles. This is less because of red tape, and perhaps more related to other factors such as labour market regulation and taxation.

Regulatory policies and institutions

A key part of the 2005 OECD *Guiding Principles for Regulatory Quality and Performance* is that countries adopt at the highest level broad programmes of regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Experience across the OECD suggests that an effective regulatory policy should be adopted at the highest political levels; contain explicit and measurable regulatory quality standards; and provide for continued regulatory management capacity.

Sweden's regulatory policies are not yet brought together into an identifiable single policy that covers the whole-of-government. Regulatory quality tends to be seen as part of broader public sector reform, rather than a policy objective in its own right. Nevertheless strong individual elements of an effective policy can be identified in the legal framework and institutional framework, as well as in the mechanisms for developing rules.

The legal framework for rule making (Box 2.1) is comprehensive and includes several elements aimed at ensuring legal quality and clarity as well as helping SMEs.

Box 2.1. The Swedish legal framework for regulatory policy

- The Swedish Constitution. This comprises the fundamental rules governing the state, defining the relations between the legislative and executive powers, and the rights and freedom enjoyed by citizens. Laws and ordinances cannot conflict with it. The Constitution is made up of four fundamental laws: the Instrument of Government; the Act of Succession; the Freedom of the Press Act; and the Fundamental Law on Freedom of Expression.
- The Parliament Act. This lays down detailed provisions on the Parliament (*Riksdag*) and its procedures.
- The Law on publishing laws and regulations. This lays down basic rules on publishing laws and regulations, and codes of statutes.
- The Codes of Statutes Ordinance. It contains more specific provisions on publishing codes of statutes.
- The Government Agencies and Institutes Ordinance. This lays down the principles on which the regulatory activities of the central government authorities should be based, including not least the agencies.
- The Administrative Procedure Act. Its aim is to safeguard citizens' legal rights in their dealings with administrative agencies and to improve agencies' service to the public.
- The Committees Ordinance. It requires all Committees of Inquiry to examine new or amended legislation from *inter alia*, a small business perspective.

Box 2.1. The Swedish legal framework for regulatory policy (cont.)

- The Ordinance on the special impact analysis of rules on small enterprises. Also called the “Simplex Ordinance”, it sets out the requirements for a special impact analysis for SMEs.
- Guidelines for the Government Offices on special impact analysis of rules on small business. This too addresses special RIA needs for SMEs and uses the same checklist of issues as the Simplex Ordinance.
- Control by regulation-Checklist for legal drafters. A document that helps civil servants and public authority employees engaged in enquiries and investigations to ask the right questions.
- The Bill handbook. This document helps civil servants to prepare and write bills.
- The Green book Guidelines for writing laws and regulations. Guidelines for writing and publishing laws and regulations.

The institutional framework (Box 2.2) echoes some of the structures that would be found in other OECD countries, but with the distinguishing feature that there are four agencies with direct responsibilities for regulatory policy, as well as the ministry and other central government structures. Responsibilities are spread around a number of institutions.

Box 2.2. Swedish institutional structures for regulatory policy

- Parliament (*Riksdag*). As representative of the people, it enacts laws, decides on state income and spending, and scrutinises government’s work. Laws are usually proposed by government, but can also be tabled by members of parliament. 16 Standing Committees support its work, including the Committee on Trade and Industry for issues related to industry, trade policy, state-owned enterprises, prices and competition in the business sector, and regulatory issues generally.
- The Government (*Regeringen*) issues ordinances, *e.g.* within the field of regulatory policies.
- Ministry Director-Generals (DG) for Legal Affairs. Officials responsible for the preparation of laws and ensuring their legality and consistency etc. The DGs attached to the Prime Minister’s Office and the Ministry of Justice have an especially important role in this respect, and have a comprehensive responsibility for terms of reference for Committees of Inquiry. They also co-ordinate the publication of the Code of Statutes.
- Prime Minister’s Office. Political and legal co-ordination of legislative work, mainly of a procedural nature. There is a Legal Secretariat and a recently established EU Co-ordination Secretariat. The latter establishes political priorities and co-ordinates the work of Sweden’s ministries in the EU Council of Ministers.
- Ministry of Finance. Reviews the budget implications of new or amended legislation.
- Ministry of Justice. Responsible for, among others, legislation concerning the Constitution and general administrative law, civil law, procedural law, and criminal law. Its Division for Legal and Linguistic Draft Revision has law and language experts who review all draft government bills, ordinances and terms of reference for Committees of Inquiry for general quality, and fit with the Constitution. Also responsible for ensuring that government offices consult externally as required in the Instrument of Government.

Box 2.2. **Swedish institutional structures for regulatory policy** (cont.)

- Ministry of Industry, Employment and Communications includes the Better Regulation Unit (within its Business Division) and is responsible for providing guidance and support for work on better regulation and SME aspects. The Unit is on the compulsory circulation list for any new or amended rules that affect SMEs.
- Ministry of Foreign Affairs. Must be consulted on all matters concerning the EU internal market.
- Office for Administrative Affairs. Responsible for development of administrative and management routines including use of IT, and supports the Committees of Inquiry.
- Swedish National Audit Office (*Riksrevisionen*). Responsible for auditing the operations of the state at central level, promoting the optimum use of resources and efficient administration. Audits the accounts of government agencies and the effectiveness and efficiency of government undertakings through performance audits.
- Council on Legislation. Made up of judges, it scrutinises proposed legislation from the legal viewpoint, to prevent conflicts, identify problems that may arise, and ensure that the law will meet its stated purpose.
- Swedish Financial Management Authority. Plays a role in monitoring how agencies apply the Ordinance on Government Agencies and Institutes, related to impact analysis.
- Swedish Agency for Economic and Regional Growth (*NUTEK*). NUTEK has had special responsibility as a better regulation agency since January 2005, providing support and advice on other agencies' impact assessment, as well as training programmes.
- Swedish Agency for Public Management (*Statskontoret*). Support for the government and Committees of Inquiry, via published studies and evaluations on public management issues.
- Swedish Administrative Development Agency (*VERVA*). A new agency established in January 2006 responsible for public administration and co-ordination issues and human resource development inside government. Special role promoting e-government.
- Parliamentary Ombudsmen. An office established in 1809 and elected by Parliament, they ensure that public authorities comply with the laws governing their actions, by investigating complaints and making inspections.
- Chancellor of Justice. Appointed by the government, this is a non political civil servant who has a similar role to the Ombudsmen.

The Government Offices forms one integral authority, comprising the Prime Minister's Office, the ministries and the Office of Administrative Affairs. Individual ministries are (as in most OECD countries) responsible for developing regulatory proposals, consulting with affected parties and assuring regulatory quality control. Government decisions must be taken collectively and unanimously by all members of the government. Before a law can be passed, a formal process with specific timelines and stages is set in motion (Box 2.3 below).

Committees of Inquiry have an important role in the development of many rules. Their reports are comprehensive and they are often required to set out in detail the consequences of the proposed course of action as well as to assess alternatives, together with the views of different stakeholders. The report of a Committee of Inquiry is referred for consideration to relevant bodies. This external consultation provides valuable feedback on the report in question.

Box 2.3. The legislative process in Sweden

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

1. *Initiation*. Although most legislative proposals submitted to the *Riksdag* are initiated by the government, some bills may be based on suggestions put forward by the Parliament or by citizens, special interest groups or public authorities.
2. *The inquiry stage*. Before the Government can draw up a legislative proposal, the matter in question must be analysed and evaluated. The task may be assigned to officials from the ministry concerned to a commission of inquiry or a one-person committee. Inquiry bodies, which operate independently from the Government, may include experts, public officials and politicians. The reports setting out their conclusions are published in the Swedish Government Official Reports series (*Statens Offentliga Utredningar, SOU*). The reports are available in Swedish on the Internet.
3. *The referral stage (external consultation)*. Before the Government takes up a position on the recommendations made by a commission of inquiry, its report is referred for consideration to the relevant bodies. These referral bodies may be central government agencies, special interest groups such as business or consumer organisations, trade unions, academic society, courts, regional and local government authorities or other bodies whose activities may be affected by the proposals. This process provides valuable feedback and allows the Government to gauge the level of support it is likely to receive. If a number of referral bodies respond unfavourably to the recommendations, the Government may try to find an alternative solution.

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

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

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

Box 2.3. The legislative process in Sweden (cont.)

5. *The parliamentary stage.* Responsibility for approving all new or amended legislation lies with the *Riksdag*. Legislative proposals, whether proceeding from the Government or a private member, are dealt with by one of the parliamentary committees. Anyone of the 349 members of the *Riksdag* can table a counter-proposal to a bill introduced by the government. Such a proposal is called a *motion*. If a motion is formally adopted by the *Riksdag*, the government is bound to implement its provisions. When the committee has completed its deliberations, it submits a report and the bill is put to the chamber of the *Riksdag* for approval. If adopted, the bill becomes law.
6. *Promulgation.* After its successful passage through the *Riksdag*, the new law is formally promulgated by the Government. All new or amended laws are published in the Swedish Code of Statutes (*Svensk författningssamling, SFS*).

Co-ordination between levels of government:¹ national-EU

Sweden joined the EU in 1995, and the government offices devote a considerable part of their daily work to EU issues. Overall responsibility for EU policy lies with the Prime Minister's Office, which co-ordinates EU activity in government, sets priorities, formulates policies, heads a think tank on the EU's long term development, resolves interministerial disputes, prepares for meetings of the European Council, and provides guidance on EU legislative issues.

Implementation, also supervised by the Prime Minister's Office, takes account of what needs to be done at the local as well as central levels. It is mostly carried out at central level through powers delegated to agencies to lay down implementing regulations. Around 8% of agency regulations are EU-related. The National Board of Trade, the agency for foreign trade and trade policy, provides Internet-based information on the transposition into Swedish law of EU legislative acts.

Implementation is sometimes rushed, the government offices hesitating as to which agency they will nominate for the task, and delays can be up to one year in exceptional cases. Co-ordination with stakeholders needs improvement. It is also felt – especially by business – that the implications and content of EU law need to be clarified. Nevertheless, Sweden is generally performing well in implementing EU law.

The impact of EU legislation on business is strong. A study has found that some 44% of proposals for new or amended business regulations stem from the EU.

Transparency and consultation

Transparency is one of the central pillars of effective regulation, making the regulatory environment more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised processes for making and changing regulation, consultation with stakeholders, effective communication of the law and plain language drafting, publication and codification to make it accessible, controls on administrative discretion, and effective implementation and appeals processes.

Transparency of law making procedures

The law-making process requires high levels of transparency to sustain confidence in the legal environment, and procedures for this in OECD countries are usually enshrined in legislation. For Sweden, the essential provisions are set out in the Instrument of Government and the Freedom of the Press Act. Regulatory quality principles are set out in regulations and other documents, applicable to all the entities involved in law-making (government offices, agencies and Committees of Inquiry). Guidance material is widely available, including on the Internet. It includes a special handbook on how to comment on draft EU legislation. Seminars and training courses on quality of legislative drafting and plain language are also arranged.

Transparency through consultation

Sweden's consultation processes reach a high standard in OECD comparison, and appear to be effective in obtaining the participation of key stakeholders, reinforcing the legitimacy of the law-making process, and helping to secure institutional co-ordination. It is very important to incorporate the views of the business sector and of consumers effectively at an early stage, which helps to assess the cost of proposals for these groups. Government agencies are the main implementers of legislation and consultation procedures at this level are also very important. The agencies themselves consult quite extensively on regulatory changes.

The mandatory referral stage of law making (the process is embedded in the Instrument of Government) provides a significant and routine opportunity for public consultation on reform issues. There is also extensive consultation within government to secure legal and technical quality. The inquiry stage is equally important, and the government often appoints a Committee of Inquiry made up of experts from a wide range of fields, as well as politicians. Committee terms of reference are published. Committee reports are made available for further comment, including by the general public, before the government drafts the legislation: if the reaction is bad, the proposal may be dropped, or an alternative approach identified. The reports are published and also available on the Internet. A final stage may be further consultation on the draft law, to which comments received and a justification of the course adopted may be attached. This consultation may be precisely targeted at the entities, such as companies most affected by the proposed law.

The government's legislative forward plans and direction of reforms are presented in the annual budget bill to the Parliament, which is also told about some prospective Committees of Inquiry.

Transparency through communication

Communication is another facet of transparency. Governments need to communicate regulation effectively to stakeholders, not least to ensure that it is complied with. Rules need to be accessible to those who are regulated.

Sweden has a powerful principle of public access. The general public and mass media are guaranteed an unimpeded view of the activities of government at all its levels, through such means as public access to official documents, subject to two restrictions, which are clearly laid out: freedom of expression for civil servants and open court proceedings.

Regulated entities have good access to the rules. The Swedish Code of Statutes has been the official publication, since 1825, of laws and ordinances. New rules must be

published four weeks before they come into force. Rules are also published on the Internet through a special government gateway website. This is easily navigated, free of charge, and offers access to all laws, ordinances and regulations, as well as case law from the courts. It also contains many other documents including committee terms of reference, reports and international agreements. As well, many agencies have a gazette in which they publish their regulations. A database with consolidated versions of laws and ordinances is improving accessibility. The Parliament's website also offers a large number of its texts including government bills and committee reports. Plain language is a statutory requirement for drafting laws and regulations, and active efforts have been made to promote this over the last few years. It is also supported by the training given to drafters.

Transparency in implementation through compliance and enforcement

Adoption and communication of a law sets the framework for achieving a policy objective. But effective implementation, compliance and enforcement are essential for actually meeting the objective. An *ex ante* assessment of compliance is increasingly a part of the regulatory process in OECD countries.

In Sweden, inspection and supervision are important instruments to ensure compliance. Some 200 laws set out different forms of these activities. The system is quite heavy and complex, and a government-initiated review to improve efficiency has led to proposals for a new framework for inspection, although there is no decision for change yet. One major issue is that there is no clear definition of inspection. The activity is regulated differently in different sectors and the line between information and inspection activities is therefore often not clear, which raises problems both for the inspectors and the inspected. It also complicates evaluation of inspection work. Another issue is that inspection work often overlaps across agencies, generating unnecessary burdens.

Public redress: appealing administrative decisions

Mechanisms to prevent and redress regulatory abuse should also be in place, both as a democratic safeguard and as feedback to improve regulations. It should be possible to appeal administrative decisions based on a regulation, as well as the regulation itself.

Swedish law sits somewhere between the codified "Napoleonic" approach, and the approach of countries like the UK and US based on judicial practice and precedent. Judicial review is regulated by the Instrument of Government, which distinguishes between material errors (the law conflicts with a fundamental or a higher law) and formal errors (breaching procedural rules for example). The Administrative Procedure Act states that "a person whom the decision concerns may appeal against it, provided that the decision affects him adversely and is subject to appeal". It is a fundamental right of all persons (including foreign persons) to have their case, if it falls within this definition, considered in the courts. The general administrative courts are responsible for maintaining due observance of the law within the public administration. They do not, however, become involved in most cases, except for those where the legal element is pronounced. There are three levels in the administrative court system: county administrative courts, administrative courts of appeal, and the Supreme Administrative Court. Proceedings in the administrative courts are usually in writing, which keeps them cost-effective. There have been some significant delays in resolving appeal processes in the courts (average times 4.8 months in the county administrative courts, 8.2 months in the administrative courts, and 11.2 months in the Supreme Administrative Court).

The Parliamentary Ombudsmen also have a responsibility to ensure that public authorities comply with the laws governing their actions, by investigating complaints and making inspections. A complaint can be made by anybody who feels that he or she has been wrongly treated by a public authority at any level of government. The office does not, however, cover actions by members of the Parliament, the government, or members of municipal and county councils. Also, a number of entities including the press, trade unions and banks do not fall within the Ombudsmen's remit and have their own supervisory agencies. The Chancellor of Justice has a similar role to the Ombudsmen. Neither office can review nor modify the decisions of another authority or court.

Alternatives to regulation

The use of a wide range of mechanisms, not just traditional regulatory controls, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Governments must lead strongly on this to overcome inbuilt inertia and risk aversion. At the same time care must be taken when deciding to use "soft" approaches such as self regulation to ensure that regulatory quality is maintained.

Sweden puts clear formal obligations on its government regulators to consider alternatives and to justify decisions to opt for traditional regulatory solutions. This requirement is also valid for agencies. Alternatives (such as leaving it to the market, information or guidelines) must be evaluated if a proposed regulation affects small business.

Voluntary agreements – companies taking voluntary action to address a policy concern in order to avoid formal regulation – are part of the Swedish system. Two important examples are:

- Consumer protection. The Swedish Consumer Agency negotiates with business organisations to conclude agreements about contract terms and content in standardised consumer contracts reflecting good market behaviour. The aim is to fill gaps or clarify a part of the underlying legislation. Businesses generally comply with the contract terms negotiated by their organisation. The Agency also uses guidelines. Both approaches are helpful in dealing with issues that go to the Consumer Ombudsman and the courts.
- Labour market. By tradition, legislation has been kept to a minimum, and the social partners regulate employer-worker issues (wages, working and employment conditions) through collective agreements – private law agreements between individual legal persons. Collective agreements cover about 90% of Swedish workers.

Standardisation is a private sector activity in Sweden and standards are voluntary documents under private law. The Swedish Standardisation Council – a special body made up of government representatives and the Confederation of Swedish Enterprise – oversees the statutes and work of the standardisation bodies. Government agencies participate in standardisation work on equal terms with industry representatives. The standardisation bodies have undertaken not to adopt Swedish standards that conflict with international standards. A special committee within the Council must approve exclusive national standards before they can be adopted. Voluntary standards often reduce the need for legislation.

Conformity assessment (technical analysis, testing, calibration, certification and inspection) is performed by private and public bodies in competition ("open system for conformity assessment"). Bodies that wish to perform conformity assessment work must first be accredited, a task carried by the Swedish Board for Accreditation and Conformity Assessment (SWEDAC), a government authority.

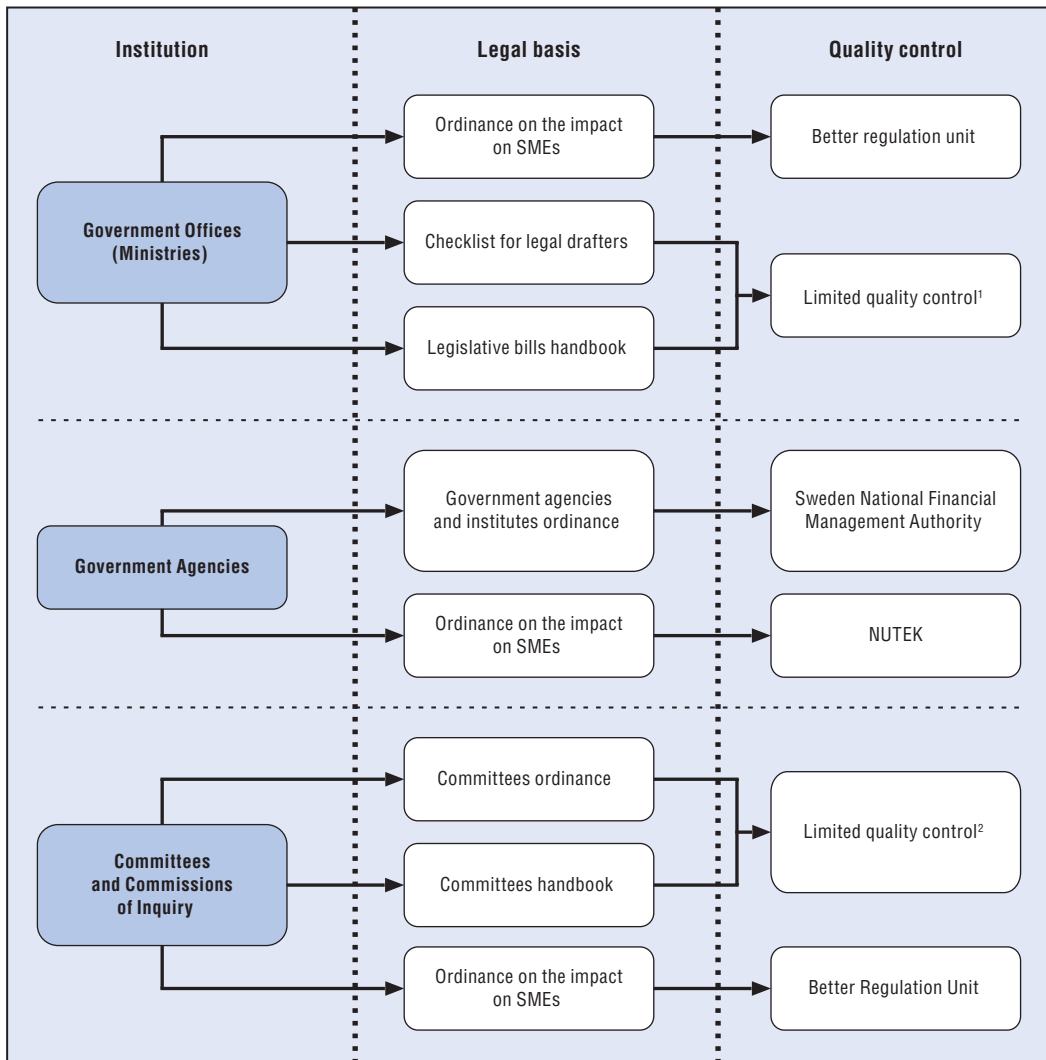
Important elements of self regulation can usually be found in the fields of corporate governance, financial markets and accounting across the OECD. In Sweden, the Swedish Financial Supervisory Authority is the formal regulatory body, and its work is supplemented by the work of a range of self regulatory bodies.

