

# Benchmarking of existing national legal e-business practices

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Country report - Sweden

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# Sweden

## 1.1 General information about the national legal system

The Swedish Constitutional system may be briefly described as a parliamentary democracy with a state governed by law and a monarch as the representative head of state. Sweden is a member of the European Union as well as the UN.

An EU directive is usually implemented into the Swedish legal system by instituting a new law. When an EU directive concerns an already regulated field, the directive is implemented by changes in the existing regulation in case the Swedish regulation lacks certain provisions which the directive regulates.

Sweden belongs to the Continental law tradition, which is characterised by its dependence on statutory law. Most of the judicial principles are organised into a number of acts. Sweden has in the recent decades collaborated with its Scandinavian neighbours when drafting new legislation. Since Sweden became a member of the European Union the legislation has been deeply influenced by the work of the union.

In Sweden there is an administrative court organization and a civil court organization. When a contractual dispute has arisen, it is handled by the judicial system of the civil courts. In Sweden, as in many other countries, the dividing line between general civil courts and special courts is far from distinct. A usual starting point, but one not free from objections, is that general civil courts are those that adjudicate cases, which have not expressly been excepted from their jurisdiction. The system of the general civil courts consists of three instances: district courts (*SW. tingsrätter*), being the courts of first instance, courts of appeal (*SW. hovrätter*), the intermediate instance, and the Supreme Court (*SW. högsta domstolen*). The Swedish Market Court (*SW. marknadsdomstolen*) is a Swedish special court which also quite often adjudicates in cases which concerns market disputes.

Swedish courts are not formally bound by the decisions of higher courts, not even those of the Supreme Court. However, the judgements of the Supreme Court play a significant role in practice especially on such procedural matters as are dealt with only briefly or not at all in the text of the statutes.

The Swedish judicial procedure rests on four fundamental principles, the principles of free evaluation of evidence, of oral proceedings, of concentration and of immediacy.

Arbitral proceedings are also a part of the Swedish system of judicial procedure. Recourse to arbitral proceedings is quite common in B2B relations.

B2C disputes can also be brought before the Swedish National Board for Consumer Complaints (*SW. Allmänna reklamationsnämnden*). This is quite often the case as a court proceeding is more expensive. The decisions by the Board for Consumer Complaints are not legally enforceable but are mostly followed by the businesses as the decisions of Board is considered good marketing practice.

Consumers may also address complaints to the Swedish Consumer Ombudsman. The Consumer Ombudsman often brings such market disputes before the Swedish Market Court to get a binding and legal decision from the court on the specific issues. These cases mostly concern issues regarding the use of unreasonable contractual terms in B2C contractual relations.

## **2. Electronic signatures**

### **2.1 National legislation and administrative practice**

Directive 1999/93/EC on a Community framework for electronic signatures was implemented in Sweden by the Qualified Electronic Signatures Act (SFS 2000:832). The act entered into force as of 1 January 2001. According to the Qualified Electronic Signatures Ordinance (SFS 2000:833) The National Post and Telecom Agency ("PTS") is set out as the supervisory authority responsible for supervising compliance with the Act and the regulations issued based on the Act. The PTS may issue the injunctions and prohibitions required to ensure compliance with the Act, or with regulations issued pursuant to the Act. The PTS shall also keep and make public a list of the certificate providers that issue qualified certificates. There are at the moment no certificate providers that issue qualified certificates in Sweden.<sup>1</sup>

The Directive 1999/93/EC has been very stringently implemented in Sweden and the Act has, similarly to the Directive, no regulation concerning the contractual relationship between the parties who use digital signatures.

The purpose of the Qualified Electronic Signatures Act is to facilitate the use of electronic signatures, through provisions regarding secure signature creation devices, qualified certificates for electronic signatures, and the issuance of these certificates. The Act applies to certificate providers that are established in Sweden, and issue qualified certificates to the public. It has been left to the Swedish courts to interpret the conception of "the public".

The Qualified Electronic Signatures Act describes three different kinds of electronic signatures: 1) Electronic signatures, 2) Advanced electronic signatures, 3) Qualified electronic signatures, which are defined as advanced electronic signature based on a qualified certificate and created by a secure signature creation device.

The Qualified Electronic Signatures Act secures, in compliance with Article 5.1, letter a) of Directive 1999/93/EC, that if a requirement of a handwritten signature or its equivalent, contained in a law or regulation may be satisfied by electronic means, a qualified electronic signature shall be deemed to fulfil this requirement. A qualified electronic signature is thus to be considered as a valid signature in relation to electronic data in the same way as a written signature is valid in relation to paper based data. However, in communication with or between government authorities, the use of electronic signatures may be subject to additional requirements.

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<sup>1</sup> The list can be viewed at: <http://www.pts.se/Sidor/sida.asp?SectionId=1011>

Article 5.1 letter b) and Article 5.2 (concerning legal effectiveness and recognition in legal proceedings) have not been implemented in Sweden due to the regulation in the Code of Judicial Procedure (as described in Section 1) which stipulates that Swedish courts are free in their assessment of evidence. No legislative measures to implement Article 5.1 letter b) and Article 5.2 was therefore deemed necessary.

The Swedish government decided in January 2002 that each ministry should review the formal requirements in its legislation and ordinances and consider the need for change in this respect for the purpose of removing unnecessary obstacles for electronic communication and the handling of electronic documents. To co-ordinate this review a workgroup was set up; the FORMEL-group. The result of the review was presented in the memorandum (DS 2003:29) Formel - Formkrav och elektronisk kommunikation.<sup>2</sup> The FORMEL-group concluded that all formal requirements constituting obstacles should be revised when it came to legislation governing the work of the Government authorities. Regarding formal requirements in other areas of law the need for revision should be deemed necessary on a case to case basis depending on the specific conditions of each respective area. The memorandum furthermore presents information set to be a base for the Swedish government's future work.

