
CHAMBERS GLOBAL PRACTICE GUIDES

Climate Change Regulation 2023

Definitive global law guides offering
comparative analysis from top-ranked
lawyers

Sweden: Law & Practice

Johanna Lindqvist, Mikael Mellberg,
Matilda Hellström and Tor Pöpke
Advokatfirman Lindahl KB



SWEDEN



Law and Practice

Contributed by:

Johanna Lindqvist, Mikael Mellberg, Matilda Hellström
and Tor Pöpke

Advokatfirman Lindahl KB

Contents

1. Multilateral and Regional Regimes p.4

- 1.1 Multilateral Climate Change Legal Regime p.4
- 1.2 Regional Climate Change Legal Regimes p.5

2. National Policy and Legal Regime (Overview) p.6

- 2.1 National Climate Change Policy p.6
- 2.2 National Climate Change Legal Regime p.6
- 2.3 Bilateral Co-operation p.8
- 2.4 Key Policy/Regulatory Authorities p.8

3. National Policy and Legal Regime (Mitigation) p.8

- 3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors p.8

4. National Policy and Legal Regime (Adaptation) p.11

- 4.1 Policy/Regulatory Instruments and Spheres of Government/Sectors p.11

5. Responses to International Developments p.13

- 5.1 Carbon Markets p.13
- 5.2 European Union Carbon Border Adjustment Mechanism (CBAM) p.13

6. Liability for Climate Change and ESG Reporting p.13

- 6.1 Task Force on Climate-Related Financial Disclosures (TCFD) p.13
- 6.2 Directors' Climate Change Liability p.14
- 6.3 Shareholder or Parent Company Liability p.15
- 6.4 Environmental, Social and Governance (ESG) Reporting and Climate Change p.15

7. Transactions p.16

- 7.1 Due Diligence p.16

8. Climate-Friendly Investment Support p.17

- 8.1 Renewable Energy p.17
- 8.2 Other Support p.17

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

Advokatfirman Lindahl KB is one of Sweden's largest business law firms, and most of its clients are innovative, knowledge-based businesses. Lindahl has cutting-edge competence in M&A, capital markets, real estate, banking and finance, intellectual property, life sciences, IT and technology, and dispute resolution. Lindahl's environmental department consists of two partners and eight lawyers, and its environmental team comprises leading advisers to Swedish and foreign private and public entities/utilities in the energy and infrastructure

sectors, other industrial sectors and regarding water operations. Lindahl's environmental team is particularly strong in matters concerning different types of energy projects, combining environmental expertise with a profound knowledge and experience of regulatory energy law, EU law and EU proceedings. The firm has extensive international experience and a well-developed network of leading business law firms globally. In Sweden, Lindahl has offices in Stockholm, Göteborg, Malmö, Uppsala, Örebro and Helsingborg.

Authors



Johanna Lindqvist is a specialist counsel. She has worked in the field of environmental law since 2009. Among other things, she handles environmental permit matters, takes part in transactions, and gives legal advice in matters concerning contaminated land and environmental damages. She also has extensive experience in drafting and negotiating agreements for land usage and compensation connected to infrastructural projects, water permits, quarries and windfarms. Notably, Johanna combines her vast knowledge of and experience in environmental legislation to provide advice in matters concerning the Planning and Building Act.



Mikael Mellberg is a lawyer and partner. He specialises in private M&A, investments, corporate law and commercial contracts, such as co-operation agreements, shareholders' agreements and distribution agreements. Mikael is experienced in national and international M&A, acting for Swedish and foreign listed and private companies.



Matilda Hellström is an associate. She regularly works with projects in the environmental and energy sectors and has special experience with permit procedures, supervisory issues and issues concerning various environmental risks, including contaminated land. She assists both private and public actors and represents them in court proceedings in the general court, the land and environmental court and the administrative court.

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB



Tor Pöpke is an associate. He is experienced in the field of environmental law and in particular works with permit issues and related court and administrative proceedings, and with issues regarding contaminated land and environmental law-related due diligence. He acts as counsel in various cases concerning, inter alia, water legislation and solar power.

Advokatfirman Lindahl KB

Studentgatan 6
211 38 Malmö
Sweden

Tel: +46 40 664 66 50
Email: reception.malmo@lindahl.se
Web: www.lindahl.se



1. Multilateral and Regional Regimes

1.1 Multilateral Climate Change Legal Regime

Ratification of International Conventions

Sweden has ratified approximately 40 international environmental conventions, both individually and as part of the European Union (EU). The ratified conventions include:

- the United Nations Framework Convention on Climate Change (UNFCCC);
- the Kyoto Protocol; and
- the Paris Agreement.

