The Swedish Administrative and Legislative Frame for Animal Welfare and Official Animal Welfare Control Impacted by Private Quality Systems

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Non Peer Reviewed Article

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1. The Swedish Administrative and Legislative Model

This article provides a comprehensive review of the Swedish administrative and legislative frame for animal welfare and official animal welfare control in primary production.

The central administration in Sweden is the Parliament, the Government (with the Government Offices) and the government authorities. The government offices is divided into

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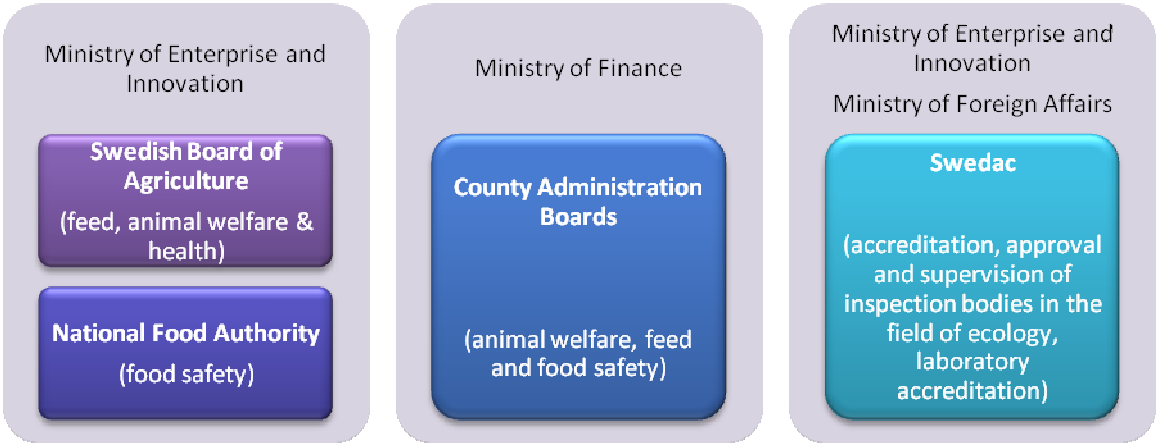
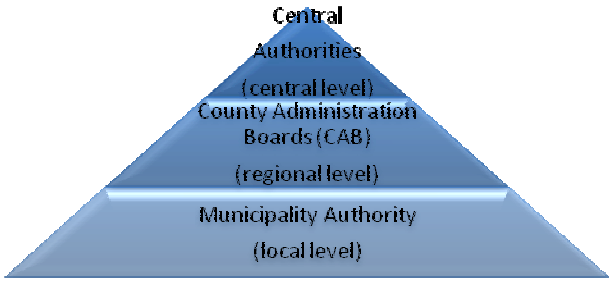
Ministries, each responsible for different areas of national administration, and led by a government Minister. Each Ministry has a vast amount of independently working central administrative authorities to supply the expertise needed within the Ministries remit. As a consequence, Swedish Ministries are relatively small and main parts of work are provided by the governmental authorities.



1. Organization of Swedish ministries and governmental authorities of the food chain, including primary production.

The Government determines the central administrative authorities' activities on an overall level by general regulations on economic governance affecting the authority powers and duties. Operations within the authority are executed in accordance with laws and regulations applicable in the specific area of expertise. Both operations and the results are monitored and evaluated through an annual report to the government.[2] By statutory authorization, many of the central administrative authorities are responsible for issuing regulations in the field of operation. The central administrative authorities are often designated as the Swedish competent authorities, e.g. within animal welfare official control, guiding, advising, monitoring and audit designated control authorities on regional or local administration level.[3] The central administration authorities conduct an independent work, including exercising of public authority, e.g. issuing permits and official decisions.[4] Ministerial rule is prohibited.[5]

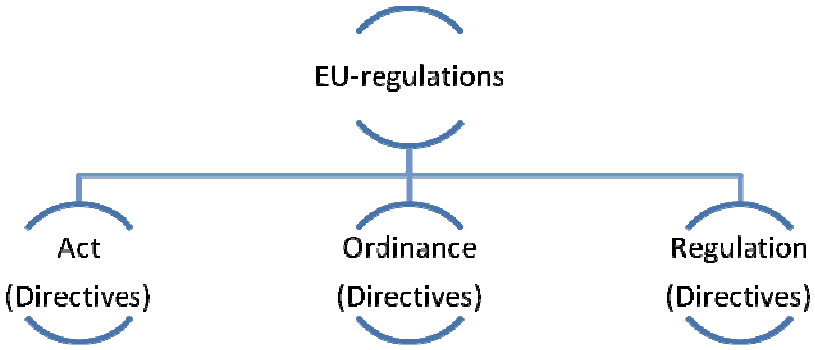
[2] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 13.
[3] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 12.
[4] Instrument of Government (1974:152), Chapter 11, Section 7.
[5] National plan for control of the food chain 2015-2018, part 4 of 4. Page 12.



