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# SWEDEN

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**1. How is "ESG" in Sweden defined in a corporate/commercial context, and what are its major elements?**

The overall impression is that the interest for investing in ESG-related products, services, and processes has largely increased in Sweden during the last decade. ESG has not, however, been given any consistent definition by the Swedish legislator. This is resulting in ambiguity around the exact meaning of ESG and its main components. In Swedish legislative history, the term has been recognised by the legislator as relating to how companies affect the environment and climate, social responsibility (such as human rights), employment rights, (including non-discrimination/equal treatment) as well as company governance (such as shareholder rights and compensation to senior management).

**2. What, if any, are the major laws/regulations in Sweden specifically related to ESG?**

There is currently no comprehensive legislation or regulation under Swedish law specifically covering ESG. CONCORD Sweden is a platform made up of 81 Swedish civil society organisations. In May 2019, their Working Group for Business & Human Rights published a position paper calling for the government to investigate the possibility of a human rights due diligence law. In 2020, a campaign bringing together civil society organisations, trade unions, and businesses was launched.

The Swedish Government has welcomed the European Commission's initiative on a mandatory EU due diligence duty and wants to see an ambitious approach. In 2018, the Swedish Agency for Public Management (Statskontoret) proposed that the Swedish Government investigate the possibilities for statutory requirements for Swedish companies to implement human rights due diligence, at least in high-risk situations, but no such statutory requirements have been implemented.

According to the Swedish Annual Accounts Act (1995:1554), sustainability reporting is mandatory for companies that meet at least two of the following conditions:

- the average number of employees in the company during the past two financial years exceeds 250;
- the company's reported balance sheet total for the past two financial years exceeds SEK 175 million; and
- the company's reported net sales for the past two financial years exceeds SEK 350 million.

The sustainability report must include statements regarding environmental, social, employment, human rights and anti-corruption issues related to the development, position, results and consequences of the company's operations. The report can either be included in the company's annual report or issued as a separate document.

The above-mentioned requirement for sustainability reporting implements the reporting requirements set out in the so-called non-financial reporting directive (2014/95/EU). The Swedish Annual Accounts for Credit Institutions and Securities Companies Act (1995:1559) and the Swedish Annual Accounts for Insurance Undertakings Act (1995:1560) also set out such requirements for sustainability reporting by reference to the Swedish Annual Accounts Act.

Furthermore, the Swedish Annual Accounts Act imposes a requirement for companies listed on a regulated market to issue a corporate governance report. The report can either be included in the company's annual report or issued as a separate document and must include information about, *inter alia*, the principles the company applies (apart from the ones imposed by laws and other regulations), and, if the company meets more than one of the conditions set out above, the diversity policy applied with regards to its board of directors, the goal of the policy, how the policy has been applied during the past financial year and the results of its application.

Pursuant to the EU Sustainable Finance Disclosure Regulation (Regulation (EU) 2019/2088) (SFDR), certain Swedish financial market participants (e.g., investment firms that provide portfolio management and AIFMs) and financial advisers (as applicable) must inform their investors and customers on sustainability factors. Furthermore, Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU) 2019/2088 ("Taxonomy Regulation") applies to certain financial market participants, listed companies, and other large publicly owned companies. It contains rules for determining when an economic activity should be considered environmentally sustainable. The European Commission has implemented certain delegated regulations, which, among other things, require investment firms providing financial advice or portfolio management to carry out a mandatory assessment of the sustainability preferences of clients.

## 3. What other laws/regulations in Sweden touch on ESG themes?

### Environmental

The Environmental Code (1998:808) aims to promote sustainable development that will assure a healthy and sound environment for present and future generations. Examples of other relevant pieces of environmental legislation are the Ordinance concerning Environmentally Hazardous Activities and Protection of Public Health (1998:899), the Civil Protection Act (2003:778), the Flammables and Explosives Act (2010:1011), the Transport of Dangerous Goods Act (2006:263), and the Act on Measures to Prevent and Limit the Consequences of Major Chemical Accidents (1999:381).

### Social

Sweden is, from an international perspective, normally seen as a country with relatively strong employment protection. There are several laws that regulate the relationship between employers and employees. However, labour market parties can, to some extent, deviate from the legislation through collective agreements. A distinctive feature of the Swedish labour market model is, therefore, the importance of collective agreements between an employer-representative organisation or an employer and trade unions. Relevant laws are, among others, the Employment Protection Act (1982:80), the Employment Co-Determination in the Workplace

Act (1976:580), the Discrimination Act (2008:567) and the Whistleblowing Act (2021:890). The Work Environment Act (1977:1160) includes regulations about the obligations of employers and others responsible for safety to prevent ill health and accidents at work.

