AVOSETTA MEETING, STOCKHOLM, 2-3 OCTOBER 2009

REPLY TO QUESTIONNAIRE ON THE ENFORCEMENT OPF EC ENVIRONMENTAL LAW: **SWEDEN**

Questionnaire on National Laws, Practices and Experiences on Enforcement

1. Please describe generally the most import tools for the enforcement of environmental law in your country. Also describe the relative "weight" of private law, administrative law and criminal law for the enforcement.

The most important means of enforcement in Swedish environmental law is the supervision carried out by local or regional administrative authorities. Each municipality has to appoint one administrative authority – usually an "Environmental Board", "Environmental Protection Board" or a "Board on the Protection of Health and the Environment" (the name is decided by the municipality). These boards shall supervise all activities within their jurisdiction, initiate the inspections necessary and make request for operators of activities with an impact on health and the environment. The shall also take the necessary actions when members of the public complain about environmental or health matters.

2. Please answer sub-questions I-IV **for each situation listed as a-i below**. Also indicate whether you know of national cases where these issues have been dealt with:
   I: Which sanctions are provided under national law (criminal, administrative etc.)?
   In Swedish law there are both criminal and administrative sanctions. While criminal sanctions are regularly imposed (but usually with only small fines), administrative sanctions have a greater impact and are more frequently imposed on operators. Administrative sanctions are of two kinds: Fines are imposed in order to sanction prospective injunctions and prohibitions, but also as a means of punishing violations of certain regulations and decisions.

   II: Can NGOs and/or citizens challenge the enforcement – or lack of enforcement – by the competent authority, or is it within the full discretion of the competent authority to decide whether and how offences should be sanctioned? (If NGOs and citizens can challenge such decisions and omissions, including failures of a procedural character, please describe how.)
   Members of the public concerned, but not NGOs, can challenge most, but not all, actions and omissions by the supervisory authorities. If a member of the public finds that the authority did not act in accordance with his/her complaint against an operator, the person may appeal that decision. One important exception is that – so far – members of the public have not in any way been able to challenge a decision of a competent authority not to require a review of a permit (see IV). This is essentially based upon the jurisprudence of courts rather than on clear-cut statutes.

   III: In light of European Community law, including the possible direct or indirect effect of

directives, does national law grant NGOs and/or affected citizens the right to take direct enforcement measures against the polluter?
It is possible for a member of the public to ask the court, as a means of private law rather than administrative law, to decide on a injunction or mandamus action. Such a claim must relate to the private situation of the plaintiff and not only to a public interest. Likewise NGOs can only take such measures if they are specifically affected, e.g. as land-owner or tenant, not on behalf of public interests only. The alternative for members of the public (not NGOs) to a private suit is to request that the administrative authorities take action against the operator, and then appeal a no-action; se under II.

IV: Could the competent authority under national law be held liable for erroneous acts and for omissions (non-enforcement) in the cases listed below? If so, how?

a. When an EIA project is established without an EIA permit. **While the state as well as the municipality can be held liable to compensate for damages due to erroneous acts under tort law, this would be very rare in the field of the environment. Civil servants can be held criminally liable for *misuse of office*. Although it is indeed rare, there is still some important jurisprudence to show that.**

b. When conditions attached to the EIA decision, granting a development consent, are disregarded. **See a.**

c. When an IPPC facility is established without an IPPC permit. **See a.**

d. When an IPPC facility is permitted without prior assessment in accordance with article 6(3) of the Habitat Directive. **See a.**

e. When an IPPC facility is operated in violation of conditions of an IPPC permit. **See a.**

f. When an IPPC facility releases greenhouse gases beyond what is provided for by allowances under the ET Directive. **See a.**

g. When an IPPC facility has negative impact on Natura 2000 sites beyond the threshold in article 6(2) of the Habitat Directive. **See a.**

h. When water plans adopted under the Water Framework Directive – or for the moment existing water quality standards laid down in the "old" water directives – are not complied with. **See a.**

i. When air plans under the Air Framework Directive are not complied with. **See a.**

Please, comment on whether you find the national means of enforcement adequate, and if, based on the national experiences, you have any general suggestions for improving the enforcement.
Despite possibilities for members of the public to push for enforcement by the public administration, Sweden fails to provide adequate means for citizen enforcement. For instance, there is no opportunity for members of the public, including NGOs, to request a review of a permit; not even when the operator fails to comply with the conditions, the environmental circumstances have changed dramatically, more than ten years have passed since the permit was issued, or new technologies have been developed.

3. How is article 9(3) of the Aarhus Convention, regarding access to administrative or judicial procedures for members of the public to challenge violations of environmental law, complied with? In which situations is it NOT complied with?
Sweden fails on a number of accounts, e.g. by applying too strict criteria for NGOs generally (including the organisational structure and the minimum requirement of 2,000 members), and also by not allowing NGOs to challenge urban plans at all. Moreover, see the final

paragraph in IV(2).

4. Please identify possible factors, such as costs, length of procedures or other practical matters, that may prevent effective access to justice for members of the public.
   While the appellants do not risk paying the costs of the operator in case they lose an appeal, there are still very limited possibilities for members of the public to get funding for judicial advise or assistance in the appeal procedure. As mentioned, Sweden applies too strict requirements for associations and NGOs.
5. Do NGOs and/or citizens have access to injunctive relief and interim legal remedies? Do you know any national cases which have dealt with this?
   In the administrative procedures concerning permits, licenses and approvals, NGOs may appeal decisions and also ask for interim measures (i.e. provided they meet the criteria for NGOs). However, they have not legal standing to initiate cases and request injunctive relief.
6. Are there any examples where a final administrative decision has been reopened because of a complaint based on later case law from the ECJ?
   Not that I know of.
7. Has there been any national case in which the State or the local authority have been held liable for not remedying environmental damage or other damage in violation of EC environmental law?
   Not in the sense that the state or municipality has been ordered to compensate economically or by other means because of the failure.
8. Do you now of any significant developments, good practices or failures (e.g. cases, new laws, new institutional arrangements, or new policies) with regard to the enforcement of EC environmental law, not covered by the previous questions, that you would like to highlight?
   No.