Sweden is actively working to develop and strengthen the implementation of many of such conventions, on a national and international level. For most of the ratified conventions, EU member states act jointly.

Mitigation

Sweden is one of the countries with the capacity to show that a fossil-free society is possible. Besides the Swedish Climate Act and ambitious emission targets, there is a broad consensus behind the climate transition among the Swedish people and at the political level. Swedish companies lie at the forefront in offering innovative solutions. The government is determined to meet the national climate goals and to fulfil Sweden's commitments under the Paris Agreement.

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

Adaptation

Sweden tries to work preventatively and at the forefront of issues of climate adaptation. Climate adaptation in Sweden is based on knowledge and participation from many actors. Rules on processes, knowledge development, joint preparedness and division of responsibilities are found in many laws and regulations.

Technology Transfer

Several Swedish authorities and institutions are involved in technology transfer to developing countries and economies in transition. This includes both soft and hard technology, and in several different sectors, such as energy, agriculture and disaster risk reduction. The technology transfer is often combined in an integrated way with capacity building to ensure long-term sustainability.

Climate Finance

Developing countries can apply for funding for climate adaptation through, inter alia:

- the Green Climate Fund (GCF);
- the Least Developed Countries Fund (LDCF);
and
- the Adaptation Fund.

Sweden is a major donor in these multilateral climate funds and, in addition, conducts extensive bilateral climate work.

1.2 Regional Climate Change Legal Regimes

General

Sweden takes part in several regional co-operative arrangements, such as:

- the Arctic Council;
- the Barents Council's environmental working group;

- Nordic environmental co-operation (Nordic Council of Ministers); and
- through the United Nations Economic Commission for Europe (UNECE).

In addition, Sweden co-operates with the countries around the Baltic Sea in the Baltic Sea Co-operation.

The EU

As a member state of the EU, Sweden participates in the drafting of EU policies for combating climate change. The EU is also party to several international conventions on climate issues.

In July 2021, the EU presented the Fit for 55 package, which is an extensive legislative programme with rules on climate, energy and transport, and aimed at enabling EU countries to reduce emissions by at least 55% by 2030 and to reach climate neutrality by 2050 at the latest. The package contains several proposals for extensive changes to legal acts or proposals for new legal acts.

The EU's climate target is divided into three parts:

- emissions trading within the EU ETS;
- the distribution of the member states' responsibilities for emission reductions according to the Regulation on the distribution of responsibilities (ESR); and
- the Regulation on uptake and emissions from forests and land (LULUCF).

The climate goal was adopted by the EU in the Climate Act in June 2021. According to the Climate Act, the Commission must submit proposals regarding new climate targets for the EU for the year 2040 by the first half of 2024 at the latest. Several important parts of the EU's Fit for

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

55 climate package have been negotiated during Sweden's presidency in 2023.

Nordic Environmental Co-operation

Official Nordic co-operation is carried out within the framework of the Nordic Council of Ministers and the Nordic Council, and includes Denmark, Finland, Iceland, Norway and Sweden, as well as the Faroe Islands, Greenland and Åland. The vision of the collaboration is for the Nordic region to be the world's most sustainable and integrated region by 2030. The Nordic Council of Ministers' action plan for Vision 2030 has been approved by the Nordic co-operation ministers and is valid for the period 2021–2024.

The action plan includes social, economic and environmental sustainability. The Paris Agreement and Agenda 2030 demonstrate the way, and the Nordic countries have the goal of working even faster and more ambitiously than the rest of the world to achieve such objectives.

2. National Policy and Legal Regime (Overview)

2.1 National Climate Change Policy

In Sweden, extensive research is carried out on climate change and its current and potential future effects, as well as on adaptation and mitigation options. The government provides targeted investments for both national, regional (European) and international research programmes. Swedish research councils fund national research and innovation of the highest scientific quality and relevance for adaptation to climate change.

Sweden advocates an ambitious implementation of the Paris Agreement and contributes in several different ways to achieving the goals

within the Agreement; this includes via measures to reduce emissions of greenhouse gases in Sweden through nationally determined climate targets, and also via international implementation support for developing countries.

Since Sweden is part of the EU, it also has commitments within the EU. The EU is considered a party in the Paris Agreement, meaning that the EU submits a jointly decided NDC that all EU member states stand behind. The EU has decided on climate targets that apply to the entire Union; thus, Sweden is covered by these. The climate goal states that the entire EU must reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 emission levels. All member states, including Sweden, must participate in and contribute to meeting the climate goals and the EU's contribution to the Paris Agreement.

