NATURE 2000 IN SWEDEN

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I. General background of the MS relevant for nature protection

Sweden joined the EU in 1995 and obviously had no legislation for SPAs or SACs before that. Swedish environmental law was thoroughly changed in 1999 by the adoption of an Environmental Code, which replaced 15 previous acts and established a system of environmental courts. Still, the Environmental Code initially failed to sufficiently implement Directive 92/43 and Directive 79/409. At the risk of being brought to the ECJ by the Commission, the part of the Environmental Code that addresses nature conservation was amended so as to better implement Nature 2000.

Nature 2000 has been an issue in quite a few cases before environmental courts, the Superior Environmental Court, the Government and the Supreme Administrative Court.

The legislative competence with regard to nature protection is held by the Parliament, but the essential piece of legislation – the Environmental Code – confers some competence on the Government to adopt regulations of national application, and on the regional Counties (*Länsstyrelse*) to adopt generally applicable regulations, so as to implement nature protection provisions in the region. Generally speaking, the County administrations are much involved in nature protection, e.g. in the preparation for the establishment of Nature 2000 sites.

Supervision of protected areas is carried out by regional County administrations and municipal environmental authorities. The County administrations also supervise activities that may affect Nature 2000 sites (although they may delegate that to municipal authorities). The municipalities as well as the regional County administrations may also decide on the establishment of nature reserves.

The physical geography of Sweden differs considerably in the South and the North. The habitat types in Sweden include about 90 of the types of habitats listed in Annex I of Directive 92/43. About 9 per cent of the Swedish area consists of water; in all there are more than 85,000 lakes larger than one hectares (about two and a half acres). There are about 9 million hectares of wetlands, and about 65 per cent of Sweden is covered by forest Not surprisingly, forestry is one of the main exporting industries in Sweden. In the identification process for Nature 2000 sites, most controversies have related to the protection of certain forest areas. Forestry is also one of the threats against Nature 2000 sites. A general concern is the decrease of deciduous forests and trees. Another threat to Nature 2000 sites are infrastructure projects.

II. Natura 2000

1. Identification and notification of special areas of conservation (SACs) and special protection area (SPA's) in MS

a) Article 4(1) Dir 92/43 and 4(1) Dir 79/409

How were the areas identified which went into the national list of candidate areas for SACS (Article 4(1) of Directive 92/43)? Which criteria were used, if any?

Has your country identified sufficient candidate SACs and notified them to the Commission? Have core zones and puffer zones been suggested?

Which criteria were used to designate to designate SPA's (art. 4(1) Dir. 79/409)?

Was there any public consultation or discussion with regard to the selection of sites of Article 4(1) of Directive 92/43 and to designate SPA's (Dir. 79/409)?

What were the main obstacles in process of identification these areas (e.g. local protests, lack of explicit criteria, lack of national data base on such areas)

The Government ordered the Environment Protection Agency, EPA (*Naturvårdsverket*), to carry out the identification of relevant sites in cooperation with the regional Counties. The County administrative boards were requested to identify and select relevant areas within the respective jurisdiction, and to report them to the EPA, after due consultation with landowners. The EPA reviewed the selected areas – and cut down the number of sites considerably – before passing the list further to the Government for formal decision on proposed areas to be delivered to the Commission. The Government has on several occasions decided to propose new Special Areas of Conservation.

Initially when selecting SACs, the County administrations were asked to seek the approval of each landowner concerned, but later on the directives were changed so that the County administrations could also list areas were no approval had been given. According to the Government Report, some NGOs were involved in the identification process, e.g. by establishing their own "shadow lists" of areas which they thought should be included in the list. The shadow lists were then submitted to the Counties and – again according to the Government report – considered by the relevant authorities in the preparation of the list.