2. Organisation of the Swedish administration

At the regional level of the Swedish Administration Model, twenty-one (21) *County Administrative Boards* (CAB) are representing the state. The CAB coordinates assignments issued by central administration and operates in a number of areas, as in animal health, animal welfare and food safety.[6] At the local level, 290 municipal authorities are governed by the national law. Official animal welfare control is handled by the central administration authority, the *Swedish Board of Agriculture* (SBA),[7] and the regional CAB. Official animal welfare control for organic primary production has been delegated by the SBA to private accredited control bodies.[8]

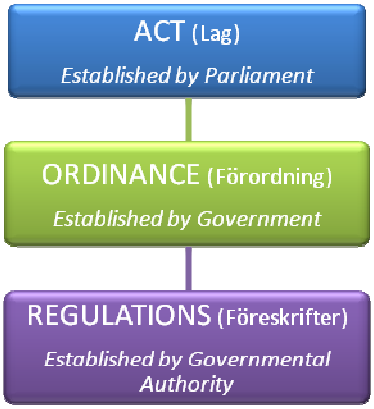
By Swedish membership in the European Union (EU) legislature permeates all levels of Swedish legal hierarchy. EU regulations apply directly as national law while EU directives are transposed to the most appropriate level in the hierarchy to meet the objectives given. For provisions of a directive to be transposed into a Swedish ordinance or regulation, there must be a statutory delegation in a Swedish Act.



3. EU legislation placed in the Swedish legislative model

[6] National plan for control of the food chain 2015-2018, part 4 of 4. Page 14.
[7] Homepage of the Swedish Board of Agriculture:
http://www.jordbruksverket.se/swedishboardofagriculture.4.6621c2fb1231eb917e680002462.html
[8] Animal Welfare Ordinance (1988:539). Section 1 b – 4.
[8] Animal Welfare Ordinance (1988:539). Section 22 – 24.

The Swedish legislative hierarchy consists of Acts established by the Parliament. Swedish acts are usually characterised by containing general rules with articles delegating authorisation to the government or a governmental authority to issue detailed provisions within specified parameters. Ordinances are issued by the Government and the regulations by governmental authorities (after re-delegation of the authorisation by an article in the ordinance). Acts, ordinances and regulations are all binding Swedish statutes since every article are based on a delegation in an act.[9] Acts are covering a specified legislative area. A legislative area is therefore covered by one act, one ordinance and as many regulations as the competent authorities decide.



4. Hierarchy of norms in the Swedish legal system.

2. Animal Welfare

2.1 Administration

As mentioned above the SBA is a governmental authority for animal welfare and animal health, including animal welfare control. The SBA is also the competent authority based on article 13 in the Regulation (EC) No 882/2004 on official controls of animal health and welfare. Furthermore, the SBA is responsible for the coordination of official control of animal health staff;[10] the import and export of animals and animal products; animal breeding and production; organic farming; food safety issues and animal by-products. According to the legislative instructions, the SBA shall also ensure good animal health status (for animals in human care), prevent spread of and fight infections in animals (in human care), ensure animal welfare and promote safe food and consumer consideration in the food chain,[11] and compile annual statistics of the regional animal welfare control.[12]

[9] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 7.
[10] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 25.
[11] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 27.
[12] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 28.

The *National Food Agency* (NFA)[13] is the governmental authority in food control based on the Regulation (EC) No 882/2004 on official controls.[14] The NFA is the Government's expert authority in the food policy area. The NFA shall operate, manage and coordinate effective and equivalent food control, including animal welfare inspections at the slaughterhouses.

