

## *D. Sweden*

### **(1) LEGISLATIVE MEASURES OF INTERNATIONAL INTEREST**

Due to the pandemic, new environmental legislation in several areas, such as property law, biodiversity offsetting, forestry, water management, and so on, has been postponed by the legislature. One legislative measure was passed on the clarification of state responsibility for certain nuclear activities (Bill 2019/20:157). The legislative measure makes amendments to the Environmental Code, the Act on Nuclear Technology Activities, and the Act on the Financing of Nuclear Waste. The changes mean that the state's responsibility for certain nuclear activities is clarified in law. If there is no one who can be made responsible for fulfilling the responsibility, the safety of a nuclear activity must be a state responsibility. However, the state's responsibility is limited to necessary measures for safety and ceases when a permit-holder can take responsibility. The measures that are necessary for the state to make must be financed through the Nuclear Waste Fund (financed by the nuclear power operators). Further changes were that it was clarified that the responsibility for a geological repository of nuclear waste rests with the state. For the responsibility to be transferred to the state, it is required that the permit-holder receives permission from the government to close the geological repository. In connection with the question of final closure being considered, the government shall decide when the responsibility is to be transferred to the state. A corresponding amendment is proposed in the Environmental Code, which means that the state alone shall be responsible for remedying pollution damage and serious environmental damage in accordance with the Environmental Code for such geological repositories for which the state is responsible.

### **(2) POLICY MEASURES OF INTERNATIONAL INTEREST**

#### **(A) National Plan for Review of Hydropower Permits**

As reported last year, new legislation on water operations was passed by the legislature. The European (EU) Commission had repeatedly criticized Sweden's implementation of EC Directive 2000/60 Establishing a Framework for Community Action in the Field of Water Policy (Water Framework Directive) and noticed that reviews of hydropower stations that affected the possibility to achieve the Directive's objectives were not conducted. In the Swedish doctrine calculation on the time frame to review all dams and hydropower stations in Sweden, approximately four thousand activities were made, and based on the number of stations to review each year, it would take eight hundred years to review all stations and dams affecting the possibility to achieve the Directive's objectives. Since the Directive's objectives are supposed to be achieved by 2027, the situation was not very satisfying. The new legislation aims to change the situation and now all operations linked to the production of hydroelectric power shall be provided with a modern environmental permit by 2040. Since the Directive's objectives are supposed to be achieved by 2027, Sweden will fail to realize its EU obligations.

To ensure that the review of the hydropower sector will go as smoothly as possible, a national plan was established to balance the need for environmental improvement and the national need for efficient access to hydropower-generated electricity. The Marine and Water Authority, the Swedish Energy Agency, and the Swedish National Grid Authority have sent a joint proposal for a national plan to the government that was decided on this year. The plan, which has a national comprehensive approach, describes how the coordination and guidance for the re-examinations

should go. Given the number of activities, there is a risk that the re-examinations will completely devour the administrative capacity of the permit authorities, other authorities, municipalities, non-governmental organizations, and so on, for the next twenty years.

Based on the national plan, all hydropower plants in Sweden will be tested systematically. For example, by allowing all hydropower plants in a river stretch to be reviewed at the same time, it is possible to coordinate the review process. This leads to a coordinated court assessment and simplifications compared with the previous approach that focused on each activity separately. The intention is that this will result in increased environmental benefits and reduced costs when measures can be implemented in coordination and where they have the greatest effect. The national plan is not binding but supplies guidance for the authorities that prosecute or comment on the review process. The plan also provides guidance for the authorities that work with or make decisions about the management of the quality of the aquatic environment, such as the county administrative boards and the water authorities.

### (B) Forest Owners Receive Compensation from the State

In Sweden, the protection of property is strong. For several years, a conflict on the right to harvest forests for timber, for example, has been fought in Swedish Courts. The main element of conflict is that the Swedish Forest Agency has refused to approve forest owner's application for clear-cutting their forests (which is the normal Swedish procedure to harvest forests) due to biological values attached to these areas, which are close to the Swedish mountain range, but without any type of economic compensation. Several landowners sued the state, as they consider that they were entitled to compensation because they were not allowed to cut down their forests. As a reason for the decision, the Swedish Forest Agency said, in summary, that the area has such high natural values that felling trees would be inappropriate as they are of significant importance for nature conservation or cultural environmental protection.