Regulatory Impact Analysis

Regulatory Impact Analysis (RIA) is one of the most important regulatory tools available to governments. Its aim is to influence policy makers to adopt the most efficient and effective regulatory options, using evidence-based techniques to justify the best option. Much of the OECD's regulation checklist relates to RIA good practice.

The key to understanding RIA in the Swedish system is to consider three core elements of the central administrative structure for regulation: ministries, agencies and Committees of Inquiry.² A Checklist for legal drafters applies to all rule-making entities from government to agencies, which was started by the Cabinet Office in 1995. The Constitutional principle of autonomy for public authorities means that RIA in one form or another is carried out through each of these three institutions (Figure 2.1).

- **Ministries.** They are each responsible for the quality of their own legislation. The Checklist for Legal Drafters, which was issued by the Swedish Cabinet Office in 1995, is intended to provide a foundation for drafters to assess the most important questions when drafting new legislation. A group of State Secretaries announced Guidelines in 1999 on how regulatory work should be conducted within the government offices. These guidelines complete the Committees Ordinance and the so-called Simplex Ordinance. Each ministry has a legal division that controls that the Checklist for Legal Drafters is followed when drafting regulations. During the drafting stage, different units at ministerial level, including the Better Regulation unit, all have the possibility to give their point of view, making sure that their interests are taken into account.
- **Committees of Inquiry.** These independent bodies are usually set up by the government to review major proposed regulatory changes. Their work is framed by a Committees Ordinance, which among other issues requires an assessment to be carried out, including the cost consequences of proposed rules. A Committee Handbook sets out further guidance. It outlines how to carry out the analysis and further points out that the Simplex Ordinance also applies to committees as well. Since 2001, the Government includes in the terms of reference especially for business relevant committees an obligation to consult with the Board of Swedish Industry and Commerce for Better Regulation on the consequences for the business sector and businesses. Since proposals for review by a committee are at an early stage of development their consequences can be difficult to evaluate. Regulation that breaks new ground can also be hard to evaluate because its effect on the market is uncertain. For these reasons, committee evaluations may necessarily be “soft” rather than quantitative. The absence of quality controls means that committee RIAs are uneven in quality, an issue picked up by a National Audit Office report in 2004.
- **Agencies.** A framework Ordinance sets out general issues for agencies, and has a checklist of points to consider when agencies are developing subordinate legislation, including cost consequences and consultation of those affected financially. The Simplex Ordinance (RIA for SMEs) applies to agencies. Quality control is exercised by the Swedish National Financial Management Authority (though its work has lost prominence in

Figure 2.1. **Current system for impact assessments in Sweden**

1. Each Ministry has a legal division that controls that the Checklist for Legal Drafters is followed when drafting regulation. The Division for Legal and Linguistic Draft Revision makes a quality control concerning the Legislative Bills Handbook, making sure that it has been followed for different documents.
2. No formal quality control is performed by an independent body concerning Committees of Inquiry. However, a support function exists with economic and statistical expertise providing advice when needed. A linguistic expert also is available for the work carried out by Committees of Inquiry.

Source: OECD Secretariat.

recent years), and by NUTEK, which reviews agencies' RIA work in relation to the SME requirements, and agencies' annual reports on RIA. Requests have been made by agencies that the requirements for impact assessments in the Government Agencies and Institutes Ordinance and the Simplex Ordinance should be combined and that the roles between NUTEK and the Swedish National Financial Management Authority should be clarified. A Committee of Inquiry has recommended that the requirements for impact assessments under the above-mentioned ordinances should be combined in one ordinance on impact assessments of regulations. The Government Offices is currently working on a proposal for an improved model for impact assessment.

Sweden's RIA performance presents a mixed picture. Box 2.4 sets out specific aspects of performance against the OECD checklist. Tools and advice are extensive, but there is no comprehensive and unified framework, and no systematic scrutiny of key impacts, especially as regards agency regulations. The Board of Swedish Industry and Commerce for Better Regulation has been measuring the quality of RIAs since 2002. It has developed quality indicators (such as early consultation, description of alternatives, cost analysis) which show some improvements since 2002. There is still, however, a long way to go in some areas. The ambitious goals set by the framework ordinances are often not matched by actual RIA performance. A general lack of enforceable quality control mechanisms (with the exception of the Better Regulation Unit) is one obvious reason for this. Reforms to improve RIA and streamline it into one system are currently under consideration by the government.

Box 2.4. Swedish performance against good RIA practice

1. Maximise political commitment to RIA. Current quality control mechanisms do not reflect the strong political commitment needed to promote a strong overall RIA performance.
2. Allocate responsibilities for RIA programme elements carefully. The need in some cases to produce two RIAs fragments the system, and not all the quality control bodies can reject a RIA or require amendments.
3. Train the regulators. This is a strong point. A number of training initiatives are in place.
4. Use a consistent but flexible analytical method. There are no precise guidelines on how to undertake a full cost-benefit analysis of proposed legislation.
5. Develop and implement data collection strategies. There are no specific guidelines on how to integrate data collection mechanisms and quantitative analysis into RIAs.
6. Target RIA efforts. No advice is given on the scope of RIA, except for that related to the costs imposed on SMEs. RIAs are applied to all significant regulation, but there is no special requirement to target proposals with the largest likely impact. An important gap is that EU legislation is not explicitly included in RIA checklists.
7. Integrate RIA with the policy-making process, beginning as early as possible. Although RIAs accompany law and ordinance proposals, they are not always carried out at the start of the process. There is scope to improve timing of ministry and agency RIA processes so that these are better integrated in the decision-making process.
8. Communicate the results. RIAs, unlike in many other OECD countries, are not systematically made available to the public, except for the final reports of Committees of Inquiry and in the government bills.
9. Involve the public extensively. The Government Agencies and Institutes Ordinance (SFS 1995:1322) and the Consultation Ordinance (SFS 1982:668) require agencies to consult company and municipality representatives. Consultation at an early stage is more frequent and dialogue with business is stronger, but there is still scope for improvement.
10. Apply RIA to existing as well as new legislation. RIA is applied to both in Sweden.

Building regulatory agencies

Independent regulators are part of an OECD-wide trend to clarify and separate important functions of central government policy making from regulation – and both of these from ownership where appropriate – and to improve their management. The aim is

to put regulatory functions in the hands of entities that are independent both of commercial interests and of short term political pressures. This poses a challenge for most jurisdictions. Independent regulators with delegated decision-making powers often do not fit neatly into existing structures of government. The evidence, however, shows that the establishment of effective independent regulators and reaping the economic benefits of market opening go hand in hand.

Sweden was an early reformer in the liberalisation of some infrastructure sectors. The railways, telecommunications, energy, postal services and domestic aviation have all been liberalised, albeit to different degrees. At the same time Sweden does not have a specific framework for independent regulators. The exercise of public authority is generally devolved to government agencies. Agencies must conform to certain principles of conduct, and respect rules and procedures which promote, among other issues, transparency and legal certainty. Sweden's independent regulators are rooted in this context. They have developed piecemeal, which has led to considerable variety in their roles. Telecoms, for example, is the only sector with a regulator that has explicit competition promoting functions. Sweden's independent regulators can be assessed against a set of key attributes for successful independent regulators (Box 2.5). This shows that, with a few exceptions, the general framework for government agencies works well for the sectoral regulatory function too.

Keeping regulation up to date and reducing administrative burdens

Reviewing existing regulations

The large stock of regulation and administrative formalities accumulated over time in OECD countries needs regular review to weed out obsolete or inefficient material. Sweden has, over time, tackled this issue in several ways:

- The “guillotine” rule. This very successful initiative took place in the 1980s, nullifying hundreds of rules that were not centrally registered by a certain deadline. The impetus came when the government found that it was unable to compile a list of regulations in force. All government agencies established registries of their ordinances. The opportunity was taken to clear out redundant rules, and all new regulations subsequently had to be entered in the registry.
- Committees of Inquiry. The guillotine approach has not been repeated. Instead the government has appointed committees to review regulatory frameworks for defined sectors or policy areas. These have covered issues such as taxation, public sector responsibilities, and regulatory reform.
- Instructions to public authorities. The government may instruct authorities to follow developments in their field and provide feedback. In particular, government agencies are required, under the Government Agencies and Institutes Ordinance, to continuously follow up and examine their own activities and the consequences of their regulations and decisions, and take appropriate action.

Despite these initiatives, and the relevance of the Action Plan, the lack of a standardised and comprehensive approach means that rule simplification and understanding of the burdens imposed by rules has some way to go still, as the Swedish National Audit Office pointed out in its 2004 report. Sunsetting is very seldom used, as it is in many other OECD countries. However, sunseting rules were actually applied during the mid 80's, regarding the area of governmental employers field of action. Three Governmental Ordinances stated that

Box 2.5. Independent regulators: key attributes

Best practice for independent regulators can be defined in terms of key characteristics:

- **Powers.** Effective regulators are entrusted with significant powers to issue opinions, set rules, monitor and inspect, enforce regulations, grant licences and permits, set prices and settle disputes. In Sweden, the Government Agencies and Institutes Ordinances set out general provisions and principles for agencies. Beyond this, regulators' design differs from market to market.
- **Independence.** Regulators' independence flows from the institutional and legal framework that defines their existence, together with provisions for their governance, including issues such as appointments. A core principle of Swedish governance is that agencies are substantially independent in their work from ministries. On the other hand, the recruitment of agency heads (Directors-General) is not through open procedures. A committee, reviewing the Instrument of Government, is *inter alia* considering the issue of appointment procedures.
- **Accountability.** Independence needs to be balanced with accountability. This is often achieved through procedures such as annual reports, transparent decision-making, and provisions for self and external evaluation. Swedish procedures include the use of the annual Budget Bill reports to Parliament, parliamentary capacities to investigate activities of its choosing, and the role of the Ombudsmen in taking up complaints.
- **Consultation.** Effective consultation contributes to accountability. The Administrative Procedure Act sets a comprehensive framework in Sweden for the responsibilities of all administrative authorities in their actions as regards consultation and complaints handling.
- **Transparency and communication.** These allow parties to understand decisions and to secure confidence in the regulator's decision-making process. It may not be sufficient: some regulatory decisions may be complex and need to be fully explained and justified, in order to secure public support for regulatory actions (for example through public hearings, reports and websites). Strong principles of transparency and legal certainty, including access to official documents, apply to government agencies in Sweden.
- **Sanctions.** An important regulatory power is the capacity to impose sanctions. Most Swedish agencies do not have direct sanctioning powers, and must rely on the court system, or exercise indirect pressure on regulatees. However, a few powers exist in some cases. The Competition Authority can for example require an undertaking to terminate an infringement. The decision may also be imposed under a penalty which takes the form of a fine. The Swedish National Post and Telecom Agency can for example retrieve a given permission.
- **Administrative appeals and public redress.** The existence of procedures to appeal against administrative decisions taken by regulators is important. The Administrative Procedure Act covers this in Sweden. A weakness is that there is no unified system of appeal between sectoral regulators and the competition authority, appeals against their decisions going to different courts. This undermines consistency and co-ordination between regulators and the competition authority.
- **Co-ordination with the competition authority.** There is a need for co-ordination between regulators and the competition authority in order to avoid problems of overlap. The Swedish government defines the administrative relationship between sectoral regulators and the competition authority through its annual appropriation direction to each of them. The competition authority has sole responsibility for applying competition law. Other authorities often consult the competition authority on matters linked to competition, and the relationship is generally perceived to work well.

certain agency regulations listed in those Ordinances should be abolished by the end of September 1985. The background is described in a Governmental writing to the Parliament (Skr.1985/86:165). About 150 agency regulations were thus abolished. Improving RIA would help to ensure a systematic evaluation of the costs of new rules.

Reducing administrative burdens

Government formalities are important tools to support public policies, and can benefit enterprises by setting level playing fields for commercial activity. But a general increase in legislative activity is a common issue for OECD countries, and this can impede innovation or create unnecessary barriers to trade. This is an especially important area for Sweden which needs to encourage entrepreneurship. Sweden has made progress in reducing administrative burdens, and does well relative to many other OECD countries. It has launched several important initiatives including the Action Plan to reduce burdens on enterprises, and the measurement of burdens. Sweden also takes part in the OECD's Red Tape Scoreboard Project, a way of exchanging best practice. Nevertheless, compliance with all central and local government and EU rules continues to be seen as an obstacle to entrepreneurship. Employment legislation, environmental standards, and tax regulation may be regarded as particular trouble spots.

The Parliament has been an important source of pressure on government to do more. This pressure and a supporting report carried out by the National Audit Office "Regulatory Reform for Enterprises" led the government to set up the 2004 Action Plan to Reduce Administrative Burdens for Enterprises. This was based on extensive analysis and consultation with business. All ministries were required to examine the rules affecting enterprises, and 46 agencies were asked to do likewise for their regulations. The resulting Plan contains 310 actions, to be implemented between 2004 and 2006. The Plan does not cover sub national levels of government directly. Even at this early stage, business has found that some simplifications can be done without regulation.

Follow up to the Action Plan includes the development of methods to measure administrative burdens, in which NUTEK plays a leading role. A method based on the Standard Cost Model, which enables the identification of provisions in a law that make the most administrative demands on enterprises, is being deployed. Measurement will provide evidence to support the political case for further action.

The use of ICT for administrative simplification programmes is an important trend across the OECD. The Swedish government attaches great importance to the integration of ICT tools in the public sector, in order to facilitate the provision of information to individuals, and this is reflected in many initiatives. The long term programme launched in 2002 to modernise the public administration and make it more user-friendly includes the concept of 24/7 agencies, which means that agencies should be electronically available for information and services at all times. A new e-government strategy has recently been launched, emphasising a more efficient and user-responsive public service. The Action Plan includes the use of IT to reduce administrative burdens, for example electronic filing of documents. A pilot project for a "one-stop shop" permit application process where several agencies are involved is being tested in Stockholm.

Business formalities are also receiving attention. NUTEK has been active on the issue of business permits, carrying out a study in 2004 with the aim of identifying the most important permits needed for a business start-up, and the time taken by the authorities to

process these. Information on the latter was often lacking. NUTEK and six other authorities engaged in business start-ups have initiated a project to streamline the process, mainly through more integrated information services. NUTEK runs an “Entrepreneur’s Guide” on its website, which assembles key background information. Some local authorities have started to provide “one-stop shops” for budding entrepreneurs.

Conclusions

Sweden’s strong economic performance supports important social and environmental policy priorities. Current achievements, however, cannot be a reason for complacency, given an ageing population as well as increasing demand for higher regulatory standards, especially for public services. To sustain a strong performance will require further attention to product market opening and public sector efficiency. The groundwork for further effective reform is already in place. Reforms can be developed on the helpful building blocks of consensus-based decision making, high levels of transparency, high standards of law-making and respect for the rule of law. Good regulatory practices already exist and can support reform. The most significant challenge is to set up a comprehensive, government-wide regulatory policy with institutional support, which will pull the current diffuse set of policies into greater coherence. Regulatory policy needs its own identity, not just as part of broader public sector reform.

Policy options

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

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

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

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

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

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

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

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

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

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

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

The shortcomings of the current system cover different aspects. First, the organisational structure of the assessment system presents some limitations. The division between different impact assessments carried out by agencies, Government offices and Committees

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

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

Third, there is an important gap in the quality control of RIAs. This is linked to different factors. On the one hand, the model used for impact analysis does not provide for systematic assessments. The quantification of costs and benefits is not carried out for all pieces of legislation and there is no mechanism, except for the RIA on SMEs, to evaluate if the quantitative assessment has been done properly. As a consequence, cost-benefit analysis is rarely used in the decision-making process, even if, in a consensus driven system, there is a joint drafting procedure requiring general agreement on the proposals being circulated. On the other hand, and this has to do with the institutional set up for regulatory reform in Sweden, there is no single oversight body responsible for the quality control of all RIAs carried out. The lack of a lead unit, in combination with an incoherent application of quality assurance tools, means that the scrutiny of draft regulations may vary significantly.

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

Sweden should, therefore, consider introducing a comprehensive, integrated and uniform system for RIA, based on a single ordinance that provides clear guidance on when and how to undertake RIAs. This should be complemented with clarification of the role of institutions in charge of their quality control: the Better Regulation Unit in the Ministry of Industry, Employment and Communications, the Swedish National Financial Management

Authority and the Swedish Agency for Economic and Regional Growth (NUTEK). The different actors of the regulatory process, the Government Offices, Committees of Inquiry and agencies, should be given more resources to undertake RIAs. This could consist of appointing people to be responsible for RIA, but also of technical capacity to integrate quantitative analysis in the decision-making process.

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

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

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

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

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

In the last few years, administrative simplification efforts have evolved in the context of growing pressure from businesses to reduce and improve economic performance. OECD countries are confronting key questions: What impacts can efforts to reduce administrative burdens have on other efforts to improve public sector performance? How can co-ordination at different levels of government be improved? What else can governments aim to achieve, to further improve business conditions? How can obstacles to change of the administrative culture be overcome more easily and how can burden reduction efforts be sustained over time?³ These are also valid for the Swedish case: the Swedish Government should supplement and reinforce efforts on administrative simplification, integrating the Action Plan to Reduce Administration for Enterprises in a broader programme for regulatory quality, supported at political level, strengthening transparent processes and reinforcing consultation mechanisms with stakeholders that are directly affected by administrative burdens.

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

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

5. Reinforce efforts in the measurement of administrative burdens.

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

Sweden is fully embarked on a process to measure administrative burdens, in line with good practice at international level. The challenge is to extend the efforts to those regulations that have not been covered in the initial process. Special emphasis should be put on tax procedures, environmental and labour regulations which can be linked to the promotion of SMEs. As a reflection of the political commitment now underpinning this process, a quantitative target for a reduction of the overall administrative burden has recently been announced in the Budget Bill for 2007. The recently elected Government has set a target to reduce the overall administrative costs for businesses with 25% in 2010.

6. Strengthen the governance of sectoral economic regulators.

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

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

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

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

Notes

1. See Chapter 5 on the multi-level governance for a fuller perspective including the national-local interface.
2. See Chapter 5 for RIA in the context of the sub-national levels of government.
3. OECD (2006), *Cutting Red Tape: National Strategies for Administrative Simplification*, Paris.

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PART II
Chapter 3

Competition Policy

Introduction and context

The foundations of Swedish competition policy date back to 1925, with the adoption of a law on enquiries into monopolistic enterprises and associations. But with no enforcement agency and limited powers the law was never effective. The next major turning point followed the Second World War. An intense debate opposed a planning and control system (as applied in the wartime economy) with an open market economy based on competition. The competition “line” broadly prevailed and has been developed ever since. The 1953 Restrictive Trade Practices Act was the first effective competition law, based on the “abuse principle” which called for action to eliminate the harmful effects of restrictive behaviour (rather than prohibit it). New competition institutions were established to apply the law. Transparency through instruments such as a public cartel register was also used to encourage competition. The post war regime, however, also retained price control, which was softened from permanent control to the establishment of a price monitoring regime and an option to control prices if the need arose. Selective price controls were extensively deployed between 1970 and 1990 in a fight against inflation.

The most recent and radical turning point for Swedish competition law and policy took place in the wake of the economic crisis in the early 1990s. The crisis triggered sweeping reforms which included extensive product market deregulation and a new Competition Act and Competition Authority, superseding the model that had been applied for almost 40 years since the war. Inspired by the EU approach, the new competition regime is now based on the prohibition principle, clear rules and vigorous enforcement. Price controls and the “negotiation principle” (aimed at influencing companies’ price decisions directly as well as competition law enforcement) were set aside. In promoting the new law, the government made it clear that it considered competition to be decisive for dynamic growth in the Swedish economy, and an organising principle for the economy.