E-business is not commonly used by Swedish authorities. With the aim to change the authorities' awareness in this respect the predecessor to the Swedish Administrative Development Agency ("Verva") was assigned by the Swedish government in 2003 to promote e-business within the Government sector.<sup>3</sup> E-business (Sw. elektronisk handel) according to Verva means the process that includes *inter alia* contract management, orders, deliveries and invoicing.

The Qualified Electronic Signatures Directive and Act has been criticized for being unclear. According to a report presented by Post & Telestyrelsen ("PTS") in 2002 the regulation on liability for damages was criticized by certain persons interviewed for the report as being unreasonable from a business perspective. Under the Act, a certificate provider is liable for damages for any injury or loss caused to anyone relying on such a certificate, due to certain circumstances. A certificate provider's liability for damages under the Act can not be set aside by the contracting parties. A certificate provider that wants to limit its damage can however reinsure against such possible claims for damages, and by doing so it should be able to estimate the risk exposure. If so, the cost of reinsurance could be the actual problem. Since there are no providers of qualified signatures in Sweden it is difficult to assess if the requirements laid down in the Act are reasonable from a business perspective. It should be noted, however, that it is possible to limit the various areas of use of such signatures, and also possible to limit the possible transaction amount.

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<sup>2</sup> <http://www.sweden.gov.se/content/1/c4/19/80/e0150150.pdf>

<sup>3</sup> <http://www.verva.se/>

In 2004 the PTS presented a report on the use of electronic identification and signatures.<sup>4</sup> According to the report, it was mainly authorities and banks that offered electronic services requiring electronic identification to consumers. The motivation for companies and consumers to use electronic services, i.e. services that demand electronic identification and electronic authenticity, was considered to be the advantage and the usability of the offered services. The lack of usable electronic services was highlighted as an obstacle to an increased use of electronic services. The consumers interviewed for the report said that they were prepared to use other electronic services than the commonly used banking services if they felt that they were benefiting from the service in some way. If they felt that the benefits met their expectations they were also prepared to pay for the service, for example a certificate. An electronic service is considered interesting by a company or a consumer if it is considered beneficial in form of time or money. Consumers need to be aware of the electronic services available and how the services are used in a safe way. The PTS made the point that if a consumer is uncertain of how an electronic solution shall be used and how secure it is, this constitutes an obstacle to the promotion of electronic services. The conclusion is that it is important to provide information as to what electronic services are available and how they are safely used. In Sweden it is regularly the provider of the electronic service that supplies the solution for electronic signature and authentication. A consumer who wants to use several different services may feel that the need to use one password or smart card per each electronic service is an obstacle to use these services. Further, the lack of a national standard does constitute a problem for the development of the use of electronic services.

The purpose of the Qualified Electronic Signatures Act was to secure that the providers of qualified signatures were put under the supervision of the government. There are no providers of qualified signatures in Sweden. This does not mean that there is a lack of providers of electronic signatures. Nor does it mean that these signatures are less secure than qualified certificates in Sweden. The development of electronic signatures in Sweden has been handled by the market actors. The lack of a standard certificate has been pointed out as a major problem to e-commerce by *inter alia* providers of business sites on the Internet. Today, software has been developed that makes it possible for an Internet business site to handle different standards of electronic certificates. This is one example of how the market has improved the development of e-commerce.<sup>5</sup> According to Verva, the means for electronic identification that are available in Sweden are very advanced and the lack of registered issuers of qualified certificates can be explained by the fact that there is no demand for qualified certificate in Sweden at the present. Consequently, no providers of electronic certificates are prepared to issue a more costly qualified certificate.<sup>6</sup>

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<sup>4</sup> The National Post and Telecom Agency's report nr. PTS-ER-2004:3, Användningen av elektronisk identifiering och signaturer, dated 30 January 2004

<sup>5</sup> Interview with Mr. Peder Cristvall and Mr. Björn Scharin at PTS, 5 May and 6 September 2006

<sup>6</sup> Interview with Mr. Göran Ribbegård at Verva, 6 September 2006

It has been suggested that electronic signatures are still too costly and too roundabout to be practical for a consumer who makes purchases only on very rare occasions or only makes purchases involving small amounts. The most common means of payment offered by companies with a web store are cash on delivery or against invoice. Although consumers have become more willing to use credit cards when shopping on-line, trust and security issues have been held as a dominant factor as to why electronic means of payment are not commonly used.

By order of the Swedish Government the Swedish Police has introduced a national identity card enabling its holder to travel to the member countries of the Schengen Agreement without carrying a passport. Placed on the card is a contact chip that in the future can hold information, EID-functions, enabling for example electronic identification.<sup>7</sup>

## **2.2 Cross border regulatory issues**

As mentioned above the Qualified Electronic Signatures Act applies to certificate providers that are established in Sweden. However the Act states that if a certificate, satisfying certain requirements set forth in the Act, has been issued by a certificate provider not established in Sweden, the certificate shall be deemed to be qualified provided that the certificate provider is established in another state within the European Economic Area, and is permitted to issue qualified certificates there. The certificate shall also be deemed to be qualified if the certificate provider satisfies certain requirements according to the Act and is accredited in another state belonging to the European Economic Area. Finally the certificate shall be deemed to be qualified if it is guaranteed as being qualified by a certificate provider. Since the Act defines a "signatory" as a natural person, no company can obtain a qualified electronic signature.