2.2 National Climate Change Legal Regime

The Constitution

The Constitution does not contain any provisions directly regulating climate change. The Constitution stipulates that the public must promote sustainable development that leads to a good environment for current and future generations. As a reason for the provision, the government stated that Sweden should be a leading country when it comes to the protection of the environment. The wording of the provision was linked to the Environmental Code's goal-setting clause (Chapter 1, Section 1), which describes in detail the purpose of Swedish environmental policy – ie, to highlight the central environmental policy concept of sustainable development and to emphasise the principle of solidarity with future generations (namely the importance of steering development in society along paths that are sustainable in the long-term).

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke, Advokatfirman Lindahl KB

Sweden's Environmental Target System

The environmental target system provides an overall picture of Swedish environmental work:

- the Swedish Parliament and the government decide on objectives and policy instruments;
- society and the authorities carry out the work;
- the authorities follow up, evaluate and propose further efforts; and
- a parliamentary preparation draws up strategies with proposals for stage objectives and instruments to develop the work.

The environmental quality objectives describe the quality of the environment that parliament and the government have decided on.

Climate Policy Framework

In 2017, Sweden adopted a climate policy framework, which is a key component in Sweden's efforts to comply with the reduction of greenhouse gas emissions in accordance with the Paris Agreement. The framework consists of a Climate Act, climate targets and a climate policy council. The purpose of the framework is to create a coherent climate policy to ensure long-term conditions for implementing the transition required for Sweden to reach the climate goals and to contribute to the Paris Agreement's temperature goals.

According to the Climate Act, the government must present a climate report in the budget bill every year. The report facilitates follow-up and assessment of the combined climate effects of all policy areas and must contain a description of the emission trend in relation to the targets. The report must also describe the most important decisions during the year and their effect on the development of greenhouse gas emissions, as well as contain an assessment of whether there is a need for further measures.

The Climate Act also states that the government must produce a climate policy action plan every four years. The purpose of the action plan is to show how the government's combined policies within all relevant spending areas contribute to reaching the milestone targets for 2030 and 2040 and the long-term emission target for 2045. If the government determines that intended targets cannot be reached with current policy instruments, the action plan must contain an account of the reasons for this and of what further measures the government intends to take. The plan must also contain an account of how other decisions and measures, both at the national and international level, affect the possibility of reaching the climate goals.

The climate goals are not regulated by law and are not part of the Climate Act. There are no sanctions or other legal effects where the government fails to fulfil its obligations according to the Climate Act. Therefore, it is unclear what the effect will be if the government fails to fulfil the climate goals.

However, a legal claim for damages from the government has been filed in the Stockholm District Court by a large number of youths. The claim for damages is based on the alleged lack of fulfilment of the government's obligations to, *inter alia*, reduce greenhouse gas emissions according to the Climate Act.

Other Regulations

The main and most direct law regulating preparedness and prevention measures with regard to climate change is the Planning and Building Act. Another prominent law which indirectly governs climate change is the Environmental Code.

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

2.3 Bilateral Co-operation

Sweden has signed memoranda of understanding, expressing a common interest to co-operate through Article 6 of the Paris Agreement, with three other countries: the Dominican Republic, Ghana and Nepal.

The next step in the collaborations is to agree on a binding framework agreement, which is a prerequisite for Sweden being able to finance emission-reducing activities in such countries. The framework agreement establishes conditions, rules and which activities are to be carried out. In addition to the three countries mentioned above, Sweden is in dialogue with several other countries regarding co-operation under Article 6.

2.4 Key Policy/Regulatory Authorities

The Swedish Parliament and Government

The Swedish Parliament is the legislative body, and the government can issue ordinances as authorised by parliament. The government has the right to issue ordinances on climate adaptation. There are many laws that directly or indirectly affect climate adaptation in Sweden, most prominently the Planning and Building Act and the Environmental Code. The government has also given certain state authorities special tasks of co-ordinating the national climate adaptation work.

State Authorities

According to Ordinance (2018:1428) on state authorities' climate adaptation work, approximately 30 state authorities with designated responsibility for climate adaptation must support and help in the respective authority's area or sector. The Swedish Board of Agriculture and the Swedish Forestry Agency must, for example, support climate adaptation in the agricultural and forestry sectors, respectively. The Civil Contingencies Agency must increase society's

preparedness for climate-related accidents and crises such as forest fires and floods, while the Public Health Agency handles the impacts of climate change on human health.

The National Expert Council for Climate Adaptation

The government has appointed a special council to review and evaluate the work with climate adaptation in Sweden. The council is linked to the Swedish Meteorological and Hydrological Institute (SMHI). Every five years, the council must produce a report containing, among other things, proposals for the continued work with climate adaptation in Sweden.

