

UNOFFICIAL TRANSLATION

For
the Stockholm District Court

Summons application

Plaintiffs

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|--|---------------------------|---------------------------|
| 1. Non-profit organisation
PUSH Sverige | 23. Fatima Berthelsen | 46. Kajsa Kramming |
| 2. Non-profit organisation
Fältbiologerna | 24. Emil Thuvander | 47. Dimitri Litvinov |
| 3. Minou Moon | 25. Åsa Ström Hildestrand | 48. Torgny Larsson |
| 4. Ahmed Al-Qassam | 26. Pella Thiel | 49. Staffan Lindberg |
| 5. Jonas Bane | 27. Angelica Vehma | 50. Torbjörn Vennström |
| 6. Annika Hagberg | 28. Li Vinthagen | 51. Elin Ingersdotter, |
| 7. Samuel Jarrick | 29. Christer Haagman | 52. Rebecca Andersen |
| 8. Jesper Nordqvist | 30. Amos Strömberg | 53. Eva Ekholm |
| 9. Moa Lindholm | 31. Viktoria Olausson | 54. Sara Edberg |
| 10. Petter Bjersér | 32. Lanja Rashid | 55. Kim Wahlman |
| 11. Johan Thunberg | 33. Ellen Malmberg | 56. Samuel Costa Nordvall |
| 12. Andreas Jonsson | 34. Emil Dahlström | 57. Anna Bokström |
| 13. Jonathan Nylander | 35. Carolina Stenberg | 58. Thomas Wingren |
| 14. Fanny Sannerud | 36. Viktoria Stenström | 59. Deniz Tütüncü |
| 15. Robin Holmberg | 37. Rebecca Hedlund | 60. Perikles Nalbantis |
| 16. Karolin Joelsson | 38. Rose-Marie Olsson | 61. Sigrid Magnusdotter |
| 17. Sara Trulsson | 39. Magnus Åkerlind | 62. Stefan Doverud |
| 18. Lisa Färnström | 40. Benjamin Esterdotter | 63. Erik Almlöf |
| 19. Joakim Hagström | 41. Mathis Nylén | 64. Petter Nordqvist |
| 20. Johan Rosander | 42. Eva Gardek | 65. Hans Holmgren |
| 21. Alfred Lundberg | 43. Samson Gardek | 66. Eric Svensson |
| 22. Emillia Rekestad | 44. Ida Satz | 67. Peter Fritzson |
| | 45. Magnus Johansson | 68. Agnes Lansrot |