The Swedish government strives to make the authorities available to the citizens 24 hours a day. To pursue this goal the Swedish banks and the telecom operator Telia AB together with Steria AB have together with the Swedish authorities procured a standardized security solution in the form of an e-identification. The e-identification is either stored on the computer or on a standard card. A person, or the person signing for a company, needs a Swedish social security number to get a Swedish e-identification. Not all authorities accept e-identification at the present, but Skatteverket (the Swedish Tax Authority), Vägverket (the Swedish National Road Administration) and Försäkringskassan (the Swedish Social Insurance Office) are a few of the Swedish authorities offering electronic services to the public.

On a general note it is up to the contractual parties to decide if they want to use, and how it is to be administered, a non-qualified electronic signature in their business relation. Since the Swedish courts are free in their assessment of evidence general procedural rules will govern a potential dispute. However, a person or the person signing for a company needs a Swedish social security number to obtain a Swedish e-identification.

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<sup>7</sup> See: <http://www.polisen.se/inter/nodeid=33595&pageversion=1.html>

### 3. General elements of electronic contract law

Both directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contract and directive 2002/65/EC on the distance marketing of consumer financial services has been implemented through the Distance and Door-to-Door Sales Act (SFS 2005:59).

Directive 2000/31/EC on information society including e-commerce has been implemented through the Act on e-commerce and information society services (SFS 2002:562). The Act is not applicable on agreements which creates or transfers rights to real properties. Agreements based on family law, for example premarital settlements and agreements regarding division of the joint property of husband and wife, are also excepted from the applicability of the Act.

Directive 1993/13/EC on unfair terms in consumer contracts has been implemented through the Act on terms of agreement in relation to consumers (SFS 1994:1512).

Directive 1998/6/EC on prices of products has been implemented through the Act on price information (SFS 2004:347).

Directive 1999/44/EC on certain aspects on the sale of consumer goods and associated guarantees has been implemented through adjustments in the the Consumer Sales Act (SFS 1990:932) and in the Consumer Services Act (SFS 1985:716).

Directive 2001/115/EC amending Directive 77/338/EEC with a view to simplifying, modernising and harmonising the condition laid down for invoicing in respect of value added tax has been implemented through adjustments in the VAT Act (SFS 1994:200), the Accounting Act (SFS 1999:1078) and the Tax Payment Act (SFS 1997:483).

#### 3.1 National legal and administrative practices

In Sweden there is no legal framework which has been established to solely regulate contracts entered into electronically.<sup>8</sup> The Swedish statutory regulation of obligations is fragmented. There are no general principles of obligations or contracts laid down in legislation. The most important statutes of more general character in this area are:

- The Contracts Act (SFS 1915:218) – this act do not cover every aspect of contract law, only a few;
- The Act on International Sales of Goods (SFS 1987:822) incorporating the 1980 International Convention on the Sale of Goods (CISG);
- The Consumer Sales Act (SFS 1990:932), which is based on, and is to a large extent in harmony with the CISG;
- The Consumer Sales Act (SFS 1990:932);
- The Consumer Services Act (SFS 1985:716);
- The Consumer Contract Terms Act (SFS 1994:1512); and
- The Contract Terms (Undertakings) Act (SFS 1984:292).

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<sup>8</sup> Government bill (*Sw. proposition*) no. 2001/02:150, page 37.

Outside the consumer law area most statutes are of non-mandatory character. The parties are in principle free to contract and regulate their respective responsibilities in a different manner from what is provided for in legislation.

Generally, all contracts are binding regardless if they are entered into orally or in writing. The Swedish Contracts Act states that the act is applicable on all agreements if nothing else is agreed on or is stipulated by commercial practice or by custom. Thus, the Contracts Act is also applicable on contracts entered into electronically. Various types of contracts are subject to different formation regimes, such as those requiring special form (including the sale of real property) or the delivery of property (including an accepted gift, sometimes referred to as a real contract), though they may in other respects fall under the Contracts Act. As for electronic contracts in general these are considered to be just as valid as a contract drafted up on paper.

As stated above there is generally no formal requirement of in which manner a contract is concluded. Swedish contractual law also does not uphold any formal definition on the concept of offer and acceptance. According to general Swedish contract law, the offeror is unilaterally bound by his promise even if he does not explicitly state that he intends to be bound by the offer. If the offer is met by a corresponding acceptance by the offeree, both parties become bound by a mutual contract. That the offeror is unilaterally bound by his promise is a feature of "the principle of promise" (Sw. löftesprincipen), and is quite unique in an international perspective.

Theoretically an oral agreement is as valid and binding as a written agreement. However, if a dispute arises concerning the existence of a binding obligation, the party claiming to have entered a contract must prove the existence of such a valid agreement. Thus, if a written and signed contract exists this will work as sufficient evidence, as to the existence of a binding contractual relation. Even if a written contract is presented to a Swedish court as evidence the court is free to interpret the contents of the obligation and may fill in any gaps in the contract if the matter of the dispute is unregulated in the contract.

As has been mentioned above, a contractual relation is considered valid and binding, when the will thereto has been expressed, even though the parties to the contract have only agreed orally on the most essential elements of the contractual obligations. There is no difference in judgment if the contract is in electronic form which represents the will to be bound to a contractual obligation.

Sweden has not specifically implemented Art 9 (2) of Directive 2000/31/EC that excludes certain types of contracts to be concluded electronically. As stated above, there are only a few form requirements in Swedish legislation related to private law and these are in harmony with the regulations in the directive. However, during the implementation process of the directive a number of laws were modified due to that the form requirements in those laws were not in accordance with the EU directive.<sup>9</sup>

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<sup>9</sup> Government bill (Sw. proposition) 2001/02:150, page 78 ff. The necessary modifications were made in the Consumer Credit Act (SFS 1992:830) and the Financial Instruments Trading Act (SFS 1991:980).

