

Complaint for breach of EU law

Information on the complainant

Organization	Djurens Rätt
Address	Box 17132
City	Stockholm
Zip code	10 462
Country	Sweden

Authority or body to which the complaint relates

Name	The Swedish Board of Agriculture
Address	Jordbruksverket
City of	Jönköping
Zip code	551 82
EU country	Sweden

The complaint is addressed to Sweden, the Swedish Board of Agriculture and the 21 county administrative boards together. The problems are not due to action by an individual authority. It is only possible to specify an authority in the form, therefore the Swedish Board of Agriculture, as a coordinating authority, has been specified.

What EU law does it apply to?

Dir. 2010/63/EU article 34.

What national measures do you consider to be a breach of EU law and why?

Sweden is failing to carry out enough regular inspections of users in accordance with Article 34(3). Insufficient amounts of inspections has been carried out in the last three years and it is unlikely that the frequency will increase in the foreseeable future.

Sweden's implementation of Articles 34(2) and 34(3) means that 21 authorities responsible for each of their geographical areas (counties) each carry out inventory, risk classification and control of users in each area. Sweden is a large country in terms of surface area, but high-risk users are typically concentrated in a few locations. As a result, inspections of low-risk users takes precedence over high-risk users in terms of the country as a whole.

The number of inspections carried out without prior warning is also unknown as the data are not in the published statistics and Sweden has not incorporated Article 34(4) in the Swedish Regulations.

Regarding the low frequency of control, Djurens Rätt has identified the following probable causes.

- Most county administrative boards do not issue control plans in accordance with the Swedish regulations and thus do not inventory either the users or the need for resources on time.
- The county administrative boards is underfunded.
- The county administrative boards have been given equal responsibility for the classification and control of the users in their respective county, even though Swedish conditions require that risk classification takes place at national level and that resources and responsibilities are distributed among the county administrative boards in accordance with that risk classification.
- There is a lack of effective coordination for the inspections of users with activities related to more than one county.

Describe the problem and state the facts and reasons for the complaint

In its report to the Commission pursuant to Article 54(1) of 2018 (the report), the Swedish National Board of Agriculture (SJV) stated that Sweden had initially had difficulty in complying with the requirements of the Experimental Animal Directive, but that efforts by one of the county administrative boards had led to exceptionally many inspections.

The report covered the years 2013-2017 and it shows that too few inspections were carried out in the first three years while the last two years were approved. Since then, control levels have again fallen and in 2018-2020 only 26, 29 and 25 inspections were carried out respectively. In addition, according to the information we have received from the county administrative boards, only 29 inspections are planned in 2021. Note, however, that four of them have not answered the question and that the outcome in previous years has been lower than the plan.

Djurens Rätt does not have an indication of how many users there have been each year, but in 2020 there were 212 permits to use animals for scientific purposes in Sweden, which means a minimum requirement of 71 inspections. Given that the number of permits has been subject to a downward trend, it is safe to use it as a reference.

Djurens Rätt has examined the work of the county administrative boards and found that the infrastructure for national inspections is not working satisfactorily in Sweden. Sjv has identified shortcomings in the work of the county administrative boards and has formed a working group to address them. However, after constact with Sjv and the Ministry of Economic Affairs, we can conclude that these measures will not be sufficient and we expect Sweden to report 5 failed years when it is time for the next report to the Commission in 2023.

Our concern is based on the fact that both Sjv and the Ministry of Economic Affairs point to shortcomings in the work of the county administrative boards, while our view is that the problems are primarily due to the fact that the county administrative boards have not been given sufficient means to meet the requirements of the directive. The county administrative boards themselves are alerted to a lack of resources and competence and we also believe that there

are some shortcomings in the coordination for the inspections of users and that it is likely that the shortcomings are partly due to how Sweden has chosen to adapt the rules to Swedish conditions when implementing the directive.

Sweden is a large country by its geographical area. The country has been divided into 21 counties where a authority is responsible for each geographical area. However, the use of animals for scientific purposes is concentrated to a few areas. In implementing the directive, Sweden has chosen to oblige each of the county administrative boards to classify and control 1/3 of the users in their respective counties. This is certainly in accordance with the wording of the directive.