### Governance

The main Swedish law, in an administrative context, regulating anti-money laundering is the Act on Measures against Money Laundering and Terrorist Financing (2017:630). The regulation is principally based on Directive (EU) 2015/849 and is applicable to companies that operate in certain areas. The Act aims to prevent the use of companies for money laundering and terrorist financing.

Anti-corruption is widely regulated within the criminal law area, but also through the requirement to issue a sustainability report under the Swedish Annual Accounts Act.

### Government pension funds and public procurement

In areas where there is a higher involvement of public interest, such as the Swedish national pension funds and public procurement, there are stricter requirements to consider sustainability. Pursuant to the legislation governing pension funds, there is an obligation to manage the fund's assets in an exemplary manner through responsible investments and responsible ownership. In the legislative history, it is specified that this means that ESG aspects must be considered.

The Swedish Public Procurement Act (2016:1145), which applies to procurements conducted by contracting authorities (public procurement), states that a contracting authority should take environmental considerations and social and labour law considerations into account in public procurement, if the nature of the procurement so justifies. The Swedish Government has requested that the Swedish Council on Legislation (Lagrådet) review a proposal for amendments to the Swedish Public Procurement Act. The implementation of the proposed amendments would lead to the current regulation being more stringent when it comes to considering the climate, environmental, human health, animal care and social and labour law aspects.

## 4. What, if any, litigation or enforcement activity has Sweden seen related to ESG?

There is currently no public litigation or enforcement activity specifically related to ESG, primarily as there are no specific rules creating enforceable rights in relation to ESG under Swedish law. By contrast, litigations that touch on ESG themes, such as environmental and employment litigations, are frequently seen in the Swedish court system.

## 5. What are the major non-law/regulatory drivers of ESG trends and developments in Sweden?

In 2015, the Swedish Government presented a national action plan to translate the UN Guiding Principles on Business and Human Rights into practical action at the national level. The plan is meant to assist all Swedish companies in their work with human rights questions linked to their operations. With regards to the UN Sustainable Development Goals, Nasdaq has integrated this work into the sustainability tools that it offers to issuers and investors. Nasdaq has also included a general definition of the term ESG in its ESG Reporting Guide, which is a voluntary programme for public and private companies. In the guide, ESG is referred to as "a broad set of environmental, social, and corporate governance considerations that may impact a company's ability to execute its business strategy and create value over the long term."

Furthermore, the market for ESG-related bonds, such as green bonds, enables companies to raise capital and invest in new and existing projects with environmental benefits. To support issuers in this matter, the International Capital Market Association has issued the Green Bond Principles, which are voluntary process guidelines for issuing green bonds.

By way of illustration of a private initiative to promote ESG aspects, Nasdaq offers a network for sustainable bonds, the Nasdaq Sustainable Bond Network, which connects issuers of sustainable bonds with investors. An issuer can apply to list their securities on the Nasdaq Sustainable Bond Network and, if the bond(s) fulfil the criteria, the application is approved and the issuer can start publishing their securities on the platform.

In addition to green and sustainable bonds, green shares have also become a way for companies to mark their shares as suitable for sustainable investments. In 2021, Nasdaq launched two different markings for green shares, Nasdaq Green Equity Designation and Nasdaq Green Equity Transition Designation, which companies can apply for. Green shares are, however, still in an early stage of development, and there is no general standard for what constitutes a green share. This will likely be more standardised as EU regulation develops further.

Sustainability-linked loans are also an established financial product in Sweden, in which the interest rate or other pricing metrices of the financial arrangement are linked to the borrower's sustainability performance measured against environmental, social, and/or governance criteria.

Regarding the involvement of institutional investors in the development of ESG-related issues, there are, as mentioned in Question 2 above, laws under which some Swedish institutional investors are required to consider certain questions before investing the fund's assets. Furthermore, institutional investors are also governed by investment principles and policies according to which particular issues are to be taken into account in the management of the ownership stake. Since institutional investors are major shareholders in many Swedish listed companies, this becomes highly relevant for the development of ESG and sustainability awareness in the public markets.