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|----------------------------|-------------------------------------|---------------------------|
| 69. Kenneth Öhlund | 99. Frida Åberg | 129. Maja Gunnarsson |
| 70. Tomas Lohammar | 100. Mikael Andersson | 130. Ida Rogne |
| 71. Josefin Smeds | 101. Louise Gripenberg | 131. Cecilia Fransson |
| 72. Anne von Heideman | 102. Moa Karlsson | 132. Maria Schultz |
| 73. Claes Trygger | 103. Hannes Willner | 133. Felix Seestränd |
| 74. Erick Giessler | 104. Josefin Heed | 134. Stina Eriksson |
| 75. Eva Lenke | 105. Martin Arnsten | 135. Simon Jansson |
| 76. Ebba Larsson | 106. Salomon Abresparr | 136. Daniella Simonsson |
| 77. Idah Magnusson | 107. Linus Linde | 137. Ellika Axelsson Fisk |
| 78. Sofia Fransén, | 108. Jens Persson | 138. Theresé Engwall |
| 79. Caroline Alexandersson | 109. Adam Leckius | 139. Sofia Östblom |
| 80. Martha Bengtsson | 110. Lovisa Lundgren | 140. Alexis Engström |
| 81. Peter Groth | 111. Karmapriya Jessica
Muschött | 141. Henrik Strömsten |
| 82. Karin Andersson | 112. Joel Harsten | 142. Karl Andreasson |
| 83. Saga Lennskog | 113. Filip Jacobsson | 143. Annelie Ekblom |
| 84. Linus Amvall | 114. Filippa Olli Johanson | 144. Caroline Bodin |
| 85. Carolina Engström | 115. Sara Tjellander | 145. Hillevi Persson |
| 86. Jessica Engström | 116. Tim Saari Byström | 146. Peder Karlsson |
| 87. Gabriel Malmer | 117. Filip Uthammar | 147. Ella Jansson |
| 88. Martin Arvidsson | 118. Judith Hörding | 148. Christopher Eriksson |
| 89. Roger Jakobsson | 119. Sara Westbom | 149. Lovisa Sundström |
| 90. Tim Isaksson | 120. Hannah Doherty | 150. Sofia Sundström |
| 91. Lars Simmons | 121. Simon Wrang | 151. Olivia Linander |
| 92. Malin Bergh | 122. Johanna Lennartson | 152. Eva Ålander |
| 93. Michael Wernstedt | 123. Jaqueline Österberg | 153. Joakim Andrén |
| 94. Regina Munoz | 125. Markus Marttila | 154. Frida Berry Eklund |
| 95. Julia Norman | 126. Julia Rehn | 155. Mårten Pella |
| 96. Karl Johan Bonnedahl | 127. Rikard Schöier | 156. Mio Tholerus |
| 97. Christoffer Söderlund | 128. Lisa Nilsson | 157. Robin Holmberg |
| 98. Turid Brodin | | 158. Frida Heilert |

159. Karin Wahlgren	166. Ingrid Hallman	173. Rikard Rehnberg
160. Yngve Sundblad	167. Aurora Sofia Palm	174. Annika Elmqvist
161. Olga Günther	168. Inger Raaby	175. Jonas Roupé
162. Susanna Fjällström	169. Julia Lönnqvist	176. Eva Jakobsson
163. Sandra Ahlqvist	170. Moses Shahrivar	177. Annette R Bettaieb
164. Jan Strömdahl	171. Helena Günther	178. Kashya Ole
165. Mathias Fridemark	172. Nina Günther	

Legal representatives:

LL.B. Jan Palmblad,
Northern Linnégatan 3 452 31 Strömstad,
Tel: 072 5555 041; Email: jan.palmblad@hotmail.com

Lawyer Pia Björstrand, law firm Omnia AB
Järnagatan 6 A, 2nd floor, 151 72 Södertälje
Tel: 08550300 62; Email: pia@advokatomnia.se

Defendant:

The Government of Sweden through the Government Offices of Sweden, 202100-3831, 103 33
Stockholm

Application:

National duty towards the citizens according to the Constitution, the European Convention for the
Protection of Human Rights and Fundamental Freedoms, etc.

As representatives of the plaintiffs above, we state the following.

1. PUSH Sweden was founded in 2013 and represents 24 organizations and 665 individual members. PUSH Sweden believes that anthropogenic climate change is among the foremost threats to the future of mankind and that it is necessary to take, without further delay, all reasonable and feasible measures at national and international levels to reduce and halt global warming.
2. With around 2000 members, Fältbiologerna (Nature and Youth Sweden) is the largest non-profit association for young people interested in nature and environment issues, and is an independent youth association under the Swedish Society for Nature Conservation. Since 1947 Fältbiologerna has shaped both the environmental debate and new generations of environment-smart and nature-interested citizens.
3. The other plaintiffs are private individuals who all want to work for a sustainable future and for strong measures to reduce Swedish and international greenhouse gas emissions and thereby prevent a climate catastrophe.