I am not able to tell whether the candidate areas are sufficient to meet the standard of Directive 98/43. In all, there are 3,992 Nature 2000 sites in Sweden; 3,903 have been identified as SACs under Directive 92/43 (amounting to 6,235,623 hectares) and 509 as Special protection Areas under Directive 79/409 (amounting to 2,864,780 hectares). Since some areas are listed as SACs as well as SPAs, the total net area of Nature 2000 in Sweden equals 6,383,673 hectares.

b) Article 4 para. 2 and Art. 5 Dir 92/43

Is the Commissions decision with regard to the lists of areas (Article 4(2) of Directive 92/43) final? How many areas of those that had been proposed have been retained (number and surface)? What then happens to the candidate areas which had been proposed by a Member State, but not retained?

c) Art. 4(4) Dir 92/43

- *Has your country already taken decisions with regard to Article 4(4) of Directive 92/43 (final decision to consider an area as special area of conservation of Community interest)? What is the state of decision-taking?*

d) Are Natura 2000 sites protected through a genuine category of area protection, or are the existing categories of protected areas used for Natura 2000 areas?

All Nature 2000 sites are protected by the Environmental Code by means of permit system for any activity that may significantly affect the environment of such a site. Such a permit can only be given if the activity, individually or in combination with other activities, does not deteriorate natural habitats and the habitats of species to be protected, and does not disturd the species for which the areas have been designated.

About 60 per cent of the Swedish Nature 2000 sites are also protected as nature reserves, national parks etc, with the restrictions prescribed to such areas. Some areas are also protected as wildlife sanctuaries (rather small areas), habitat protection areas or through the shoreline buffer zones (i.e. the protection of land and water areas up to 100 metres, with possible extension to 300 metres from the shoreline). Moreover, some areas are covered by voluntary nature conservation agreements between the land owner and the competent authority (e.g. the Forest Agency (*Skogsstyrelsen*)). Still, great parts of the Swedish Nature 2000 area remains without further legal protection than the permit system established for Nature 2000 sites.

e) Are there decisions by national courts which deal with the identification and notification of areas under Article 4(1) of Directive 92/43?

Not to my knowledge.

f) If the notification of the first round is completed, is there an obligation to improve the list of Natura 2000 sites, eg under Art. 10 Dir 92/43?

Is it possible to reduce or abolish already designated sites (for others reasons then indicated in point II. 3.c).

The EPA is obliged to consistently keep a list of areas which should be or have been given protection as SPA or SAC. An area that has been put on the list should be given priority in future work on nature protection.

According to the Environmental Code, the Government may, in consultation with the Commission, revoke a declaration concerning the designation of a site if its nature values no longer merit such a declaration.

2. Management of Natura 2000 sites

a) Article 6 paras. 1 and 2 Dir 92/43

- *does national law require management plans for the sites - are they specifically designate for the site or integrated to others plans (which?)*
- *which conservations measures - statutory, administrative or contractual measures – where chosen in your country? Which is the main form?*
- *what appropriate steps are taken to avoid deterioration/disturbances (art.6(2) Dir 92/43*

The County administrations and municipal environmental authorities are obliged to adopt management plans for nature reserves. The County administrations are also responsible for the drafting of management plans for each nature 2000 site. These plans were to be completed by August 2005.

Apart from the Nature 2000 sites which are also protected as nature reserves etc, the Swedish approach taken to protect Nature 2000 sites mainly consist in the mentioned permit system, according to which a permit is required for any activity that may significantly affect the environment within a Nature 2000 site. A permit may only be granted if the activity individually or in combination with other activities does not deteriorate the habitats for which the area has been designated, and does not disturb the species for which the area has been designated, in so far as the disturbance could be significant in relation to the objectives.

If an activity which is already permitted disturbs the area in a way which is not compatible with Directive 92/43, the permit may be subject to a review.

b) Who does administer/supervise Natura 2000 sites – *is it organized within existing nature public bodies? Do environmental associations supervise?*

The main responsibility for administering Nature 2000 sites is bestowed on the regional County administrations. Thus, they also have a coordinating function among the different public authorities.