The 1993 Competition Act (CA) remains in force with some changes, including a few significant ones such as a leniency programme. It has three cornerstones: prohibition of restrictive agreements, prohibition of abuse of dominance, and control of concentrations. It is largely harmonised with the EC competition rules, though merger control standards remain slightly different. The law has an unusually wide coverage compared with many other OECD countries. Institutions comprise the (Swedish) Competition Authority (SCA) and two courts, the Stockholm City Court and the Market Court. The latter is last instance for competition cases – its rulings cannot be reviewed by the government. The policy approach is very broad, covering not only law enforcement but also advocacy and other actions to strengthen the competition culture, such as support for academic research.

Competition law content and related issues

Restrictive agreements

All agreements between undertakings defined in line with the EU definition are prohibited if they have as their object or effect the prevention, restriction or distortion of

competition in the market to an appreciable extent. The SCA has issued guidelines on the meaning of “appreciable extent”, without prejudice to the interpretation that may be given by the courts. Co-operation is not perceived to affect competition to an appreciable extent if companies have a joint market share of not more than 10% for horizontal agreements, and 15% for vertical agreements. Some types of agreement such as horizontal price fixing or market sharing agreements will always be considered to have an appreciable effect. The prohibition applies especially to certain types of agreement such as price fixing.

There is a general exemption for certain types of agreement including those that can be linked to technical or economic progress, and benefit to consumers. The government may issue block exemptions, and the SCA may revoke the applicability of a block exemption to an individual agreement. As under EC law, companies must assess whether or not an agreement qualifies for exemption. No considerations other than the CA can be used, and no body other than the SCA and the courts can be involved, to determine if a prohibition applies. This is clearly spelt out in the law.

The position for vertical agreements is more liberal than for horizontal agreements (the market share threshold is 15%). The government has, however, issued a block exemption for certain vertical restraints where the supplier has a market share of up to 35%. Some types of vertical agreement will always be considered to have an appreciable effect, notably certain forms of resale price maintenance or territorial restrictions.

Seven block exemptions have been issued by the government. Three are sectoral, and the other four apply to categories of agreements in all sectors. Six of the seven are based on EU rules. The one for taxis is not reflected in EU rules. Unlike most other EU member states, Sweden has liberalised the taxi market. Large parts of Sweden are scarcely populated, and there is thought to be a need for special measures to sustain taxi services there.

Abuse of dominance

Any abuse by one or more undertakings of a dominant position in the market is prohibited. The Swedish provisions match EU provisions (except that trade between member states does not have to be affected for the Swedish prohibition to apply), and EC case law is used to guide application of the rules. As for other areas of CA enforcement, no considerations other than the CA can be used.

The abuse of dominance provisions have been especially helpful in the liberalised infrastructure sectors, which tend to suffer from strong ex-monopoly incumbents. They have helped to prevent customer lock-in based on schemes such as fidelity rebates, tying or predatory pricing. The law has been less effective in enforcing third party access to networks and bottlenecks, which has instead been picked up in sector specific legislation. Between 1993 and 2004 the Competition Authority handled 14 cases of abuse of dominance across the liberalised sectors.

Mergers

The provisions are modelled on EC rules, but are currently under review by a government committee to take account of recent changes in those rules. A concentration is prohibited “if it creates or strengthens a dominant position which significantly impedes, or is liable to significantly impede the existence or development of effective competition in the country as a whole, or a substantial part thereof”. A second condition is that it “can be issued without significantly setting aside national security or essential supply interests”, meaning

that criteria can be applied that are related to other policy interests than competition. This condition has not yet been tested through a court ruling or SCA decision. Unlike in several other OECD countries, merger cases cannot be reviewed by the government. The process works solely through the SCA, the Stockholm City Court and the Market Court. The SCA may order divestiture or require some other action to remove the adverse effects of a concentration, instead of prohibiting it, if parties make voluntary commitments.

Most concentrations notified to the SCA have been found to raise no competition problems, and the clear tendency is to solve issues by other means than formal orders and prohibitions, with the SCA therefore making the final decisions. Since the current law's entry into force in 1993, the SCA has appealed to the court for prohibition of only five mergers. The court rejected three of these cases, while the parties recalled or abandoned the remaining two transactions. 17 notified concentrations have been approved by the SCA based on voluntary commitments. Closing merger cases at the level of the SCA may be resource efficient, but it does not offer the transparency of a court case which helps clarify the law for both the agency and market players. And absent systematic evaluation, the impact of this approach on competition is not clear. It could also be noted in this context that many mergers involving Swedish companies have been examined solely by the EU Commission.

State aid

State aid is regulated at the EU level by Articles 87-89 of the EC Treaty. Subsidies of all kinds, including indirect ones, offered by all levels of government are prohibited if they are liable to distort competition and there is an effect on trade between member states. Exemptions, however, are possible. Enforcement is with the EU Commission, and Sweden like other member states must notify state aid above certain thresholds.

The EC Transparency Directive (Box 3.1) has led to a new role for the SCA. Under Swedish legislation giving effect to the Directive, the SCA has been designated to monitor observance of the transparency provisions, and has powers to request relevant information from companies on behalf of the EU Commission.

Box 3.1. The EC Transparency Directive

The EC Directive on the transparency of financial relations between member states and public enterprises requires separate accounting for private and public undertakings active in both the reserved sector and the competitive sector. The Directive aims at facilitating the EU Commission's analysis and control of state subsidies that might distort competition. An important example is cross-subsidisation of a public enterprise's economic activities in competitive markets using profits from activities protected by monopoly rights. Information that has to be available may be required by the Commission through a competent authority of the member state.

State aid below certain thresholds that does not affect trade between member states, is not covered by EU rules. However, it can seriously distort competition in the national market, especially at the local level and to the detriment of small firms. Several reports, including reports from the SCA, have highlighted the problem, but no action has yet been taken.

Public procurement

Public procurement above certain thresholds is also regulated by EC law, enforced by the national courts, the national surveillance authority, the EU Commission and, as a last resort, the European Court of Justice. Two Swedish laws apply, the Public Procurement Act (PPA), implementing the EC directives, and the Act on Undue Behaviour in Public Procurement. The latter empowers the SCA to take action against any level of government on grounds of discrimination against a tendering company, but it is in practice inoperative. The PPA regulates the organisation of public procurement aiming at equal treatment of competing suppliers and efficient use of public funds. Competition rules (such as the prohibition on restrictive agreements) also apply to companies engaged in public procurement.

Difficulties with the current situation have been raised in a number of government and other reports, most notably as regards the absence of effective sanctions. This issue has attracted attention from policy makers. Furthermore the government is planning to transfer the surveillance of public procurement to the current SCA. Another issue is conflict between the judiciary and local government, where a few cases of local governments refusing to abide by court judgements have been noticed (see Chapter 4).

Unfair competition and consumer protection

Sweden tends to categorise unfair competition as consumer policy, which is seen as a complementary tool to competition policy for ensuring that markets function to the benefit of consumers. The CA does not include specific provisions on unfair competition, but these can be found in several other laws. They include the Marketing Act, which has rules on false advertising and unfair commercial practices, supervised by the Consumer Ombudsman, who is also head of the Consumer Agency. The legislation assumes an inherent imbalance between business and consumers in the market place, as well as the importance of a strong consumer voice for an efficient market economy. This is reflected, for example, in the strength of the Marketing Act provisions. Unfair marketing includes not only misleading advertising, but also unethical or aggressive methods. The burden of proof that marketing is not unfair rests with the company. Consumer access to justice is provided through a Consumer Complaints Board and by the possibility of jointly addressing the Market Court. The Consumer Ombudsman may, on behalf of the collective interest of consumers, bring an action to the Market Court in cases regarding misleading and unfair advertising. The SCA and the Consumer Agency co-operate both formally and informally.

Competition policy institutions and enforcement

Competition policy institutions

The SCA's formal roles cover law enforcement, broad ranging advocacy for pro competitive reform and the support of research on competition issues. It has the broad status of a government agency (shared with other agencies). This means that its authority derives from the government, which collectively decides its annual budget and its overall mission and tasks, stated in an annual letter. Beyond these annual instructions, though, the government cannot intervene in the SCA's individual decisions and conduct of business. Responsibility for these rests with the Director General, who, like heads of most Swedish agencies, is appointed by the government for six years (with the possibility of renewal for a further three years). The nomination process is not transparent, unlike that for the

Authority's other officials. Dismissal during the period of office is exceptional, and general elections have no influence. The 2005 Regulatory Reform Commission report suggests that independence of sector regulatory and competition heads should be enhanced.

As part of its advocacy role, the SCA has an important role (shared with the other government agencies, but emphasised in the government's annual instructions) in the review and approval processes for laws and rules that affect competition, as well as the right to offer comments at its discretion. This mostly means review of regulatory proposals made by government committees, and where competition is a big issue, offering expert advice to the committee. The SCA co-operates on a regular basis with other regulatory agencies including those for the infrastructure sectors, and this work can include joint enquiries and studies. The scope and detail of these advocacy and consultation activities are sometimes laid out formally, but can also emerge informally.

Enforcement of the CA is shared with the two special competition courts. The Stockholm City Court (SCC) is first instance for cases about inspections, fines and mergers brought by the SCA. The Court's rulings may be appealed to the Market Court, which is last instance. For some issues the Market Court is the only court instance. The Market Court is unusual compared with other courts in that its judges are appointed for a fixed term (using a similar non transparent process to the one applied for the SCA head). A number of other government agencies responsible for economic sectors share responsibility for developing and applying competition policy, but only the SCA has competence to apply the CA. The County Administrative Boards have a role to promote competition and co-operate with the SCA.

Enforcement processes and powers

The SCA has two enforcement roles. The first is the enforcement of rules prohibiting restrictive agreements and abuse of dominance. The second is enforcement of merger control. The CA empowers the SCA to carry out on-site inspections (dawn raids) to secure evidence, subject to authorisation by the SCC. It may also carry out inspections at the EU Commission's request (and may, under EC law, request dawn raids in other parts of the EU). Companies or other parties may be required to supply information, and local governments engaged in commercial activities may be requested to do so.

The CA sets out the range of specific decision-making powers for the SCA, including termination of an infringement and acceptance of a voluntary commitment. Unlike competition authorities in most EU member states, the SCA does not have powers to decide on fines for infringements of the prohibition rules or to impose a fine for breach of a decision adopted under the penalty of a fine, nor does it have competence to prohibit a merger. It has instead the role of prosecutor, and brings these matters to the SCC. Very few decisions ordering the termination of an infringement or seeking a sanction have been taken in the last five years, most such enforcement following the softer approach of decisions to close a case as a result of a practice being discontinued. Assessing the efficiency of this approach is difficult, as there is no data and usually no explanation justifying the reasons for it.

Sanctions for infringement of prohibitions, in the form of administrative fines, may range from SEK 5 000 to 5 million or a higher amount that does not exceed 10% of the company's annual turnover. There is a clear tendency for the courts to reduce the amount of fines claimed by the SCA. This may reflect a more lenient view taken by the courts, or a failure by the SCA to justify its proposal, or the possibility that courts might set higher fines

if the SCA could demonstrate companies' gains from infringement. The trend for the SCA is to claim higher fines than before. The level of fines actually imposed now is not a serious disincentive to anti competitive practices. The level of fines is another issue which is under review by the government.

Breach of the CA is not subject to criminal sanctions. There has been a debate about this, with the SCA arguing that criminal sanctions would undermine the leniency programme (under which companies may be fully or partly exempted from administrative fines if they disclose their participation in an illegal cartel and meet certain conditions) and jeopardise Swedish participation in the European Competition Network, a view shared by the EU Commission. Full amnesty from criminal sanctions, like the Anglo-Saxon crown witness model, would be incompatible with the Swedish legal system. The issue of criminal sanctions is also under review by the government.

The Administrative Procedure Act, applicable to all agencies, regulates the procedural framework, including availability of information, for the SCA's work. There is a general obligation to handle matters simply, rapidly and economically. In addition the CA sets timeframes for the handling of concentrations and the SCA has set itself internal time limits.

Independent research commissioned by the SCA in 2004 to evaluate the outcome of its court proceedings found that it won 45% of its court proceedings, had partial success in 14% and lost 42%. If procedural cases are excluded the success rate was only 38%. This compares with a success rate (full and partial) for the EU Commission of 75-85%. The SCA has questioned the way the researcher defined full and partial success and has also questioned the success rate of the EU Commission as an excessively high standard for an agency – like the SCA – that is limited to taking the role of a party. The study identified three main reasons for the SCA's low success rate: failure to correctly assess the state of law; the SCA's investigation of facts not reaching the level requested by the courts; and failures in SCA litigation.

Judicial review

Judicial review in the competition area is marked by few cases and a long drawn-out process. A delay of five years or more is not exceptional, and can be explained by factors such as limited resources and complex cases. Thus the SCC has an important first instance role on competition law cases but is perceived to have insufficient resources. But such delays are unsatisfactory from the point of view of correcting malfunctioning markets. This is another area under current review by the government.

Private action

Private action does not play a major role in Swedish competition policy. Explanations for this include the small size of the economy (making it difficult to avoid doing business with an adversary in court), low damages, and the consensus culture. A party can commence an action for damages in the general courts. Damage cases are handled under the Swedish Code for Judicial Procedure. Complaints may be addressed to the SCA and are handled under the provisions of the Administrative Procedure Act. Many hundreds of complaints are received annually, many of which are irrelevant from a competition perspective. Complaints may be closed by a simple SCA decision that is not reasoned and cannot be appealed. This releases the "subsidiary right of action" allowing a party to bring suit to the Market Court. Private actions may also be brought following certain SCA decisions. If the SCA decides not to impose an obligation on a company to terminate an infringement of a prohibition against

restrictive practices or abuses of dominance, the Market Court may generally do so at the request of the company affected by the infringement. The Court has to date ruled on ten cases brought by private parties in this way.

International issues

The SCA is well integrated into the various European co-operation networks. The CA's prohibitions apply to practices that have an effect "in the market", which implies that whether or not the companies concerned are inside or outside Sweden has no relevance. In practice, extra-territorial application of Swedish law may have its limits. The SCA is part of the European Competition Network (ECN), which covers all EU competition authorities and which offers a framework for co-operation among these and the EU Commission.* It also participates in the network of European Competition Authorities (ECA) which groups competition authorities in Europe and is mainly concerned with the review of merger co-ordination. Information on cross border mergers that falls within the scope of EC law is circulated across the ECA, and the ECA may also help with cases handled at the national level. In 2003 Sweden joined the co-operation agreement between the Nordic countries, which enables the exchange of confidential information for the enforcement of competition rules, including for mergers.

The SCA applies the EC notice on the definition of relevant markets. This offers guidance on how market openness, foreign supply and the likelihood of entry should be assessed. Market openness is relevant both in assessing the geographic market and the effects of a case, especially mergers. Foreign supply suggests a market that goes beyond national borders. Markets are dynamic and their scope may develop beyond national borders over time, not least as a result of reform and deregulation.

The SCA is also a member of the WTO preparatory group on international trade issues in the Ministry of Foreign Affairs.

Resources and priorities

The SCA has about 100 staff, which is about the same as the competition agencies in other countries of Sweden's size. Its budget has been reduced in recent years and the SCA has asked for a budget increase to sustain activities at the current level, or even to develop enhanced capacities for action. The budget squeeze has affected the quality of staff resources, for which the low success rate in court may be evidence. The SCA itself has pointed to the need for staff with new skills and experiences. Staff are being lost to private law firms, as it is difficult for the SCA to offer similarly attractive employment terms.

Two thirds of the SCA's resources are devoted to law enforcement and one third to advocacy. The share going to advocacy is high in comparison to other OECD competition agencies. To some extent, shares would vary depending on how advocacy is defined. In Sweden's comparatively small government organisation, SCA may have a larger role to play.

* The European Competition Network is co-ordinated at the EU level and its main purpose is to manage co-operation in enforcement about cartels and restraints.

The limits of competition policy: exclusions and sectoral regimes

Four broad aspects of the law affect the CA's reach in the economy:

- When public regulation is agreed by Parliament which has anti-competitive effects, this takes precedence over the CA.
- The CA applies to all enterprises, public or private and irrespective of legal or organisational status (this corresponds to “undertaking” in EU law). This means that the CA applies to commercial activities carried by the government, for example by state-owned enterprises. But the CA has been found to be less effective in these cases and especially in relation to local government activities. The government is aware of the problem which has been under discussion for several years.
- The prohibition rules of the CA apply only where competition is restricted to an “appreciable extent”, which may mean that some agreements involving SMEs are excluded. Agreements between competitors do not appreciably restrict competition where the aggregate market share held by the parties does not exceed 10%, and agreements between non-competitors are accepted if the market share held by each of the parties does not exceed 15%. These provisions do not apply to agreements that contain hard core restrictions such as price fixing. No other rules specially address SMEs.
- The CA does not apply to agreements between employers and employees on wages and other conditions of employment.

There are also sectoral and other special regimes. Provisions to secure co-ordination and consistency between CA enforcement and sector regulation require that the SCA and sector agencies consult each other on competition matters.

- Exemptions exist in two sectors, agriculture and taxis. The agricultural exemptions apply primarily to co-operation within primary agricultural associations between individual farmers and other raw material producers. Forestry also has an exemption because of its close links with agriculture in Sweden. Taxis benefit from a block exemption for co-operation (such as joint marketing) as well as specific legal exemptions for agreements within the sector, the justification being the need to secure taxi services in sparsely populated areas where private demand is low. At the same time they may be required to provide transport assignments.
- In the media sector the CA does not apply in cases of conflict with legislation securing freedom of the press.
- In the postal and telecommunications sectors, special regimes have an impact on competition policy. The Postal Services Act includes a provision for the promotion of competition via neutral regulation of access to the postal infrastructure. The telecommunications sector also has legislation to promote competition concurrently with the CA.
- The financial sector regulator applies prudential rules specific to that sector concurrently with the competition law.

There are three legal monopolies – pharmaceuticals retailing, alcohol retailing and gambling, all motivated by concern for public health. These are unusual in market economies and their compatibility with EU law is uncertain. They also risk being undermined by e-commerce.

- The pharmaceutical monopoly was established in 1970 to safeguard supply, keep prices low (prescription drugs are subsidised) and ensure that drugs cost the same in all parts

of the country. A challenge to the monopoly led to a recent ruling by the European Court of Justice (ECJ). Whilst stating that EC case law does not require the total abolition of state monopolies of a commercial character, the ECJ notes that they need to be adjusted so that there is no discrimination, and that the Swedish pharmaceuticals monopoly falls short in this respect. Some changes have since been made and a government committee has also reviewed some aspects of the monopoly. The new Government will make an overall review of all existing committees under the Ministry of Health and Social Affairs, in order to align their work with its policies in different areas. This will include the committee dealing with the pharmaceutical monopoly.

- The alcohol monopoly covers direct sales of alcohol to consumers, and its share of total consumption was 48% in 2005, remaining consumption being accounted for by imports, smuggling and home brew, and restaurant sales. Access to alcohol is limited by regulating the establishment of outlets and opening hours, and through selling rules. The monopoly is a sensitive issue in the EU context, and it was a key issue in Sweden's accession negotiations. The ECJ has found it to be compatible with EC rules on free movement of goods and on state monopolies of a commercial character, but two further cases are pending.
- Gambling is regulated via exclusive rights given to three types of organiser (the state, the horse racing community, and non profit organisations for the public welfare). The gambling market is growing rapidly, not least through the Internet. Its compatibility with EU law is currently under review.

Competition advocacy and policy studies

Foundations and processes

As well as law enforcement, measures to improve competition, knowledge dissemination and knowledge building (three different aspects of advocacy) are part of the SCA's role. Knowledge building means support for academic research. The government's standing instructions to the SCA identify a number of specific advocacy tasks, which are fleshed out in its annual letter, and on which the SCA must report annually:

- Propose measures aiming at deregulation.
- Observe impediments to efficient competition in the public sector and propose measures to eliminate such impediments.
- Evaluate such measures that have been implemented.
- Consult with public agencies that are affected by proposals made by the SCA.
- Disseminate information on the implementation of the CA and EC competition rules, and in general promote pro competitive attitudes.

The SCA's advocacy work takes many forms, including consultation statements, published reports based on studies it carries out, informal consultations with other government agencies and civil society, and participation in public debates via conferences, the media etc. The SCA prepares numerous consultation statements on government committee reports (163 in 2005) covering a wide range of topics (from occupational pensions to waste management, as well as more specific competition law issues such as the calculation of fines). It also published 11 reports on an equally wide range of topics in 2005, some in co-operation with the competition authorities of other countries. The most comprehensive initiative in 2005 was the report "Competition in Sweden" which presents policy options for ten markets of particular importance to consumers.

Advocacy requires patience and a long perspective, and activities tend to build on the work of previous years. A case for action is gradually developed, and the effects of specific advocacy actions are not immediately obvious. The SCA's quantitative output is impressive. Yet pro-competitive reform has lost momentum in Sweden since the 1990s. Successful advocacy for efficient markets, however, is at least as much about scrutiny of regulatory details as the spectacular reform of entire sectors. The SCA's efforts often seem to have been successful when suggesting concrete regulatory solutions in non-controversial areas, and less so in sensitive areas such as public procurement.