A. CLIMATE CHANGE

4. Climate action is an urgent priority. July 2016 was the warmest month ever since records began in 1880, 136 years ago, and the tenth consecutive month of record high average temperatures according to NASA.¹ According to the US climate and environment agency NOAA the combined average temperature for June 2016 was 0.9°C higher than the average for the last century of 15.5°C²

5. Recent scientific reports indicate that climate changes are happening faster than predicted in the 2013 IPCC report and that national commitments under the Kyoto Protocol are insufficient to keep us below a 2°C average temperature increase, with the ambition to try to limit temperature increase to as close to 1.5°C as possible over pre-industrial levels. Recent analyses show that the commitments submitted by countries in Paris instead will lead to an increase equivalent to 2.7 to 3°C³ by 2100, a level at which the scientific community believes that climate change becomes catastrophic and irreversible.⁴

6. The decisive factor is the continued burning of fossil fuels. The IPCC's fifth assessment report from 2013 states:

Governments have set an international goal of limiting average warming to 2°C. For the world to have a 50 percent chance of staying below 2°C of warming by 2100, the AR5 identifies a greenhouse gas emission budget of 840Gt of carbon. More than half of that (over 531GtC) has already been emitted. At current emission rates (around 10GtC per year), we will use up our carbon budget in just 30 years.

Translated into oil, natural gas and coal, various studies calculate that 70-90% of the world's total fossil fuel reserves cannot be burned if we are to have a 50 percent chance of staying below a 2°C average temperature increase by 2100.⁵

7. To reduce the burning of oil, natural gas and coal is therefore the single most important measures to counter global warming. The concentration of carbon dioxide and other greenhouse gases in the atmosphere are rising more because global emissions increases. To the average temperature increase should have a 50 percent probability to stay below two degrees indicates the IPCC that global greenhouse gas emissions need to be reduced by 80-95% by 2050 compared to 1990.⁶

8. Renowned climate scientist Kevin Andersson (University of Manchester, Tyndall Centre for Climate Change Research, Visiting Professor Uppsala University) says among other things:

Long-term and end-point targets ... have no scientific basis. What governs future global temperatures and other adverse climate impacts are the emissions from yesterday, today and those released in the next few years.

¹ Data from NASA website: <http://data.giss.nasa.gov/gistemp/news/20160816/>

² Data from NOAA: <https://www.ncdc.noaa.gov/sotc/global/201606>

³ SVT's Climate guide: <http://pejl.svt.se/klimatguiden/>

⁴ Article in The Guardian, 2016-08-30:

<https://www.theguardian.com/environment/2016/aug/30/nasa-climate-change-warning-earth-temperature-warming>

⁵ Article in The Guardian, 2015-03-25:

<https://www.theguardian.com/environment/keep-it-in-the-ground-blog/2015/mar/25/what-numbers-tell-about-how-much-fossil-fuel-reserves-cant-burn>

⁶ The EU's submitted INDC:

<https://www.google.com/url?q=http://www4.unfccc.int/submissions/INDC/Published%2520Documents/Latvia/1/LV-03-06-EU%2520INDC.pdf&sa=D&ust=1473273430476000&usq=AFQjCNERv5LTy8qe77ZFh1iE-p-xcUboZw>

⁷ Kevin Anderson and Alice Bows (2012). A new paradigm for climate change. *Nature Climate Change*, vol 2, September.

He also believes that our current emissions targets to stay within the two-degree limit, and keep us within the remaining carbon budget should, for the rich countries, be at least 10% emission reductions year to year from now on, with a 50% reduction in emissions in 2020 (compared to 1990 levels), 75% by 2025 and 90% in 2030 to close to zero emissions by 2035.⁸

His analysis also shows that:

Even with the more optimistic reading of Sweden's 2016-2100 carbon budget (the 336MtCO₂ value), by 2025 emissions of energy-only CO₂ will need to have been reduced by over 70% (cf 2016) reaching a reduction of almost 95% by 2035. Based on the more cautious budget (but still well in excess of what aligns with the Paris Agreement's temperature objectives). These reduction rates increase significantly to over 90% and 99% by 2025 and 2035, respectively.⁹