The *Swedish Board for Accreditation and Conformity Assessment* (Swedac)[15] is the accreditation body for food quality and safety (governmental authority). Swedac conducts the official control of private control companies in charge of certifications. Only products, services and processes that require equivalence can be evaluated through accreditation. The accreditation constitutes a formal recognition for the control company making these certification controls. Swedac uses independent working methods and audits in accordance to specified standards, legislation, private rules, etc. Swedac accreditation includes certifying for labels as e.g. KRAV.[16]

5. Central Administration connected to Animal Welfare and Animal Welfare Control.

The *County Administrative Boards*, CAB, are the government regional authority responsible for operational animal welfare official control e.g. in primary production with farm animals.[17] The CAB has statutory authority – if needed – to impose animal holders to take specific action to secure or ensure animal welfare or to make official decisions for the disposal of animals or to issue prohibitions on keeping animals.[18] Official decisions by the CAB are appealed to the General Administrative Court.[19]

[13] Homepage of the National Food Agency: http://www.livsmedelsverket.se/en/
[14] Councils Regulation (EC) No 882/2004.
[15] Homepage of the Swedish Board for Accreditation and Conformity Assessment:, http://www.swedac.se/en
[16] Homepage of KRAV: http://www.krav.se/english
[17] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 36.
[18] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 37.
[19] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 16.

2.2 Legislative framework of animal welfare

The Swedish animal welfare legislation complements several EU regulations and transposes directives, as example the Council Regulation (EC) No 1/2005 on the protection of animals during transport[20] and the Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing.[21] Sweden has set higher requirements on welfare than those regulated in the directives in several cases; e.g. the Swedish ban on unenriched, conventional cages for laying hens and the ban on all forms of mutilation of animals without any veterinary medicine reason (including beak trimming, docking of ears and tails etc.).[22]

The animal welfare legislation in Sweden consists of the Swedish Animal Welfare Act (1988:534), the Animal Welfare Ordinance (1988:539), and approximately 35 animal welfare regulations issued by the SBA. The current Animal Welfare Act replaced a 44-year-old law in 1988.[23] The replacement was preceded by a debate of if the intensive livestock farming took advantage of the animals to the limit of their biological capacity and thereby was disregarding the animals' need for natural behaviour.[24] The requirements in the current Animal Welfare Act was set to match what was considered acceptable by society at the time. At the time the domestic production was accounted for a high level of self-sufficiency and the agricultural market was protected from imports.[25] This changed in 1995 when Sweden joined the European Union. Self-sufficiency disappeared and Sweden had to match the rules for entry and exit of products within the EU, as well as export and import from third countries.[26]

The Swedish Animal Welfare Act complements the EU regulatory framework as well as it is implementing directives.[27] The Animal Welfare Act addresses the general rules and requirements on how animals should be kept and cared for; on operative procedures; slaughter; license requirements for certain livestock keeping; competition and official presentation of animals; animal testing and rules for official controls including measures for the competent authorities needed to perform official control tasks.

[20] Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97.
[21] Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing.
[22] New Animal Welfare Act. (1988:534). Section 10.
[23] Act on Animal Welfare (1944: 219).
[24] New Animal Welfare Act. SOU 2011:75. Page 198.
[25] New Animal Welfare Act. SOU 2011:75. Page 203.
[26] New Animal Welfare Act. SOU 2011:75. Page 204.
[27] Announcement (2013: 419) of the EU regulations complemented by the Animal Welfare Act (1988: 534).

3. Animal Welfare Control

3.1 Official animal welfare control

The Council Regulation (EC) No 882/2004 on official control gives the legislative framework on how the competent authority shall implement and organise the official control to monitor, inspect and ensure of animal welfare legislation in conformity. The Control Regulation defines *official control* as "any form of control that the competent authority or the Community performs".[28] The *competent authority* is defined as "the central authority of a Member State competent for the organisation of official controls or any other authority to which that competence has been conferred".[29] Official control applies to all stages of production, processing and distribution, and the official decisions following an official control are open for appeal. The competent authority shall carry out official controls with impartiality and effectiveness, with access to qualified and experienced staff and adequate facilities. Official controls are to be carried out regularly and based on risk-assessment and with special control in suspicion of non-compliance.[30] *Non-compliance* means "non-compliance with feed or food law, and with the rules for the protection of animal health and welfare".[31]

Member States are encouraged to legislate under which conditions and possibilities the national competent authority can delegate a certain control task to a control body.[32] *Control body* is defined as "an independent third party to whom the competent authority has delegated certain control tasks."[33] Important to notice is that the "independent third party" means in practice that the control body needs to be accredited by a state authority which in Sweden would be accredited by Swedac.

