

Case note **Sweden**

Case No. **2572-2573-2002**

Name and level of court **The Swedish Supreme Administrative Court (Sw: Regeringsrätten)**

Members of court **Leif Lindstam, Mats Melin, Carina Stävberg**

Date of verdict **18 December 2002**

## Brief facts

The Appellant challenged a decision by the Tax Authorities in Malmö at first instance, to the competent court of second instance, the Gothenburg Administrative Court of Appeal. The appeal submission was filed by e-mail.

The Gothenburg Administrative Court of Appeal dismissed the appeal on the grounds that the Swedish Act on Administrative Procedure (*Sw: Förvaltningsprocesslagen*) requires the appeal submission to be signed with a handwritten signature<sup>1</sup> (*Sw: egenhändigt undertecknad*), which it was not.

The Appellant challenged the dismissal of his case in the Swedish Supreme Administrative Court (*Sw: Regeringsrätten*), and requested that the case be referred back to the Gothenburg Administrative Court of Appeal. He stated that his appeal in the Gothenburg Administrative Court of Appeal was signed with a qualified electronic signature and thereby "signed with a handwritten signature" (*Sw: "egenhändigt undertecknad"*) in accordance with the Swedish Act on Administrative Procedure.

## Decision and reasoning of the court

The Swedish Supreme Administrative Court dismissed the appeal on the grounds that the Swedish Act on Administrative Procedure requires an appeal to be signed with a handwritten signature, and that the appeal was signed with an electronic signature but lacked a handwritten signature.

## Comments by Anna Nordén, LL.M

The Swedish Act on Qualified Electronic Signatures<sup>2</sup> states 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.<sup>3</sup>

The Swedish legislature has interpreted article 5.1(a) of the Directive on Electronic Signatures<sup>4</sup> so that if according to national law (either due to legislation or due to interpretation of rules regarding form requirements) it is at all allowed to fulfil a form requirement for a traditional signature by electronic means, then a qualified electronic signature must always be accepted.<sup>5</sup> Article 5.1(a) does thus not effect form requirements that exclude the use of electronic means.<sup>6</sup> This means that a qualified electronic signature cannot meet a requirement for a handwritten signature, unless the law allows for the form requirement to be met by electronic means.<sup>7</sup>

Since the Swedish Act on Administrative Procedure does not allow the requirement for a handwritten signature to be met by electronic means, a qualified electronic signature cannot replace a handwritten signature.

The court therefore did not need to discuss whether the electronic signature used was indeed a qualified electronic signature or not. ■

<sup>1</sup> Swedish Act (1971:291) on Administrative Procedure § 3.

<sup>2</sup> Lag (2000:832) om kvalificerade elektroniska signaturer.

<sup>3</sup> Swedish Act (2000:832) on Qualified Electronic Signatures § 17: *Om det i lag eller annan författning ställs krav på egenhändig underskrift eller motsvarande och om det är tillåtet att uppfylla kravet med elektroniska medel, skall en kvalificerad elektronisk signatur anses uppfylla kravet. Vid kommunikation med eller mellan myndigheter kan dock användningen av elektroniska signaturer vara förenad med ytterligare krav.*

<sup>4</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ 19.1.2000 L13/12).

<sup>5</sup> Government Proposal 1999/2000:117 p 56 available in electronic format at

[http://naring.regeringen.se/propositioner\\_mm/propositioner/pdf/p19992000\\_117.pdf](http://naring.regeringen.se/propositioner_mm/propositioner/pdf/p19992000_117.pdf).

<sup>6</sup> Government Proposal 1999/2000:117 p 78.

<sup>7</sup> The basis for the Swedish interpretation of the directive is that the scope of the directive does not include aspects related to the conclusion and validity of contracts or rules and limits contained in national law governing the use of documents (Article 1 para 2), Government Proposal 1999/2000:117 p 56.

Anna Nordén, LL.M is General Counsel at Tekki AB. Anna served as the national expert for Sweden in the e-signature work that Professor Jos Dumortier undertook for the European Union.

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