Lessons to be learned from 25 years experience with the Swedish Environmental Code

#### **Presentation for Chinese delegation** of legislators on study visit to Europe

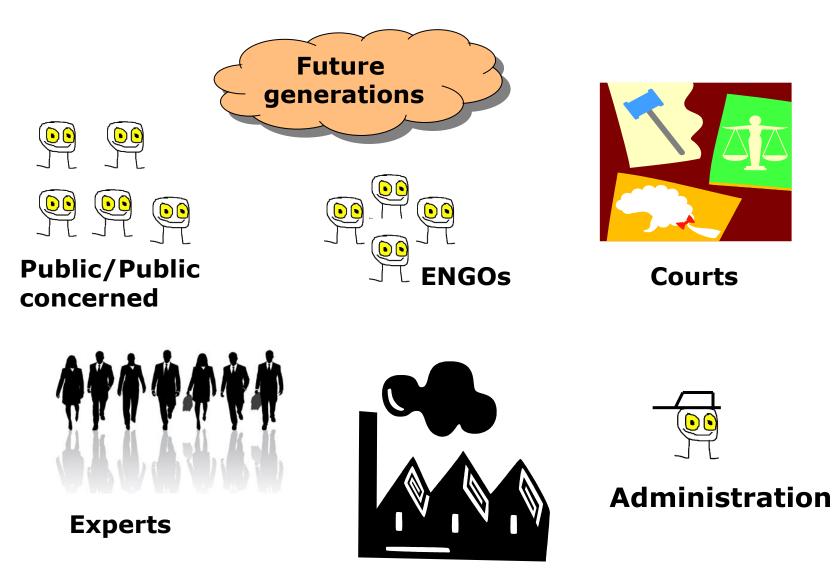
Organized by ClientEarth, Rule of Law Programmes, Beijing/China

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## Environmental "interests"





**Comparative Law** 

#### "Criminal law is part of public law. Civil law is divided into public law and private law"

McKenna-report 1996: Study of civil liability systems for remedying environmental damage, p. 4 (Denmark)



# *(EU) Principles of Environmental law*

- Precautionary Principle (burden of proof, EIA)...
- Best Available Techniques (BAT)...
- Pollution prevention at source...
- Substitution principle...
- Polluter Pays Principle (PPP)...



## Sources of EU Law

### PRIMARY

- Treaty of European Union (TEU): Aims and goals, the institutions, relations to the surrounding world
- Treaty of the Functioning of EU (TFEU): Overarching and general provisions about the EU tasks



## Sources of EU Law

#### SECONDARY

- Regulations apply directly in member states: REACH, waste transportation, species protection, international agreements on the environment...
- Directives "binding, as to the result to be achieved, upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods" (TFEU, art. 288): Dominating, all areas of environmental law...



## Sources of EU Law

#### SECONDARY, continued...

- Decisions directly to one addressee; rare in environmental situations
- Case-law from CJEU all areas of all: Very rich, expanding, activist; "judicial engineering"
- Soft guidelines; Commissions guidelines, recommendations, reports from different agents, etc...
  - LCIE on management of large carnivores...
  - CIS on Water Framework Directive and AQS...
  - Commission's Notice on A2J



## Direct Effect of EU Environmental Law

A forceful tool for the implementation of environmental obligations in EU law in the MS, with two main components, namely that provisions which are unconditional and precise;

- Overrules national law, "dis-apply" or "set aside", and
- Carries "rights" for ENGOs concrning administrative "obligations" ...



# Background to EC 1998

- 16 laws on the environment; EPA, ChemA, WaterA, NatureA, HealthA, WasteA, AgriA, DamagesA, CrimA, PlanA, GMOA
- The Administrative Decision-making and Appeals Procedure...
- Water Courts 1918 →
- Fragmentation; Areas of Law, Admini-stration, Jurisprudence...
- Traditions meeting modern environ-mental demands..!!

# 25 years - Pros...

- Broad definition of environmental law...
- All-embracing framework legislation with high ambitions...
- One line of decision-making and judicial review...
- Planning and Building Act / Environmental Code…
- Image: mage: ma
- Specialized Courts with technical judges...



# 25 years - Pros...

- Reformatory procedure...
- National authorities advocating different interests...
- Participation & Access to Justice for the Public Concerned in environmental decision-making...



# 25 years - Cons...

- The many instances (3-5)...
- The strength of the traditions (administration, permits)...
- Important legislation still outside the Environmental Code…
- Courts as permit bodies...
- Environmental Courts within General courts system...
- Criminal cases in all general courts (48)...

## Implementing Science in Environmental Decision-making...

- Experiences and specialized courts or benches...
- Technicians in court...
- Stichting Advisering Bestuursrechtspraak (StAB), cf separate authority for EIA...
- Ex officio principle...
- The role of the ENGOs...
- Cost rules...



## Success & Failure!!

- Pollution control...
- Nature conservation & Species protection...
- Public Participation and the Role of the courts...

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- Water law...
- Waste handling...
- CITES criminality...
- Weak (municipal) enforcement...



## Ideas (more or less) on the table

+ Regional Licensing Boards replacing LEC in first instance...

+ Criminal cases under the Environmental Code in the LEC only...

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- Trend towards fragmentation...
- "Green nationalism"...
- Weakening of Public Participation...





### IS CHANGE ALWAYS A GOOD IDEA..?





#### **THANK YOU FOR LISTENING..!**



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