3. National Policy and Legal Regime (Mitigation)

3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors

The Swedish Climate Goals

The long-term goal

By 2045 at the latest, Sweden must have no net emissions of greenhouse gases into the atmosphere, in order to subsequently achieve negative emissions. The goal means that the emissions of greenhouse gases from Swedish territory must be at least 85% lower by the year 2045 than the emissions in 1990. The remaining emissions down to zero can be achieved through so-called supplementary measures.

To be able to reach the goal, the separation and storage of carbon dioxide of fossil origin must also be counted as a measure where reasonable alternatives are lacking.

Milestones for 2030 and 2040

The milestones for the long-term goal include greenhouse gas emissions in the so-called non-

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

trading sector (greenhouse gases covered by the EU's allocation of responsibilities). Greenhouse gas emissions covered by the EU Emissions Trading System (EU ETS) are not included in the milestone targets.

The milestones are:

- emissions in 2020 should be 40% lower than emissions in 1990;
- emissions in 2030 should be 63% lower than emissions in 1990; and
- emissions in 2040 should be 75% lower than emissions in 1990.

The Swedish Environmental Goals

In addition to the climate goals, the Swedish Parliament has decided on several different environmental goals, which serve as benchmarks for environmental work in Sweden. The goals demonstrate the way towards sustainable development and constitute the environmental dimension of Agenda 2030. Sweden's environmental goals consist of an overall generational goal, 16 environmental quality goals and several milestone goals.

The environmental goals with their specifications describe what constitutes a good environment in Sweden. They are the starting point for various policy instruments and for the entire society's work with environmental issues. To demonstrate how the environmental work is going and what needs to be done, there are indicators and milestones that describe what needs to happen and when.

The government has an overall responsibility for the environmental goals. Beyond that, responsibility is delegated in different ways. Eight authorities are responsible for monitoring and evaluating one or more environmental

quality objectives. The county administrative boards have an overall and co-ordinating role as regional environmental authorities. They must work together with other regional authorities and bodies, and in dialogue with municipalities, businesses and voluntary organisations. Municipalities have the task of translating national and regional environmental goals into local goals and measures, so that the environmental goals become tools for local politics.

EU Emissions Trading System (EU ETS)

The main instruments specifically dealing with climate change mitigation, and guaranteeing the NDC mitigation targets, are found within the EU ETS.

The EU ETS works on the "cap and trade" principle. As mentioned in **2.1 National Climate Change Policy**, the overall volume of greenhouse gas is limited by a "cap" on the number of emission allowances for operators (power plants, industry factories and the aviation sector), on the basis of the EU ETS regulated by Directive 2003/87/EC as amended by Directive (EU) 2018/410. This cap on emissions is set for the whole of the EU and is reduced over time so that total emissions fall.

Sweden has introduced a series of policy instruments and measures that directly or indirectly affect greenhouse gas emissions. The emphasis in Sweden's work for reducing society's climate impact is on the use of general economic instruments. These are targeted measures to supplement and support the development and market introduction of new technology.

The three largest sources of greenhouse gas emissions in Sweden are transport, industry and agriculture. Another large source is the building sector.

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

The following is a summary of the key instruments, measures and initiatives by sector/topic that are intended to contribute to climate change mitigation in Sweden.

Traffic sector

Parliament has decided on a climate target regarding greenhouse gas emissions for the domestic transport sector. The goal is that greenhouse gas emissions from domestic transport, excluding domestic aviation which is part of the EU's emissions trading system, must be reduced by at least 70% (compared to 2010) by 2030 at the latest.

Industrial sector

The industrial sector accounts for approximately one third of Sweden's territorial emissions. The emissions are dominated by the iron and steel industry, the mineral industry and the refineries.

The EU ETS is an important steering tool for industry, together with support for innovation and development. The control from the EU ETS, together with increased climate ambitions within the EU, has caused the prices of emission rights to increase.

In the Fit for 55 package, which is part of the EU's growing climate ambitions, further tightening of the EU ETS has been proposed, providing incentives for further emission-reducing measures within industry.

The Swedish Energy Agency offers financial support to projects that have good potential for contributing to a resource-efficient and climate-neutral industry. The Energy Agency's investments should contribute to Swedish industry being competitive in the long-term and to delivering resource-efficient and climate-neutral products, processes and services to the global market.

Agricultural sector

The government is currently making a special investment in nature-based solutions to rewet peatlands and restore and create wetlands, among other things, with the aim of reducing emissions of greenhouse gases.