In the Animal Welfare Act only animal welfare trained inspectors are allowed to carry out official animal welfare controls.[34] Competent authorities, as well as control bodies, are upon request entitled to the information and documents needed for control.[35] The Animal Welfare Act authorises delegation to the Government or the authority appointed by the Government, to write detailed provisions on obligations for control bodies engaged in official control to provide information to the competent authorities,[36] application of Council Regulation (EC) No 882/2004 in official control for other animal keepers than those keeping animals for food

[28] Council Regulation (EC) No 882/2004. Article 2. 1 p.
[29] Council Regulation (EC) No 882/2004. Article 2. 4 p.
[30] Council Regulation (EC) No 882/2004. Preamble (11).
[31] Council Regulation (EC) No 882/2004. Article 2. 10 p.
[32] Council Regulation (EC) No 882/2004. Preamble (21).
[33] Council Regulation (EC) No 882/2004. Article 2. 2 p.
[34] Animal Welfare Act (1988:534). Section 24 a.
[35] Animal Welfare Act (1988:534). Section 27.
[36] Animal Welfare Act (1988:534). Section 25.

production[37] and on charges for official controls which may be levied by the competent authorities and control bodies.[38]
Violations of the Animal Welfare Act are covered by criminal provisions and handled by public prosecution in general court.[39] Official decisions by the competent authority toward individuals, based on a section in Animal Welfare Act, the regulations authorised by delegation in the Act or based on Council Regulation (EC) No 882/2004, can be appealed to general administrative court.[40]

Swedish Board of Agriculture regulations (SJVFS 2008:67) on official animal welfare control also complement Council Regulation (EC) No 882/2004 on official control: "Competent authorities are to keep records of all control objects and make a plan over the official control."[41] Operative controls, usually performed by the CAB, also monitor and evaluate after inspections. If any new forms of animal welfare deficiencies are discovered in special kinds of animal husbandry, methodology, systems, equipment or the like, it must be reported to the SBA. Control reports are sent to the SBA annually.[42]

The Animal Welfare Ordinance appoints the CAB and the SBA as competent authorities for the official animal welfare control. The SBA is the central coordinating authority which gives the CAB support, advice and guidance for making operational control.[43] The SBA regulations includes detailed provisions for the official animal welfare control covering; cooperation between competent authorities, obligations for the CAB and other control bodies to provide information on their inspections to the SBA and additional charges for official control.[44] Furthermore, the NFA is delegated to handle the official animal welfare control by official veterinarians and official auxiliaries in the slaughter houses.[45] Appeals of official decisions based on Animal Welfare Ordinance are made to the General Administrative Court.

3.1.1. Delegation of official control

The Council Regulation (EC) No 882/2004 authorises a Member States competent authority to delegate specific tasks in official control to a control body. A condition is that there is an accurate description of the tasks that control bodies may carry out and conditions under which the controls may be performed.[46] Control bodies must have the expertise, equipment and infrastructure required for those control tasks which have been delegated by the competent authority. It is also required for control bodies to have a sufficient number of qualified and experienced inspectors who are impartial and free of conflicts of interest in delegated control

[37] Animal Welfare Act (1988:534). Section 25a.
[38] Animal Welfare Act (1988:534). Section 25b.
[39] Animal Welfare Act (1988:534). Sections 36 – 37.
[40] Animal Welfare Act (1988:534). Section 38.
[41] Swedish Board of Agriculture regulations (SJVFS 2008: 67) on official animal welfare control. Sections 5 – 6.
[42] Swedish Board of Agriculture regulations (SJVFS 2008: 67) on official animal welfare control. Sections 23, 6a and 7.
[43] Animal Welfare Ordinance (1988:539). Sections 59 and 63.
[44] Animal Welfare Ordinance (1988:539). Sections 65 and 68.
[45] Animal Welfare Ordinance (1988:539). Section 69.
[46] Council Regulation (EC) No 882/2004. Article 5.2a.

tasks. Control bodies are to be accredited in accordance to European standard EN 45004 and / or an another standard which is more appropriate for the task. On suspicions or indications on non-compliance, the control body must inform the competent authority immediately. Handling of deficiencies cannot be delegated to control bodies.[47]

3.1.2 Official control by state officials

The Administrative Procedure Act (1986:223) is regulating the actions taken by the state authorities. The official control includes the exercise of public power against individuals. Thus, the Administrative Procedure Act includes, amongst other things, provisions on oral processing, annotation data, the right of a party to obtain information, justification of official decisions, disqualification, correction of clerical errors and other provisions aiming to ensure legally secured handlings by the authorities.

A state officials, as for example a CAB official animal welfare control officer, are not allowed to work in or run a business alongside their government employment that may be affecting confidence in the impartiality[48] or adversely affect the peoples trust and reputation for the authority.[49] State officers are not either allowed to have any interest in the control object, e.g. being part of the company board.[50] Breaking the regulations has criminal sanctions targeted against the official as well as risk of indemnity for the state.

