

SWEDISH ENVIRONMENTAL LAW - *a brief* PRESENTATION

Introduction

Swedish environmental law is currently undergoing major structural changes. 1 January 1999 saw a new Environmental Code (miljöbalken) come into force which integrated a large piece of the existing environmental legislation and also implemented all relevant EC legislation. An attempt to adapt Swedish law to international environmental law (the Rio-declaration and its Agenda 21) has also been made.

Substantive provisions

Swedish environmental law is now based on the Environmental Code (the Code), which governs several vital aspects of environmental protection. The new approach is to concentrate more on the effects of an activity instead of its nature. The effect of the activity now determines the measures to be taken in order to avoid disturbances, damage, and to promote sustainable development.

The Code provides several rules which must be considered when taking measures or carrying out operations. It does not matter whether the measure or operation is carried out on land or in water, by a private individual or a company, or in the public sector. These generally applicable rules also contain fundamental provisions on management of land and water, and environmental quality standards. Penal provisions related to environmental legislation are also contained in the Code.

The Code also contains statutes applying only to specific activities: environmentally hazardous activities; activities in water areas; agriculture; quarries; and the handling of chemical substances and waste. An important part of the Code concerns supervision and the duty of operators to self-control the environmental effects of their activities.

Other legislation involving environmental issues is The Planning and Building Act (plan- och bygglagen), the Road Act (väglagen), the Forestry Act (skogsvårdslagen), and the Minerals Act (minerallagen).

Procedural rules

Under the Code, five new regional environmental courts have been established. The environmental courts grant operation permits for larger industrial installations and for activities in water (including groundwater). They also decide on environmental damages (property damage, personal injury and economic loss) caused by environmental pollution. The County Administrative Boards (CAB) grant permits for medium-sized industrial installations, as well as having a supervisory function - overseeing larger industrial installations. The municipal health and environmental committee supervises smaller industrial installations.

CAB decisions can be appealed to a regional Environmental Court, while decisions by the Court can be appealed to the Environmental Court of Appeal - a recently established department of the Svea Court of Appeal in Stockholm. A decision by the Court of Appeal may be appealed to the Supreme Court.

The Code entitles environmental interest groups to appeal decisions regarding permits, licences and approvals, and exemptions. However, such groups must have existed for at least three years and have more than 2000 members.

The Environmental Code

The Code contains seven parts: general provisions; protection of nature; provisions concerning certain operations; examination of cases; supervision; penal provisions; and compensation and damages. In total, the seven parts contain 33 chapters and more than 450 articles.

The aim of the Code is to promote sustainable development, so that present and future generations will be guaranteed a safe and healthy environment. Sustainable development is based on the belief that nature is worthy of protection and that the right of humans to alter and utilise nature requires responsible management. The Code provides that:

- human health and the environment is protected against damage and disturbance;
- valuable natural and cultural environments are protected and conserved;
- biological diversity is preserved;
- land, water and the physical environment generally are used so that, from an ecological, social, cultural and socio-economic viewpoint, the long-term good management of resources is assured; and
- re-use and recycling, together with other management of material (raw materials and energy), is promoted so that an eco-cycle is attained.

The opening of the Code is essential for interpreting its substantive provisions, including the general rules of consideration.

General rules of consideration

The most important rule of consideration is the precautionary principle. Everyone who carries on an operation, or intends to do so, must take necessary precautions to prevent and reduce damage or nuisance to human health and the environment. The rule is a natural consequence of the 'polluter pays' principle and applies as soon as a risk of harm has been identified. If the operation is carried out commercially, the best possible technology must be applied when taking precautionary measures. This means that you must (from a technical and financial viewpoint) be able to industrially apply the technology in question.

Those carrying out an operation must also:

- have access to knowledge about the environmental risks and effects of the operation in question;
- ensure that the operation is located so that its purpose is achieved with a minimum of intrusion and disturbance to human health and the environment;
- ensure that the operation is carried out in accordance with the resource management and eco-cycle principles mentioned above;
- avoid using dangerous chemical products when they can be replaced with less environmentally damaging products. This product choice principle also applies to goods containing chemical products; and
- repair any damage caused by the operation.

It is not unreasonable to expect companies to comply with these rules of consideration. However, when assessing the environmental benefits of precautionary measures they should be compared with the cost and expense of such measures.

The stop rule

An operation must not be carried out without compliance with the rules of consideration. However, since the rules include a cost/benefit assessment, compliance is not a guarantee of environmental protection.

Even when there is compliance with the rules, the operation must not be carried out if it is likely that it will cause

substantive damage and disturbance to human health or the environment. Only the government has the power to make exceptions to the stop rule, allowing an operation to proceed if there are special reasons for doing so.

Fundamental provisions for management of land and water

The Code provides general guidelines concerning the balance between protection and exploitation of natural resources. The main consideration should always be what constitutes 'the best use' in the public interest.

The rules stipulate certain factors to be taken into account when a change in the use of land or water is planned. They also contain specific provisions for certain geographical areas and set basic requirements as to how land and water should be used. In areas of national interest, the only operations permitted are those that will not harm the unique value of these areas.

