

## Article 8: the legal quirk entangling some Swedish businesses

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December 5th 2015 is a date on which you're probably already firmly focused. Because, of course, that's the date by which businesses across Europe must comply with EU Energy Efficiency Directive 2012/27/EU Article 8, (or 'Article 8' for short).

So if you're a business with at least either 250 employees, or have annual revenues of €50 million and a €43 million balance sheet, the deadline is now less than two months away. And in every EU Member State where your business has operations, you must comply.

But comply with what, exactly? A simple enough question, you might think. Yet for businesses in Sweden, the question does not come with a simple answer.

That's because the definition of who needs to comply with this legislation is different in Sweden compared to the EU definition.

In Sweden, businesses need to meet two compliance elements: the size criteria (250 employees) and also the financial criteria (50 MEUR annual revenues or 43 MEUR balance sheet), and these obligations are enshrined in in Swedish national law.

This, to our certain knowledge, is a distinction that appears to have tripped-up a number of Swedish businesses. So let's look at why.

### Sweden's law is different

Fairly obviously, as with any European Directive, Article 8 only has legal force through the national laws that individual Member States enact in respect of it.

And it's fair to say that there are some significant differences in how different countries have chosen to interpret the Article 8 Directive. Indeed, some countries—Spain, Luxembourg and Poland, for instance—have yet to enact their laws, even so close to the deadline.

Sweden, however, has taken a different tack. The applicable law has duly been enacted, but with the December 5th deadline relating not to full compliance, but to the date by which companies must 'self-declare' that Article 8 affects them, and that they consequently need to comply.

Once that declaration has been made, Swedish law then gives companies until the first quarter in 2017 to effect full compliance.

However, that 2017 deadline has been misleading to several companies.


### Elsewhere, December 5th means compliance

That's because—critically—that 2017 deadline relates only to affected Swedish companies operating in Sweden.

It does not relate to Swedish companies with operations in other countries, where the December 5th deadline requires full compliance.

And some Swedish companies, it's fair to say, have mistakenly assumed that they had until 2017 to achieve full Europe-wide compliance.





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It's been a shock. And a potentially very expensive shock, should individual Member States choose to levy the appropriate penalties for non-compliance.

### **It's not too late**

So what to do, if—as a Swedish company—you find yourself in this situation?

Well, even though time is tight, much can be achieved between now and December 5th. And—to be frank—even if compliance occurs slightly after December 5th, that's better than not being compliant at all.

So we'd suggest speaking to us, to see how we can help. Simply pick up the phone, or e-mail us. We're only too happy to talk.

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