Conclusions

The relative stability of competition law and policy over the last fifteen years has been juxtaposed with a number of reports and analyses, not least that of the 2005 Regulatory Reform Commission, which suggest the need for further pro competition reform covering issues such as public procurement, further deregulation of product markets, public sector activity in competitive markets, and a review of regulation for the infrastructure sectors. The Competition Authority is widely regarded and it has a broad reach. But at the same time a number of specific concerns have emerged.

As regards law enforcement:

- There are few formal decisions. Only two cases were brought to court by the SCA in 2005. There was only one court ruling in the same year. The number of sanctions or orders sought or imposed is low. These figures reflect the fact that many cases are solved by decisions not to take action because of commitments from the companies, and this is resource efficient. But there needs to be a fair share of formal rulings to secure transparency and restore confidence that Sweden has moved as intended from a “negotiation economy” to a more rules-based approach to competition policy.
- The success rate in court could be improved. An enforcement agency should certainly not expect to win every case – if it did, this would be a sign that is avoiding complex, difficult cases. Nonetheless there is room for improvement here.
- Competition cases take a long time. In several cases the timespan from the SCA's opening of the case to last instance ruling is 5 to 8 years.
- Sanctions are not sufficiently deterrent. International experience shows that the effectiveness of leniency programmes depends on the predictability of amnesty rules; the risk of discovery; and the seriousness of sanctions. The Swedish approach raises issues on all three counts. The SCA has discretionary power to decide a reduction of, or full amnesty from, fines. The risk of discovery is related in part to the effectiveness of the leniency system. Sanctions are not at the level that exceeds the violator's gain from the infringement. Hard core cartels offer gains of such magnitude that many countries now supplement fines with sanctions that hit individuals directly. A committee of inquiry has proposed stronger decision-making powers, such as direct settlements, for the SCA and more precise rules on the circumstances to be taken into account when determining the size of financial penalties for infringements.

With regard to advocacy:

- The SCA has four branches of action: i) law enforcement; ii) measures to improve competition; iii) knowledge dissemination; and iv) knowledge building. The second and third of these tasks largely corresponds to what is commonly referred to as competition advocacy. The SCA's most important advocacy activities are consultations, reports and

informal consultations with other government agencies and the civil society. Close to 30% of the SCA's resources were allocated to competition advocacy in 2005, which is high in international comparison, although its Nordic neighbours also devote considerable resources to advocacy. Possible differences in the methods of measuring resources and in defining advocacy, need to be kept in mind when comparing resource allocation of different competition authorities. For example, SCA advocacy includes both sectoral studies and enquiries as well as information to the public and research activities. Nonetheless, it might be useful to review whether the current resource balance between advocacy and enforcement is the right one.

- There is much work on broad studies, such as the annual report "Competition in Sweden" commissioned by the government that includes a comprehensive set of concrete policy proposals. Studies that address specific competition problems may have a powerful effect. Broader and more descriptive studies may require disproportionate resources relative to their impact on the reform agenda.
- There is no strong evidence that the government has perceived the SCA as a core motor for reform. Where the SCA has strongly advocated change such as the public/private interface for commercial activities, the SCA appears to have had no tangible impact. The competition voice is not always strongly heard in other agencies, which may be linked to the informal nature of the SCA's relationship with them.

There are also institutional factors:

- Resources, skills and competencies. The SCA's budget reduction has had a negative qualitative impact on staff. More skilled officials are needed to raise the success rate of the SCA in court.
- Independence. Formal independence of Swedish agencies is part of the governance tradition. Real independence needs to be reinforced by careful attention to issues such as appointment procedures. The Regulatory Reform Commission has made a number of proposals for enhancing independence of regulatory agency heads including the SCA, in order to support their considerable responsibilities for consumer welfare, asset and investment management, standard setting and also to reinforce credibility with the often state dominated sectors which they regulate. The Commission has proposed among other issues, non renewable fixed term appointments, and separating ownership and regulatory interests across different ministries. The appointment procedures and fixed term set for the head of the Market Court also need review to strengthen independence.
- Powers. Unlike most other EU competition authorities, the SCA does not have powers to decide on sanctions for infringements or to impose a penalty for non compliance with an order. The court procedures for doing this are lengthy and sanctions have mostly been below the SCA's claims.

The system now seems ripe for further reform, in order to strengthen the fight for free competition in the economy. Some elements of the old negotiation-based approach to resolving competition issues linger. An authority with sharper teeth and greater independence, stronger sanctions, and more compulsory consultation with the Competition Authority on relevant policy issues would help. A government Committee is currently reviewing the Competition Act with a view to making proposals to strengthen enforcement. The government is on record as stating that the share of the total economy exposed to competition should increase, and this now needs to be turned into reality.

Policy options

These options may be considered *ad hoc* and separately, or a co-ordinated approach could be envisaged that would provide enhanced impetus to competition policy in Sweden.

1. Confer powers to decide fines to the competition agency.

Strengthening competition policy is closely related to strengthening the competition agency. An authority with “sharper teeth” will have more bite, both in enforcement and advocacy action. Giving the competition agency powers to impose fines could also boost tougher attitudes about serious anti-competitive conduct. Changing attitudes will help overcome tendencies that are reminders of the pre-1993 system, of few orders and sanctions, reliance instead on negotiation and settlement, and lengthy processes. In the international perspective, allowing a competition agency to decide on fines is not exceptional, rather the opposite.

2. Strengthen the independence of the competition agency and the Market Court.

In addition to powers, an effective competition agency needs real and perceived independence. As noted by the Regulatory Reform Commission, an appointment for a limited term can create a situation of dependence *vis-à-vis* the nominating body, in particular where there is an option for a second term. The current model with appointment for 6 plus 3 years for the President of the Market Court is an example. Employment terms that give more job security should be considered both for that post and for the person or persons that take formal enforcement decisions in the competition agency.

3. Strengthen sanctions for serious violations of competition law.

The fines that have been applied to date fall short of levels needed to deter serious violations of competition law such as hard core cartels. Measures to raise those levels would be welcome. Many countries have concluded that sanctions against individuals would make deterrence more effective. Sweden has seriously considered criminal sanctions for competition law infringements, but found that such a step would make the leniency system inoperative. Full amnesty from criminal sanctions, like the Anglo-Saxon crown witness model, would be incompatible with the Swedish legal system. Criminalisation of competition offences would also reduce the efficiency of enforcement because of the higher burden of proof and the need to refer competition cases to the general prosecutors.

A different model to consider would be administrative fines for individuals, if they would not fall in the area of criminal law and enforcement. To be sure, companies might find ways to compensate the individuals’ pecuniary loss. Still, the disincentive for company officials to engage in anti-competitive practices would be greater than now, if only because of the risk of personal embarrassment.

4. Strengthen compulsory consultation with the competition agency.

A competition agency may have an important role in preventing public authorities and other bodies of government from adopting or applying rules that distort or eliminate competition in a disproportionate way. The SCA is active in this field through consultation statements and informal co-operation with other agencies. The impact of this work is limited by the power of persuasion and the strength of the SCA’s arguments. And when a conflicting interest is at stake, the persuasive voice may not be strong enough or may be heard only at a stage “when the ink is dry”. Introducing compulsory consultation

provisions is one way to strengthen the competition interest in relation to other aspects. This does not imply that competition should have priority before all other policy interests. But clear rules on consultation with the competition agency, organised in a way that does not create an excessive burden on either side, may help finding the most efficient trade-off between competition and other policy interests. Such rules could define issues such as who should consult, matters covered by the obligation, in what stage of the process, what materials to submit, and how to handle dissent.

5. Find an organisational structure for the competition agency that matches new and enhanced powers.

A competition agency that has powers to decide on fines (including administrative fines to individuals), which has strong independence, and which is in charge of compulsory consultation procedures, would not necessarily be best organised like the present SCA. With stronger powers, decision-making should be organised in a way that meets high standards of legal certainty. And such an agency must obviously have the resources needed to maintain professional qualities at high level. Appropriate separation of adjudication from investigation would be important. A collective decision-making procedure could be an alternative to the current model where decisions are adopted by the head of the SCA alone. Several countries have competition agencies that incorporate some kind of council in order to meet such requirements.

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PART II
Chapter 4

Market Openness

Introduction and context

Sweden is an open and prosperous economy. It has a relatively high dependence on international trade in OECD comparison, with imports and exports of goods and services amounting to 41% and 49% respectively of GDP in 2005. As a country with a limited domestic market, parts of its industry have always been outward looking. Success on international markets has been a major factor in the economy's growth over the last decade following the economic crisis of the early 1990s, with international commerce growing significantly faster than the national economy.

Most of Sweden's trade is with other OECD countries and in particular with its Nordic and European neighbours. Trade with emerging markets is, however, expanding more quickly. Sweden's trading strengths lie in engineering and process intensive products, and the two largest export sectors are road vehicles and telecommunications. Road vehicles accounted for nearly 14% of merchandise exports in 2005. Telecommunications exports reached only 10% following the global ICT downturn, which forced structural adjustments. The service sector, which makes up around 75% of the national economy, represents a small but fast growing share of exports, more than doubling in 1998-2005. This growth is expected to be sustained as Swedish manufacturers of engineering and technological products increasingly provide ancillary services.

Sweden is relatively open to foreign direct investment (FDI). In 2005 it had over double the share of inward and outward FDI stocks relative to GDP compared with the OECD average. A significant share of the Swedish economy is controlled by foreign owners, and Swedish interests hold important assets abroad. Part of this picture covers considerable consolidation in some major Nordic services markets including cross-border M&As in sectors such as banking and finance, telecommunications, media, utilities and IT services. The World Economic Forum survey of business views on competitiveness confirms that Sweden is well regarded for FDI, a status that is supported by the transparency and quality of its public institutions. This investment openness has brought Sweden significant benefits. Foreign-owned companies employed 23% of total private sector employees in 2005, and are more R&D intensive, enjoy a higher labour productivity and have a higher share of exports to total revenue than Swedish companies.

Sweden has generally strong policies to encourage market openness, having learnt the cost of trade protectionism from negative past experiences. Union support has helped, aided by the fact that the latter focus on the protection of workers' rights and benefits, rather than on jobs themselves. However the 2004 EU enlargement to the east, under which Sweden was one of only three EU members to allow free movement of workers from the start, has introduced some tensions about jobs. Advice from the OECD in recent years on further improving (an already good) economic performance has not singled out any issues directly related to market access. As a member of the EU, Swedish trade policy is "communitarised", and in this context Sweden encourages the development of a trade policy agenda that promotes market openness including the removal of anti-dumping measures and reform of

the Common Agricultural Policy, as well as stronger environmental regulation and more generous policies towards developing countries.

The policy framework for market openness: the six efficient regulation principles

Market openness refers to the ability of foreign suppliers to compete in a national market without encountering discriminatory or excessively burdensome or restrictive conditions. With the fall in tariff barriers, the impact of domestic regulation on international trade and investment has become more important. In a global economy, regulations need to be market oriented and friendly toward trade and investment. Six “efficient regulation principles” for building these market openness qualities into regulations were identified by the OECD in its 1997 *report on regulatory reform*, further developed by the Trade Committee, and incorporated into the OECD’s 2005 *Guiding Principles for Regulatory Quality and Performance*. They reflect the principles underpinning the multilateral trading system:

- Transparency and openness of decision-making.
- Non-discrimination.
- Avoidance of unnecessary trade restrictiveness.
- Use of internationally harmonised measures.
- Streamlining of conformity assessment procedures.
- Application of competition principles from an international perspective.

Transparency

Transparency is a safeguard of equality of competitive opportunity for locals and foreigners alike. Market openness requires that all market participants be fully aware of regulatory requirements so that they can base their decisions to invest, produce and trade on an accurate assessment of likely costs, risks and benefits. This is especially important for foreign firms, which have to cope with differences in the business environment, such as language and business practices. Transparency requires access to information on regulations and openness of the rule-making process through public consultation. Foreign parties also need the security of knowing there are accessible and effective appeals procedures. The handling of public procurement and of technical regulations are important specific areas for transparency in support of international market openness.

Sweden has sound procedures for disseminating information in the regulatory process. Established consultation mechanisms provide interested parties with opportunities for input, and both the internal consultation process in the Government Offices as well as the National Board of Trade provides useful and effective mechanisms for ensuring that market openness concerns are taken on board. The main area for attention is public procurement where currently limited foreign participation could be increased by ensuring a stricter application and enforcement of the current regulatory framework for public procurement, leading to increased transparency.

Access to information

Sweden has a range of well-developed and effective processes for disseminating information on laws and ordinances, paper and web-based, as well as contact points. For example the Government Ordinance on Legal Information stipulates that any person

should have free access through information technology to all statutes, and the principle of public access to official documents is entrenched. Foreign parties can obtain more tailor-made information through a network of enquiry points, generally managed by the National Board of Trade (a government agency), as well as central units within relevant government offices. The main enquiry points are the Swedish WTO-TBT and Directive 98/34 Enquiry point (EU/WTO issues and notification procedures for national technical regulations); SOLVIT, which covers EU rules and other EU information; and Open Trade Gate Sweden (OTGS), which acts as a one-stop information centre for exporters in developing countries.

Consultation mechanisms

Well-developed and well-functioning consultation mechanisms are another core feature of Sweden's regulatory governance. These apply to domestic parties and foreigners alike. Swedish regulators routinely consult a range of external interests in drawing up rules, noting that it brings them new perspectives. For their part, business interests appreciate these processes which give them a voice. Large companies, including foreign-owned companies, are a regular part of the process, and companies established abroad, if they take the initiative, can make their voice heard. The National Board of Trade and other relevant government bodies have an important formal opportunity, at the "referral" stage, to influence the government before it takes a position on the recommendations of Committees of Inquiry on proposed laws. The Board, acting as consultant and discussion partner in the process, analyses whether new rules conform to international commitments and their impact on foreign trade. Informal channels for comments are also widely used, including by foreign parties.

Information and consultation channels for EU rules are not as well developed, a situation not unique to Sweden and which companies tackle by setting up their own initiatives to monitor the EU and lobby the government on the basis of information gathered.

Appeal procedures

The picture is generally positive. The Swedish regulatory system does not have an explicit guarantee for appeals by foreign companies but these are possible whenever a foreign company is subject to a decision or directly affected by a decision taken by a government authority. The company can then claim that the decision is not taken in accordance with applicable law. Appeal procedures are the same for citizens and businesses whether domestic or foreign. A trouble spot is public procurement. Legal remedies and processes for a supplier (whether domestic or foreign) who has not been treated in accordance with the rules are clear. In a few cases local authorities that have been found guilty of breaking the rules have ignored the court's judgements. For such "obstruction" there are no sanctions, but an injured supplier may claim damages. The question of effective sanctions is part of the ongoing work on EU-level amending the so called Remedies Directives.

Technical regulations and standards

The development of mandatory technical regulations follows the same basic procedures as for other regulations regarding transparency, supplemented by a special Ordinance on technical rules. This Ordinance sets out a number of requirements to ensure that the impact of such rules on trade is minimal. These include a requirement on the regulating authority to ensure that the rule is least trade restrictive, to check if a standard does not already exist or is proposed that would meet the same objectives, and to consult the National Board of Trade. The Board has a pivotal role as interface between the Swedish government and the EU and

WTO on market openness issues, providing the government with information and acting as watchdog for market openness issues in the regulatory process.

Sweden's technical rules are advertised in a central registry and translated into several languages. Domestic transparency provisions have been enhanced by EU legislation and a ruling by the European Court of Justice that a non-notified regulation is not enforceable. Notification of technical regulations follows carefully established processes laid down in relevant EU (Directive 98/34/EC) and WTO legislation. The Board is responsible for making authorities aware of the obligation to notify draft technical regulations to the EU and the WTO in accordance with this legislation. Sweden notifies regulations that have a significant effect on trade to the WTO, in accordance with requirements in the TBT Agreement. A special website posts information on the draft regulations notified in the EU. The number of notifications made by Sweden is around the EU15 average. Reactions to notified rules from the EU Commission or other member states have frequently led to modifications.

Transparency in government procurement

Public procurement in Sweden accounted for some 17% of the country's GDP in 2005 (compared with 15% in Norway, which also has a large public sector). Managing it fairly and transparently is therefore important. Swedish rules and policies conform to the best practices laid out in EC directives and the WTO Agreement on Government Procurement (Box 4.1), but there are challenges. These may help to explain why the level of foreign company involvement in public procurement contracts would appear to be relatively low.¹

- Enforcement of the legislation on advertising. As many other EU countries, Sweden finds it at times difficult to fully comply with EU legislation. Its record on advertisement for

Box 4.1. Sweden's institutional and regulatory framework for public procurement

The National Board for Public Procurement

An independent central government agency under the Ministry of Finance, its tasks include the supervision of compliance with the Public Procurement Act and the WTO Agreement on Government Procurement; the promotion of efficiency in public procurement; and the dissemination of information.

The Act on Public Procurement

It regulates procurement of a broadly defined set of contracting entities in the public sector covering the different levels of the government, as well as some publicly-owned companies and other entities. The rules depend on the value of the awarded contract. Above threshold values, they follow the EC directives, and below, the rules are national. As a general rule, all public procurement must be advertised, although there are some well-defined exclusions. Contract documents which cover a list of pertinent details (such as award criteria) must be prepared by contracting entities. The latter must also keep a record of the reasons for their decisions. Procurement above threshold values requires that annual procurement plans and contracts awarded be advertised in the EU's *Official Journal*, as well as the specific procurement. Tender information is subject to absolute secrecy until the procurement process is concluded. Once a contract has been awarded the documents, as a principal rule, become public official documents, which any person may request to obtain.

public procurement is close to the EU15 average. Sweden, with its large public sector and its market openness could draw further benefit from stricter enforcement of advertising, which would foster foreign participation.

- Rules which seek to integrate a growing number of societal objectives. While the need for social considerations is recognised at the EU level,² this could potentially be discouraging certain companies from bidding, and in particular foreign companies.
- Lack of sanctions. Despite binding legislation for the implementation of EU directives, there is still a lack of effective sanctions to force erring authorities to comply, even if Sweden does comply with the EC-directives on remedies. Municipalities have occasionally lost their case but did in a few cases ignore court rulings.³
- Coverage of state-owned enterprises (SOEs). A study by the Swedish National Audit Office has found that ambiguities in the mandate of the National Board of Public Procurement for monitoring procurement by SOEs have led the Board to leave many SOEs out. If SOEs break the rules they are unlikely to be caught. If found guilty there are no effective sanctions to enforce court rulings.

Non-discrimination

The application of the non-discrimination principle in regulation is upheld by two WTO codes of conduct, which aim to provide equal competitive opportunities irrespective of the origin of products or services and so maximise efficient competition. The first is Most Favoured Nation Treatment (MFN), under which all firms in the WTO membership seeking entry to a national market are treated the same. The second is National Treatment (NT), under which foreign firms are treated the same as domestic firms.

Sweden has made extensive use of the scope for exceptions to MFN and NT that are allowed under the WTO framework. However its procedures are based on principles that control for discriminatory measures and there are no indications that new Swedish regulations discriminate against foreigners.

Non-discrimination in domestic regulation

As a WTO member, Sweden is bound to apply the MFN and NT principles in its trading relations, although the WTO does allow certain discrimination between trading partners if these are notified and conform to the WTO legal framework. New regulatory measures that discriminate against foreign exporters are generally not allowed. As a member of the EU, Sweden may neither conclude international agreements nor enact national commercial policy measures within the common commercial policy without EU authorisation. Certain powers have, however, been retained by EU members and Sweden has used these to apply some restrictions on foreign controlled investment in air and maritime transport, fishing and accountancy. The Swedish GATS Schedule of Specific Commitments also lists a number of further limitations on NT with regard to the formation of legal entities, linked to residence in the European area, on which foreign companies have raised concerns. Swedish exemptions to GATS Article II cover a number of measures aimed at promoting Nordic co-operation such as the activities of the Nordic Investment Bank. As well, some public procurement is exempted from the Public Procurement Act, exemptions which are supported by rules agreed multilaterally.

Preferential agreements

The GATT non-discrimination principles are core components of the EU common commercial policy but the EU makes extensive use of the scope provided under GATT to conclude preferential trade agreements with non-EU countries. Through its membership of the EU, Sweden is a party to a number of such agreements, which take the form of either customs unions or free trade agreements. The number of agreements is likely to grow. The EU also grants developing countries preferential access to its single market and is seeking to expand its ties with developing countries.