Actors in the agricultural sector are offered investment support, Klimatklivet, which makes it possible to invest in fossil-free future technology and green transition.

The most common measure in agriculture is to switch from fossil fuels to renewable energy in the boilers used to dry grain or heat stables and greenhouses. Klimatklivet also sees a steadily increasing interest in electrification in agriculture. More and more farmers are receiving support for switching from fossil to electric-powered alternatives for feed handling, fertilisation, irrigation and spreading machines.

Farmers have also received support for using manure to produce biogas. This helps to reduce methane emissions from manure, while the biogas can be used to produce electricity and heat, or can be upgraded to vehicle gas that enables other players to use renewable fuels instead of fossil fuels.

Together, the measures in agriculture are expected to reduce emissions of carbon dioxide and other greenhouse gases by 228,000 tons of carbon dioxide per year.

Building sector

The National Board of Housing, Building and Planning publishes the Swedish Building Code, which includes rules on energy economisation to be complied with when constructing new or changed buildings – for instance, the maximum amount of kilowatt hours (kWh) of energy per

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

square metre and per year that is allowed in a building.

Furthermore, there are provisions that stipulate the requirement for the building to have a valid energy performance certificate – eg, for new buildings, buildings that are about to be sold and leased buildings. An energy performance certificate is issued by an energy expert and must contain information on, inter alia, the building's energy use and energy class, and any suggestions from the expert on how the building's energy use can be decreased.

Other

The Environmental Code has a goal-setting clause, which states that its goal is to promote sustainable development and thus ensure a healthy and good living environment for now-living and future generations. Thereby, there is an obligation to consider environmental aspects in general (also in permit applications).

The Environmental Code also entails, inter alia, legal requirements on sustainable use of resources, which includes energy, to be considered by operations. Larger companies are also obliged to make an energy survey every four years with the aim of improving their energy efficiency. The survey should report the energy use and proposals for measures to decrease the use of energy.

EU law requires certain large companies to disclose information on the way they operate and manage social and environmental challenges. Directive 2014/95/EU (the “Non-Financial Reporting Directive”) lays down the rules on disclosure of non-financial and diversity information by certain large companies. Under the Directive, large companies are obliged to publish information related to environmental matters.

The government has also established a climate policy council, which is intended to provide independent assessment of how the comprehensive climate politics presented by each government are compatible with the targets set.

Climate change issues are also encompassed by other legislation in which renewable energy benefits are provided in different ways – for instance:

- the Energy Tax Law;
- the Environmental Code; and
- the Building and Planning Act.

ESG due diligence for transactions and ESG due diligence in supply chains are becoming more common. As part of the work to develop public procurement, the former government has developed a national procurement strategy, which aims, among other things, to ensure as low a negative environmental impact as possible in each individual procurement, and to use procurement as a strategic tool to achieve environmental goals.

4. National Policy and Legal Regime (Adaptation)

4.1 Policy/Regulatory Instruments and Spheres of Government/Sectors General

Since 2017, there has been a climate policy framework. The framework consists of the Climate Act, climate targets and a climate policy council. In the Climate Act, it is established that the climate goals must govern the government's policy and how the work is managed.

Sweden also has a national climate adaptation strategy that was decided by parliament in 2018. The strategy includes Sweden's goals regard-

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

ing climate adaptation, guiding principles for the work (see below), organisation and distribution of responsibilities, follow-up, financing principles and knowledge-raising efforts.

The following is a summary of the key instruments, measures and initiatives that are intended to contribute to climate change adaptation in Sweden.

The National Expert Council for Climate Adaptation

The National Expert Council for Climate Adaptation, linked to the SMHI, has the task of deciding on a report to the government every five years. The report must contain:

- proposals for the direction of the national work for climate adaptation;
- a prioritisation of adaptation measures based on an assessment of risk, cost and benefit;
- a summary analysis of the effects of climate change on society; and
- a follow-up and evaluation of the national work on climate adaptation.

Government Agencies

In Ordinance (2018:1428) on authorities' climate adaptation work, authorities are listed with designated responsibility for working with climate adaptation. The authorities' powers vary from merely supportive to prescriptive.

Different authorities are responsible for support and help regarding different sector issues. Examples of sectors include:

- the agricultural and forestry sectors, where the Swedish Agency for Agriculture and the Swedish Forestry Agency are responsible for climate adaptation support;

- the preparedness sector, where the Swedish Civil Contingencies Agency is responsible;
- the water environment sector, where the Swedish Agency for Marine and Water Management is responsible; or
- human health, where the Public Health Agency is responsible.