Sweden has a principle of public access to official records; meaning that documents coming in, are being established, or sent out from an authority can be requested by individuals.[51] The general rule is that all documents are official. However, documents which have not passed in or out of the authority, and are not part of an established case, constitute working material and are not thereby official documents. If considered an official document, a confidentiality assessment is made before the document is released. Authorisation in law is a requirement for the authorities to be able to cover parts of the document with confidentiality, or not having to disclose a document at all.[52] Official decisions by a governmental authority can be appealed to the General Administrative Court.[53]

3.2 Private Animal Welfare Quality Systems

The official animal welfare controls are risk-based and performed with long intervals (up to five years). Control in animal welfare programs and private certification programs are performed more often (about once a year) and covers both animal welfare legislation as well as own programme standards. Examples of animal welfare programs are Swedish Poultry Meat Association's animal welfare program for laying hens and pullets, and of private

[47] Council Regulation (EC) No 882/2004.
[48] Administration Procedural Act (1986:223). Section 12.
[49] Public Employment Act. (1994:260). Section 7.
[50] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 17.
[51] Freedom of the Press Act (1949:105). Chapter 2.
[52] National plan for control of the food chain, 2015-2018, part 4 of 4. Page 8.
[53] Act (2013:363) on official control for organic production. Section 30.

certifications programs the IP Sigill and the KRAV. Swedish animal welfare programs have been launched by the industry to help producers to maintain or improve animal welfare in their primary production. These programs are not government-regulated and animal keepers must also comply with the Animal Welfare Act.[54] Approved control programs are reviewed by the SBA. Animal keepers following such a control program (which could be part of an animal welfare program) are given a higher compensation for the animals and are also lower risk-classified in priority at official controls. Private quality systems therefore complement the official control by being an extra control as well as affecting the official controls priorities by risk-classification.

The Act on Control of Farm Animals etc. (2006: 807) is intended to promote livestock production, animals suitable for breeding, prevention of diseases in animals, and promoting sustainable management of animal genetic resources.[55] The Act (2006: 807) on Control of Farm Animals etc., authorise delegation to the Government or the SBA to write detailed provisions on control within the area covered by the Act, including delegation of control to organisations or other associations in the agricultural field.[56] Animal keepers are entitled to connect their livestock farming to private control program as long as they are following control program statutes.[57] When in non-compliance, the animal keeper can be refused continued association with the program.[58] Animal keepers covered by such private control program are regarded lower in risk assessments in priorities made in official control.

The SBA's regulations and general guidelines on animal husbandry within agriculture covers general provisions on keeping of cattle, pig, sheep, goat, poultry (except ratites) and furred game.[59] Special provisions cover keeping of cattle, pigs, sheep, goats, laying hens and pullets, chicken for fattening, turkeys, ducks and geese, and furred game.[60] Provisions in the SBA regulations have for a long time been quite detailed, but are in a process of incorporating and amend provisions into a goal oriented model to make the system more flexible for animal keepers. If a targeted provision does not lead to desired results, upcoming amendment will most probably increase the level of detail.[61] The SBA provisions includes also many minimum standards e.g. in dimensions in animal houses or number of animals of a species in a specific cage.

Nevertheless, the SBA regulations contain provisions allowing minor deviations from standards if being connected to one of the SBA approved control program. A *control program*

[54] New Animal Welfare Act. SOU 2011:75. Page 425.
[55] Act (2006: 807) on control of farm animals, etc. Section 1.
[56] Act (2006: 807) on control of farm animals, etc. Section 3.
[57] See for example the SBA regulation of voluntary and preventative health inspection in relation to salmonella in poultry (SJVFS 2007:78) which is a basic part of the Swedish Poultry Meat Association Animal Welfare program.
[58] Act (2006: 807) on control of farm animals, etc. Section 4.
[59] Swedish Board of Agriculture's regulations and general guidelines (SJVFS 2010: 15) on animal husbandry within agriculture, etc. Chapter 1.
[60] Swedish Board of Agriculture's regulations and general guidelines (SJVFS 2010: 15) on animal husbandry within agriculture, etc. Chapter 2 - 10.
[61] New Animal Welfare Act. SOU 2011:75. Page 413.

is defined as "a program, aimed at ensuring animal welfare, which have been approved by the SBA and is connected to a provision given by the SBA".[62] Assessment of a minor deviation should not be interpreted as deviation from legislated dimensions, e.g. heights or minimum area. Such assessment would lower the regulated minimum standard. Focus for the assessment of a minor deviation should be made by criteria concerning animal welfare.[63]