Avoiding unnecessary trade restrictiveness

Where possible regulators should favour measures that have the least restrictive effects on trade. For example taxes might be used instead of regulations to achieve the same policy goal. Mechanisms need to be put in place to give effect to the principle, including *ex ante* assessment of the impact of proposed regulations on trade and investment, reviewing them after a certain time, streamlining procedures, effective consultation of foreign interests, and access to a dispute settlement procedure. In short, a business friendly environment needs to be created which extends to foreigners as well as domestic interests.

Sweden is perceived to do quite well in ensuring that negative effects of rule-making on market openness are limited. It has implemented a number of initiatives to this end, and the Swedish Customs Service is at the forefront of best practice for border procedures. Simplifying regulations is receiving needed attention. Strengthening the RIA process would be beneficial to market openness.

Impact of regulation on trade

Burdensome rules have a disproportionate impact on foreign players and especially SMEs which lack the resources of multinationals, as domestic players have the advantage of knowing local customs and procedures. Sweden has, like most other OECD countries, accumulated an impressive number of rules over time, and each year there are numerous changes. Regulatory inflation is estimated to be 2-4%. Effective rule management, and especially, the application of RIA with consideration for potential impacts on foreign competition, is therefore important.

Issues with current Swedish RIA processes are explored in Chapter 2. Rigorous analysis is still the exception. Market openness issues do not appear to rank as highly as other impacts such as environment, competition and consumer issues. But other parts of the Swedish regulatory management system make up at least part of this deficit. Consultation processes and the management of technical rules and standards, reviewed above, are generally robust and helpful to the cause of market openness. The National Board of Trade plays an important role drawing out market openness issues and advising the government. The Board offers each year its opinion on some 100 commission of inquiry reports, and its recommendations are usually taken into account. Market openness issues could, however, be examined at an earlier stage in the rule-making process when committees are carrying out the inquiry. The system also rests on extensive internal consultations between relevant ministries. The Invest in Sweden Agency completes the picture. It has instructions from government to inform it about factors that negatively affect FDI, which it mainly does through an annual publication with recommendations, and the support of a twice yearly meeting of relevant ministries.

Administrative simplification

Companies put a priority on regulatory simplification in Sweden, with one report estimating that 25% of company operating costs are reporting and compliance related. The government has also made it a priority and Chapter 2 gives details of initiatives. There is some way to go. The business community, which calculates that burdens continue to grow, wants improvements to RIA, quantitative targets to reduce burdens, and a more coherent policy for regulatory simplification.

International comparative studies show a reasonably good performance, although these too pick up important issues for attention. The OECD's Product Market Regulation (PMR) database shows it to be a relatively liberal country, with scores close to those of Nordic neighbours Denmark and Finland, but more restrictive than the UK, United States and Australia. The World Bank report "Doing Business in 2006" ranked Sweden 14th out of 155 economies for the ease of doing business (regulatory and administrative efficiency), and 2nd for ease of trading (efficiency of procedures from contractual agreement to delivery of goods). The 2005-6 Global Competitiveness Report rated Sweden quite positively among the 117 countries surveyed for perceptions by business of the regulatory environment, especially as regards fairness and transparency, although regulations are also perceived to be sometimes burdensome (*e.g.* as regards permits) and somewhat stringent. Setting up a business in Sweden takes less time than the OECD average, but it is relatively costly (especially for SMEs) to deal with licences and permits. Significant burdens arise from taxation and the cost of employing workers.

As well as the help offered by the Invest in Sweden Agency related to commercial presence and investments, Sweden offers two relatively new enquiry services to help traders, which also provide direct input to the Swedish authorities on issues raised that need attention:

- The SOLVIT network. This offers support, short of formal judicial powers, to those who experience problems with national rules which deviate from EU rules. It covers areas such as border controls, market access for products and services, and public procurement.
- Open Trade Gate Sweden (OTGS). This is a one-stop information centre and targets exporters in developing countries to help them with issues such as Swedish interpretation of EU law, or overly burdensome requirements for acquiring health certificates. It tries to solve problems directly or by influencing Swedish or EU policies, again short of offering judicial assistance.

It is too early to judge the effectiveness of these commendable initiatives. They do raise challenges such as adequate manpower to provide timely and accurate information, and ensuring awareness of the services' existence (they are currently accessed through established government websites).

Customs procedures

The Swedish Customs Service is one of the most business friendly in the OECD, a model in reducing administrative workload and in shortening the time dedicated to border procedures, which is less than half the OECD average. Electronic customs solutions have been on offer since 1990, and automated risk analysis since 1997. A number of targets have been set for better service, and best practice through contact with other customs authorities is actively sought. Systems include a single export/import/transit window connecting seven government ministries, 24 hours a day information sources, the

“Customs Internet Declaration” for smaller companies, and customs declarations via Electronic Data Interchange (EDI), with an ambitious goal for 2006 of 100% electronic declarations. The Customs Service is also part of the EU “Customs 2007 Project”. Finally it has developed two systems for customs clearance: the Stairway (an accreditation and certification system for importers, exporters, brokers, carriers, freight terminals etc), and the Green Corridor (a structure for co-operation between customs authorities in Sweden, Russia and Finland).

Encouraging the use of internationally harmonised measures

Compliance with different national regulations and standards can make the cost of operating in different markets significant, even prohibitive, a major issue raised by the international business community. Internationally harmonised standards offer a solution, and their use has gained prominence with the WTO Technical Barriers to Trade (TBT) agreement. This encourages countries to base their technical requirements on international standards where these exist.

The limited size of its domestic market and dependence on foreign markets pushed Sweden early on to take an interest in international standards. It has been very active in helping to develop these and adopting them into its national framework. As a member of the International Organisation for Standardisation (ISO), the EU and the WTO, Sweden is bound by the rules of these organisations, including the obligations of the WTO TBT and SPS Agreements under which regulators must as a general rule take international standards as a basis for domestic technical regulations. International standards are often adopted as European standards, and these must be implemented as national standards within six months of adoption. Occasional concerns have been raised about standards in *e.g.* the food processing and construction sectors, but that is all.

Sweden is one of the more important contributors to the international standards making process. The chairman of the Swedish Standards Institute was recently elected president of the ISO, a network of 157 national standards institutes and the world’s largest developer of standards. Some 90% of Swedish standards conform to European or international standards, a share that is growing because nearly all new standards conform to these (unique Swedish standards have traditionally been found in the health care sector). The Swedish Standardisation Council has appointed three standardisation bodies to represent Sweden in standards work abroad, all of which subscribe to the WTO TBT Code of Good Practice and are independent organisations under private law.

Streamlining conformity assessment procedures through recognition of the equivalence of regulatory measures adopted by foreign countries

Global standards have evolved rapidly but do not yet cover all products and are not always used as basis for national technical regulations. The existence of differing national regulations and the need to use differing national procedures for assessing conformity adds to the costs of producers wishing to sell in different markets. Mutual Recognition Agreements (MRAs) can help to reduce costs. The scope of these agreements is mutual recognition of results of conformity assessment made in the exporting party according to the regulations in the importing party. Agreements seldom touch the regulations themselves or the procedure used to assess conformity. Sweden is bound by the EU’s sectoral MRAs with non-EU countries, mostly within the harmonised areas.

While the Swedish approach to these issues is generally robust and well-conceived, the handling of the mutual recognition principle within the EU generates some challenges. Companies facing trade restrictions tend to respond by modifying their products to comply with national requirements, because they may not be aware of alternatives and therefore may consider that they have no other choice. A Swedish study, however, found that the authorities may not be applying the mutual recognition principle due to a lack of awareness of their existence. Further initiatives are needed to ensure that mutual recognition works as effectively in practice as on paper.

Swedish conformity assessment (CA) works through two sets of bodies under the so called “open system” established following EU accession, which has improved service to business. Regulatory state agencies set the rules and monitor the market, and another state agency, the National Accreditation Board (SWEDAC) assesses and accredits, in consultation with the relevant regulatory agency and private certification and inspection bodies and laboratories. In the EU harmonised areas – which cover most products – all CA procedures are prescribed in EU law as well as the obligation to accept results of CA made in other EU member states. In the non-harmonised area, the Act on Conformity Assessment requires that SWEDAC accredited bodies shall carry out Swedish conformity assessment. The European Court of Justice has ruled that CA results from accredited bodies in the EEA or bodies that can demonstrate their competence by other means should be recognised as equivalent to results from Swedish accredited bodies. Accordingly most Swedish technical rules contain mutual recognition clauses. The WTO TBT Agreement has a number of provisions on conformity assessment and mutual recognition which are applied in the European and international frameworks.

All government authorities are obliged to consult SWEDAC before issuing regulations which include requirements on conformity assessment, as well as respecting mutual recognition and ensuring compliance as far as possible with European and international standards. They must also consult the National Board of Trade if a proposed rule could give rise to a technical barrier to trade.

Application of competition principles from an international perspective

Anti-competitive conduct can reduce the benefits of market access. From an international perspective, the important issues are commitment to competition principles in law and policy, and the existence of open and effective procedures for hearing and deciding complaints over market access.

There are no indications that Sweden fails to apply competition principles from an international perspective, and foreigners are treated no differently from others. The Swedish Competition Act contains prohibitions against anti-competitive behaviour, abuse of a dominant position, and rules governing the control of mergers. The competition authority also applies the EU competition rules which contain equivalent prohibitions. Articles 81 and 82 of the EC Treaty apply if trade between Sweden and another EU member is affected. Foreigners as well as domestic entities or private persons (without distinction) can contact the competition authority if they suspect anti-competitive behaviour, and the matter may be referred by the latter to the courts. The competition authority co-operates internationally in a range of arenas, Nordic, European and international. Some product markets are traditionally dominated by a small number of Swedish actors but action is underway to open these up to more competition.

Market openness and regulations in selected sectors

International market openness and the six efficient regulation principles can also be assessed by looking at key domestic sectoral regulatory regimes: how well do these square up? Two Swedish sectors that raise special challenges as regards foreign entry are the construction and food sectors.

The construction sector

This sector has experienced low productivity growth and rapid price inflation over the past decade. This is strong evidence of a malfunctioning market. Foreign participation is limited and there are high entry barriers which arise from a range of issues, some of which are complex to address. In the housing sector, national building codes have been suggested to reduce import competition for housing construction. Some procurement contracts have requirements that disadvantage foreign companies and national SMEs, depending on the type of contract and size of the project. The civil engineering market is dominated by a few vertically integrated companies that also manufacture key materials such as asphalt and ballast. As the import of materials is limited, other companies have to purchase from the market leaders, and the price of building materials is high compared to many other European countries. The architectural and engineering consulting sectors are also dominated by a few large companies which favour Swedish materials. The acquisition of building permits can be a lengthy process according to analysts, which may even have a dampening effect on investment.

EU action is one avenue of improvement. The EU is seeking to harmonise material standards so as to improve competition, a partial solution to the problem. At the domestic level, several suspected cartels have been investigated by the competition authority, and taken to court. A tougher enforcement of the competition law would help. The government is studying the sector and waiting for a report by a Committee of Inquiry.

The food retailing sector

This is similar to the construction sector, with limited competition and high prices (over 8% higher, excluding VAT, than the EU15 average in 2004). Complaints about anti-competitive behaviour are higher in this sector than others. Competition is impeded by the market domination of a handful of vertically integrated food chains, which especially blocks SMEs and international competitors. Three groups control more than 90% of the food retailing market.

Foreign competition also suffers, or has suffered, from an unhelpful regulatory framework:

- The Planning and Building Act leaves considerable discretion to municipalities who give building permits and may favour the three incumbents. Related regulation such as environmental rules play an accessory role as it takes time and understanding to work through the processes, on which the incumbents have the benefit of experience. The OECD as well as the Swedish competition authority have recommended modification of the planning process to address these issues. A government committee has adopted the recommendations, finding that problems are due less to the rules themselves than to the way they are applied. With the entry of foreign discount stores the sector is, however, starting to change. Intense public debate raised by the recent reports is putting municipalities under pressure to enhance transparency in their decision-making.

- This sector is especially vulnerable to potential costs of new consumer health regulation, which can discourage foreign market entry if the rules are more stringent than elsewhere. Two difficult areas for Sweden have been veterinary checks on meat, and recycling food and drink containers. Swedish veterinary checks for foreign meat products have failed, according to a recent ruling of the European Court of Justice, to honour obligations of free movement of agricultural products. The recycling system used to be based on a legal monopoly of aluminium recycling. A review by the competition authority has led to the abolition of monopoly practices in recycling and a stronger monitoring framework.

Conclusions

Sweden presents a generally very positive picture as regards market openness. This is linked to the successful reforms that have been made over the last decade to open markets, and which has allowed the private sector to flourish. The process has a little way to go yet, especially in the service sectors. Sweden conforms to a large extent to the OECD's six "efficient regulation" principles for market openness. Transparency is strong and the dissemination of information well developed using a range of methods, which helps foreigners. They can take part without difficulty in consultation processes for new rules. Control of discriminatory measures against foreigners is also generally robust, with an effective role played by the National Board of Trade. Some recent initiatives to prevent unnecessary trade restrictiveness, notably the Open Trade Gate Sweden and SOLVIT, are commendable, and the customs service has been especially successful in facilitating trade at Sweden's borders. The government's objective to further simplify administrative procedures and rules should be encouraged, and will help boost FDI. The use of internationally harmonised standards is generally encouraged, linked to Sweden's active role in international fora. MRA commitments are also generally respected. There are no obvious issues with the application of competition principles from an international perspective.

In short, there is little evidence of discrimination against foreigners, though as with any system, there are some areas for improvement. These include improvements to the public procurement process and the application of RIA, efforts to ensure that the principle of mutual recognition is respected more fully in practice, and a stronger competitive environment for the building and food sectors.

Policy options

1. Strengthen the regulatory impact assessment process, ensure more frequent analysis and oblige regulators to consider the regulatory footprint from a market openness perspective.

While transparency and consultation mechanisms are well embedded in the Swedish regulatory system, a culture to assess the regulatory impact is not necessarily as well in place as it could. The quality of RIAs has dropped over the last decade and they are less frequently conducted. Society is evolving faster with globalisation and technological progress – decisions and responses to new issues are expected in less time. However, the regulatory impact on international trade and investment is also likely to increase due to this process.

The lack of rigorous investigation in the RIA process affects the authorities' ability to properly consider the effects a proposed regulation is likely to have with regard to market openness. The recommendations provided by the National Board of Trade are normally

respected, not least because of the checks and balances that Swedish rules and regulations face within the EC. Nevertheless, the drop in quality and the frequency of conducting RIAs increases the risk that new rules and regulations may be more trade restrictive or burdensome than necessary. Earlier consultations with the National Board of Trade in the regulatory process may be one way to somewhat reduce this risk but the best way forward is to demand more rigorous impact assessments with regard also to market openness aspects (broader policy implications of the RIA system and recommendations are presented in Chapter 2).

2. Promote the principles of mutual recognition in Europe and internationally and invest the resources necessary to ensure that administration and other entities responsible for their implementation are informed and comply with the principles.

As a member of the EU, Sweden is party to several mutual recognition agreements and recognises the equivalence of foreign regulatory measures and conformity assessment to the extent it has agreed to do so. According to the mutual recognition principle of the EU, member states are also obliged to recognise regulatory measures and results of conformity assessment performed in other countries within the Single market if they are deemed to be equivalent. This principle applies to both products and services in the non-harmonised area. Research conducted in Sweden shows that some authorities ignore this principle and most companies respond by modifying their products. Thus the principle of mutual recognition has not yet been implemented in a satisfactory manner and it negatively affects the free movement within the internal market. This is clearly a burden to companies both within and outside the Single market.

Since this failure to a great extent is based on mistrust or a lack of information of foreign procedures, Sweden should continuously invest in educating and informing civil servants and other entities responsible for assessing and handling foreign products and services. When partners to mutual recognition agreements comply with the rules, trade is greatly facilitated and such agreements should be promoted to the extent they are feasible and the benefits exceed the related costs. An even better way forward in liberalising trade would be to make increasing use of harmonisation principles.

3. Enhance transparency in the government procurement process by further improving the notification process, including more international advertisements, and introduce sanctions for authorities that are found to have broken rules in the procurement process.

Given the large share of government procurement in total consumption in Sweden, an open, fair and transparent procurement process is crucial for the public sector to make efficient use of its resources. Sweden appears broadly within the European average in advertising procurement to the *Official Journal*, although some countries have been significantly more transparent and advertised a higher share of contracts. While Sweden advertises a higher share of its public procurement than its Nordic neighbours Denmark and Finland, countries like Greece, Spain and the UK have generally done better in terms of international transparency.

There is scope for further foreign participation in the bidding for government contracts since foreign companies currently supply a rather modest share of public procurement. Given the country's positive experiences in a number of services sectors where reduced entry barriers have stimulated foreign competition and led to reduced

prices, the Swedish public administration would benefit from a procurement process that encourages a wider participation, including from foreign companies. This could be achieved by further enhancing the transparency of the system and seek to simplify the administration of procurement contracts within the EC framework.

Sweden has yet to legislate on effective sanctions that would force authorities that are found to have violated procurement rules to better comply with court decisions. In this area there is also ongoing work at the EU level, concerning in particular the sanctioning of contracts which breach certain provisions. The lack of sanction provisions with respect to public procurement and cases of abuse – where local authorities have ignored court orders – do not help in ensuring trust in fair and competitive procurement. Nor does it enhance the interest of prospective foreign bidders to approach the Swedish market.

4. Modify the Planning and Building Act to ensure that competition aspects are taken into account, complementing the action by the Competition Authority, and fasten the application and appeal processes of issuing building permits. Work towards further international harmonisation for building materials.

Competition in the construction and food retailing sectors is held back by the application of the Planning and Building Act. First, the application of the Act involves discretion in the decision-making process of local authorities issuing building permits. The concern includes in particular limited consideration of competition aspects in this decision process. Second, application and appeal procedures in issuing building permits are time consuming and sometimes give rise to high costs. A more effective application of the Planning and Building Act would facilitate competition by lowering entry barriers to both domestic SMEs and foreign companies.

Different standards for building materials may erect further barriers to entry for foreign companies. The construction sector is not sufficiently exposed to international competition and the building price index has increased significantly over the last decade. The adoption of more internationally harmonised standards for building materials could help reduce such trade barriers and Sweden should pursue its active involvement in this field. These initiatives should preferably be complemented by effective action by the Competition Authority to tackle suspected cartels in the sector.

Notes

1. There is a lack of appropriate data to estimate the full extent of cross-border procurement, particularly from an EU perspective. As mentioned by the EU Commission in a report issued in February 2004, and some of the current numbers may reflect an underestimation.
2. Article 26 of Directive 2004/18/EC and Article 38 of Directive 2004/17/EC. The limits for laying down criteria or conditions concerning social conditions is – ultimately – set by the European Court of Justice.
3. A contracting entity, which has failed to observe the provisions of the act on Public Procurement shall pay compensation for the injury (Public Procurement Act). On EU-level there is an ongoing work with a Commission proposal for a directive amending the EC-directives on review procedures. In this context one main issue concerns sanctioning the conclusion of contracts in breach of certain provisions.

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PART II
Chapter 5

Multi-level Regulatory Governance

Introduction and context

What is multi-level governance and why is it important?

Multi-level regulatory governance is an essential element of effective regulatory management, which is recognised in the OECD's 2005 *Guiding Principles for Regulatory Quality and Performance*, which “encourage better regulation at all levels of government, improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government”. Effective multi-level governance is of growing importance for all countries that are seeking to improve their regulatory management, whether they are federations, unitary states or somewhere in between. The speed and scope of technological, economic and social change means that the realisation of national regulatory policy objectives cannot simply be based on a “decision-making as usual” approach. Co-operation and co-ordination between the different levels of governance – from local authorities to supranational entities via national or federal governments – need development and fine tuning.

Box 5.1. Multi-level regulatory governance

From supranational to local levels: a range of changing relationships, both within and outside a country, need to be managed

Globalisation, and the obligations incurred through an expanding network of global, regional and bilateral trade and other agreements, affect all countries and need to be managed. A prime example is the EU, which has a growing influence on the regulatory environment of its member states. At the same time, the local levels of government within the boundaries of a state may need more flexibility than previously to meet social, economic and environmental goals in their particular geographical and cultural setting. Local decisions can generate issues for national regulators – and *vice versa*. National and international regulatory authorities in particular face choices as to how much they can and should supervise lower levels.

A range of democratic principles – sometimes conflicting – underpins the relationships

These include: concepts of sovereignty and pooled sovereignty; subsidiarity, local democracy and flexibility to deal with different local contexts; national and international harmonisation; co-operative federalism; mutual recognition of rules and standards; equality of regulatory and service delivery for citizens; and comparative benchmarking of performance.

These principles may conflict with each other and need to be managed. Local regulatory flexibility is increasingly necessary to ensure that local communities are competitive and can adapt to social and other needs. This is likely to clash with the need for broader harmonisation and the establishment of minimum regulatory standards.