Municipalities

In accordance with the Planning and Building Act, the municipalities are responsible for new developments in the detailed plan to be located on suitable land, considering the risk of accidents such as landslides or flooding and erosion. As part of this obligation, a municipality must, in its comprehensive plan, explain its view of the risk of damage to the built environment that may result from climate-related flooding, landslides and erosion, as well as how such risks can be reduced or eliminated.

The municipalities also have a responsibility in certain other areas according to law, and can also implement preventative adaptation measures, provided that the measures are compatible with the public interest in the Municipal Act.

Other

As stated in **3.1 Policy/Regulatory Instruments and Spheres of Government/Sectors**, the Environmental Code has a goal-setting clause, which states that its goal is to promote sustainable development and thus ensure a healthy and good living environment for now-living and future generations. Thereby, there is an obligation to consider environmental aspects in general (also in permit applications).

5. Responses to International Developments

5.1 Carbon Markets

As a part of the EU, the Swedish jurisdiction is subject to commitments made by the EU. To live up to the commitments in the Paris Agreement, and especially Article 6.4 regarding carbon markets, the EU ETS is a decisive means of control in which Sweden participates. The carbon market is regulated at the EU level through Directive (EU) 2018/410 and implemented in Sweden through domestic law (Law (2020:1173) regarding some emissions of greenhouse gases).

The carbon market's system is based on a principle where a limit is placed on how much greenhouse gas a certain sector is allowed to release. The total amount is distributed between so-called emission rights, which are subject to trade on the market. An operator can buy and sell the rights on the market, and at the end of the year the operator must hand in rights which correspond to their amount of carbon emissions. If an operator submits their rights too late, or submits too few or none, a penalty fee will be levied. The limit on emissions is reduced over time, which creates an incentive for operators to invest in technologies with low carbon emissions.

Today, the system covers energy-intensive sectors, such as the steel industry and the crafting of cement, and the production of electricity and district heating. However, the system's scope for applications is expanding, and more industries (eg, emissions from road transportation, buildings and some industries that are not covered by the current system) will be covered by the regulation.

5.2 European Union Carbon Border Adjustment Mechanism (CBAM)

Due to Sweden's EU membership, the Swedish jurisdiction will be directly affected by the EU Carbon Border Adjustment Mechanism (CBAM). The aim of the CBAM is to prevent the production of carbon-intensive products outside the EU in states where policies to reduce the emissions of greenhouse gases are less ambitious than within the EU. It complements the EU ETS, which applies for emissions from operators within the Union, by managing emissions from imports. The mechanism is designed as a custom on imported products which should correspond to the carbon price on domestic products, implying that an operator in Sweden who imports certain types of goods from a state outside the EU will be affected.

Sweden has been active during the negotiations for the regulation, and has raised issues related to the impact on competitiveness. An important issue has been how the mechanism can ensure a fair competitive situation for companies that are at the front of the industrial transition. When the regulation was adopted, some of the core issues were considered; and in the main, the Swedish response to the CBAM has been positive as it can contribute to preventing the risks of carbon leakage and to the mitigation of greenhouse gas emissions.

6. Liability for Climate Change and ESG Reporting

6.1 Task Force on Climate-Related Financial Disclosures (TCFD)

The Swedish government, the Financial Supervisory Authority (FI), the AP-funds (handling the investment of the premium pension in Sweden) and the Central Bank have all joined the Task

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

Force on Climate-Related Financial Disclosures (TCFD). This has influenced national policy and recommendations in Sweden.

The FI recommends companies covered by the Annual Accounts Act's requirement for drawing up a sustainability report to use the TCFD's recommendations as a starting point for the reporting of climate aspects. The reason for this recommendation is the fact that the TCFD's recommendations are already integrated into Directive 2014/95/EU on disclosure of non-financial and diversity information (NFRD) through non-binding guidelines from the European Commission.

The Central Bank has also stated its opinion that Swedish banks should already report their exposures to climate risks in accordance with the TCFD. The Central Bank reports its own climate-related financial disclosure according to the recommendations of the TCFD. Since 2023, this also includes the carbon footprint of the portfolio of Swedish government bonds and the foreign exchange reserves.

The Swedish AP funds also report their climate risks in accordance with the TCFD recommendations. Several of the large banks in Sweden (such as Nordea, Handelsbanken, Swedbank and SEB) also report in accordance with the TCFD. Since 2021, there has been an increase of companies reporting their climate risks in accordance with the TCFD; and most companies that report climate risks are active in the financial sector. Non-financial sector companies using TCFD include H&M, Boliden and Vattenfall.

