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### Summary of the report

## Doing it right and on time

Is there a need for new methods of implementing EU law in Sweden?

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The implementation of EU law in Member States has been characterised as an issue of common interest for the European Union in Article 197 in the Treaty on the Functioning of the EU (TFEU). Increasingly the Commission also offers assistance to Member States in their work on implementation by providing manuals, guidelines etc. Moreover, the European Parliament has discussed the issue of how the EU in different ways should facilitate the implementation of EU law in the Member States. However, the question is whether this is only a positive thing. There is naturally a risk that Swedish interests are thus given rather less room for manoeuvre in the implementation process which is now to a greater extent based on common European guidelines. This is why we in this report argue that Sweden needs to ensure that its own organisation is efficient and fully able to implement EU directives correctly and within the deadline all whilst safeguarding Swedish interests and preconditions.

An important question in this context is how to maintain the level of quality in Swedish legislation and the precision of Swedish regulations. In our view, the Swedish legislator should not unreservedly pass on problems with regard to interpretation into national legislation when implementing EU directives or supplementing EU regulations. This creates problems for the application of Swedish law. At the same time it is important that when Member States draw up national implementing legislation they respect the EU legal concept and principles contained in the directives. It is important that these are not mixed up with concepts and terms that have a determined national significance, since the point of departure is that directives shall be interpreted and applied in the same way in all Member States. It is therefore important to balance interests, between safeguarding precision and the level of quality in Swedish legislation and ensuring that the Swedish part of Union Law does not lose its European foundation.

Moreover, it is unfortunate if the transposition process in Sweden becomes unnecessarily cumbersome because of delaying factors which it is fully possible to influence or even completely eliminate. It is worrying that Sweden, which previously held a good position, has now fallen behind in the statistics on the rate of transposition of directives. It might give the impression that Sweden no longer takes its membership and European cooperation as seriously as it used to.

In our view there is thus a need to adapt and change procedures in the Swedish legislative process. This is possible without sacrificing Swedish constitutional traditions, in other words it can be done by upholding the Swedish administrative model in an adapted version, ensuring that there is an efficient collective preparation process in the Government Offices and ensuring that the Riksdag has real political influence. In our report we highlight mainly four areas where changes need to be considered. The Riksdagen's role in EU work, the preparation of EU matters in the Government Offices, the procedure of referrals and work with checklists, impact assessments etc.

A general conclusion is that the efficient implementation of EU legislation requires a better coordination between the negotiation phase and the implementation phase. The second phase, the implementation phase, should be seen less as an independent legislative process than it has been previously since the political choices and decisions have already been determined within the framework of the first phase, the negotiation phase.

This leads us to the following conclusions:

*Firstly*, legislative proposals from the EU should be firmly established in the Riksdag at an early stage. One way is to broaden the subsidiarity review that is made of all proposals with regard

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to legislative acts to also include the proposals themselves. This also has the advantage of ensuring that the Riksdag is forced to clarify its position early on in order to avoid political hurdles at a later stage.

*Secondly*, the preparation process in the Government Offices needs to be made more efficient. In Sweden, the committee and inquiry systems are a vital part of the Swedish legislative process. The question is, however, whether they are as well adapted to the legislative process whose only role is to transpose EU legal acts, primarily directives, into Swedish law. Directives are often so detailed that it is questionable whether an inquiry would be of any use since they are only initiated after a directive has been adopted.

At that stage, during the implementation phase, there is often no room for any real legislative decisions. Thus, other forms of preparation might be considered where civil servants at the Government Offices are better able to follow the working process with directives. One way might be to appoint a working group which is operational both during the negotiation and implementation phases. It must be stressed, however, that there is no one-size-fits-all solution with regard to the implementation of directives. Extensive directives such as directives that give the Member States a great deal of room for manoeuvre with regard to implementation might lead to more in-depth inquiries at the national level.

*Thirdly*, it is important to make the most of all knowledge of Swedish circumstances during the negotiations. It is fairly common for stakeholders outside the Riksdag and Government through their European trade organisations or similar to follow the EU legislative process and they may be familiar with the impact proposals may have on their situation. It should lie in the interests of the country to collect these points of view before starting negotiations at the EU level.

*Fourthly*, Sweden's position during the negotiations should be more broadly established. It is important to ensure that smaller stakeholders without their own channel to the European legislative process are given the opportunity to put forward their views within the framework of the Swedish process. A well-functioning dialogue with interested parties may also help to facilitate the implementation of legislation. The procedure of referral is also very important in order to maintain a dialogue with government agencies, local authorities and private stakeholders, the aim being

to ensure that EU policy is firmly established at the national and regional levels. However, to make this possible there needs to be a preparation organisation in place which is flexible and can be set up at short notice. We therefore propose the creation of an organisation of stakeholders whose task it is to work with certain ministries (perhaps preparation groups for each Council constellation). The stakeholders may be bodies that participate actively themselves in the European legislative process, for example, government agencies, or organisations representing civil society that have a direct dialogue with the European Commission, but it may also be bodies that represent the national perspective.

*Fifthly*, it is important that constitutional, systematic and practical problems that arise with regard to the Swedish legal system are resolved when a directive is about to be implemented in Swedish law. One way to facilitate the identification of difficult areas at an early stage is to use parallel tables early on in the process. These can subsequently be used as a basis for memoranda on standpoints and negotiation strategies. These documents may play an important role throughout the process, from the negotiation stage to the implementation stage and later also the application stage. Another aid that can be used in the early stages is impact assessments. These must be conducted in conjunction with the regulatory work of government agencies as well as committee and inquiry work. A systematic description of the impact of EU legislation at an early stage will facilitate the identification of problems early on and ensure that knowledge gained from other inquiries are taken into consideration when legal acts are implemented in Swedish law.

Finally, it is important to point out that the increased complexity and speed of the legislative process, both at the European and Swedish levels, may also create problems and have a substantial impact on the application of the law. To put it in another way: the more legal problems that are left unresolved during the legislative process, the more problems will need to be resolved during the application of the law; primarily by legal advisors at the government agencies and judges in the courts, and not rarely as a reaction with demands from private individuals. In other words, private enforcement takes over when institutional enforcement does not work and at the end of the day this may undermine the democratic governance of Sweden. In this light it is important to ensure that central provisions in both EU directives and EU regulations work in practice as an operational part of Swedish rules and regulations.