Environmental quality standards

An Environmental Quality Standard (EQS) is set by the government (or in certain cases the Swedish Environmental Protection Agency) and represents the highest permitted concentration of a substance in soil, water, air and so on, within a fixed geographical area. Environmental courts and other environmental authorities must ensure that an EQS is observed when considering permits, licences, or supervising activities. A permit may also be reviewed if it leads to material contravention of an EQS.

If an EQS is contravened, the environmental authorities must prepare an action programme which will identify all sources which pollute the substance in question, and the steps to be taken in order to establish compliance.

Environmental Impact Assessment

Under the Code, a permit or licence must not be granted unless an Environmental Impact Assessment (EIA) has been made. Such a decision will be based on the results of the EIA. An EIA will be prepared and financed by the permit applicant and will identify, describe and provide a general assessment of the direct and indirect effects of the subject activity on humans, flora, climate and so on. An EIA must include information on:

- the subject activity;
- measures planned to avoid, minimise or repair damage caused by the subject activity;
- the activity's effects on human health and the environment, together with information on how these effects have been identified and assessed; and
- alternative locations and alternative ways of performing the activity, as well as the reasons for the chosen alternative.

The Code contains several provisions regarding the preparation of the EIA. At a very early stage of the process, the permit applicant must also consult with the CAB and private parties particularly affected by the activity. The CAB will then decide whether the activity involves a significant impact on the environment. If that is the case, a more extensive procedure will apply (involving additional consultations with neighbours) and a more detailed EIA must be prepared.

Responsibility

Penal provisions

The following environmental offences are subject to penalties under the Code:

1. Environmental crime - to intentionally cause pollution and other damage.
2. Causing environmental disturbance - to cause pollution and other damage through negligence.

3. Environmentally hazardous handling of chemicals - to intentionally or through gross negligence handle a chemical product (or goods containing a chemical product) without taking preventive measures, making a correct product choice, or taking other necessary precautionary steps.
4. Unlawful environmental activities - to intentionally or through negligence commence or perform an activity without having obtained the necessary permit, in violation of conditions of a permit.
5. Obstructing environmental monitoring and supervision - to intentionally or through negligence fail to supply information, or to supply incorrect information, to a public authority.
6. Inadequate environmental information - to intentionally or through negligence fail to comply with product labelling requirements.

Alongside these violations, a breach of certain provisions of the Code (or provisions in ordinances and decrees issued under the Code) is deemed to be a criminal offence. Penalties will normally range from fines to two years imprisonment.

Environmental sanction charges

An environmental sanction charge, ranging from SKr5,000 to SKr1m, may be levied on those who, in the conduct of commercial operations, fail to comply with specific provisions of the Code. The Government stipulates which provisions are subject to the charge, basing it on strict liability.

Damages

If an operation causes disturbance to the environment resulting in personal injury, property damage or financial loss, the operator is under a duty to pay compensation. However, compensation for simple financial loss (one not due to any offence) is only paid if the damage is significant.

A disturbance (water pollution, air pollution, noise, vibrations and so on) is only deemed to have caused the injury or damage if a causal link can be established based on the balance of probabilities - bearing in mind the nature of the disturbance, other possible causes of the damage and other circumstances. Compensation for damages is normally based on strict liability.

Environmental repair

The Code provides new and strict regulation concerning the operators liability, requiring repair of polluted areas.

Those who currently carry out an operation which causes pollution on land or water are liable for the repair of any environmental damage caused by the operation. This also applies to those who have carried out a polluting operation after 30 June 1969. If two or more have carried out the same operation in succession, they have a joint liability for the pollution caused by the operation. An exception can be made if it is shown that (a) one operator has only contributed to the pollution in a very limited extent, or (b) in such cases full responsibility for one operator would be unreasonable. The final share of liability between several liable parties depends on the circumstances (such as contractual arrangements and so on).

If the necessary repair cannot be performed or financed by the operators mentioned above, liability for environmental repair may be imposed on the owner of the polluted area. This is provided the landowner (a) purchased the area after 1 January 1999, and (b) at the time of the purchase knew or should have known of the pollution.

Other environmental laws

Apart from the Code, there is legislation which contains provisions on the environment. In fact, the general rules of consideration previously mentioned apply to such legislation, unless expressly exempted.

Planning and land use legislation

Planning and land use legislation governs the use of land and regulates the use of land and water, including objects physically connected to the land (eg buildings). One important piece of legislation in this area is the Planning and Building Act (plan-och bygglagen). Other statutes in this category are the Ancient Monuments Act (lag om kulturminnen), the Forestry Act (skogsvårdslagen), and the Road Act (väglagen).

Legislation on the exploitation of natural resources

This legislation aims to control the exploitation of natural resources while allowing the exploitation of socio-economic benefit. This includes the Minerals Act (minerallagen), the Hunting Act (jaktlagen), and the Fishing Act (fiskelagen).

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