Pursuant to the Swedish Annual Accounts Act, it is mandatory for a company to prepare a sustainability report if it meets one or more of the conditions stated in Question 2 above. Companies listed on a regulated market that also meet one or more of these conditions must also prepare a corporate governance report that includes, among other things, the diversity policy applied to the company's board of directors. For these companies, the requirement to publish such reports also follows from soft law regulation in the form of the Swedish Corporate Governance Code, issued by the Swedish Corporate Governance Board. The Code includes a number of rules on good corporate governance that, apart from the requirements regarding disclosure of information, must be applied on a "comply or explain" basis. For instance, the Code states that the board of directors has a duty to identify how questions regarding sustainability can affect the company's risks and corporate opportunities.

In the wake of increasing demand for green and sustainable investments, there is an emerging concern about greenwashing. By way of example, the Swedish Financial Supervisory Authority (Finansinspektionen) has identified greenwashing as one of the largest risks in the financial sector for 2022 and it is therefore one of the five prioritised areas that the authority will review in more detail. According to a press release published in April 2022, the authority will prepare an in-depth analysis on the topic. However, the analysis is yet to be published.

## 6. Are the laws, regulations and obligations highlighted in Question 2 primarily related to corporate disclosure?

As mentioned in Question 2, some companies must prepare reports on corporate governance and sustainability, in which certain information about the company's operations must be disclosed to the public. These reports are to be published annually and can either be included in the company's annual report or be published separately. Pursuant to the Swedish Corporate Governance Code, listed companies must also make the information available on their website.

## 7. Which sectors are most impacted by ESG in Sweden? How significant is ESG investment in Sweden?

### Private equity

Private equity fund managers are impacted by ESG through the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation, which requires the consideration and disclosure of ESG-related matters in their operations and when marketing their products to fund investors. In July 2021, the Swedish Private Equity & Venture Capital Association published a joint sustainability report for the Swedish private equity industry, in which they reported that portfolio companies of Swedish private equity firms are ahead of public firms in some ESG respects, while lagging behind in others.

### Hedge funds/asset managers

In a similar way to private equity fund managers, hedge fund managers and asset managers in Sweden are impacted by ESG through the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation. Our understanding is that asset managers are integrating ESG in their operations more actively, in conformity with the general trends of focusing on ESG and due to an increased interest from their clients. According to the Swedish Investment Fund Association, 35% of consumer investors have chosen to invest in a fund because it is sustainable. The Swedish Investment Fund Association found that the main reason why investors choose sustainable funds is primarily the opportunity to influence development towards a sustainable society, followed by the desire to avoid unethical activities. At the same time, more and more investors indicate that they choose sustainable funds because they believe they will yield a higher return. According to a survey by the European Fund and Asset Management Association, 92% of the total assets of UCITS and AIFs in Sweden, at the end of Q1 2021, were so-called SFDR Article 8 funds.

### Banks

The transition necessary to reach the goals set out in the Paris climate agreement is broadly expected to involve large investments. In this context, banks and other intermediaries in the capital market are expected to play an important part by channelling capital and, therefore, influencing what resources are used for through lending and investments. This would give the intermediaries a key role in the work of accelerating private capital's contribution to the transition.

In addition to being subject to the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation (as applicable), all the major Nordic banks and the Swedish Bankers' Association have signed the UN Principles for Responsible Banking.

In 2021, the Swedish Bankers' Association, which represents banks and financial institutions in Sweden and currently has 31 member banks with operations in Sweden, published a climate roadmap to zero emissions. The purpose of the roadmap is to supplement the banks' existing efforts to integrate climate aspects into their business and set milestones in respect of achieving net-zero emissions. The milestones include the banks:

- identifying their most significant positive and negative effects on society, the economy, and the environment;
- undertaking to measure the carbon footprint from their relevant financing and investment activities to calculate their own emissions and indirect emissions; and
- ensuring that strategies and goals for the Swedish operations contribute to achieving Sweden's adopted goal of net-zero emissions by 2045.

## 8. What are the trends in Sweden regarding ESG governance?

Pursuant to the Swedish Corporate Governance Code, identifying how sustainability issues affect a company's risks and corporate opportunities constitutes one of the board of directors' main duties. Hence, the entire board is obligated to, in a broad manner, address issues regarding sustainability. It has also become more common for companies to appoint sustainability officers.

