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Recent developments on climate law and litigation

Sweden

As for climate law and litigation, there is little to report from Sweden. No new cases have been initiated or decided since last spring, and, as regards legislation, the Parliamentary lacuna in these issues is almost total (see below). The initiatives taken have all concerned the facilitation for more "green" industry and the opening of "green" mines, often to the detriment of other interests (land rights of the Sami people, nature conservation, water quality, etc.). Under the field call "climate neutrality", the Government in March issued a concession for the Kallak (Gallok) mine in the northern part of the country. The iron ore in this area is of a very poor quality and will last for only 14 years, while strongly impacting the reindeer herding activities. The Sami village of Gallok is one of the last in Sweden with traditional herding and will now be forced to transport the animals with trucks instead. It is widely expected that the courts will quash the governmental decision – either in the judicial review proceedings in the Supreme Administrative Court or by the Land and Environmental Court in the subsequent permit proceedings under the Environmental Code – but that remains to be seen.

As for the Swedish position in the EU negotiations for "Fit for 55", we largely stands behind the Commission's proposal on stricter requirements in order to lower the emissions of greenhouse gases, both within and outside the EU ETS. Sweden is also presenting a proposal of its own, namely that each Member State within its own territory shall reach climate neutrality. Today, my country is probably the only Member State which reaches this goal, primarily due to a very high amount of "negative emissions" through the forest sink. Concerning emissions from cars, Sweden wants a stop for the sale of vehicles with combustion engines from 2030, which is 5 years earlier that the Commission's proposal.

On the other hand, as regards renewable fuels and the carbon sink in the landscape, Sweden proposes weaker demands compared with the Commission. We strongly oppose all requirements on sustainable forestry in the production of biofuels, arguing that that issue lies outside the competence of the EU to decide upon. Further, in contrast with 2021, Sweden today also opposes demands on increased levels of carbon storage in the forests (LULUCF).[1]

[1] For an interesting opinion on this subject from the Swedish Forestry Industry, see; https://www.forestindustries.se/our-views/current-issues/current-issues-within-forest-and-climate/LULUCF/

Recent developments of national and EU environmental law in general

Sweden

First of all, it should be noted that the previous Government – based on the cooperation between the Social democrats, the Green party and the "Center party" (a conservative party, mostly representing farmers) fell in August 2021. Instead, we have a minority government with Social democrats only. As the Swedish democratic system is designed, this leads to a situation where all legislative power rests on different majorities in the Parliament. Thus, a number of important proposals for reforms in the field of environment law – for example in order to facilitate wind farming – have not succeeded in passing the elected assembly. Along with a very contentious climate between the parties, it's fair to say that we have a lacuna in politics that will rest until the next elections in September (except for the NATO issue of course).

Due to a poor EIA, the application for a new permit to extract limestone on Gotland by the company *Cementa* was rejected by the Land and Environmental Court of Appeal in July 2021. This – amplified by disastrous media coverage – led to a public outcry and calls for the Government to intervene. Pointing to the risk for cement shortage for the construction business and thus the green transition (!), the Government and the Parliament swiftly implemented the derogation possibility in Article 2.4 of the EIA Directive (2011/92) into the Environmental Code. Directly thereafter, the Government issued a permit for *Cementa* to extract the amount of limestone already covered by the old permit which ran out of time during the fall. Thus, the old permit was extended in time for another year under the argument that this was an "exceptional case" and no alternatives were available. According to the procedure under Article 2.4, the Commission was alerted and the decision communicated among the Member States. To date, no reaction has been known to come from Brussels on this issue.

After a strong campaign by the forestry industry together with the Forest Agency, the Government decided to reform the legislation on species protection in Sweden (see C-473/19 and C-474/19 *Skydda skogen*). The argument was that the judgement meant that every single bird of even ordinary species – such as the *Chaffinch* –must be protected because of the Swedish implementation of EU's nature directives, which would entail excessive costs for the forestry. As of today, the Birds Directive and the Habitats Directive have been implemented into the Environmental Code with a single set of rules, jointly applicable on birds and listed species, taking account to their conservation status. The background to the controversy is that the Land and Environmental Courts in a surprisingly high degree have disallowed the investigations made by the Forest Agency concerning habitats for species of birds sensitive for forestry (Capercaillie, Siberian jay, Willow tit, etc.). In order to make things more clear, the Government has now stated that the two directives will be separated, thus removing anything protecting the birds' habitats that goes beyond the Birds Directive. Hopes now run high among the forest industry, wind farm operators, city developers and others that they now will be exempted from the protection of birds. While these aspirations seem futile in many of these situations, the reform poses a real threat to endangered species in the forest as they now may get stripped from the protection of their living areas. At the end of the day, however, this comes down to how the courts understand the prohibition against "deliberate disturbance" in relation to, for

example, the living areas of the Siberian jay or the breeding grounds of the capercaillie. So far, they have been quite strict on this interpretation.

Finally, it should be mentioned that as a result of both *Cementa* affair and the *Chaffinch debate*, the role of the courts have been questioned by representatives from farmers their parties. This is also true in the *wolf issue*, but now the criticism seems to be wider in the industrial circles and is followed with demands for interventions from "the politics", be that from the Government directly or the Parliament. I take it this patter is recognizable from other Member States.