### 3.1.1 *Electronic invitation to make an offer and submission of an offer*

As mentioned above there are no formal requirements needed for the assumption of a contractual relation. Thus, there are no legal requirements to use electronic signatures in the conclusion of contracts. Certain service providers use electronic signatures as an extra security mechanism to prove that a contract has been accepted and entered into by the customer.

As mentioned above, Swedish contract law is based on that contractual obligations arise from the expression of a will to be bound in accordance with the offer submitted. However, occasionally it is difficult to determine if goods and services offered by a businessman or private person to the public through a website actually can constitute a binding offer.

In a case brought before the Swedish National Board for Consumer Complaints the board have stated that an offer which has been addressed from a businessman to the public on a webpage does not constitute a binding and valid offer. Such an offer of supplied goods or services should be regarded as an invitation to anyone who could be interested in the goods or services to leave an offer. For the conclusion of contract the businessman have to accept or verify the consumers offer in some way.<sup>10</sup>

The board's opinion was confirmed in a case brought before the Swedish Market Court in 2004 by the Swedish Consumer Ombudsman.<sup>11</sup> In this case a number of persons had been invoiced by a telecommunications company for certain services provided on a number of websites. The persons had connected to the websites in question and had been invoiced for services which they had not explicitly ordered. They had not confirmed any order by stating their names or by leaving any other personal information. In spite hereof, the company sent out invoices and claimed payment for the services provided on the websites. The court came to same conclusion as the board in that sense that a contract, regardless of its conclusion on the internet or not, can only be valid and binding if there is proof supporting that the parties in any way accepted the agreement by manifesting their will to be bound.

### 3.1.2 *Electronic acceptance*

For an acceptance to be binding and valid, according to the Contracts Act, the message containing acceptance of the offer must have been received by the offeror within the acceptance period and must be in compliance with the offer. If the acceptance does not meet these requirements it is considered to be a refusal of the offer in combination with a new offer.

Electronic acceptance is not treated differently than acceptance made with any other means.

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<sup>10</sup> Summary of the decision of the Swedish National Board for Consumer Complaints (*Sw. Allmänna reklamationsnämnden*) no. 2001-4889, dated 2002-05-22.

<sup>11</sup> The Swedish Market Court, case no. 2004:18.

### 3.1.3 *Information obligations in relation to electronic contract conclusion*

The Swedish regulation concerning what type of information which must be provided to the consumers before, and sometimes after, an order made on distance correspond with the requirements in Article 5 of Directive 2000/31/EC on electronic commerce, Articles 4 and 5 of Directive 97/7/EC on distance contracts, and Articles 3, 4 and 5 of Directive 2002/65/EC on distance marketing of consumer financial services.

In Sweden one of the major problems surrounding contract conclusion over the internet is the lack of conformity with the mandatory information requirements. The Swedish Consumer Agency have on a number of occasions performed surveys or so called "sweep-days" to inspect if the e-business market comply with the mandatory information requirements. The most recent sweep-day was performed the 28:th of February 2006. The subject for the sweep was contractual agreements in e-business companies.

During January to October 2003 the European Consumer Centre ("ECC"), with its 15 centres in 13 member states performed a consumer complaint study.<sup>12</sup> The goal was to look into what type of problems consumers face when shopping online. The ECC in Stockholm reported the highest number of complaints. The collected results were overall negative. The most common complaint concerned non-delivery, quality or condition of products and insufficient information of payment and prices, contract terms and redress. Another issue commented in the study's report was an increasing number of complaints relating to internet auctions. In many cases the problems concerned C2C commerce.

One of the key elements of consumer protection is the statutory 14-day cool-off right which is a result of the implementation of the Directive 97/7EC on distance contracts. During the fall of 2000 the Swedish Consumer Agency performed an inspection of 41 Swedish websites. Insufficient information on the websites to consumers regarding the mandatory cool-off right was a general problem during the review of the said websites. However, these problems have significantly decreased during the last years.<sup>13</sup>

Through the EC Directive 2000/31 Article 3 (1) certain mandatory information requirements has been implemented into Swedish legislation through the Act on e-commerce and information society services (2002:562). The Act states that Swedish suppliers of services must comply with Swedish legislation regardless of whether the services are aimed towards Sweden or another Member of the European Economic Area.

Further, the Act imposes an obligation on the supplier to provide the consumers with certain information of the supplier and under which conditions a contract can be concluded. If the supplier does not observe the mandatory provisions of the Act he may be obligated to pay a market disturbance fine.

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<sup>12</sup> The ECC Report; The European Online Marketplace: Consumer Complaints

<sup>13</sup> Press release from the Swedish Consumer Agency, dated 20 September 2001

### 3.1.4 *Standard terms and unfair clauses*

Incorporation of standard terms in B2C agreements as well as in B2B agreements has been a highly debated issue in Swedish contractual law for a long time. However, standard terms are generally seen as part of the contract if they are considered to be of customary use between the contractual parties or they are considered to be trade custom.<sup>14</sup>

The requirements of Swedish legal practice have been that a referral to the standard terms is sufficient to make them a part of the contractual obligation (even orally). Normally it would be sufficient that the counterpart has access to the standard terms or easily can obtain access to the terms prior to the conclusion of the contract. However, in some cases it may be required that the standard terms are enclosed to the contract. All the above is depending on the situation at hand and how burdensome or surprising the terms are, especially if one of the contractual parties is a consumer or is regarded as a weaker party.

According to Section 36 of the Swedish Contracts Act unfair terms may be adjusted or disregarded by the courts if they are considered unreasonable with regard to the content of the agreement. Although the provisions in the Act applies to B2C relations as well as B2B and C2C relations, special considerations shall be given to consumers and parties which have an inferior position in a contractual relationship.