3.2.1 Control in Animal Welfare Programs

A control program may be part of an animal welfare program[64] approved by the SBA and connected to provisions in a SBA regulation as for example the Swedish Poultry Meat Association animal welfare program for broiler and turkey.[65] Connection to the program is voluntary, but compulsory for membership in the Swedish Poultry Meat Association's insurance of herds against salmonella. Animal keepers connected to this program accept more stringent requirements and additional controls, but are also provided possibilities for aberrations from the Animal Welfare Act. In the Swedish Poultry Meat Association's control program the controls are based on both the legislative and associative standards. Private control is carried out by veterinarians and employees of the insurance company Agria.[66] The reports from the inspections are sent to the CAB. Every six months a comprehensive audit report is sent to the SBA.

Instrument of Government (1974:152) regulates that the exercise of public power may only be delegated the private control companies and only given to accredited control bodies for certifying organic production. The SBA authorises Animal Welfare Programs. Controls executed within such programs include tasks very similar to the exercise of public power. Since there is no legitimacy for exercise of public power, these controls remain purely as verifications by the industry.[67] Non-compliance with animal welfare legislation discovered or suspected are to be reported to the competent authority for handling.

The SBA conducts regular audits of private quality systems in terms of feed and animal welfare.[68] It is a control to make sure the quality systems are implemented and working as expected. The SBA also examines the assessments which has been made in the control program, particularly assessments in relation to legislation and system controls set up to assure that legislative requirements are being followed.[69] Random checks are carried out at different primary producers and often together with the control company hired by the quality system. The audit covers how well the quality system ensures regulatory compliance, control

[62] Swedish Board of Agriculture's regulations and general guidelines (SJVFS 2010: 15) on animal husbandry within agriculture, etc. Chapter 1. Section 4.
[63] New Animal Welfare Act. SOU 2011:75. Page 415.
[64] New Animal Welfare Act. SOU 2011:75. Page 425.
[65] New Animal Welfare Act. SOU 2011:75. Page 426.
[66] New Animal Welfare Act. SOU 2011:75. Page 268.
[67] New Animal Welfare Act. SOU 2011:75. Page 426.
[68] Guidance on risk classification of food and feed producers in primary production. Latest update 2015-01-05. National Food Agency and the Swedish Board of Agriculture. Page 24.
[69] Guidance on risk classification of food and feed producers in primary production. Latest update 2015-01-05. National Food Agency and the Swedish Board of Agriculture. Page 24.

companies' independence, competence and application of own standards.[70] Control points are summed to a weighted results and the competent authority gives feedback to the quality system and the control company, sometimes with suggestions for improvement. Outcome of this review can mean that the quality system or the control company will have to raise or lower their performance in regard to the given requirement level.[71]

3.2.2 Certification through a state accredited Control Body

In addition to control programs within an animal welfare program, there are also private systems of certification where the label given requires the animal keeper to follow legislation as well as private standard (and thereby to be certified by a Swedac accredited certification company). Examples of such labelling are the KRAV and the Sigill Kvalitetssystem AB. These control bodies execute official control on organic production in accordance with animal welfare control legislation. They are also inspecting the animal keepers connected to the certification label for complying with the private certification standards.

The Council Regulation (EC) No 834/2007 implements the provisions in Council Regulation (EC) No 882/2004 on official control for organic production.[72] Delegation of certain tasks of the official control, from a competent authority to a control body, differs when it comes to organic production. Control bodies are allowed to issue decisions on measures for non-compliance[73] and decisions for certain exemptions.[74] Because of this, control bodies must be accredited and approved by the competent authority.[75] Official animal welfare control includes exercise of public power and the accredited control bodies for controlling certification of organic production are therefore accredited by Swedac and covered by several provisions[76] in the Administrative Procedure Act (1986:223).[77]

The NFA and the SBA are the central control authorities for official control in organic production within their respective area of expertise. Both the NFA and the SBA has the legitimacy to delegate operative official control to control bodies.[78] The SBA is responsible for effective, impartial and independent controls completed by the control body.[79] The SBA exercises also central authority control over production and management of organic products that are not food, e.g. as primary production from animals and animal products. Swedac is the