## 9. To what extent are ESG ratings or ESG benchmarks relied upon in Sweden?

ESG ratings are commonly used by institutional investors and fund managers as part of investment decision-making and assessing the sustainability of investments.

Consequently, companies (above all publicly listed companies) use ESG ratings and benchmarks in peer and competitor benchmarking purposes to attract investors. The Carbon Disclosure Project, Science Based Targets Initiative, Member of Chartered Institute for Securities & Investment, Institutional Shareholder Services group of companies, and Sustainalytics are commonly used for these purposes.

In addition to the aforementioned third-party ESG ratings providers, and as a consequence of the demand for benchmarking ESG, the Nasdaq Nordic exchanges have, in the past few years, launched a number of ESG initiatives, one being the ESG Data Portal, launched in 2018. The database is a centralised distribution point that offers investors access to standardised ESG data from Nordic listed companies, while listed companies are offered a platform to showcase their ESG data. The data is distributed to all investor recipients of the Nasdaq equity market data feeds, predominantly investors and brokerages acting within or having exposure to the Nordic markets.

The portal captures a range of actionable environmental, social, and corporate governance data and markets itself as providing a cost-effective manner for firms to showcase their ESG efforts. ESG reporting is encouraged but not a formal requirement for companies listed at Nasdaq Nordic.

## 10. What is the role of the private markets versus public markets in driving ESG developments in Sweden?

In addition to the broader trends in Sweden, the development of ESG is mainly driven by participants in the public markets. As mentioned in Question 2, it is mandatory for larger companies to annually publish reports on corporate governance and sustainability. ESG-related matters must therefore always be addressed in some way by all larger companies. Many Swedish listed companies, however, do not only comply with the minimum requirements set out by law but also go further with their sustainability work, as it is often seen as eligible from an investor perspective.

According to the most recent state ownership policy, adopted in 2020, all state-owned companies must act in an exemplary manner within the area of sustainable business. This includes strategic and transparent work guided by international guidelines, Agenda 2030, and the global goals for sustainable development. This is supplemented by legislation regulating public procurement and government pension funds, which is further described in Question 2.

## 11. What are the major challenges in terms of compliance for companies under ESG obligations?

Due to the lack of an unambiguous definition of ESG, the metrics become more difficult to quantify, measure, and compare in practice. Hence, individual companies can, and have to, make their own interpretation of what ESG means in a certain context.

Furthermore, there is an inherent risk of fatigue regarding monitoring and complying with ESG-related requirements because of the plethora of ESG reporting frameworks, standards, and ratings for companies to refer to.

## 12. What information sources are most relevant for ESG considerations in Sweden?

Various trade associations, such as the Swedish Investment Fund Association, the Swedish Securities Markets Association, and the Swedish Bankers' Association, cover trade-specific ESG aspects within their area.

There are also product-specific information sources that aim to make it easier for buyers and investors to measure, where it is difficult for them to make such assessments, the ESG risk of purchasing or investing in a specific product. Such sources are, for instance, the Morningstar Sustainability Rating for funds, BREEAM-SE for buildings, and the Nordic Swan Ecolabel and the EU Ecolabel. In addition, the ESG ratings and benchmark institutes referred to in Question 9 can serve as sources of information for ESG considerations.

## 13. Has Sweden developed a Taxonomy related to ESG?

Apart from the EU Taxonomy Regulation, there is no taxonomy related to ESG in the Swedish jurisdiction.

## 14. What does the future hold for ESG in Sweden?

In the light of the EU's climate goals and the European Commission's Green Deal, the Swedish Competition Authority (Konkurrensverket) published a statement in 2020 regarding sustainability-related issues in a competition law context. According to the statement, the authority supports the European Commission's initiative to investigate how antitrust laws can best supplement sustainability regulation to ensure that competition law does not provide unnecessary obstacles for collaborations promoting environmental considerations. The authority emphasised that the European Commission is best suited to issue guidance, or coordinate such work as this ensures uniformity in competition supervision throughout the EU and, as a result, gives companies greater predictability.

Since ESG combines a number of different objectives, it does not provide a coherent framework for investors and companies. The uncertainty can make investors more sceptical and less willing to rely on such measurements. However, it can, in the light of the European Commission's proposal for a Directive on corporate sustainability due diligence, be assumed that ESG issues will be subject to stricter regulation in the future.

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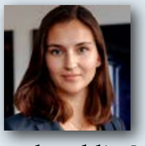

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