In addition, the Swedish Market Court may prohibit businessmen to use unreasonable contractual terms both in B2C and B2B relations according to the Consumer Contract Terms Act and the Contract Term (Undertakings) Act.

Further, according to the above stated case brought before the Swedish Market Court, standard terms accepted only by point-and-click acceptance are not considered to be in accordance with good market practice in Sweden.<sup>15</sup> It should be noted that this case concerned a so called pay-site for internet services. Acceptance by a point-and-click procedure of other products and services may, however, be in accordance with good market practice as long as the consumer is being informed of the terms under which the products or services are purchased and delivered.

The Swedish Consumer Ombudsman has on several occasions filed suits against companies for use of unreasonable standard terms when providing services on the internet and the Ombudsman plays an active part in issues concerning consumer protection in Sweden.

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<sup>14</sup> See for instance Adlercreutz, *Avtalsrätt II*, p. 64-76, Bernitz, *Standardavtalsrätten*, p. 26 ff.

<sup>15</sup> The Swedish Market Court, case No. 2004:18.

### 3.1.5 *Choice of law and forum*

As of 1 July 1980 the Rome Convention on the law applicable to contractual obligations is effective as Swedish law.<sup>16</sup>

The Council Regulation (EC) No. 44/2001, which replaces the Brussels and Lugano Conventions in the other Member State countries, is applicable in Sweden. Since it is a regulation there is no need for any specific implementation measure. According to the EC regulation the principal rule is that a claim should be raised in the country of the defendant. Exceptions to this rule exist.

The Vienna Convention of 1980 on the International Sale of Goods (CISG) has been ratified by Sweden and it has been incorporated into Swedish law through the Act on International Sales of Goods (SFS 1987:822).<sup>17</sup> Sweden, as well as the other Nordic countries, has however made a reservation declaring that it will not be bound by Part II on the formation of the contract, as permitted by Article 92(1) of the CISG. This is important when a contract is governed by Swedish law, as in such cases the provisions of the Swedish Contracts Act apply. If a contract is governed by the law of another country, the provisions of Part II of the CISG apply provided the other country has ratified the CISG in its entirety.

Upon ratifying the Convention, Sweden further declared, pursuant to article 94(1) and 94(2), that the Convention would not apply to contracts of sale where the parties have their place of business in Denmark, Finland, Sweden, Iceland or Norway<sup>18</sup>.

It is also possible in general for contractual parties to agree on choices of law and forum other than those pointed out by the various conventions, acts and regulations.

Choice of law and forum selection is not considered to be a specific barrier for e-business in B2B and B2C transactions in Sweden. The challenge for e-business in this area is the same as for traditional business relations. However, the internet has made the world's providers of services and products more accessible to the public and this may lead to that problems involved in cross border trade in general will be more highlighted.

Directive 2000/31/EC on electronic commerce is based on a country of origin principle, which provides that information society services are only required to comply with the requirements of the Member State in which the service provider is located.

Even before the Directive was implemented into a Swedish Act there was been a debate concerning the country of origin principle and its applicability and how it is going to interact with the rest of the Swedish regulations on the area for contractual and marketing law.

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<sup>16</sup> 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

<sup>17</sup> The Convention was implemented through Regulation No. 1988:443 and the Act entered into force on 1 January 1989.

<sup>18</sup> Such a reservation has also been made by the other Nordic countries.

### **3.2 Cross border regulatory issues**

During the research, no specific court rulings on the use of electronic contracts or in cross-border trade between enterprises have been identified.

## **4. Electronic invoicing, payment and other matters related to execution of electronic contracts**

### **4.1 National legislation and administrative practices**

#### *4.1.1 Electronic invoicing*

Directive 2001/115/EC amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax was implemented through amendments of the Value Added Tax Act (SFS 1994:200), the Tax Paying Act (SFS 1997:483) and the Swedish Accounting Act (SFS 1999:1078). Through these legislative measures explicit regulations allowing electronic invoices were enacted.

There is no requirement in Swedish legislation that invoices must be signed and the legal status of an electronic invoice is the same as the one of a paper invoice. However, according to the Value Added Tax Act, invoices issued by an undertaking (*Sw. näringsidkare*) for goods or services sold may only be electronic if this is approved by the other party.

The Public Procurement Act (SFS 1992:1528) might be considered as preventing the government sector from requiring that suppliers use electronic invoices. Since it is not allowed to discriminate certain suppliers the question has arisen whether or not suppliers unable to produce electronic invoices should be considered discriminated. However, it has been suggested that since software for electronic invoicing has become affordable and electronic invoicing has become common in certain lines of business, a requirement of electronic invoicing should not be considered as discrimination, not even in relation to smaller companies.<sup>19</sup>

Generally the obligation to pay for goods and services in B2B and B2C transactions does not differ from the obligation to pay in traditional off-line business relationships. If the time for payment cannot be determined from the contract, the buyer shall make payment when the seller demands payment, however, not before the goods have been made available to the buyer.

The Nordic Consumer Ombudsmen have issued a joint position statement on e-commerce<sup>20</sup> in which it is stated that payment (by consumers) shall normally not be made before the product has been delivered. Standard contract terms for advance payment may be deemed unfair.

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<sup>19</sup> The National Post and Telecom Agency's report nr. PTS-ER-2002:3, E-handel och statens instrument för att utveckla förutsättningarna, dated 22 February 2002, p. 27.

<sup>20</sup> Position statement of the Nordic Consumer Ombudsmen on e-commerce and marketing on the Internet, October 2002

The Position Statement reflects the specific legislation and legal practice that has been developed within the area of e-commerce in the Nordic countries and it also provides, in some areas, an indication of what should apply as good marketing practice. It is our assessment that the statement reflects the current law in Sweden.