The inherent complexity of multi-level relationships can also lead actors and institutions to avoid responsibility, hiding behind layers of authority and bureaucracy, and practicing the arts of blame and blame avoidance.

Sweden's multi-level governance framework

Sweden's multi-level governance framework consists of four parts (Box 5.2). The local parts are important. Sweden has a long tradition of strong democratic local self-government. As in other unitary states, it bases its approach on decentralisation. Over time the local parts have been given considerable freedom to carry out their tasks on the basis of local conditions, but this freedom is increasingly constrained by a dense framework of rules and guidance from the central authorities on how they must carry out their tasks. Central government also controls the local government through the design and size of grants and other financial provisions, through national action plans, and time limited projects. The three level administrative court system also plays an important role in implementing national legislation.

Box 5.2. Sweden's structure of governance

National. The national Parliament, the government and its national agencies. Parliament, through its laws, determines the allocation of responsibilities between levels of government within Sweden.

County. 20 elected county councils (two of which – Vastra Gotaland and Skane – are experimenting with new tasks) plus a County Administrative Board in each county. The county councils carry out mandatory tasks in areas such as health, medical care and dental care, and share responsibility with municipalities for regional and local public transport. The County Administrative Board is a government agency that represents Parliament and the central government in the county, responsible for ensuring that decisions taken by the government and Parliament have the best possible effects in that county. It is also a forum for appeal on some municipal decisions. The Board also issues permits for some environmentally harmful activities.

Local. 290 elected municipalities with some limited rule-making authority of their own but whose main rule-making authority derives from national laws and rules, and which play a major role in regulatory enforcement and in ensuring equality of service delivery to citizens. They are key implementers of national laws and regulations, under the supervision of the national government (ministries and agencies). The municipalities' mandatory tasks are social services, pre school, compulsory and upper secondary education, planning and building matters, environmental and public health protection, refuse collection and waste management, water and sewage, rescue services, civil defence, library services, and housing.

Supranational. European Union legislation, international rules and agreements (in fields such as health, environment, energy, and transportation), and regional regulatory arrangements with neighbouring Nordic states. EU regulations have direct application and directives must be implemented into Swedish law.

External and internal drivers for reform

External pressures for reform have come from the European Union, as well as the Council of Europe and the Congress of Local and Regional Authorities (a consultative body to the Council). Sweden takes EU legislation seriously and strives to implement it through open consultation processes with the EU and with businesses and NGOs in Sweden. Local governments are not directly involved in these processes, which is a matter of some concern.

Internal pressures for reform have also emerged. Two pilot regions have been set up as a result, and it is argued that these have led to stronger economic growth and development programmes, from health care to transport. Legally the two regions are county councils with additional tasks. Related debates are taking place about how to strengthen the competitiveness of key metropolitan cities/regions such as Stockholm. Pressure for reform is also growing out of concerns from municipalities and county councils about the extent to which they are regulated and the limits this puts on their freedom of action. This “regulation inside government” stems primarily from co-ordination problems among the ministries and national agencies over the implementation and supervision of national laws at local level.

In January 2003, the Swedish Government appointed a parliamentary Committee on Public Sector Responsibilities with the task of reviewing the structure and division of responsibilities in the system of public administration. An early focus of its work was on “Development Capacity for Sustainable Welfare”. In June 2004, the committee was given a second stage remit to analyse and assess whether the structure and division of responsibilities within the state and between the state, the county councils, and the municipalities needed to be changed. The purpose was in part to improve the ability to deal with future welfare commitments and help attain growth within the framework of sustainable development, and in part to improve people’s opportunities to exert influence, gain insight and demand accountability by creating more distinct public administration.

The regulatory policy framework for multi-level governance

Is there a framework?

To the question whether there exists a clear regulatory policy framework for multi-level governance in Sweden, the answer is both yes and No. As in many other countries, it is a central part of regulatory governance, but it is not explicit or even identified as such. There is no mention of it in official documents on Sweden’s legislative framework. General principles of regulatory quality are set out in ordinances and documents, aimed at the bodies involved in the drafting of new laws and rules – ministries, agencies and Committees of Inquiry.

The agencies have delegated responsibility from ministries for much secondary rule-making to implement national laws, and must carry out their tasks according to certain principles laid down by government in a framework ordinance (see Chapter 2). These principles are intended to make them reflect on whether the regulation they propose to issue is appropriate and does not impose unnecessary costs. The local levels should have the opportunity to voice their opinion on matters of special importance to them. The agency head must monitor the consequences of its rule making. Other important aspects of regulatory governance include the establishment of a Better Regulation Unit with a special responsibility for SMEs, and the Regulatory Impact Analysis (RIA) process. This has indirect impacts on local government but does not directly focus on regulatory issues and burdens at the local level.

Regulatory competence sharing between levels of government

Only Parliament and the government (based on the Instrument of Government) have competence to issue legal norms. However this competence may be delegated to other national authorities and local governments. To have legal force, a provision adopted by a

public authority or local government must have support in a higher statute and in the last resort, in one of the basic laws. This means that municipalities have, in some areas, the right to issue regulations. Examples include public cleaning and refuse collection; street cleaning; health protection; environmentally harmful activity; traffic and temporary prohibition against car traffic; rescue service.

Funding of regulatory bodies at the different levels of government flows from national and local taxation, and sometimes from fees levied on regulated entities. Local governments have the right to levy taxes to carry out their tasks, although the national Parliament decides what they can tax. They can also charge fees for some of the services they provide such as childcare, elderly care and health care. A single new state grant was introduced for municipalities in 1993 which is not earmarked for any particular activity, and also used for equalisation purposes. In 1996 this grant was replaced by a new general grant for local governments, which is distributed among municipalities as a uniform sum per inhabitant. Also, a horizontal equalisation system between local governments was introduced. In 2005, the general grant and the equalisation system were merged. According to the local government financing principle, if the state decides on action that is directly targeted at local government activities, the financial effects of this decision must be neutralised by adjusting the level of state grants.

Regulatory co-ordination mechanisms

The state monitors local government activities with reference to the national objective of ensuring that all citizens in all parts of the country have access to equally good services. At the same time, local self-government implies that local governments may tailor their tasks to local conditions. This gives rise to a difficult balancing act.

The County Administrative Board in each of the 21 counties is a government agency that represents Parliament and the central government in the county. It is responsible for ensuring that decisions taken by the centre have the best possible effects in that county. It also helps to ensure that national goals are met at county level, by co-ordinating interests in the community and supervising the correct implementation of laws and guidance. It monitors the services provided by local governments, for example by inspecting elderly care and youth homes.

Two other organisations, Verva (Swedish Administrative Development Agency) and Salar (Swedish Association of Local Authorities and Federation of Swedish County Councils), facilitate co-ordination between the national and local levels of government. Verva has the task of promoting public administration development. Salar represents governmental, professional and employer related interests of the municipalities and counties, and often participates as an expert in Committees of Inquiry. In addition, since January 1, 2006, the Council for Local Government Analysis is responsible for a database presenting data on costs, volumes and quality of municipalities' and county councils services. The Council is an association between the central government on the one hand and SALAR on the other. It has also been assigned the task of supporting the assessment of target fulfilment and use of resources in municipalities and county councils, stimulate comparisons, develop new indicators, and in co-operation with government agencies develop nationally available statistics.

The Committees of Inquiry appointed by government to examine new legislative proposals, the subsequent consultation phase for the proposal, and the national RIA process are also potential sources of multi-level regulatory exchange. There are some

concerns, however, that the committee and consultation processes are not always used effectively to draw in local views, and that fast track processes can sideline the local level. The impact of new rules on local governments should be considered in the RIA process, which applies to national rule-making authorities. But the RIA requirements do not specify the need to consider multi-level issues directly.

There are no formal joint institutions, mechanisms or fora for co-operation and discussion of emerging issues between the national and local level, regarding regulation making and co-ordination although these do exist in some other Nordic countries.

The supranational dimension

This is of growing importance for multi-level governance. Of particular importance for Sweden is the EU, with an increasing proportion of legislation originating from the EU. Some is applied directly without reference to Parliament (notably EU Regulations), the rest needs implementing Swedish legislation to give it effect (notably EU Directives). Agencies generally play a key role in implementing EU laws through more detailed rules. Some agencies are heavily involved in the implementation of EU policies aimed at the regional and local level. For example the Swedish Board of Agriculture co-ordinates issues relating to the EU's Common Agricultural Policy. Although many local tasks such as education and health are not directly covered by EU law making, the latter can still have a marked indirect impact, for example via EU rules on public procurement. Local government plays an important role in the implementation of EU law covering the environment and food policy.

National mechanisms and tools to ensure regulatory quality at the local level

National tools such as RIA are not usually explicitly focused on local level impacts of rule making though this may still be picked up. It should be noted that Committees of Inquiry do have instructions to analyse the consequences and costs of their proposals for the local level (see the Committees Ordinance).

There are concerns at the local level about the extent and quality of regulation cascading down to them from above. Local governments increasingly feel that they are the “regulated” as well as the implementers of national laws. Two issues can be identified:

- The need for less “command and control” regulation, and for more flexible performance-based regulation, and more managerial autonomy.
- Inadequate co-ordination among ministries and agencies at the national level which can give rise to policy conflicts.

Equality of service provision at the local level: this principle is a statutory provision but refers only to equality “within” a municipality. It warrants consideration as a more general value regarding overall multi-level regulation among citizens in all municipalities. There is very little information about comparative performance, some health care and education services excepted. Statistics Sweden has a project on the development of qualitative data, and a local government database offers some data. But overall, it is hard for Swedes to check if they are getting reasonable equality of service delivery. Such data or “league tables” information is available about some health care and education services which accounts for 53% of local services of a spending nature but not for most services and regulations or for regulatory compliance and enforcement.

Regional and local regulatory institutions and tools

Multi-level institutional challenges

A number of challenges are emerging, with potentially damaging economic and social consequences. Regulatory inertia is a major culprit because of a failure to aim for better co-ordinated regulation among and between levels of government. The areas of concern are:

- Rent control and housing. Rent control rules combined with elaborate planning law mean that over time investors are reluctant to build new homes, and the housing stock becomes inadequate for changing needs. This is a common problem not just in Swedish cities but elsewhere. For example, tenants could contest rents in new builds and this put off investors, an issue on which Parliament has now taken action.
- Planning and environmental laws. A similar investment issue affects business, which has to deal with a permitting system that in some cases can be slow whether for new build or refurbishment, and for the establishment of retail outlets.
- Local government business in competition with local entrepreneurs. Examples include hotels and exercise centres owned by municipalities.
- Appeal procedures to County Administrative Boards. The County Administrative Boards tend to be slow, even if they tend to be quicker than the general courts (And even if some Boards are quite efficient). A Committee of Inquiry has been looking at the appeal procedures (SOU 2005:77). These boards also raise a broader issue of a potential conflict of interest as they are acting both as a court and as representatives of central government at the same time. It has been argued that all appeals should be to the courts. A mitigating factor is that different divisions of the Board cover the two roles.
- Stovepipe regulatory government. As noted above, local governments feel that they are the “regulated” and face excessive regulation from agencies, each of which is a separate “stovepipe”. The problem thus has its roots in inadequate co-ordination at the national level, but is often replicated at the local level. Some local governments are trying ways of breaking down the stovepipe syndrome at their level, through joint inspectorates for example, but this is the exception.

Municipalities’ management of their regulatory powers

Municipalities may lay down regulations in some areas, to take forward the tasks given to them through central statutes. Local government committees do this work and the municipal assembly takes the final decision. For certain regulations the municipality must first consult relevant agencies, and it must consult the County Administrative Board on regulations related to environmentally harmful activities.

The use of regulatory quality tools by local government

As local governments have limited rule-making powers of their own, the use of regulatory tools is also limited and more informally-based compared with central government. Transparency and predictability in enforcement and compliance are the key issues for the local level.

Transparency in rule making is good as might be expected given Sweden’s strong general traditions for this. Formal consultation mechanisms are limited but citizens and businesses have considerable informal opportunities to interact with the work of municipal councils and committees. Communication of decisions on rules may be via

Box 5.3. Illustrative examples of multi-level institutional frameworks: animal welfare, health and social services, and consumer regulation

Animal welfare

Supervisory responsibilities for animal welfare are divided between a number of institutions from the centre to the local level. The Animal Welfare Act enacted by Parliament sets the framework, which is given more detailed effect in a government Ordinance. The Swedish Animal Welfare Agency writes regulations based on the Act and Ordinance. A regulation is often detailed. For example it can establish minimum dimensions for the boarding of animals. The Agency can also issue general non binding advice and guidance. The County Administrative Boards help co-ordinate the municipalities' animal welfare inspectors, make decisions on animal care and may carry out their own field inspections. The animal welfare inspectors in the municipalities are mainly responsible for inspections in the field and have a watchdog role for the Act. The framework for their activity is set by the local politicians.

Health and social services

Most local government tasks for health and social services are regulated in special legislation. The most important laws in the area are the Health and Medical Services Act and the Social Services Act. The National Board of Health and Welfare is the Swedish national expert and supervisory authority for the social services, public health and the health services. It influences local government through standard setting, supervision and knowledge dissemination. It writes regulations giving effect to the Act. It evaluates municipal activities and developments, and is responsible for official statistics in social and health care services. Non binding national action plans are also deployed to influence local developments and provide information. Finally, there are time limited binding agreements, often including state grants, between the state and the local level.

Consumer regulation

The Swedish consumer regulatory regime is based on nine laws and three agencies carry the legislation forward (Swedish Consumer Agency, National Board of Consumer Complaints, Swedish Consumer Electricity Advice Bureau). The head of the Consumer Agency is also the Consumer Ombudsman who represents consumer interests to the business world and pursues legal action on behalf of these interests. At the local level, consumer counsellors provide advice to individual consumers, with practical support from the Consumer Agency. The consumer regulatory regime also has a growing international dimension given the EU and the expansion of global trade. Relevant institutions include not just the EU but the European Consumer Centre, Committees of the Nordic Council of Ministers, and Consumers International.

municipal notice boards, and there is increasing use of e-government. Municipalities' own regulations should be added to the county statute book as soon as they are made, but in any event they are usually announced in the local press and printed copies are made available. Plain language drafting is not a formal requirement but it is clear that local governments aim for this. No central registries of laws, regulations and processes have been set up at local or regional level.

Transparency and predictability on matters of compliance, control and enforcement present a more mixed picture. Compliance and enforcement is a major local government activity, covering a vast range of policy fields each with its own specificities. This means that there are no explicit enforcement policies that apply generally. Some local rules

include penalties/fines. Individual residents may appeal against decisions of the municipal assembly in the administrative court system. Appeals under planning law can be made to the County Administrative Boards which as noted above raises a few issues.

Assessment and evaluation of rules and their effect is also not subject to the same formal framework that exists at the national level. There is no systematic requirement for *ex ante* RIA as regards local governments' own rules. Nor is there any explicit *ex post* evaluation process, or benchmarking. The government and Salar have initiated a project for voluntary local government benchmarking, and some local governments have started some benchmarking. Local governments are audited and these can reveal performance issues.

Administrative simplification

There are no systematic procedures for updating local government regulation. However the issue of administrative burdens has become increasingly important at this level of government, as evidenced in numerous initiatives taken both by the central government and its agencies, and by the local authorities themselves.

Local burden reduction can be included in national programmes, such as “The regional growth programme” co-ordinated by NUTEK. The government has also taken an initiative to improve permit processing, with targets to agencies which now need to be picked up at local level. A pilot study on alcohol permitting has been launched by NUTEK. The government's Action Plan for Administrative Simplification includes elements that will improve multi-level government such as greater co-operation between agencies. Work is also underway to measure and identify the source of administrative burdens, as a basis for further efforts to reduce them. ICT is an important part of efforts to reduce burdens, and many of the programmes involve use of the Internet and computer-based platforms etc. The objective set by government is that all public authority services that can be delivered electronically with the same or reduced cost efficiency must be delivered this way. As far as possible a single contact with a public authority should be sufficient to present an issue.

Important initiatives have also been taken at local level. A survey by NUTEK in 2003 revealed that 71% of local municipalities had adopted programmes for administrative simplification, including one-stop shops for businesses. The County Administrative Boards are developing a programme to provide web-based systems for permits (LITA), part of the “24/7 agencies” project. Within the regional growth programme of Vastra Gotaland a pre study on the conditions for entrepreneurship in relation to public administration has been carried out. This includes a review of best practices around the world and in other areas of Sweden, and proposes possible models to be tested. E-government is not neglected. Salar runs an e-government project that aims to integrate e-government issues into the regular business development, processes and governing models of its members.

The food sector and multi-level regulatory governance

The food sector is considered here, because it is illustrative of many of the issues raised in this chapter.

The food system flow and its challenges

The food flow “from farm gate to plate” is complex. Food is grown, harvested and treated, must then be transported, sold at wholesale and retail levels, and is then eaten in homes, restaurants and school canteens. Added complexity comes from the great diversity

of food products, and the fact that their journey can include locations outside Sweden. Food safety has become a major issue with the global terrorist threat. Swedish legislation essentially complements EU law and focuses on enforcement. The EU-national interaction is perceived to work quite well. Municipalities have the main responsibility for enforcement. Risk management is an important part of the Swedish approach, for example risk-based system inspections. A national agency (the NFA – National Food Administration) has the main overall responsibility for food regulation in Sweden.

The system has its critics. The Swedish food industry complains of regulatory problems and congestion at the local level, and has even argued for a more centralised national regulatory system centred on a strengthened NFA. It notes control and system inconsistencies across areas (for example widely varying fees), a lack of resources, and uneven qualifications of local inspectors. In the absence of a benchmarking system it is hard to prove these problems formally but the anecdotal evidence appears strong. Local front line staff echo some of these complaints, especially the lack of adequate resources which is a growing issue in line with the growing demands of legislation, and the importance of adequate training. Inspectors need both specific expertise and a broader systemic knowledge base, a difficult trade off to achieve in the field. The local perspective is also an illustration of the stovepipe government problem, with a large number of rules from above that are increasingly difficult to manage.

Enforcement and compliance mechanisms for co-operation

At the national level the NFA plays a central and leading supervisory and co-ordinating role, and recent legislation has strengthened this. It must give guidance to local authorities, with the aim of achieving greater uniformity across Sweden, and with a view to promoting safe food and fair competition for businesses. An NFA unit is specialised in this support, which includes training courses for local inspectors. If a local authority does not fulfil its obligations, the NFA can issue an administrative sanction, and if there is grave misconduct, it can take direct control of a food business after application to the government. It can issue rules about how local food control should be conducted, and can demand information of the municipalities, which are required to report annually to the NFA the results of their official controls (which are then transmitted by the NFA to the EU Commission). These reports are not, however, routinely made public, nor are they used to provide comparative information across municipalities.

At the regional level, co-ordination groups meet regularly under the chair of the county veterinarian to exchange information. Some interesting initiatives have been taken, such as a successful campaign in Stockholm for the joint supervision of restaurants involving co-operation between food control, financial/taxation control and the police authorities.

Recent legislation to enhance enforcement encourages the municipalities to co-operate, for example using an inspector from one municipality to carry out inspections elsewhere, which helps them to become more specialised.

Conclusions

Multi-level regulatory governance is of growing importance for effective regulatory management, and raises important issues of co-ordination between regulatory levels and among regulatory bodies.

Box 5.4. The regulatory and institutional structure for the food chain

European Union and other international agreements

- EU regulations. These set out the principles of what food is, how it should be handled, and under what conditions it should be let out into the market. They help to clarify the roles and responsibilities of different stakeholders.
- Membership of International Codex Alimentarius and its science-based standards. The NFA and the Ministry of Agriculture, Food and Consumer Affairs participate actively in Codex work.
- Co-operation under the auspices of the Nordic Council of Ministers on matters such as food control, toxicology, risk assessment, diet and nutrition.

National authorities and legislation

- Swedish Food Law and related government ordinance. This has provisions regarding control authorities, administrative measures, penalties, fees and delegations of standard-making competence. Swedish regulation essentially complements the EU food law, focusing on surveillance and inspection, controls and penalties, across the whole food chain. The government ordinance sets out the criteria for deciding which institution should be in charge of inspection.
- General environmental and planning legislation also applies to the food sector.
- National Food Administration (NFA). This national agency reports to the Ministry of Agriculture, Food and Consumer Affairs. It controls 52 000 food establishments, including waterworks. Its mandate is to protect the interests of consumers in relation to three goals: safe foods of high quality; fair practices in the food trade; good and healthy eating habits. The NFA works in close co-operation with the municipalities, who are responsible for most of the supervisory work, and with county veterinarians. Supervision is based on companies' internal control programmes which are themselves based on relevant regulations and approved by the supervisory authority, which checks that it is being followed as well as providing advice. The NFA supervises directly about 500 of the larger establishments including all the slaughterhouses.
- 12 other agencies with relevant expertise co-operate with and provide advice to the NFA.
- Competition authority and Consumer Agency. The food sector has been the subject of cases before the competition authority, because of concerns about concentration of market power in the retail segment of the food chain. Local food co-operatives also have considerable market power locally. The Consumer Agency gets involved too, arguing for an open food market that is effectively regulated.