The County Administration Board also acts as examining authority for applications for permits concerning activities that may affect Nature 2000 sites, unless the examination for permit is a part of a permit procedures for other forms of environmental permits.

c) Special question on GMOs and nature protection (posed in the context of research for the German Nature Protection Agency): Is there specific regulation or a discussion in your country on whether in nature protection areas the sowing of genetically modified seeds can and even must be prohibited? Can the authorisation for releasing genetically modified seed be denied for the mere fact that the site of release is situated in a nature protection area? Would an authorisation of the bringing on the market of genetically modified seed exclude any measure restricting the sowing of the seed in nature protection areas (see Art. 22 Dir 2001/18)?

There is no particular legislation or regulation concerning the planting of GMOs in nature protection areas. If the examining authority or court finds that the cultivation of

GMOs may entail such detrimental effects on a Nature 2000 site, then it may turn down the application.

3. Appropriate assessment' and authorisation of plans and projects

a) Article 6 para 3 and 4 Dir 92/43

- *How was Article 6(3) and (4) Dir 92/43 transposed in your country*
- *does national law/case law make Article 6 para 3 and 4 applicable also to a) Proposed Sites of Community Importance (pSCIs) b) non proposed but eligible sites (npSCIs)? If yes is this regarded as required by EC law or as a stricter national measure?*
- *what is the factual information on plans and projects affecting Natura 2000 candidates or determined sites*

In Swedish law, the permit and assessment requirements for Nature 2000 sites apply to areas which have obtained protection as well as to areas which has been proposed by the Government to be included in the network of SACs.

The EPA operates a specific Nature 2000 website with detailed information about the status and purpose of each site as well as about the species concerned (http://w3.vic-metria.nu/n2k/jsp/main.jsp).

b) Relation of the appropriate assessment under Article 6 to the EIA under EIA Directive and SEA under SEA Directive

PROJECTS

- *Does the assessment for the purposes of Article 6(3) take the form of an assessment under EIA Directive /or SEA Directive (if not – please shortly indicate the form, content and procedure of 'appropriate assessment ', including questions of public participation*
- *is the appropriate assessment confined only to EIA Directive Annex I and II projects or also to other projects (if yes - how they are being defined and what triggers the procedure)*
- *is the appropriate assessment confined only to 'development consent" under EIA Directive or also to other permits (for example: IPPC permit)*
- *is the scope of EIA procedure and EIA documentation (EIS) limited in case of 'appropriate assessment' as compared with those under EIA Directive?*
- *has there been any discussions concerning the possible effects on the national legal scheme of the Waddenzee case; Draggagi case*

An environmental impact assessment is required for any activity which may affect the environment of a Nature 2000 site, In these cases, the EIA must include the necessary information to determine the implications of the activity for the site in question.

PLANS

- *is the 'plan'' under the Habitat Directive (and legal implications under Article 6.4) interpreted to cover all plans and programs covered by SEA Directive? How in practice it is determined that they are "likely to have significant effects on the site'? what triggers the procedure?*

- *is there any special decision making procedure to decide in case a plan will "adversely affect the integrity of the site". Who decides whether to agree to the plan and what compensatory measure be taken (the authority competent to prepare/adopt the plan or any other authority)?, in what legal form?*

Planning and construction decisions are made under a special planning regime, which is distinct from, yet related to the Environmental Code. Thus, while planning decisions are made according to the 1987 Planning and Building Act, this act has several cross-references to the Environmental Code. In 2005, the cross-references to the Environmental Code were even strengthened with respect to environmental impact assessments of plans, as a means to implement the SEA Directive.

According to the Planning and Building Act, a detailed development plan must be subject to an environmental assessment if its implementation may entail significant impact on the environment. In the case of planning, the authority or municipality responsible for adopting the plan is also responsible for providing an adequate impact assessment, when so is needed. If it fails to provide such an assessment, the plan may be annulled by superior authorities or, finally, by the Supreme Administrative Court. It may also be annulled upon appeal if a superior instance or court finds that there should have been an impact assessment due to the likely effects, but there was none.

c) Interpretation of certain terms according to administrative adjudication, court decisions, and academic debate (you can illustrating the following problems on significant case/cases or just answer the questions)

- *design of impact studies*

- *meaning of „significant effect" and „adversely affect", e.g.: is the cutting of a special area of conservation (SAC) per se an adverse effect? Any mandatory or indicative thresholds (for example - projects within certain radius from a site deemed to be likely to have significant effect on it)*