#### 4.1.2 *Electronic payment*

Directives 2002/65/EC and 97/7/EC were implemented through the enactment of the new Swedish Distance and Door-to-Door Sales Act (SFS 2005:59). Generally a consumer is not liable for a claim that has arisen from unauthorised use of his or her credit card but many standard contractual terms stipulate that the consumer shall be liable for payment even under such circumstances. However, section 34 of the Consumer Credit Act stipulates that a contractual provision providing for that an account holder shall be liable for payment as a consequence of a credit card being used by an unauthorised person may only be relied upon if the account holder has given the card to someone else or lost the card through gross negligence. Section 34 of the Consumer Credit Act is directly applicable on contractual terms regarding credit cards (i.e. cards enabling use of a credit), but are considered analogously applicable to charge cards. Furthermore, unfair terms, including unfair terms pertaining to payment, are covered by the general clause on unfair contract terms in section 36 of the Swedish Contracts Act and the Swedish courts may modify or set aside a contract, in whole or in part, if it would be unreasonable or contrary to the principles of good faith to enforce it. In the light hereof, it was not considered to be necessary to implement Article 8 of Directive 97/7/EC.<sup>21</sup>

#### 4.1.3 *Delivery of the goods or provision of services ordered electronically and withdrawal period*

Pursuant to the Distance and Door-to-Door Sales Act the Marketing Practices Act (SFS 1995:450) is applicable where an undertaking fails to provide information in accordance with the Distance and Door-to-Door Sales Act. Information in accordance with the Distance and Door-to-Door Sales Act shall be deemed to be such information that is of special significance from a consumer perspective as referred to in the Marketing Practices Act.

According to the Marketing Practices Act a businessman whose marketing activities violate good market practice or is in any other way unfair to consumers or businessmen may be prohibited from continuing with the marketing or taking any similar measure. Further, a businessman who in his marketing omits to provide such information that is especially important from the consumer perspective, may be ordered to provide such information. Such prohibitions shall be made subject to a default fine unless special reasons render this unnecessary. A person who intentionally or by carelessness violates a prohibition described above shall pay compensation for the damage suffered by a consumer or another businessman.

Apart from the Market Court and the civil courts a consumer can address the National Board for Consumers Complaint. The Board is a public authority that in many ways functions like a court. Its main task is to impartially try disputes between consumers and companies. Petitions are filed by the consumer. The Board submits recommendations on how disputes should be resolved. The Board's recommendations are not binding, but the majority of companies nonetheless follow them.

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<sup>21</sup> Government bill 2004/05:13. <http://www.riksdagen.se>

The Board does not provide advice on individual cases. Consumers can turn to consumer counselling services in the relevant municipality for advice.

A petition to the Board must be made within six months of the first time the company rejects the consumer's claims in part or in whole. If the company does not respond to a complaint at all, a rejection of the claim is considered to have been made. Additionally, a claim must exceed a certain amount, the minimum amount being SEK 500. If a dispute is of a principal nature or if there are other special circumstances, the Board can choose to try the dispute despite the claim being below the above-mentioned amount. The Board does not try disputes between private persons or between companies. The Board's inquiry is normally limited to contracts that have been entered into in Sweden.

The Board can also reject matters that cannot sufficiently be investigated or that otherwise are not appropriate to the Board's inquiry with regard to the Board's written procedures and simplified working methods. This can affect matters which require submission of oral evidence or large or complicated cases that require comprehensive investigation.

In Sweden, the Board has the task of trying disputes that arise between consumers from other Member States and Swedish companies and it is the authority in Sweden that tries disputes regarding financial matters.

#### *4.1.4 Non-performance of the obligation to deliver and late delivery*

The general non-performance and late delivery rules are regulated in the Sale of Goods Act, regarding B2B, and the Consumer Sales Act, regarding B2C.

In B2B transactions, the purchaser of goods or of services is granted the following remedies in case of non-delivery according to the Sale of Goods Act. The buyer may enforce the contract and demand performance or terminate the contract on the grounds of the seller's delay and, in addition, claim damages. He may also withhold payment. The buyer may only terminate the contract provided that the breach of contract was of material importance to the buyer and the seller realised or should have realised that this was the case.

If the seller, according to Section 24 of the Sale of Goods Act, notwithstanding the delay, requests that the buyer accepts delivery of the goods within a specified time, or if the seller gives notice that he will perform the contract within a specified time, and the buyer does not respond within a reasonable time after he has been requested or has received the notice, the buyer may not terminate the contract if the seller performs its obligations within the time indicated. On the other hand, according to Section 23, if the buyer demands that the seller performs the contract, the buyer has forfeited this right if he allows an unreasonable period of time to pass before issuing the demand.

As mentioned above, generally, the buyer is entitled to damages in respect of loss suffered as a consequence of delay on the part of the seller (Section 27 of the Sales of Goods Act). In any event, the buyer is entitled to compensation if the loss was caused by the seller's negligence.

In B2C transactions the Consumer Sales Act offers basically the same remedies for the buyer; however certain differences are at hand. For example the buyer may terminate the contract if the seller's delay is of material significance to him whether the seller realised or should have

realised that this was the case or not. There is no regulation equivalent to the above-mentioned Section 24.

According to the Consumer Service Act, a buyer of services is offered the same remedies as mentioned above, i.e. demand performance withhold payment, terminate the contract and claim damages.

#### *4.1.5 Right of withdrawal from the contract in B2C transactions and return of the goods*

As mentioned above, Directive 2002/65/EC and Directive 97/7/EC was implemented through the new Swedish Distance and Door-to-Door Sales Act. When it comes to distance contracts concerning financial services and financial instruments, the consumer is entitled to withdraw from a distance contract by submitting or sending a notice to that effect to the undertaking within 14 days from the day when the distance contract was entered into. However, the withdrawal period in conjunction with distance contracts for life insurance or private individual pension saving is 30 days. Regarding distance contracts for life insurance, the withdrawal period commences on the day on which the consumer has received information that the insurance policy has entered into force.