[70] Guidance on risk classification of food and feed producers in primary production. Latest update 2015-01-05. National Food Agency and the Swedish Board of Agriculture. Page 25.
[71] Guidance on risk classification of food and feed producers in primary production. Latest update 2015-01-05. National Food Agency and the Swedish Board of Agriculture. Page 25.
[72] Guidance to control bodies in organic production. Application of Administrative Procedure Act and handling of appeals in organic production. Swedish Board of Agriculture and National Food Agency. Page 9.
[73] Council Regulation (EC) No 834/2007, referral to Article 5.2. Council Regulation (EC) No 882/2004. Articles 27.4 and 27.5.
[74] Government Bill No 2012/13:55. *Act on control for organic production*. Page 24.
[75] *National plan for control of the food chain, 2015-2018,* part 2 of 4. Page 104.
[76] Act (2013:363) on official control for organic production.
[77] Government Bill No 2012/13:55. *Act on control for organic production*. Page 28.
[78] Act (2013:363) on official control for organic production. Section 2.
[79] Council Regulation (EC) No 882/2004. Article 5.2.

competent authority for accreditation[80] and supervision of control bodies in operational control. The SBA verifies the control bodies' statuses for delegation of certain control tasks in accordance to demands given by Council Regulation (EC) No 882/2004 on official control and No 834/2004 on organic production. Swedac shall provide the information needed by the SBA for this verification.[81]

The Act on Official Control for Organic Production (2013:363) complements Council Regulation (EC) No 834/2007 on organic production, implementing Council Regulation (EC) No 882/2004 on official control.[82] The control bodies must apply the Administrative Procedure Act (1986:223) provisions on disqualification,[83] oral processing, annotation data, justification of the decision, suitor's right to access information, and to correction of clerical errors.[84] The control bodies are allowed to make official decisions revoking issued certificates, removing markings of a product[85] as well as prohibiting the marketing and sale of a product if there is non-compliance with legislation or statutes. Control authorities may issue injunctions and prohibitions (also with a penalty) if it is needed to prevent or remedy non-compliance.[86]

The KRAV is an economic association that promotes the economic interests of its associates through control and certifying of organic products.[87] They are working with standards, control and labelling of organic farming, animal husbandry and production, as well as with training and information on organic production. Official control for certification is carried out by accredited certification bodies (meeting the requirements of a control body in Council Regulation (EC) No 882/2004) at least once per year and covers animal welfare, animal health, social responsibility and environmental impact. Review and development of the private standards are made by a committee with working groups, where specialists and individuals with different perspectives and interests of the label are involved. New regulatory proposals are sent out for open consultation. Decisions by a control body are to be appealed to the CAB[88] while official decisions by a governmental authority are appealed to General Administrative Court.[89]

[80] Council Regulation (EC) No 834/2007. Article 27.4.
[81] Act (2013:363) on official control for organic production. Section 16.
[82] Act (2013:363) on official control for organic production. Section 1.
[83] Act (2013:363) on official control for organic production. Section 7.
[84] Administrative Procedure Act (1986:223). Sections 11-12, 14-17, 20-21 and 26.
[85] Council Regulation (EC) No 834/2007. Article 30.1 (1).
[86] Act (2013:363) on official control for organic production. Section 10-12.
[87] KRAV Statutes: www.krav.se. Sections 1 and 3.
[88] Act (2013:363) on official control for organic production. Section 28.
[89] Act (2013:363) on official control for organic production. Section 30.

4. Animal Welfare Quality Systems Impact on Separation of Powers

4.1 Legal security in handling

After the extensive overview of the Swedish administrative model and legislative framework of animal welfare and animal welfare control, the impact of the private control on state power and the conformity of law in Sweden will be discussed.

The current Swedish animal welfare legislation is composed of many detailed provisions that are focused on the resources around the animals, as size on cages or number of laying hens in the cage. As a consequence, official animal welfare controls are considered to be more focused on the dimensions and numbers than on assessments of the animal welfare outcome. In the Swedish Government Official Report, SOU, No 2011:75 *New Animal Welfare Act*, suggestions were presented for changes in current animal welfare legislation. The Inquiry Chair declared in the report that animal welfare legislation need to be more flexible and open for the use of different methods to reach animal welfare goals. It was also noted that some requirements for animal welfare, such as the need to perform natural behaviours, could not be replaced by other targeted animal welfare aspects.[90] Unfortunately, the proposal for a new Animal Welfare Act has been stuck in politics ever since. Yet, the report presents the ongoing debate on changing from detailed provisions on specific resources as measurements and number of animals, to provisions targeting on animal welfare oriented goals.