Municipalities and County Administrative Boards

- Municipalities carry out most of the supervision. The 51 000 businesses they supervise (generally via their environmental and health protection committees) include small scale food industries, shops, catering establishments, street kitchens, and municipal waterworks. Municipal food control is financed partly by local taxes, partly by fees. The municipalities have a set of administrative measures at their disposal flowing from the relevant EC regulation, to correct situations of non compliance. Criminal acts are handled in the courts, and violations are punishable by fines.
- County Administrative Boards are responsible for co-ordinating food control in their county area but are usually not involved in direct inspections.

How well does multi-level governance function in Sweden, and how effectively does it contribute to the achievement of Sweden's economic and social goals? The picture is mixed. National-EU level co-ordination is a strong point. At the same time, the national-local level presents challenges. First, the local level municipalities and counties increasingly feel that they are the receiving end of excessive and inappropriate regulation from the centre. The government and its national agencies need to "set goals and steer" rather than engage in detailed "command and control" regulation. Second, problems arise in the first place from inadequate co-ordination among central regulatory bodies – ministries and agencies – rather than from inadequate co-ordination between levels of government. Third, a central principle of Swedish governance is equality of treatment and services for citizens wherever they live, but there is only limited information about how far this is met.

Is there a clear regulatory policy framework for multi-level governance? As in many other countries, it is informally embedded in different parts of the general regulatory policy framework, which sets parameters such as local government's main role as implementer of national policies and rules. There is, however, no explicit policy. General principles of regulatory quality are more clearly present, at least for the government, agencies and Committees of Inquiry, via tools such as RIA.

How well is multi-level governance understood by the public and could a consensus for reforms be generated? Sweden has strong traditions of democratic consensus which will serve it well if reforms are publicly debated and developed. Swedish citizens appear also to have a reasonable basic understanding of their governance system, though as in other countries they may be unclear as to which level of government or which institution is responsible for specific regulatory tasks.

Policy options

1. Strengthen co-ordination at the central level to take better account of sub-national impacts.

There is a need for the national government to develop an explicit mechanism that would better enable national ministries and agencies to co-ordinate overlapping regulatory and compliance issues in ways that explicitly take into account impacts at the local level and among different municipalities and counties. This would allow for multi-level regulatory governance issues to be more explicitly included in framework policies. It would support a more concerted approach to multi-level regulatory governance and would ensure that reforms receive broader public support. This would be consistent with the Swedish tradition for democratic transparency and consultation in regulatory and compliance processes.

2. Integrate multi-level issues into the national regulatory policy framework, including RIA.

The Swedish Government should review its overall regulatory policy framework so that multi-level regulatory governance is unambiguously part of that framework. Multi-level regulatory governance issues and processes need to be highlighted and integrated into future regulatory policy frameworks and statements in explicit ways. This should cover the inclusion of multi-level regulation as a separate and more explicit analytical feature of RIA processes at the national level and at local and county levels. This would also help bring a clearer and earlier awareness of issues relevant to the links between local planning and environment policy, housing and construction, and appeal processes.

3. Determine capacity-building needs at sub-national level to improve regulatory practice, and explore areas where flexibility and innovation can be encouraged.

The study noted that local decisions can affect progress towards integrated national regulatory goals and compliance. National regulatory decisions can also affect how local authorities respond to problems facing their community. National and international regulatory authorities in particular face choices in terms of how much they can or should supervise national, sub-national and local authorities. Multi-level regulatory governance is very much a two way street. Sweden needs to conduct more research and analysis on how regulatory policy objectives at the national and EU and international levels are affected by weaknesses at the local and county level in regulatory governance and practice. This could include research and analysis on staff needs and capacities at the local and county compliance levels; the possible encouragement of integrated regulatory teams at the local and county levels rather than “stove pipe” approaches; the identification of regulatory areas and activities where more local discretion can help or harm national policy; and areas where performance-based regulation at the local and county level may work better than detailed command and control styles of regulation.

4. Provide comparative data and information on regulatory performance at sub-national levels.

Sweden’s national and local governments need to develop and publish better comparative and information data on standards of regulatory performance among county and local governments in order to ensure that equality of public service and of regulatory provision occurs across all municipalities, and is seen to occur, in the eyes of Swedish citizens. This should also include efforts to collect and publish reliable data on compliance and enforcement activities at local and county levels and on issues such as time taken for regulatory and compliance decisions dealing with local planning processes including times for appeals. This could be an initial initiative to be undertaken through an annual national-local government summit process as suggested below.

5. Institute an annual multi-level regulatory forum.

Sweden should adopt – as have some neighboring Nordic states – a regular annual national institutional forum where the national government and representatives of local and county governments could discuss and act on key emerging regulatory governance issues. This forum could also take the lead to ensure that better comparative regulatory performance data is collected and published, particularly regarding service achievement. It could also provide a mechanism to ensure that municipalities and county councils have more systematic input consultation processes linked to the EU-national frameworks. This annual forum would also correspond well to the traditions of Swedish democratic practice.

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PART II
Chapter 6

Environment

Introduction and context

The nature of environmental policy and regulation

The starting point for environmental policy and regulation should be an analysis which seeks to identify where public intervention is necessary in order to achieve a specific environmental goal. It is driven by the need to address a market failure, that is to say, a failure of the market if it is left to its own devices to deliver a particular environmental goal. An unregulated market economy may, for example, lead to a level of pollution that is considered to be undesirable. The purpose of regulation (or its alternatives) in this context is to secure a means by which the environmental policy goal can be efficiently met, with minimal distortions in the market and minimal burdens on market participants.

Four complicating factors need to be taken into account. First, an important and distinguishing feature of environmental regulation is that it needs to be adjusted to different local conditions, since ecosystems and economic conditions vary greatly from one geographic area to another. This of course raises challenges and the likely need to identify trade-offs as regards equal treatment of firms, trade and factor mobility, and the mutual recognition of standards. Second, environmental goals must be balanced against other public policy goals, such as social or regional goals, which may require policy interventions with conflicting impacts. How these issues are resolved depends on the type of jurisdiction (federal or unitary), its legal system, and the underlying culture of decision making (conflictual or consensual).

A third factor is the need for regulators to appreciate the dynamics of environmental regulation. On the one hand, a degree of policy certainty, with respect to objectives to be met, and flexibility, with respect to the means by which they are met, is likely to encourage efficient innovation. On the other hand, there may be a need for regular adjustments in the policy framework in the face of new information. This trade-off needs to be addressed.

And finally, some regulatory tools are especially prone to gaming by agents, which can be deployed across different levels of the regulatory framework. Since many policies create and allocate rents and since there is often an asymmetry of information between the regulator and the regulated, there is considerable scope for strategic behaviour.

A shared agenda with the broad themes of regulatory governance

Environmental policy and regulation share nearly all of the issues that are central to any general discussion on regulatory governance, though often with an environmental “twist” (Box 6.1).

Environmental policy and regulation in Sweden

In Sweden, the management of environmental policy and regulation is affected by five important features of Swedish regulatory governance: decentralisation of power and local level responsibilities; delegated responsibility to agencies for policy implementation; growing role of the courts at the expense of civil servants; co-operative (rather than

**Box 6.1. General regulatory reform issues viewed
from the environmental perspective**

- *Market competition.* Many environmentally important activities such as waste management and water treatment display significant economies of scale and/or natural monopoly conditions. The application of environmental policies can also directly affect market competition, by creating new markets (tradable emission permits for example) or by affecting competition in an existing market.
- *Whole-of-government approach.* Environmental issues and their regulation touch on a wide range of other responsibilities in government (including transport, health, industry, finance and agriculture). The different levels of government are also involved.
- *Policy evaluation.* *Ex ante* regulatory impact analysis has probably been developed further for environmental regulation than elsewhere, largely spurred by the need to evaluate non market benefits of regulation. *Ex post* evaluation is also important to ensure that the regulatory framework reflects rapid technological and other developments.
- *Alternatives to direct regulation.* Environmental regulators are ahead in the development of market-based tools, such as tradable permits and taxes, which can be as effective as classic regulation, as well as more efficient.
- *Transparency, consultation and accountability in rule making.* A wide range of stakeholders are affected by environmental policy and regulation, so these aspects of regulatory governance are important for this sector.
- *Communication and information in policy implementation.* Efficient markets depend on full information, and environmental regulation makes considerable use of instruments such as eco labels.
- *Non-discriminatory policy frameworks.* The “polluter pays” principle is a key principle of environmental policy, but hard to apply in practice. Distributional and competitiveness concerns are often seen as barriers to its application. The case for preferential treatment such as tax exemptions needs careful examination, as it may disadvantage SMEs, foreigners and new market entrants.
- *Monitoring, compliance and enforcement.* Environmental agencies often have large budgets, but the regulatory framework which they cover is large and complex. Adequate resources are needed to secure effective enforcement, as well as ensuring an effective relationship between nationwide agencies and local offices.
- *Administrative burdens and policy choice.* Minimising burdens is a key regulatory principle. Environmental externalities are rarely targeted directly as the administrative costs of doing so can be overwhelming. Important trade-offs need to be made.

adversarial) relationships between regulators and those regulated; and importance of consultation and stakeholder participation. Sweden also has an industrial sector that is unusually skewed towards large international companies which has generated, over time, the development of strong bonds between governments and industry “insiders”, to the possible detriment of new firm growth. The strong culture of widespread consultation helps to mitigate this effect, although the EU is adding a further layer of complexity to consultation and decision-making processes.

Municipalities have considerable autonomy in Sweden, boosted by their power of taxation: of all public bodies, they collect the largest amount of tax revenue. This, however, sits alongside the ambitious national goal of equal treatment for all citizens, which means

that local politicians are faced with a tension between local self-determination and the need to implement national legislation aimed at securing equal treatment. Policy making, carried out by a small core of ministries, is strictly separated from policy implementation, which is delegated to a large number of agencies. This double decentralisation, thematically by agency as well as geographically to the local level, tends to complicate regulatory implementation as agencies' thematic division is not wholly replicated at the local level, despite efforts in some localities to address the issue, via one-stop shops for permitting for example. This issue is especially relevant for environmental regulation where local conditions may well affect the way in which policy and regulation need to be implemented.

Important recent developments

Swedish environmental policy is ambitious. It has a fairly long history and has evolved rapidly over recent years. A new Environmental Code was adopted recently, and there has been an increasing use of the courts, as well as a growing use of market-based instruments. The relative prominence of environmental issues has increased over time, and this is reflected in changed institutional structures, a new framework for environmental legislation, and new policy instruments.

Regulatory policy and institutions

Giving effect to the principle of the “whole-of-government” approach

A “whole-of-government” approach is a core principle for regulatory reform, fostering policy coherence and a sense of ownership and common purpose among the various actors in government and beyond. The development of EU policy-making has lent it even greater importance, and the Swedish tradition of strong local government adds to the importance of finding a way of “pulling together”. Through its Ministry for Sustainable Development and its framework Environmental Code and EQOs, Sweden has established successful mechanisms for encouraging broad participation in environmental policy and rule making, reinforcing accountability in the implementation phase.

Policy coherence for sustainable development

Under the former government, separate Ministries that were previously responsible for environmental, energy and building issues had been brought together under the Ministry of Sustainable Development, which co-ordinates government work to promote sustainable development. Cross-ministry co-operation had been reinforced with the establishment of the Co-ordination Unit for Sustainable Development within the Ministry. These arrangements are in keeping with the Swedish tradition of collective decision-making based on strenuous consensus-building and wide-ranging public consultation.

A new framework for environmental legislation

Sweden reformed the structure of its environmental legislation in 1999, with the adoption of the Environmental Code, a new framework law that spells out general principles relating to the environment, consolidates previous legislation, introduces ambient quality standards, and new institutions. The aim was to simplify and modernise the legal structure, and make it more transparent. Environmental courts as well as environmental sanctions were introduced, and the role of environmental impact assessment was clarified. The Code also transposes key EU legislation: the Water Framework Directive, and the Integrated Pollution Prevention and Control (IPPC) Directive.

Independent of the Code, Parliament has adopted sixteen Environmental Quality Objectives (EQOs) as from 2005. These are rooted in an ecosystem view of the relationship between man and nature, and set long term strategy. They cover a wide range of issues, from the major global and regional environmental threats such as climate change and acidification, to issues of local importance to Swedish citizens such as good water quality, the built environment, and noise pollution. Interim targets flesh them out and serve as medium term planning tools. Parliament has laid down 72 interim targets to be generally met by 2010, and which address the state of the environment in different areas. EQOs may be seen as the means by which Sweden has introduced EU Environmental Quality Standards (EQS). EQOs may raise conflicts with other societal goals. The lower levels of government generally sort this out, as no specific resolution process is laid down. EQOs are adopted by the Parliament but do not have a specific legal status, for example in the context of permitting.

Perhaps the most interesting aspect of EQOs is the process of drafting and review. This provides a forum for discussion of core issues such as trade-offs and the timing and implementation of specific goals, which rallies all the different levels of government as well as other actors. It generates a dialogue which may be especially important in Sweden for building consensus between disparate actors ranging from the national agencies to powerful local interests. EQOs change over time, as knowledge grows, with new technology, and as a result of the country-wide dialogue.

The *Agenda 21** process also provides a vehicle for consensus building, prioritisation and evaluation. Over 70% of municipalities have adopted Agenda 21 plans. Many have also made progress with local EQO implementation, adopting local EQOs derived from the national ones, usually covering issues such as waste management, chemicals, housing, transport and energy use. Resources for this work are an issue. Progress toward meeting the EQOs is evaluated annually by the Swedish Environmental Protection Agency (SEPA). The National Audit Office has reviewed the evaluation process, and specialised agencies such as the Chemicals Inspectorate (KEMI) have an important monitoring and enforcement role, alongside regional and local governments and agencies. The NAO has pointed to the need for progress on some issues such as better information to judge progress towards the goals, and improved data on the costs of different measures. The government is looking at this. More broadly, some are concerned that the new law is not transparent and quite complex, with SMEs needing to employ consultants to know the relevant rules. The Code's ambitious objectives may not have been fully met, some critics arguing that the law is not very new or unified. Rules for compensation, for example, differ, reflecting the old laws.

A growing role for the courts

Introduction of the Environmental Code has increased the role of the judiciary, which has expanded the rights of some parties, but at the occasional expense of uncertainty and delays. Other legal changes have followed, notably those arising out of accession in 2005 to the Aarhus Convention on improved rights of access to information and to justice. Some NGOs for example may now, under the Code, have a right of appeal (notably as regards

* *Agenda 21* is a comprehensive plan of action to be taken globally, nationally and locally by organisations of the United Nations System, Governments, and Major Groups in every area in which human activity impacts on the environment. It was adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 3 to 14 June 1992.

permits) to the courts. This has enabled them to put formal pressure on the government over important environmental issues such as sensitive rail and tunnel projects. It is worth noting that Sweden does not traditionally give individuals ready access to the courts to defend their rights, on the basis that the state takes care of citizens' rights through careful permitting and review procedures. Whilst this was generally true in the past, agencies no longer have the resources to "take care" of citizens' issues in this way.

The issue of local government and its many roles

Arising out of a strong belief in local self-determination, Sweden has an unusually strong local government. However, this can result in multiple and potentially conflicting roles, raising particular issues in the environmental context. These roles include responsibility for enforcement of national law (including the granting of permits) to promote uniformity of conditions; ownership of water/waste facilities; and, of course, their role as local politicians. Conflict can arise for example, between the pressure to generate local jobs and the need to sustain demanding national environmental standards. Ownership of environmental facilities also sits uneasily with the need to monitor and enforce regulations, when the same entity covers both.

The double role of the County Administrative Boards is another issue. These deal with appeals against their own supervisory or permitting decisions. Conscious of this potential the Swedish Government has sought to ensure that responsibilities for operations and supervision are not under one and the same Committee at the local level. However, the internal separation of roles is not sufficient to prevent disquiet.

The mixed benefits of EU membership

The EU adds another layer of complexity in decision making which can be difficult to handle effectively. In some cases EU engagement has been vital in taking forward a key environmental issue – the case of acid rain is a good example. At other times it has made the management of an issue more complex, as in the case of TCE. More broadly, EU engagement tends to reduce clarity as to who makes the decisions. It also shortens the time available for taking a position. Sweden's open approach to freedom of information for its citizens has also raised issues, as other EU countries can be less open, putting pressure on Sweden to do likewise as regards EU matters.

Regulatory instruments: overview

An often innovative and generally flexible approach

Sweden has a strong record in the deployment of flexible market-based environmental instruments and several of its approaches are discussed in later sections. Particularly striking is a fairly broad acceptance of (often high) taxes, considered by many experts to be the ideal instrument:

- It has recently initiated an ambitious tax shift, with higher environmental taxes offset by reductions in other taxes such as labour taxation. Several taxes including those on CO₂, energy, electricity, landfill and gravel, were increased while others were decreased, especially labour taxes and employers' social contributions.
- A number of other taxes and fees are important for the environment including the congestion tax in Stockholm city and parking fees.

- The refunded emission payment for nitrogen oxide emissions from large combustion units is an innovative new instrument. A tax was not politically acceptable in this case, and this led to the creation of an instrument that puts considerable environmental pressure on firms without ill effects on competition at home or abroad. It has, perhaps surprisingly, not yet been tested in other contexts.
- Labelling is another strong feature of the Swedish landscape for environmental regulation.
- Sweden belongs to the European Trading System for carbon dioxide use in heavy industry.
- Green certificates have also been deployed in the energy sector, encouraging the use of renewable energy in a flexible manner.

Subsidies are used sparingly, as Sweden generally subscribes to the “Polluter Pays Principle”, which implies for example that municipalities charge households the full cost of environmental services, such as waste and sewage treatment. Moreover, subsidies can be difficult to target efficiently, and have the potential to encourage rent-seeking. Where subsidies have been deployed (for example LIP and KLIMP) they have been designed to mitigate such problems.

Sweden appears to be moving away from perhaps over-ambitious and detailed regulation, partly under the influence of the EU in some areas such as chemicals. The emphasis is now less on prohibition and more on collaborative development of solutions with stakeholders.

Public procurement is potentially an important instrument for advancing environmental goals, and Sweden uses this tool extensively. However, there have been some concerns in the past with respect to both potential conflicts with procurement and competition law. Rules on public procurement, which are designed to ensure competition, and thus value for money, may not always be well observed, for example in the area of municipal waste management.

Environmental issues are often quite complex and multifaceted, involving several different types of market failure, for example the environmental externality coupled with asymmetric information. Political economy issues loom large, as well as concerns about the distribution of economic burdens. Combinations of policy instruments may often be the answer, and Sweden often uses this approach.

The choice of instrument links to issues of political economy. One advantage of many (not all) market-based instruments such as environmentally-related taxes and tradable permits and certificates is that once they have been introduced they reduce discretionary power downstream at the permitting and enforcement stages. Incentives for private rent seeking are reduced, and for public poaching are lost, because there is less scope for making decisions for individual cases.

Issues with licensing

Most licensing decisions are taken at the regional or local level, reflecting a belief that this is the best way to capture relevant knowledge. This can raise potential conflicts of interest for local authorities, who have an interest in generating employment and tax receipts by attracting new industry, as well as in avoiding local pollution. Another issue is potential conflicts of interest for municipalities that both monitor the regulations and run the installations, for example waste management and water supply. While safeguards existed in the Swedish Local Government Act (1991), a specific “conflict of interest” rule in the municipality law was introduced in 2003 to address this concern. Moreover, the

Environmental Code obliges the Government and the Government agencies to revoke supervisory responsibility from a municipality if it revises its Committee structure in a manner that conflicts with this rule.

Many smaller firms find the process of obtaining a permit very burdensome, needing to apply for different permits in separate procedures. There are concerns that the burdens are particularly onerous for SMEs, and run contrary to the quality regulation principle of non-discrimination, as larger firms have more resources to deal with the issues. One report notes that long permitting times hinder investment. Another report highlights that regulators put too much effort into dealing with administrative errors and not enough looking at issues of real environmental significance. There is no one-stop shop. For example permitting procedures for wind power are slow and complex. However, the Government has recently adopted a new provision in the Ordinance of Environmentally Hazardous Activities and Health Protection in which wind power stations below 25 MW no longer require permission from the County Administrative Board. A Government Committee has proposed new regulations in order to ensure better co-ordination between the Planning and Building Act and the Environmental Code. The proposals of the committee will be taken into consideration by the Government. Environmental sanction fees for not following procedures have also been criticised for their impact on SMEs who may not know what rules they need to apply.