- *what is and what not regarded as „imperative reason of overriding public interest"? On what level of concretion are the objectives of the plan or project formulated (mark that the more concrete the less alternatives come into play)? Are they sometimes expressed in monetary terms?*

- *what is the scope of alternatives to be considered? must any alternative considered be realisable by the original applicant? Are alternatives involving more costs than the prime variant excluded from further consideration?*

- *Are compensatory measures (Art. 6 para 4 subpara 1) be counted as reducing the adverse effect?*

- *Do „prioritary" species under under Art. 4 para 4 subpara 2 Dir 92/43 also include endangered birds, such as those listed in Annex 2 of Dir 79/409 recognised?*

- *what counts and what not as an „opinion from the Commission"? Is an informal statement sufficient? Are there instances of lobbying the Commission to render obtain a favorable opinion? What is the legal role of a positive or negative opinion?*

- *who has standing to challenge decisions under Art. 6 para 4 Dir 92/43? is it a difference between plans and programs in this respect? Does Article 10a of the EIA Directive apply?*

- *Is Art. 4 para 4 Dir 79/409 either as such or in combination with Art. 7 /Art. 4 para 4 Dir 92/43 directly applied if the site was not notified?*

- *Is Art. 4 para 4 Dir 92/43 directly applied aa) if the site was notified and listed by the Commission (Draggagi case) bb) if the site was notified but not yet listed cc) if the site was not notified but qualifies as potential Natura 2000 site*

Thus far, Swedish courts have been reluctant to examine the scope of alternatives to be considered in cases involving Nature 2000 sites. In a couple of cases concerning the construction of new railways, persons concerned as well as environmental NGOs have argued that less harmful alternative routes were possible, but thus far no application has been turned down for that reason. Swedish courts have also been reluctant to ask the ECJ for a preliminary ruling with respect to alternatives (in fact Swedish environmental courts have extremely reluctant to ask for preliminary ruling at all).

Other issues which are relevant in a pending case are what is meant by "overriding public interest", and what suffices as necessary "compensatory measures".

So far, the Commission has only been asked to give its opinion on one major project which will entail negative implications in accordance with art 6(4). This was indeed a formal opinion.

Whether individuals and NGOs have standing to challenge the decision under art 6(4) depends on the kind of permit procedures. In some cases, the Government is to examine the permissibility of the project. The legal implications of such a decision is not yet fully clear. In fact, this is one of the issues in a pending case before the Superior Environmental Court.

III. Species Protecion (only for discussion)

- *For reasons of time we will discuss this topic as in terms of EC requirements rather than as in terms of national law. It is recommended that you make yourself familiar with Artiles 12 to 16 Dir. 92/43 as they are viewed from the EC and national perspectives. No written report is requested.*

IV. Financing nature protection (please write a short opinion, if possible)

- *Should there be a financial instrument (fund) at EC level for financing conservation measures? Don't we run the risk that then Member States will do something on the condition that there is money coming from Bruxelles?*
- *What about Article 175(5) EC Treaty and Article 8 of Directive 92/43: should these provisions be made operational?*

- *Is it appropriate to delete LIFE (Regulation 1655/2000) and let the Structural Funds intervene instead?*

V. The actual state and the future development of EU nature protection law (topic for final discussion; the written answer is optional)

It is suggested that we come up with an avosetta resolution on certain basic points including e.g.

- *The results of 26 years of Directive 79/409 and 13 years of Directive 92/43. What has been the evolution of animals and plants in this time? Is it true that despite these measures, nature slowly withdraws from the environment in Member States?*

- *Major deficiencies in the 2 directives: e.g.: does EC law allow for too many possibilities for the balancing of interests and thus the preponderance of exploitation interests?*

- *The main 'troubles' with regard to transposition and applying of the directives?*

- *Is the system of Directives 79/409 and 92/43 enough to protect nature in Europe? Should there be further European legislation (e.g. on landscapes)?*
- *What can be done to improve the situation of nature within the EU and globally?*