Thus, it should be made clear that the private quality systems do contribute to a higher level of animal welfare than the Swedish legislation requires in certain respect. Despite this, there are several problems with the current system when viewed from a legal perspective. The SBA is authorised to accept the animal welfare program and control program connected to a provision in the regulations. However, private control of this kind doesn't replace official controls, but complement them. Further, the SBA has not authorisation to provide exemptions from the minimum requirements set in the law and imposed by the EU-law. Still, an animal keeper connected to an animal welfare program approved by the SBA is given aberrations beyond legal minimum requirements (e.g. animal coating with laying hens).

My first objection is that the SBA is showing lack of legal management when accepting aberrations from a minimum provision in the regulations based on the fulfilment of a private standard in the approved animal welfare program. The SBA cannot allow aberrations lowering the minimum standards, unless having delegation from an act for doing so (note that the objection is not about whether the animals are doing well or not). The objection concerns how the SBA complies with the acts established by the EU and the Swedish Parliament. As mentioned earlier delegating articles are to be kept within specified parameters. When the SBA approves aberrations below the legislated minimum standards, the board violates its power in the legislative hierarchy. As a consequence, the private quality system affects the distribution of state power and conformity with law.

[90] New Animal Welfare Act. SOU 2011:75. Page 431.

My second objection is that the SBA uses goal targeted private program standards for allowing aberrations below regulated minimum requirements (e.g. the number of laying hens allowed in an area). The most important requirement for the animal keeper to be given aberration, is demonstrating good animal welfare in the private controls programs. Even if minor deviation are allowed from current regulations if the assessment is made from criteria concerning animal welfare, it should not be interpreted as allowing deviation from the legislated minimum requirements. It should be noted that the SBA both allows and make use of the private program controls for aberration from their own detailed regulated provisions. As a consequence, the transparency of the regulatory framework is affected, especially for the animal owner or keeper, in other words, the individual.

4.2 Legal security for individual animal keepers

The provisions in the Administrative Procedure Act (1986:223) on disclosure and conflict of interest rules and impartiality, and the provisions in Freedom of The Press Act (1949:105) on the principle of public access to official records are of importance to ensure legal security at controls including elements of exercise of public power (performed by a control body or control authority). When control is conducted by a private control company, such provisions are set and followed-up in accordance with the specific program standards. Control by private control companies are first and most a verification of the programs standards – even if non-compliance are to be reported to the control authorities as described in chapter 3.2.1.

Objections are made in regards of 1) lack of transparency in the regulatory framework, 2) lack of conformity (e.g. in terms of appeal) and 3) lack of openness (e.g. in ulterior basis for outcome of control). The same objections were also discussed in the Government Bill No 2012/13:55 prior to issuing the Act (2013:363) on official control for organic production. Note that control bodies are exercising public power by the Council Regulation (EC) No. 834/2006 on organic production, e.g. by issuing official decisions' in cases of non-compliance and that the control bodies for organic production already met the requirements in Council Regulation (EC) No. 882/2004 as being independent state accredited third parties.

The Government regulated the increased exercising of public power as basis for opening up transparency and providing a legally secure handling of official decisions' made by the control bodies. The provisions from Administrative Procedure Act (1986:223) as well as Freedom of The Press Act (1949:105) are now implemented in Act (2013:363) on official control for organic production (chapter 3.2.2.). Controls executed by a private control company in an animal welfare program are not covered and does not meet the requirements of being control bodies based on the Council Regulation (EC) No. 882/2004 on official controls.

Private control includes elements bordering on exercising of public power as close as if performed by a control authority or control body for organic production; it is exercising of public power. What makes the difference? Guidance can be taken from the Governments motives for opening up transparency and providing a legally secure handling of documents when control is handled by a control body, as well as from the obligation for private control companies to report non-compliance to control authorities for follow up.

The Government seems to view the exercising of public power in animal welfare control only in connection with the authorisation of following-up if non-compliance. As a consequence, legal security for an individual animal keeper is initiated first when the control authorities are made aware of non-compliance during private control.

My objection is that animal keepers in the animal welfare programs are dependent on the private control executed for lowering the establishments risk classification and control frequency in official control. Animal keepers are also dependant on the private control to be subjected to any aberrations from provisions in the SBA regulations. In my opinion this is also exercising of public power and needs to be regulated to ensure legal security for individuals.

5. Conclusion

The Swedish Animal Welfare Programs have been and are important for the standard of animal welfare in Sweden even though, as have been discussed, there are issues to be dealt with from a legal perspective to ensure legal security in the regulatory system as well as for the animal keepers being inspected – not to forget the welfare of animals. The process of change and discussions is still continuing in Sweden.

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