Box 6.2. **Licensing and review of environmental hazardous activities**

- Sweden applies an integrated approach to licensing, case-by-case at the level of the individual facility. This approach has remained in place with the Environmental Code and the EU IPPC directive. It is based on best available technology for source emissions rather than on legally binding environmental quality standards.
- The main institutions involved are the local authorities, government agencies, and the five regional environmental courts. Most permitting decisions are taken at the regional level, and these can be appealed to the County Administrative Boards and then to the environmental courts. Judgments by the latter can be appealed to the Environmental Court of Appeal in Stockholm, and (important) cases may go to the Supreme Court.
- Facilities are classified into three categories. The most significant is the “A” list, which currently covers around 500 large point sources. These are required to obtain an integrated licence from an environmental court. The second tier (around 6 000 installations) are on the “B” list and must apply for integrated permits from the County Administrative Boards. The third category (“C” list) covers some 15 000 installations, which are simply required to notify their County Administrative Boards or municipalities. There are proposals to reclassify a large number of B installations to the C category. While this could reduce public scrutiny of important facilities, environmental significance of the facility is a key criteria in the reclassification.
- Monitoring and enforcement of the regulations includes both self-monitoring and monitoring by the municipal authorities that grant the permit.

Evaluation

A key to regulatory efficiency is consistent evaluation of regulation. Sweden’s current approach to Regulatory Impact Analysis does not apply full cost benefit analyses, which can mean that the cost of regulation may not be fully taken into account, and benefits and

costs compared. There is a strong focus on assessing the impacts of new regulations for SMEs. NUTEK estimates that administrative costs for regulated parties of complying with all environmental laws, regulations and monitoring amounts to some 3.6 billion SEK (400 m euros), of which a quarter is accounted for by external assistance from consultants. Applications and notification procedures also loom large. This estimate is to serve as baseline for future measurements.

Sweden does not carry out *ex post* policy evaluation automatically. That said, considerable evaluation has taken place. The SEPA evaluates environmental management and a large number of studies are carried out annually. The LIP and KLIMP schemes, for example, have been evaluated. The renewal of legislation usually entails evaluation. Not least, the National Audit Office does important evaluation work, often of a strategic nature, on the government's environmental work. They have, for example, audited how the government controls SEPA and made recommendations to improve its capacity to inspect and monitor local authorities, drawing attention to the need for budgetary prioritisation in the face of reduced funding. They have also criticised the control of chemicals in Swedish companies.

Climate and energy policy instruments

Climate and energy policy are major areas of environmental policy-making in Sweden, and a variety of instruments are deployed, each with advantages and disadvantages. Sweden has been creative both in fine tuning existing instruments and developing new ones.

Taxes and emissions trading

Taxation as an instrument of environmental policy is potentially the most efficient instrument available. A tax on emissions, for example, is more effective than alternatives because it simultaneously provides incentives for consumers to conserve energy, for producers to employ technologies that generate more energy for every ton of pollution emitted, and for the expansion in the use of renewables, because they are untaxed.

However, taxes may be unpopular because they raise issues of industry competitiveness when other countries do not tax. In the case of carbon, the use of taxes as a national instrument to deal with a global externality can never be strictly efficient in the absence of international co-ordination. With Norway, Sweden has much higher carbon taxes than any other country in the world. This has had a remarkable effect in the heating and household sectors, where dependency on fossil fuel has been virtually eliminated, replaced by a large and efficient use of biomass.

A preoccupation, as in many other countries, is how to design environmental taxes to reflect environmental goals whilst taking account of the effects on companies subject to international competition. Prior to 1993 Sweden granted tax reductions to energy intensive industries. This approach was replaced by a tax with differentiated levels: higher levels for households and service sector companies and lower general levels for industry in combination with further tax reductions for energy intensive industries. Relative to the previous regime, this two-level system has led to significant environmental benefits due to reduced energy consumption.

The EU's Greenhouse Gas Emission Trading Scheme (ETS) has created new markets for carbon emission allowances. Allocation of allowances is largely based on historic use (grandfathering) and thus benefits incumbents. The introduction of the scheme has raised the issue of what to do about existing taxes for those facilities which come under the ETS. A proposal has been made to abolish carbon tax for such facilities.

Box 6.3. Emissions trading, taxes and subsidies: how do they interact and should they be used together?

Emissions trading and taxes do not combine in the same way as a tax and a subsidy. If a tax on carbon is combined with a subsidy on alternatives, these two policies are broadly speaking additive. If, however, there is a trading scheme for X tons and this is complemented with a tax, the result depends on which instrument is the binding constraint. If the tax is binding, the permit scheme is irrelevant (and the permit price zero). If the permit scheme is binding, emissions will still be X tons, whether or not a tax is imposed. No climate objective would be fulfilled above that already achieved through the permit scheme.

If Sweden is alone in having a carbon tax alongside the trading scheme, the effects are more complex. The Swedish government gets the tax revenue, and emissions in Sweden are reduced. But efficiency gains from the trading scheme are lost, as the marginal cost for reducing emissions is not equalised across industries within the ETS. Emissions reductions will be inefficiently distributed, and the total cost of achieving the EU emissions target will increase. The environmental benefit will also be zero, since the sum of emissions from the trading scheme in Europe will be constant, and thus it could be said that the emissions “move away” from Sweden toward a competing country.

The complexity grows if the non trading sector is taken into account. Larger permit allocations to the trading sector with a constant overall policy objective for emission reductions, implies higher reduction requirements for other sectors, with eventual effects on the level of taxation (and tax receipts) in these sectors. In theory, if all countries over-allocate and the ETS permit price is low, Sweden would have to impose a very high tax in the non trading sectors to reach its Kyoto target.

Subsidies-LIP and KLIMP

Local Investment Programmes (LIP) were introduced by the government to encourage sustainable actions by municipalities. The latter put together investment programmes based on an economic and environmental analysis of local environmental conditions and priorities. SEK 6.2 billion was allocated by the government in the period 1998-2003, and 211 investment programmes with a total value of over SEK 27 billion (3 billion euros) were launched. LIP was superseded by a similar programme aimed at climate investment (KLIMP), which has so far been allocated SEK 2 billion. Funding is generous by European standards. The programmes are considered state aid by the EU, but state aid may be legal if it is temporary and motivated by important goals such as the environment.

As noted above, subsidies are generally considered to be a very inferior alternative to taxes, less cost-efficient. However Sweden has succeeded in designing the LIP and KLIMP to mitigate potential problems (*e.g.* adverse selection, rent seeking) by introducing competition between municipalities, providing flexibility to change project design after the award of grants, instituting a formal review process, and by allocating part of the funds to clean up related to historic pollution (which taxes cannot address). An evaluation by the EPA has found that the projects have had a greater effect than anticipated, estimating that completed projects have reduced CO₂ emissions by 820 000 tonnes pa, with a shift to renewable energy sources, energy savings, and a reduction in the amount of waste sent to landfill. Another evaluation estimated that LIP has achieved a reduction of over 1% in total CO₂ emissions, at an estimated subsidy cost of 0.12 SEK/kg (\$15/ton).

Green certificates

Green (electricity) certificates are akin to tradable permits. The government sets a target – in Sweden’s case the target is to increase the production of renewable electricity by 17 TWh by 2016 compared to 2002. The target is transformed into a yearly quota obligation. This means that the electricity suppliers have to buy certificates as a proportion of electricity sold. If the suppliers do not fulfil their quota obligation, they must pay a sanction fee. At the same time producers of electricity from renewable energy sources receive certificates from the state – one certificate for each MWh of electricity produced. When selling certificates the producers of renewable electricity receive extra income. Unlike subsidies, green certificates are not considered state aid, and have been promoted by the EU Commission.

This instrument has both advantages and potential drawbacks, compared with others. It is an effective form of subsidy for renewables, but provides no incentive for other technologies or for energy conservation. This compares, for example, with tradable emission permits, under which the whole range of carbon efficient technologies can be used. By creating an implicit tax on non-renewable energy via the implicit subsidy to renewables, it encourages more renewable energy output but at greater welfare cost. But it is likely to encounter less political and industry resistance than carbon taxes, which raise concerns about competitiveness and negative distributional effects. It may also be a better instrument to encourage R&D and innovation, compared with taxes which raise the concern that the benefits of national R&D may spill over into other countries.

Ultimately, the performance of green certificates needs to be assessed against the goals set for them. In Sweden they have so far mainly benefited biomass investments, which might have been profitable anyway given higher electricity prices. The evidence is less clear as to whether they have promoted innovation.

Refunded emission payments in acid rain policy

Sweden has a bedrock that is unusually sensitive to acidity, and hence to acid rain. The effects of acid rain were seen in Scandinavia well ahead of the heart of Europe which generated most of the emissions. Considerable, and successful, diplomatic efforts were made by Sweden and Norway in order to promote action at the level of the EU. This was achieved by leveraging the work already carried out in other international fora, including the UNECE’s 1979 Convention on Long Range Transboundary Pollution, which has been given effect by a series of agreements including the 1999 Gothenburg Protocol. The acid rain problem was made more interesting for other countries by linking it with other air quality issues such as ground level ozone and cultural heritage/health issues. Sweden also set a good example by reducing its own sulphur emissions, although they play only a minor role in Swedish acidification. This was achieved partly through a reduction in fossil fuel use, but also because of the application of the highest sulphur tax in the world.

NO_x is the other major precursor of acid rain, but more difficult to address as it must be measured at the point of emission *i.e.*, whereas SO_x is generated directly from sulphur in the fuel and can thus be more reliably measured. Real time monitoring needs to be in place which is very expensive. Taxation was ruled out on grounds of competitiveness (companies could easily relocate to Denmark). A new instrument was therefore created – the Refunded Emission Payment (REP) scheme. Under the scheme, a high unit fee is imposed on emissions, and revenues to firms are refunded proportional to output. The incentives for abatement and

input substitution are similar to a tax. However, since 46% of firms have net returns instead of paying a fee, resistance is much weaker than for a tax as there is no clear mandate for the whole industry to resist it. The administrative costs of REP are low and competition effects neutral. Most companies appear to be fairly positive about it. The most important advantage of REP over other instruments is probably political economy: lobbying, arguably the main problem of all environmental policy-making, is practically eliminated.

Environmental labelling and public procurement

Information is key to efficient markets, and labelling provides information about a product attribute or production process for which consumers might wish to express preferences. Recent years have revealed a growing awareness of the asymmetry and incompleteness of information in the environmental sphere, and the burdens this imposes on consumers to handle the relevant information.

The provision of clear information can be a complement to regulation. The use of labelling has nonetheless given rise to debate on a number of points. To use a label, companies must abide by certain criteria related to the ingredients or production process, and pay a fee. Labelling proponents consider that companies have been forced to decrease or eliminate the use of various harmful ingredients, such as phosphates, although others claim that they would have done this anyway or replaced the ingredients with others equally hazardous. Another issue is whether the criteria are too static which slows technological progress, proponents claiming that criteria are continuously tightened. Labelling may be resisted by companies but they can also find it a useful way of promoting themselves domestically and in other markets, and may even become advocates with the aim of limiting competition. If this occurs at the national level it is akin to the issue of national standards in trade policy.

The number of product labelling schemes has increased rapidly over the last few decades. Among other schemes, the Nordic Council of Ministers started the “Nordic Swan” in 1989, and the Swedish Society for Nature Conservation (an NGO) runs the “Good Environmental Choice” independent labelling scheme. The latter covers a wide range of goods and services, from electricity to transport. One of their first successes was laundry detergents. These have three characteristics that make labelling particularly appropriate: the ecological and technical criteria are complex; the main hazards lie in the product, not the production process; and the product is bought mainly by households. The Swedish market shares of eco-labelled detergents and related products rose from 0% in 1990 to more than 90% in 1997.

Eco labelling has been more successful in the Nordic countries than elsewhere, which might be explained by higher environmental consciousness. An alternative explanation is perhaps more convincing: there are only three major retail chains, one of which is a consumer co-operative, and the environmental organisations appear to have “sold” their message well to consumers. Initial resistance to eco labelling of soap products by major manufacturers led to the rapid rise of small independent producers which persuaded the large firms to follow suit. The Environmental Choice label is the outcome of collaboration between the Swedish Nature Conservancy Council and the major retail chains.

Chemicals policy and regulation

Chlorinated hydrocarbons are important solvents in industrial applications, but they also present a major hazard to health. The effect of chlorofluorocarbons (CFCs) on the ozone layer is now well known, but ozone depleting substances such as these were initially introduced as substitutes for other types of chlorinated solvent such as trichloroethylene (TCE) because they were less hazardous to human health. When CFCs were phased out to protect the ozone layer, there was some reversion to TCE and related substances. Sweden decided in the early 1990s to prohibit the use of TCE. This stringent requirement backfired somewhat, generating strong opposition from some users, which was aggravated by a lack of prior consultation on the ban, the difficulties of substitution, uncertain evidence on its toxicity, and the related fact that it was not banned by other European countries. Some companies took the step, unusual in Sweden, of fighting the ban in court.

The government's immediate reaction was to grant waivers, along with an exemption fee. The waivers were needed to address the political problems raised by the ban, but undermined its environmental effectiveness, and were costly to implement. The ban did reduce TCE use substantially and encouraged the development of new processes. Other countries which took a different approach were as, or perhaps more, successful. Norway introduced a tax which drastically reduced TCE use without strife. Germany used stiff ambient regulations which also reduced TCE use and led to the development of new machines that have become a successful export. That said, Sweden was a pioneer in pointing to the health hazards of TCE some ten years ahead of most other countries. The EU REACH programme puts TCE in the class of "especially dangerous/phasing out substances".

Experience with the TCE ban led to a profound reorientation of Swedish policy making on harmful chemicals, and an acceptance that this is now essentially in the realm of the EU. Current work is centred on the EU's Registration, Evaluation and Authorisation of Chemicals (REACH) programme which is based on consultation and industry participation. More and earlier consultation appears to improve policy design as well as compliance, reducing enforcement and monitoring costs. Sweden has worked hard and effectively in the REACH context for flexible basic instruments such as registration and testing, seconding Swedish experts to the Commission.

EU law was an important element in the Swedish TCE story. Other countries criticised the ban, and as Sweden has no production of TCE, the ban was seen as a barrier to trade. The case was taken to the European Court of Justice. The Court ruled in 2000 that the ban did not infringe EU law on the free movement of goods, and in doing so highlighted some important principles. The ban was upheld because: it was motivated by a concern for health and the environment and EU member states have the right to stricter environmental legislation; the absence of any EU harmonisation for TCE; there was no reasonable basis for suspecting that the ban was motivated by an attempt to restrict trade; and, last but not least, it was possible to obtain waivers which meant that the ban could also be construed as a threat to encourage the development of alternative chemicals.

Conclusions

Swedish environmental policy is generally ambitious, especially in the areas of acidification, access to nature, and chemicals. It is marked by a long institutional history and culture, and the dominance of a small number of large export-oriented firms. Consensus and collaboration sit alongside a tendency toward bureaucracy. The focus has been on regulation

of emissions from point sources rather than ambient quality. Fundamental changes, have, however been taking place, with the increased prominence of environmental issues, government restructuring, and the introduction of the Environmental Code and EQOs. There is considerable interest in finding new and more effective ways of achieving environmental goals and Sweden is a leader in the development and application of market friendly instruments, not least the use of taxes. These are inspiring changes that demonstrate a serious political commitment to the environment.

The Code is an attempt to set a clear and overarching framework. It has not been an unmitigated success, but given the scale of the reform, some “teething” problems were inevitable. Supervisory systems are also in transition, linked to greater access to the courts. The EU is an increasingly influential player, which can complicate the management of environmental goals further, especially the process of consultation and consensus building. The management of these changes and the transition from the old systems to the new is inevitably a “work in progress”. For example Sweden needs to defend its long history of information transparency as environmental policy gets more complex and the EU adds another layer of institutional complexity.

Management of the local levels of government, which are strong in Sweden, is an especially difficult area, because of the need to accommodate local environmental conditions without losing sight of national goals. The EQO process is helping dialogue to better align local and national interests, supported by the Agenda 21 process. There is interest in resolving the issues.

Policy options

Options which Sweden is encouraged to consider in the environmental policy sphere stem directly from some of the more general principles which guide regulatory quality and performance such as:

- Evaluation and review of proposed and existing policies.
- Ensuring transparency and non-discrimination.
- Application of efficient and non-distorting instruments.
- Keeping administrative burdens to a minimum.

Interestingly, policy development and implementation in the environmental sphere has been particularly pro-active with respect to the application of some of these principles, and particularly the use of innovative policy instruments, widespread use of policy evaluation (if not cost-benefit analysis), and transparency and consultation. Nonetheless, as Sweden’s environmental regulatory framework continues to evolve, a number of issues stand out as warranting further consideration and analysis.

1. Strengthen co-ordination of policy making across different government levels.

Multi-level governance imposes a number of difficult choices on Swedish policy-making in the environmental sphere, essentially due to the variability associated with local conditions and the strong tradition of decentralised responsibility in Sweden. Effective co-ordination of effort among different levels of rule-making is therefore very important.

2. Ensure that transparency and consultation are safeguarded.

Sweden needs to defend its long history of information transparency when it comes to certain areas of environmental policy. However, as the institutional complexity of the development and implementation of environmental regulation increases (e.g. in the context of EU membership), the time available to ensure this transparency declines. Sweden may therefore need to revisit such procedures and mechanisms, in order to ensure opportunities for stakeholder consultation are safeguarded.

3. Remove unintended inconsistencies arising out of far-reaching policy reforms.

The formulation of Environmental Quality Objectives, the creation of a Ministry of Sustainable Development by the former Government with a broad mandate and the attempt to create a new unified framework law and the *Environmental Code* are all inspiring and interesting policies that show serious political commitment to the environment. As with any far-reaching reforms of this type, certain inconsistencies remain and will need to be addressed.

4. Institute a separation of responsibilities at the municipal government level.

In another (not uniquely environmental) dimension, the autonomy of the municipalities and county councils is also a policy choice that might be of interest to other nations. However, the separation of responsibilities at the local level needs to be further entrenched, particularly in areas in which the municipalities are themselves service providers (i.e. waste collection, water treatment).

5. Ensure consistency between ambient and emission standards.

The regulation of pollution sources and the regulation of ambient environmental standards both seek to improve environmental conditions. However, both types of regulation need to be consistent with each other in order to be environmentally effective. Sweden should look at all environmental regulations affecting its territory from this perspective.

6. If exemptions or waivers are granted ensure that the economic efficiency and environmental effectiveness of the measure is not undermined.

For some environmental policies, exemptions, waivers and refunds have been accorded – often for reasons of political economy, and often in an effort to seek a balance between environmental and other public policy objectives. However, careful consideration needs to be given to how this balance is struck, since different provisions can have very different consequences in terms of economic efficiency and environmental effectiveness.

7. Seek to reduce the administrative burdens associated with permitting, particularly for SMEs.

Sweden ought to speed up and streamline routine permitting where there are no major threats to the environment. Better processes for prioritisation are necessary, so that SEPA and other authorities know where to focus their resources, and in order that an appropriate balance can be struck between cutting red tape, on the one hand, and more effective environmental management, on the other. The administrative burdens faced by small and medium-sized enterprises have been the focus of much discussion in Sweden, and the special efforts the Government has been making to reduce these burdens should be intensified.

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OECD Reviews of Regulatory Reform SWEDEN

ACHIEVING RESULTS FOR SUSTAINED GROWTH

This review analyses the Swedish institutional framework for better regulation. In recent years Sweden has made a remarkable recovery, benefiting from deregulation efforts undertaken in the early to mid 1990s. Sweden places a strong emphasis on high standards of social welfare and a strong governance framework, which foster consensus. To preserve its ambitious social and environmental goals, Sweden needs to maintain its strong economic performance. A number of challenges should be addressed, such as the labour market, the performance of the public sector and the strengthening of competition. Entrepreneurship also should be stimulated, and further efforts have to be made to reduce administrative burdens. To create momentum for reform, Sweden needs to promote a strategic vision, improve the process for impact assessment, and strengthen co-ordination between national and local levels of government. The benefits of reform need to be more widely understood by all stakeholders and citizens. Regulatory reform will help Sweden take advantage of globalisation and technological innovation, and meet the demands of citizens for high-quality public services.

Sweden is one of many OECD countries to request a broad review by the OECD of its regulatory practices and reforms. This review presents an overall picture, set within a macroeconomic context, of regulatory achievements and challenges including regulatory quality, competition policy, and market openness. Its special focus is on regulatory governance across levels of government as well as environmental policy.

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