Many Swedish financial corporations have gradually begun to adapt their lending, risk management and reporting to include climate aspects. However, there are only a few companies that

have processes in place for the whole chain of identifying, measuring, assessing and managing climate risks.

6.2 Directors' Climate Change Liability

Under Swedish tort law, no personal liability applies to directors for the climate change impacts on their companies or of their companies. Instead, the Swedish Environmental Code imposes liability for environmental damage on property owners or operators. Environmental damage refers to personal injury, material damage and pure financial loss.

However, if the proposal for the Corporate Sustainability Due Diligence Directive (CSDDD) enters into force, it will entail liability for companies' directorship. According to the CSDDD proposal, the management is obliged to implement a transition plan that is compatible with the global warming limit of 1.5°C. For companies with more than 1,000 employees, it is proposed that management be directly responsible, which in turn may affect variable elements of its remuneration, such as bonuses.

Infrastructure investments or financing arrangements that may have a negative climate change impact are not the target of any regulatory attention.

According to Swedish legislation, there is no direct rule for supervisory measures due to climate change. However, activities that are hazardous to the environment – ie, activities that may cause a nuisance to human health or to the environment and thus cause a negative climate impact – are generally subject to a permit or notification requirement. In general, infrastructure projects require a permit, for which an environmental impact assessment is required.

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

An environmental impact assessment must be submitted to the authorities and must, among other things, describe the environmental and climate impact of the planned activity, and the measures to be taken to mitigate the climate change impact. In addition, various projects or activities with environmental or climate impacts may be brought to the attention of interest groups – for example, during the consultation procedure, which also means attention from civil society.

The CSDDD proposal contains provisions on supervision and sanctions. Among other things, it is proposed that companies that do not meet the requirements of the CSDDD risk a fine of at least 5% of global net turnover. Supervisory authorities will be able to impose sanctions, and companies may also face liability for damages. Third-country companies that do not comply with the rules will be banned from participating in public tenders.

6.3 Shareholder or Parent Company Liability

Since there is no liability of the company or of the director for climate change damage under Swedish law, there is no liability for shareholders or for a parent company either.

6.4 Environmental, Social and Governance (ESG) Reporting and Climate Change

Under current Swedish law (the Annual Accounts Act), sustainability reporting is only mandatory for companies that meet more than one of the following conditions:

- where the average number of employees in the company has exceeded 250 in each of the last two financial years;

- where the company's reported balance sheet total for each of the last two financial years amounts to more than SEK175 million; and
- where the company's reported net sales for each of the last two financial years amount to more than SEK350 million.

Climate information must be presented in the sustainability report, and the TCFD recommendations can be used for this. The sustainability report must be part of the company's annual report.

Companies that meet the following criteria should also prepare their sustainability reports in accordance with the EU Taxonomy Regulation:

- public interest entities as defined in Article 2(1)(a) to (c) of Directive (EU) 2013/34/EU; and
- companies with an average of more than 500 employees during the last financial year.

When the EU Corporate Sustainability Reporting Directive (CSRD) is implemented into Swedish law, the above will be adapted in accordance with the new Directive. The financial year 2024 is expected to be the first year in which sustainability reports must be reported in accordance with the CSRD standard. The requirements above apply both to listed and to unlisted companies that meet the specified criteria. Thus, sustainability reporting is not a requirement for stock exchange listing.

The International Sustainability Standard Board works to develop a consistent framework for identifying and developing global standards that can be integrated with existing financial reporting standards. The Science Based Targets Initiative works on setting scientific targets for reducing companies' greenhouse gas emissions. These initiatives are currently voluntary,

as there is no requirement for ESG reporting as such in Sweden.

7. Transactions

7.1 Due Diligence

M&A and Finance Transactions

Climate change-related topics play an increasingly important role in M&A and finance transactions. A separate climate change due diligence workstream is now a common measure that aims to identify climate change-related risk. The authors have observed that climate change-related topics are of ever greater importance when clients examine and evaluate potential acquisition targets. The authors frequently assist clients in this initial phase of a potential transaction, and give recommendations on strategies to ensure that these initial assessments (before conducting more formal commercial, legal and financial due diligence) are sufficient and useful for the evaluation of potential targets.

With the introduction of more stringent due diligence requirements within the EU, the authors also advise clients on the introduction of, for instance, supply chain due diligence inquiries in their standard due diligence questionnaires.