Regarding distance contracts for goods and non-financial services the same 14 day withdrawal period is applicable. It is similarly required that the consumer sends a notice to the undertaking expressing his desire to withdraw from the distance contract. In conjunction with distance contracts for the transfer or grant of a right of use of goods, the withdrawal period shall commence on the day on which the consumer receives the goods or a significant portion thereof. In conjunction with a distance contract for a service, the withdrawal period shall commence on the day on which the contract is entered into.

#### *4.1.6 Delivery of goods not in conformity with the contract*

Directive 1999/44/EC was implemented by certain amendments of the Consumer Sales Act, the Consumer Services Act (SFS 1985:716) and the Marketing Practices Act. Amendments made to the Consumer Sales Act were inter alia Section 20 Letter a) that states that a defect which manifests itself within six months from the date of delivery of the goods shall be deemed to have existed at the time of delivery, unless otherwise proven or if it is inconsistent with the nature of the goods or the defect. Regarding both the Consumer Sales Act and the Consumer Services Act amendments were made of the regulations regarding notice to the seller so that a notice which is provided within two months after the buyer has detected the defect always shall be deemed to have been given in due time.

In accordance with the Consumer Sales Act and the Sale of Goods Act the goods shall be deemed to be defective if the goods are not in conformity with the provisions of the contract with respect to type, quantity, quality, other characteristics, and packaging, or if the goods are not accompanied by the instructions necessary for their installation, assembly, use, storage, and care.

## **4.2 Cross border regulatory issues**

There are no court rulings on electronic invoicing or payment related to execution of cross-border electronic contracts.

Under Swedish legislation there is no requirement that an electronic invoice must be signed. If other Member States have this requirement for accepting an electronic invoice, administrative cross border problems may arise.

It is not possible to make an assessment of the awareness in Sweden of the regulation pursuant to Regulation 2560/2001. It can be noted that Sweden has chosen to join the Swedish currency (SEK) to the Regulation. Accordingly, also the SEK is subject to the Regulation 2560/2001.

## **5. General assessment of national legislation and administrative practices in the fields of e-signatures, e-contracts and e-invoicing**

### **5.1 Main legal and administrative barriers to e-business**

The following main legal and administrative barriers to e-business in Sweden have been identified:

#### 1. Legal uncertainty of legal effectiveness and recognition of e-business documents in national trade relations

As has been mentioned above, the Qualified Electronic Signatures Directive and the Swedish Act have been criticized for being unclear. That, together with quite recently enacted laws, lack of court cases and the judicial principle of free assessment of evidence makes it inevitable, from a judicial point of view, to assume that there is a legal uncertainty of legal effectiveness and recognition of e-business documents.

From an e-business market point of view the indistinctness of laws and regulation have not hindered the development of functional e-business tools. This has been confirmed after a discussion with a representative of the Swedish Association of Local Authorities and Regions ("SALAR") (Mrs. Kerstin Wiss Holmdahl).<sup>22</sup> Contrarily, the public sector has actively worked and developed functional systems to be able to handle all aspects of e-business. The public sector has also been working actively towards the Swedish trade and industry sector. The ambition of the public sector has been to try to work for a common e-invoicing standard on a national level as well as on an international level. The e-invoicing solution within the public sector (Svefakturan) has even lead to that the Ministry of Finance has decided that all government authorities shall as of 1 July 2009 handle all its incoming and outgoing invoices electronically. The remaining work for the government in this respect would be to convince the trade and industry sector to accept "Svefakturan" as the Swedish e-invoice standard.

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<sup>22</sup> Interview with Mrs. Kerstin Wiss Holmdahl at SALAR, 6 September 2006.

As for eID solutions, the market actors in Sweden have since long found solutions to problems. Swedish eIDs are today technically similar to the criteria stipulated for qualified signatures, with the only difference that the providers have not registered at the agency (and are not compelled to do so, either). Instead, the market actors have established the certificate authority's (CA) role among private actors, i.e. banks.

An e-commerce barrier which not yet have been bridged over is to be found in the different business models. The low awareness of security among citizens, companies and agencies may still be a major obstacle. A question to be raised is if Swedish citizens, companies and agencies are prepared to pay the full price for security and integrity.

## 2. Legal and administrative barriers to cross-border exchange of electronic signatures, electronic contracts and electronic invoices

Qualified certificates have the same validity and legal recognition, regardless of their country of origin. In principle, qualified signatures from other member states are therefore treated equivalent with qualified signatures originating from Sweden. There are however presently no registered providers of qualified electronic signatures in Sweden. As had been mentioned above, Swedish authorities have, together with Swedish banks and the telecom operator Telia AB and Steria AB procured an e-identification. To be able to obtain a Swedish e-identification the person need to have a Swedish social security number. At the present time it is not possible for a non-Swedish subject to obtain a Swedish e-identification.

The Swedish legislation on electronic invoicing does not require that the invoice is electronically signed. Cross border problems may arise if other Member States require that electronic invoices are electronically signed.

## 3. Compliance problems for online shops

Surveys conducted and studies made of e-business practices such as online shops show quite clearly that there is a general lack of awareness of legal requirements and non-conformity with requirements such as with regard to for instance information, and delivery failures. The most recent survey/inspection that we are aware of took place during 2006. It appears reasonable to assume that the situation has improved to a certain extent. However, we do not believe that it has improved very much. There is a large number of players entering the field, many of them run by young people who focus on earning money and do not focus on legal requirements.

