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Recent Developments in the environmental area in Sweden

Introduction

In the fall elections of 2014, the old government was replaced by a coalition between the Social democrats and the Green party. Åsa Romson, one of the spokespersons for the Green party, was chosen as the Ministry of the Environment, the first in history. Of obvious reasons, expectations for a more ambitious environmental policy are high, although one can also expect strong resistance from the Social democrats under the leadership Stefan Löfven, a traditional industrialist.

The Government and EU

Sweden was found in breach of the updating requirement under the IPPC directive already in 2012 (C-607/10). The Commission followed up with an action for fines, which were granted in December 2014 (C-243/13). At the end of the proceedings, one installation did not meet the requirements (30 in the beginning), which cost Sweden a lump sum of 2M€, plus 4,000€ in daily fines from the day of the judgement and onwards.Sweden was also found in breach of the waste water directive in case C-438/07, but no action for fines has been initiated yet (although a LFN on the subject has been issued). Moreover, two ROs have been issued, one on the wolf issue (below) and one on delay in the implementation of the IED. As of today, there are five LFNs, most importantly one on ambient air (PM_{10}) and one on waste water from urban areas. All in all, the Ministry of the Environment has 40 ongoing communications with the Commission – from informal letters to EU Pilots and formal infringement cases – which is by far the largest number within the governmental offices.

The wolf issue is an ongoing affair between Sweden and the Commission. The species is listed on Annex IV in Sweden and the conservation status is highly questionable due to its poor genetic status (about 300 animals in an isolated population). License hunt was performed in 2009 and 2010, which triggered a LFN and a RO from the Commission in 2011. After that, the hunt was temporarily stopped. However, the Government – pressed by the farmers and hunters organisations – decided on a new license hunt to be undertaken in the beginning of 2013. By that time, the Slovakian Brown Bear had reached the Swedish administrative courts and the ENGOs were granted standing to challenge the decision by legal means. In consequence, the hunt was stopped that year, which was repeated in the beginning of 2014. The reaction from the wolf hating lobby was fierce, which lead the government to reform the procedure under the hunting legislation. From

2015, hunting decisions aretaken by the County Administrative Boards and can be appealed to SEPA, but no further. When this came to the Commission's knowledge, a new LFN was issued about the lack of access to justice in court. Despite this, license hunt was decided and performed in the beginning of the year. Irrespective of the ban on appeal, the ENGOs challenged the decision in the administrative court and leave to appeal was granted by the Supreme Administrative Court (SAC) in February. It is widely expected that that court will ask CJEU for a preliminary ruling on the issue. It is also expected, that the Commission will take further steps in the infringement caserather soon. In any event, I will publish an article on the matter in RECIEL in June…

In contrast to this and perhaps somewhat surprisingly, Sweden has sued the Commission to the General Court (T-521/14). Sweden argues that the Commission, by failing to adopt delegated acts to specify scientific criteria for the determination of endocrine-disrupting properties, has infringed Article 5(3) of the Regulation on biocidal products(528/2012). The Commission in its response in December 2014 denies the allegations, arguing that it has responded to the request for action, that the efforts to decide criteria has been problematic, that the date given in Article 5.3 is not an absolute time limit and thatthe criteria are basically unnecessary. Sweden has replied to this in February 2015. The Swedish communications are available after request from the Ministry of Foreign Affairs, however not the communication from the Commission…

Legislation

Very little of interest has happen concerning legislation on the environmental area during the last year. The implementation of the Inspire directive (2007/2) has come far and seems very promising. More than 20 authorities cooperate to create an electronic platform in order to facilitate access to official geodatavia Internet-based services to the public. For further information in English, seehttps://www.geodata.se/en/What/INSPIRE/

The governmental commission on water operations (M2012:01) published its final report in June 2014.Water law is heavily influenced by property rights traditions in Sweden and the commission proposed different means to address modern environmental law requirements on activities operating under old or even ancient water permits. Despite the urgent need for this kind of reform, the government seems reluctant to follow up with legislation as the opposition from industry is strong.

Case law

In September last year, Sweden was found in breach with Article 6 of the European Convention of Human Rights (ECHR) in the Botnia case (Karin Andersson and others v. Sweden, case No 29878/09). The case concerned a permit for the building of a railroad in the Northern part of the country, where the procedure was divided into two phases. When Karin Andersson – who lives in the neighbourhood of the railroad corridor – first appealed the decision on the location of the corridor, SAC dismissed her as it was too early to evaluate in what way she would be affected of the railroad. However, when she appealed in the second phase, the location could not be questioned, as it was already de-

cided. Not very surprisingly, ECtHR found that she had been denied a fair trial according to Article 6 of the ECHR.

In contrast to the attitude of the SAC in the Botnia case, Swedish courts have been very proactive in granting the public concerned access to justice in environmental matters. In fact, the courts have taken over the task of implementing the international norms on this issue in a situation where the legislator has been passive and even in opposition to a wider environmental democracy (cf the wolf cases). Accordingly, SAC has utilized the Slovakian Brown Bear formula not only in cases with EU law bearing, but also on purely national legislation (HFD 2014:8 Änok). The Land- and Environment Court of Appeal has mitigated the standing criteria in the Environmental Code in order to enable ENGO standing (MÖD 2015-04-15; M 8662-14) and has also challenged the Swedish version of the Schutznormtheorie in relation to individual's standing (MÖD 2015:8).

Finally, we have seen some very interesting cases on species protection and wind farms concerning the understanding of "deliberate killing" and "deliberate disturbing" in Article 5 of the Birds Directive and Article 12 of the Habitats Directive. In my understanding, Swedish case law in this respect has developed in the same vein as the case law in Denmark, Finland and Germany.

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