The market has an increased awareness of the importance of examining and evaluating climate-related risks throughout the entire ESG spectrum, but is sometimes lacking in overall understanding of what is to come. ESG regulation in the EU is quickly moving from reporting and data collection requirements towards a complex set of rules that, directly and indirectly, imposes stringent requirements on essentially all business to mitigate adverse effects on, for example, human rights and the environment. To a large extent, such regulation originates from

the implementation of the EU Green Deal and especially the CSRD and CSDDD. The authors have observed increased demand from clients when it comes to high-quality advice on how to approach these acts from a due diligence standpoint, to mitigate risk and seize the opportunities that a quickly changing legislative landscape entails.

Property Transactions

Climate change due diligence is not typically conducted on property transactions, but the authors have seen a development where the securing of finances for certain property transactions has become increasingly more difficult. Banks have set up demands related to climate and sustainability topics as conditions for the granting of financing for a property transaction. These include demands regarding energy efficiency and environmental certificates (LEED, BREEAM, Nordic Swan Ecolabel or Sweden Green Building Council).

If the property meets the bank's demands, it is classified as a green property and the conditions relating to financing the property will be more beneficial. Also, when a real estate holding company renegotiates its loans and restructures its finances, the proportion of green properties in the company's possession is of great importance in generating more beneficial conditions for the company. Green properties are not only easier for securing and renegotiating finances, but also have higher market values than other properties.

In addition, parties have begun to take into consideration costs for future climate or sustainable investments needed to fulfil legal obligations (eg, energy efficiency) when negotiating the purchase prices of properties. Sometimes, the seller undertakes to conduct such an invest-

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

ment before the buyer takes possession of the property in the purchase agreement. For example, the authors have seen that an EU Directive concerning the prohibition of the manufacturing of certain light sources has had an impact, as, when negotiating the purchase price, parties have taken into consideration the cost of replacing the light sources in property buildings when the relevant lifespan comes to an end.

As the EU has entered into an accelerating phase regarding the adoption of environmental, social and governance (ESG) issues, and environmental and climate regulation as part of EU's Green Deal, the authors expect that climate change due diligence work will become a more common and integrated part of property transactions in the near future.

8. Climate-Friendly Investment Support

8.1 Renewable Energy

Sweden has undertaken several measures for the uptake of renewable energy technologies and towards full-scale use of renewable energy. The Swedish energy policy is based on goals for reconciling a safe supply of electricity, competitiveness and ecological sustainability. Two such goals are:

- to promote energy efficiency and achieve a 50% more effective use of energy by 2040 compared to 2005; and
- to achieve zero net emission of greenhouse gases until 2045.

The ambition to reach zero net emissions of greenhouse gases is also stated in the political climate framework, which consists of the Climate Act, climate goals and a political climate

council (Swedish Climate Policy Council). The long-term purpose is to achieve zero net emissions of greenhouse gases until 2045, and thereafter to attain negative emissions. One of the sub-goals is that by 2024 all produced energy must come from renewable resources.

Sweden's undertakings and ambitions will create an increased demand for renewable energy sources. To meet the increased demand of electricity, the government adopted an electrification strategy which, inter alia, includes a market-based support system with electricity certificates. The system is designed to increase the production of renewable energy in a cost-effective way and has been in force since 2003. It applies to renewable electricity from wind power, certain hydropower and certain biofuels, solar energy, geothermal energy, wave energy and peat in nuclear power. A producer obtains a certificate for each megawatt hour of produced renewable electricity and can thereafter sell the certificate on the market to receive extra income.

Furthermore, to facilitate the changeover and cut costs for renewable energy, Sweden also provides financial contribution and support to both operators and individuals. For example, an individual can receive a tax reduction when installing "green technology" such as mains-operated solar cell systems, systems for storage of own produced energy and charging points for electric vehicles. The government has also adopted regulations regarding financial contributions in the area of renewable energy, where operators who upgrade their production of biogas to biomethane of a quality that is sufficient for the distribution grid for natural gas may receive a grant.

8.2 Other Support

The Swedish jurisdiction provides other support for the uptake of other forms of climate-

Contributed by: Johanna Lindqvist, Mikael Mellberg, Matilda Hellström and Tor Pöpke,
Advokatfirman Lindahl KB

friendly investments, such as State aid finance grants. A national strategy for climate adaptation and strengthening resilience has been adopted where actions are made at both a local and national level. The strategy includes a climate aid which will contribute to financing the reduction of emissions and climate adaptation measures.

As an example, the Swedish government has adopted national investment programmes regarding fossil-free technology and different types of research projects for reducing emissions in the industrial area. An applicant can apply for investment support through such programmes.

In addition, it is also possible to receive contributions for investments in environmentally friendly lorries and work machines, and in electrified work machines. An applicant can obtain a grant amounting to 20% of the purchase price of the lorry or machine.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com