## 4. The legislation offers limited protection for smaller businesses in electronic commerce

Smaller businesses enjoy a certain amount of protection under Swedish contract law. Unreasonable contract terms can be prohibited and they may be set aside by a court of law. However, the protection for them is far from the one provided for consumers.

## 5.2 Awareness about national authorities in charge of solving legal problems in e-business

There is no specific study or other source supporting this conclusion, but we would like to draw the conclusion that the awareness in Sweden about national authorities in charge of solving problems in e-business is considerable, in general. The Consumer Ombudsman and the Swedish Consumer Agency have quite a strong position in the Swedish marketplace. The Swedish National Board for Consumer Complaints and its functions are commonly known. The possibility to recourse to courts of law is most certainly known to the general public and the business community. But of course, it goes without saying that "niche" authorities, especially those recently set up (such as Verva) may not be subject to more than limited awareness.

No contact points were established in Sweden pursuant to Article 19(4) of Directive 2000/31/EC since it was considered that Konsument Europa<sup>23</sup> will serve the purpose of Article 19(4) regarding consumers. Konsument Europa is a part of the Swedish Consumer Agency and co-financed by the European Commission. For non-consumers the international network of Swedish Chambers of Commerce is considered as sufficient contact points pursuant to Article 19(4). There are 12 Chambers of Commerce in Sweden which all are members of Svenska Handelskamarförbundet.<sup>24</sup> There are furthermore Swedish Chambers of Commerce situated in all EEA -countries. Contact with the Chambers of Commerce can be reached through the portal [www.chamberpass.com](http://www.chamberpass.com).

The Swedish Consumer Agency<sup>25</sup> has been appointed as the single liaison office responsible for the enforcement of consumer protection laws pursuant to Articles 4 and 5 of Regulation (EC) No. 2006/2004. The Swedish Consumer Agency has furthermore been appointed as the contact point for Swedish authorities' cooperation with other national authorities within the EEA-countries regarding consumer issues concerning the Swedish Act on e-commerce and information society services.

## 5.3 Legal and administrative best practices in e-business

Verva (the Swedish Administrative Development Agency) was assigned by the Swedish government in 2006 to promote e-business within the Government sector. Verva will conduct information-, harmonizing- and standardizing work as well as procure general agreements for e-business, i.e. e-identification providers etc.

PTS (the National Post and Telecom Agency) supervises compliance *inter alia* with the Qualified Electronic Signatures Act and provides information regarding certain e-business issues such electronic payments.

The Nordic council of ministers and the Nordic council (a co-operation body composed of representatives from Denmark, Iceland, Norway, Finland and Sweden for the purpose of parliamentary-co-operation) works *inter alia* for the development of the co-operation at the Nordic level regarding e-business from a trade and a consumer perspective.

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<sup>23</sup> <http://www.konsumenteuropa.se>

<sup>24</sup> <http://www.cci.se>

<sup>25</sup> <http://www.ko.se/>

In addition, there are a number of private initiatives from organisations which represent its members with regard inter alia to e-business practices, such as NEA (a Swedish e-business network) and IT-företagen (the Swedish IT & Telecom Industry ).

## ANNEX 1: Interviews performed

- Björn Scharin and Peder Cristvall, The Swedish National Post and Telecom Agency
- Kerstin Wiss Holmdahl, the Swedish Association of Local Authorities and Regions.
- Christer Marklund, Verva -Swedish Administrative Development Agency
- Marie Jeanette Axélius, Ministry of Agriculture – consumer division

## ANNEX 2: E-business national legislation

The regulatory framework for e-business in Sweden is based on the Contracts Act<sup>26</sup> and the Sales Act<sup>27</sup> in B2B contractual relations. In B2C relations the Consumer Sales Act<sup>28</sup> and Consumer Services Act<sup>29</sup> are the most important regulations. Specific e-business and distance sales regulations can be found in the Act on e-commerce and information Society Services<sup>30</sup>, the Act on distance and Door-to-Door Sales Act<sup>31</sup> and the Qualified Electronic Signatures Act<sup>32</sup>

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<sup>26</sup> Lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område,

[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=&RUB=1915%3A218&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=&RUB=1915%3A218&ORG=)

<sup>27</sup> Köplag (1990:931),

[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=1990%3A931&RUB=&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=1990%3A931&RUB=&ORG=)

<sup>28</sup> Konsumentköplagen (1990:932),

[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=1990%3A932&RUB=&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=1990%3A932&RUB=&ORG=)

<sup>29</sup> Konsumenttjänstlagen (1985:716),

[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=1985%3A716&RUB=&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=1985%3A716&RUB=&ORG=)

<sup>30</sup> Lag (2002:562) om elektronisk handel och andra informationssamhällets tjänster,  
[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=2002%3A562&RUB=&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=2002%3A562&RUB=&ORG=)

<sup>31</sup> Distans- och hemförsäljningslag (2005:59),

[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=2005%3A59&RUB=&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=2005%3A59&RUB=&ORG=)

<sup>32</sup> Lag (2000:832) om kvalificerade elektroniska signaturer,

[http://rixlex.riksdagen.se/htbin/thw?\\${HTML}=SFST\\_LST&\\${OOHTML}=SFST\\_DOK&\\${SNHTML}=SFST\\_ERR&\\${MAXPAGE}=26&\\${TRIPSHOW}=format=THW&\\${BASE}=SFST&\\${FREETEXT}=&BET=2000%3A832&RUB=&ORG=.](http://rixlex.riksdagen.se/htbin/thw?${HTML}=SFST_LST&${OOHTML}=SFST_DOK&${SNHTML}=SFST_ERR&${MAXPAGE}=26&${TRIPSHOW}=format=THW&${BASE}=SFST&${FREETEXT}=&BET=2000%3A832&RUB=&ORG=)