After several years of court processes, the Land and Environmental Court of Appeal (M 1729-19, M 1732-19, M 1734-19, M 1736-19, and M 1737-19 (12 May 2020)) decided that the Forest Agency decision to deny the forest owners to harvest their forests was incompatible with natural or cultural environmental protection. The Land and Environmental Court of Appeal also assessed whether a decision to refuse a felling permit can provide compensation. The court found that forestry is an ongoing land use and that this land use has been significantly hindered by the Swedish Forest Agency's decision not to allow felling. The court found that the decision means that the ongoing land use—forestry—is significantly hampered and that the forest owners are therefore entitled to compensation for encroachment. The landowners were entitled compensation from the state. The court found that compensation should be paid in the same way as in decisions on area protection. The compensation shall therefore be paid as infringement compensation and for the entire area covered by the Swedish Forest Agency's decision.

## (3) INTERNATIONAL AGREEMENTS

### (A) Sweden Signs Declaration on 30 Percent Maritime Protection by 2030

The biological diversity of the sea is threatened and the Swedish government has signed the United Kingdom's declaration with the intent of a global goal of protecting 30 percent of the world's oceans by 2030. The world's oceans provide many people with their daily food, mitigate climate change, and are home to a rich biodiversity. One-half of all oxygen produced comes from the sea. The marine environment is under intense pressure from climate change, overexploitation, pollution, and eutrophication. Only 1 percent of international water is

protected. The government wants to see a global goal that 30 percent of the sea should be covered by marine area protection. The purpose of the declaration is partly to be a proposal for the next goal within the United Nations Convention on Biological Diversity and partly to contribute to the process of establishing an instrument for protecting biological diversity beyond national jurisdiction—that is, the sea that belongs to everyone and to no-one, within the United Nations Convention on the Law of the Sea. At this stage, Sweden does not make any further commitments regarding marine area protection in Swedish waters. Other partners to the UK declaration are Belgium, Belize, Costa Rica, Finland, Gabon, Kenya, Palau, Portugal, Seychelles, Vanuatu, and Nigeria.

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## 7. Baltic States

The environmental laws of the Baltic countries—Estonia, Latvia, and Lithuania—are largely shaped by the impact of the environmental law of the European Union (EU). Although the three nations share similar histories and geographies and joined the EU at the same time, their legal systems are entirely independent of each other. As small countries with populations of approximately 1.35 million (Estonia), 1.9 million (Latvia), and just under 2.8 million (Lithuania), and which restored their respective sovereignties at the beginning of the 1990s after having been occupied first by Germany and then by the Soviet Union since the 1940s, the importance of the legal integration into the EU is not to be under-estimated. Due to historical experience, the development of distinct national environmental laws was delayed compared to the countries of Western Europe. Still today, the three Baltic nations share similar challenges in regard to the treatment of waste, low recycling rates, and/or the welfare of animals. The countries, which can look back on three decades of independence of restored independence after the end of the Soviet Union and now more than fifteen years as members of the EU, are still in the process of developing their environmental regulatory systems. The role of European environmental law and the inspiration provided by it will continue to remain relevant for the three countries for the foreseeable future. Despite these similarities, the three countries have to be seen as distinct legal entities, and recent legal developments will therefore be summarized individually for each country.

Estonia's legislation regarding the protection of water against pollution can be considered ambitious, as is the legislation on the circular economy. After a change in government in early 2021, it is a reasonable assumption that Estonia will improve its track record on environmental law, beyond the minimum standards imposed by EU law, in the coming years. This is necessary, in particular, if Estonia wants to live up to its technological potential and move further towards a true circular economy. Across the Baltic region, recycling rates remain relatively low when compared to other parts of Europe. This is changing slowly. Similar to its northern neighbour, Finland, Estonia is rich in forests and wetlands and environmental awareness has been growing in the country. While waste management continues to remain a key issue in the region, in the past year the circular economy action plan and efforts to facilitate the reduction of carbon dioxide emissions were put in place. As a high-tech nation with