

Réponses au questionnaire sur la régulation économique

Responses to the questionnaire on economic regulation

Suède

Cour Administrative Suprême

Sweden

Supreme Administrative Court



Questionnaire on economic sectoral regulation in European Union countries

On behalf of the Chief Justice of the Swedish Supreme Administrative Court, Mr Mats Melin, I wish to thank you for your questionnaire and answer your question as follows.

Introductory remarks

While appreciating the strive for precision in the questionnaire, we have encountered difficulties when trying to respond to each question posed individually. Let me therefore apologize for the fact that we have found it necessary to limit ourselves to a more general and, admittedly, more superfluous description of the Swedish experience under each heading.

Scope and purpose of economic sectoral regulation

In Sweden there are a number of sectors, apart from those mentioned in the questionnaire, which are subject to economic sectoral regulation. For example, there is legislation concerning alcohol, tobacco, betting and gaming, and drugs/medicine. The purpose of the legislation in these areas is mainly consumer protection.

It is probably fair to say, that EU secondary legislation for economic sectoral regulation from most, if not all, relevant aspects has been transposed into national law. However, according to an official study from 2009, the regulation as a whole gives a divided and inconsistent impression, mainly because the legislation dates from different periods and consists of many amendments. Earlier official studies have also claimed that Swedish local and national authorities lack necessary knowledge concerning EU aspect of market issues.

An overall impression is that Sweden is in the forefront of deregulation, privatization and opening traditionally closed markets to competition. A large number of previously public domains are now open to private entrepreneurs, such as education, postal services, railway services and the sale of pharmaceutical products. (One notable exemption is, of course, the still existing state monopoly on retail sale of alcoholic beverages.) This has, for the most part, been the result of national political considerations rather than a policy prompted by EU law.

Organisation of economic sectoral regulation

By way of introduction, it should be observed that under the Swedish Constitution, Swedish public authorities enjoy a considerable degree of independence vis-à-vis the Government. In this respect, the Swedish constitutional system differs from what is commonplace in most other Member States. According to the Swedish Constitution, no public authority, including Parliament (the Riksdag), or decision-making body of any local authority, may determine how a public authority shall adjudicate any individual case relating to the exercise of public authority vis-à-vis an individual or a local authority, or how the public authority shall apply the law. This tradition of independent authorities is deeply rooted in the Swedish society.

In Sweden there are four major public authorities with horizontal responsibilities regarding market regulations:

1. **The National Board of Trade** is the Swedish authority responsible for issues relating to the EU internal market. The Board acts as the Swedish Contact Point and the central internal market authority, coordinating internal market issues for private individuals, companies and authorities, both in Sweden and in other EU countries.
2. **The Swedish Competition Authority** is the Swedish authority working to safeguard and increase competition. It is also responsible for supervising public procurement in Sweden.
3. **Swedac**, the Swedish Board for Accreditation and Conformity Assessment, is the Swedish accreditation authority. Its task is to promote the free movement of goods and services while safeguarding the safety and reliability of products as well as reliable assessment procedures.
4. **The Market Surveillance Council** is a national coordination body for market surveillance in Sweden. It functions as a forum for information and exchange of experiences between authorities and shall facilitate contacts between competent authorities, business and consumer organisations.

In addition, there are a large number of authorities with sectoral responsibilities. Among these we find, for example, the Swedish Consumer Agency which inter alia conducts tests of consumer products, the Swedish Work Environment Authority which assesses machinery and safety devices and the Swedish Environmental Protection Agency which conducts oversight regarding legislation on producer responsibility.

As specifically regards question 11, legislative proposals presented to Parliament are initiated by the Government, also when it is a matter of implementing EU law. Before the Government draws up a legislative proposal, the matter in question is analyzed and evaluated. The task may be assigned to a commission of inquiry, to officials from the ministry concerned or to a one-man committee. In these analyses employees from the public authorities concerned often participate in an expert capacity. – Before the Government takes up a position on the recommendations of a commission of inquiry, its report is, as a standard procedure, referred for consideration to a number of relevant bodies. These referral bodies may be central government agencies, special interest groups, local

government authorities or other bodies whose activities may be affected by the proposals.

Parliament and, within its competence, the Government may provide public authorities with the power to pass regulation within their area of activity. The regulatory power is usually limited to certain specific aspects of the regulation.

The Competition Authority has, as required by EU law, considerable sanctioning powers at its disposal. This is also true for a number of other regulatory public authorities. Sanctions normally take the form of orders, injunctions or fines. They may be subject to judicial review (see under the next heading).

Judicial review of economic sectoral regulatory authorities' decisions

Most decisions taken by Swedish authorities can be appealed at before an administrative court. The administrative courts can amend, annul or confirm the contested decision. The administrative courts can also review the constitutionality of a provision in the specific case at hand. When needed, an administrative court may decide to refer a question for an expert opinion from outside sources, usually public authorities.

In a few types of situations, a decision by a public authority may only be appealed to the Government. To supplement the ordinary court procedure, a decision by the Government may be challenged directly before the Supreme Administrative Court. A prerequisite for this kind of legal review is that the decision involves an examination of the individual's civil rights or obligations as referred to in Article 6.1 in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

When it comes to cases related to the Competition Act or consumer and marketing legislation a specialized court, the Swedish Market Court, has jurisdiction. In cases related to these laws, the Market Court is the highest court of appeal.

It may be worth mentioning that the fundamental task for the two supreme Swedish courts is to adjudicate cases which may provide guidance for the lower courts and the public authorities. In order to strengthen the court's possibility to fulfill this role of creating precedents, a complainant need to be granted leave to have his or her case tried on the merits by the Supreme Administrative Court. We receive some 8 000 appeals annually, out of which only a few hundred are granted leave and thus tried on their merits.

Nevertheless, the Supreme Administrative Court has pronounced a number of judgments concerning economic sectoral regulation matters. By way of example, in 2004, the Court handled a case concerning betting and gambling. The issue was whether the Swedish lottery legislation was in accordance with the EU regulation. The Swedish Lottery Inspection had decided to order a restaurant, under the penalty of a fine, to stop all meditation of betting to an Irish betting company. The conclusion of the Supreme Administrative Court in that case was that the Swedish legislation was in accordance with the EU regulation. Other cases on sectoral regulation have concerned legal review of Government decisions regarding the approval of biocides and pesticides. Moreover, a

relatively large number of cases concerns public procurement and concessions. In some other cases different aspects of the restrictive Swedish regulation on the sale of alcoholic beverages have been at issue.

Best regards,

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The Supreme Administrative Court of Sweden