

Swedish gold-plating of EU directives and the impact on SMEs



In the south-eastern region of Skåne, 97 % of the enterprises, equivalent to about 6 700, are micro, small, and medium-sized enterprises (SMEs) with between 1-250 employees.¹ These enterprises play a key role in fostering growth, competitiveness, thus innovation. Although many enterprises in Sweden are primarily active within the Swedish market and comply with Swedish regulations, they are nevertheless affected by EU regulations and the decisions made at EU level. In the EU's internal market, SMEs play a central role, representing 99 % (approximately 23 million) of all enterprises in the EU.² The internal market within the EU is designed to facilitate cross-border trade and competition, as well as to establish a single market for the 447 million citizens of the Union.³ On several occasions, Sweden has interpreted the EU's directives in a manner that exceeds the minimum level, without taking advantage of any exceptions that may have been available. This is known as gold-plating. How does Swedish gold-plating of EU directives affect SME?

EU law vs national law

EU law is superior to national law, with approximately 37 % of Sweden's laws based on decisions made at EU level.⁴ When discussing the EU, it is essential to recognise that the Member States are sovereign. The EU is a cooperative body, comprising a diverse range of Member States, each with their own unique characteristics. With regard to the legal aspects of EU, it is important to distinguish between primary and secondary law. Primary law can be defined as the EU's fundamental laws, such as the Treaty of Lisbon. Secondary legislation covers all other EU legislation and must be interpreted in the context of primary law, which represents the joint

¹ SCB, *Antal företagsförekomster per kommun (2021)*, <https://www.scb.se/hitta-statistik/statistik-efter-amne/arbetsmarknad/sysselsattning-forvarvsarbete-och-arbetstider/registerbaserad-arbetsmarknadsstatistik-rams/pong/tabell-och-diagram/antal-foretagsforekomster-per-kommun/>.

² EUR-Lex, *Small and medium-sized enterprises*, <https://eur-lex.europa.eu/legal-content/SV/TXT/?uri=LEGISSUM:sme>.

³ Europeiska rådet, *EU single market*, <https://www.consilium.europa.eu/sv/policies/deeper-single-market/>.

⁴ Dagens Nyheter, *Hur stor makt har EU i Sverige*, www.dn.se/nyheter/sverige/fakta-i-fragan-hur-stor-makt-har-eu-i-sverige/.

work of Member States are (e.g. regulations, directives and decisions). Regulations are directly applicable in the Member States, while directives must be implemented nationally.⁵

Swedish implementation of directives

Directives set targets for Member States, which are open to interpretation regarding the means of achieving those targets. Directives set a minimum level to be transposed within a certain timeframe. On several occasions, Sweden has enacted legislation that exceeds the minimum level of implementation, a practice known as gold-plating. In contrast to the directives, Sweden implements more strictly than required and rarely makes use of exemptions or adaptation measures that are made possible by the directives.⁶ This results in gold-plating, as the Swedish EU Minister Jessika Roswall has state; "*Sweden has wanted to prove to be the best in the class*".⁷ Recently, the government has established a "implementation council" with the objective of announcing the minimum level of directives, advocating for Sweden's interests and highlight an enterprise perspective. This initiative aims to prevent gold-plating. In this way, the regulatory burden, administrative costs and other costs for enterprises will be reduced when implementing new/amended directives or new interpretations of directives.⁸

Examples of gold-plating

One example of gold-plating is directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. This directive allows simplified accounting rules for small enterprises.⁹ However, Sweden has chosen to retain several of the more complex accounting requirements in the Annual Accounts Act (årsredovisningslagen 1995:1554), which means that small enterprises must continue to prepare comprehensive annual reports and disclosures. Another example is the Waste Framework Directive (directive 2008/98/EC), which requires Member States to implement appropriate measures to promote the reuse and recycling of waste.¹⁰ Hence in Swedish law, this has been implemented in the Environmental Code (miljöbalken 1998:808) and the Waste

⁵ Article 288 of the Treaty on the Functioning of the European Union (TFEU).

⁶ Motion 2021/22:1359 by Sten Bergheden (M), *Stopp för överimplementering av EU-direktiv*, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/motion/stopp-for-overimplementering-av-eu-direktiv_h9021359/.

⁷ Tidningen Näringsliv, *Nytt råd ska stoppa överimplementering*, <https://www.tn.se/naringsliv/37394/nytt-rad-ska-stoppa-overimplementering/>.

⁸ Regeringskansliet, *Regeringens nya implementeringsråd ska stärka svensk konkurrenskraft*, <https://www.regeringen.se/pressmeddelanden/2024/05/regeringens-nya-implementeringsrad-ska-starka-svensk-konkurrenskraft/>.

⁹ Article 4–6 directive 2013/34/EU.

¹⁰ Article 11 directive 2008/98/EC.

Ordinance (Avfallsförordningen 2020:614), with extensive requirements for source separation beyond the directive's minimum level.

Consequences / Fallout

The implementation of directives in Sweden may result in higher costs for SMEs when adapting to the new legal requirements and establishing compliance with them, particularly for smaller enterprises with limited resources and financial space. The navigation of multiple regulations and requirements can be challenging and time-consuming for small business owners, which can impact their ability to focus on their core business, growth, and innovation. Smaller enterprises may encounter difficulties in competing on an equal footing with larger enterprises and in investing in development and expansion, as well as in benefiting from the 23 million other SMEs and 447 million consumers in the EU's internal market. It is resource-intensive and can result in economic difficulties, which may ultimately lead to a closure for the enterprise, that in turn could affect employment and the local economy negatively.

On the other hand, strict regulations may position Sweden in forefront of future regulatory developments. This gold-plating could result in the EU's goals being better aligned with Sweden's needs and priorities. Gold-plating can be regarded as a strategy to ensure that Sweden is at the forefront of regulatory developments. If Swedish SMEs would be able to adapt effectively to the rules and utilise them to their advantage, they may gain competitive advantages in the market, such as increased confidence. Such trust contributes to Sweden being perceived as a reliable and legally secure country for customers and investors alike, and that SMEs are responsible and contribute to increased sustainability.

It may appear that the EU is the entity responsible for these decisions, thus in fact it is often Sweden that does not utilise the exceptions and flexibility that the directives permit. It could be beneficial for Sweden to implement a more gradual regulatory framework in accordance with the directives' minimum level and exceptions. This would facilitate standardisation and ensure that all SMEs in the EU faces the same costs and administrative burden. By create equal opportunities for all SMEs to enter the internal market, including the 6,700 SMEs in the south-eastern region of Skåne. Furthermore, it can facilitate greater collaboration between SMEs in different Member States, which in turn can stimulate growth and innovation. To ensure effective competition within the EU's internal market, it's essential to establish common rules and a level playing field. For example, equal environmental requirements and accounting rules for the 23 million SMEs within the EU's internal market, regardless of the enterprise's geographical location.

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