However, it is alien to the Swedish and European legal order to interpret rules primarily on its wording. Instead, the purpose of the rules should form the basis for understanding the rules. The purpose of the national inspections is for Member States to carry out risk-based inspections of users. In practice, the Swedish rules give priority to low-risk users in counties where the use of animals for scientific purposes is of a temporary and sporadic nature over high-risk users in counties with a high concentration of users. We believe that this is a contributing factor to the low inspection rates in the country.

It is natural that authorities in counties with a high concentration of users should bear greater responsibility for the inspections and that the authorities in those counties develop a greater competence for the inspection of users. Had Sweden implemented the Directive in accordance with its purpose so that risk classification had been carried out at national level and subsequently allocated resources to the respective authorities, the frequency of inspections would probably have been higher. This is also confirmed in our review of the county administrative boards' work, which shows that there is generally a higher competence and better planning for inspections of users in the counties with many users. In fact, as many as 11 county administrative boards with few users are not planning any checks in 2021 and many of them say that they have no users in their county, even though Djurens Rätt has received information about it from Sjä.

The records on users obtained by Djurens Rätt shows that the responsibility for inspections of almost 60 users is shared by several

county administrative boards in different constellations. In our contact with the authorities, we have been able to discern a discrepancy between the number of control objects included in the county administrative boards' planning and the record of users. It is likely that this deviation is due to a lack of coordination between county administrative boards and that users where responsibility for inspections is shared between counties are never assessed by the authorities.

The fact that the county administrative boards point at resource shortages is primarily about their activities being underfunded. The lack of resources is also likely due to shortcomings in the organization of the county administrative boards. According to Swedish regulation the county administrative boards must establish a control plan for each calendar year. It shall include both a plan for the next year's checks and an inventory of the resources required to carry out the work. In April 2021, Djurens Rätt requested the control plans for the current year, but only 5 county administrative boards had an established plan. The shortcomings in compliance with the rules on control plans result in the county administrative boards not reporting the correct need for resources. This is demonstrated by the above-mentioned fact that an alarming proportion of county administrative boards are not aware that they have users in their county.

We welcome the fact that Sjä has formed a working group but do not believe that this will lead to satisfactory compliance in the foreseeable future. Our concern is based on the fact that the shortcomings are due to various factors for which different authorities are responsible and that Sjä, in our contact with them, believes that *"Our assessment is that we have legislation and a structure for approval and control that well meets the requirements of the directive"* and that *"we also do not share your view that coordination of inspections doesn't work. We are the coordinating authority for animal welfare control and have a continuous dialogue with the county administrative boards on all animal welfare control issues, including animals used in science"*.

The following quotes from one of the county administrative boards suggest that Sweden lacks a functioning infrastructure for national inspections.

With the limited resources at our disposal, we try to spend time on what does the most animal welfare

benefit. We would like to see us have the resources to implement everything that the Swedish Board of Agriculture thinks we should, but unfortunately that is not the reality.

Plea to the Commission

The shortcomings of national inspections of users are due to a complex composition of causes and we believe Sweden needs help in addressing the problems. We would therefore ask the Commission, in accordance with Article 35(1), to undertake controls of the infrastructure and operation of national inspections in Sweden.

State which supporting documents/evidence you can send to us on request

1. Full account of our investigation of the authorities.
2. Written conversations with the Ministry of Economic Affairs and the Swedish Board of Agriculture showing that Sweden has not identified any problems with the implementation of the Directive, the establishment of functioning infrastructure for national inspections or coordination for inspection of users and that the efforts in the new working group are therefore unlikely to be sufficient.
3. Record of permits to use animals in science and education in Sweden in 2021 showing that too few inspections are planned in 2021 and that the division of responsibilities between the authorities is too complex.
4. Control plans from 5 of Sweden's 21 county administrative boards showing that too few inspections are planned for 2021.
5. Summary of which county administrative boards do not have established control plans and their answers to the question of whether they plan inspections of users in 2021 showing that for checks are planned in 2021.
6. Written conversations with 17 county administrative boards showing that some county administrative boards believe that their work is underfunded, that too few inspections are planned for the

control year 2021 and that the statistics reported by the county administrative boards to the Swedish Board of Agriculture are unlikely to relate solely to the control of users under the scope of Dir. 2010/63/EU. (4 county administrative boards have not responded to our email contact.)

7. The Swedish Board of Agriculture's reports on national inspections showing that too few inspections have been carried out in 2018-2020.