9. For no group in society is the climate issue more important than for the young. It is not just the major international impact, but also specific national risks. Growing up in Sweden with the climate change we now see will mean increased risks for our children and young people's well-being; among others:

- increased risk of physical and psychological effects of weather disasters such as more torrential rain and heavy rain and flooding;
- reduced air quality (more asthma and other respiratory diseases), more smog in large cities, increased pollen and smoke from forest fires;
- water availability and quality affected by changes in precipitation patterns (increasing spread of contaminants, microbiological risks);¹⁰
- increased exposure to "heat stress", including increased risk of low birth weight (an important health indicator);¹¹
- changes in disease transmission patterns and new diseases, for example Lyme disease, TBE and other vector diseases can spread to new areas.¹²

B. INTERNATIONAL COOPERATION ON CLIMATE CHANGE

10. Global warming is a common critical issue for us and the coming generations. Humanity's impacts on the climate has been discussed for 40 years, and the climate issue has become perhaps the most high-profile international political issue.

11. In 1957 oceanography professor Roger Revelle and chemist Hans Suess presented a study concluding that anthropogenic emissions of CO₂ would likely contribute to the warming of the atmosphere.

The Sustainability Conference in Stockholm in 1972

12. Continuing research and an increased atmospheric concentration of CO₂ led to climate change becoming a topic of international political interest. On the initiative of the Swedish Government, the

⁸ Presentation at Uppsala University, 31 August 2016.

⁹ Analysis by Kevin Anderson for the Magnolia case, September 2016 via email.

¹⁰ SMHI (2014). Risker, konsekvenser och sårbarhet för samhället av förändrat klimat: en kunskapsöversikt (Risks, consequences and vulnerability for society of climate change: an overview), SMHI (Swedish Meteorological and Hydrological Institute), Klimatologi Nr 10. SMHI, Sweden: <http://bit.ly/2bEDLtn>.

¹¹ Kathryn Grace, Frank Davenport, Heidi Hanson, Christopher Funk, and Shraddhanand Shukla (2012). Linking climate change and health outcomes: Examining the relationship between temperature, precipitation and birth weight in Africa. *Global Environmental Change*, vol. 35, November. <http://bit.ly/2cuNKDZ>.

¹² Nya sjukdomar och smittspridning (New diseases and infectivity). Norran.se. <http://norran.se/nyheter/nu-finns-taigafastingen-i-sverige-617898>.

UN held its first Conference on the Human Environment in Stockholm in 1972. The conference adopted the Stockholm Declaration, which, among other things, confirmed the sovereign right of States to formulate their own environmental goals, but also their common responsibility to ensure that national activities do not negatively affect the environment of other States.

The World Climate Conference in Geneva in 1979

13. At the World Climate Conference in Geneva in 1979 scientists discussed how climate change could affect mankind. Scientific studies were submitted linking human activities to emissions of greenhouse gases like carbon dioxide, methane and nitrous oxide.

The Brundtland Report

14. The Brundtland Report (Report of the World Commission on Environment and Development: Our Common Future) was published in 1987, a report written by the World Commission on Environment and Development on behalf of the United Nations. The report described the relationship between economic development and environmental degradation and united global environmental movements by establishing the concept of sustainable development:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

The International Panel on Climate Change, 1988

15. The IPCC (Intergovernmental Panel on Climate Change) was founded in 1988. The aim was to provide the world with a clear scientific view on the current state of knowledge regarding climate change and its environmental and socioeconomic impact. The IPCC should, in an exhaustive, objective, open and transparent manner, analyze the scientific, technical and socioeconomic information relevant to understanding the scientific basis for assessing the risks of anthropogenic climate change, its potential impacts and options for adaptation and mitigation of the effects. The IPCC produces reports quoted extensively in debates on climate and the organization is regarded as the foremost authority on matters related to climate change. The first IPCC climate assessment report was published in 1990, and the latest, the Fifth Assessment Report (AR5), the most comprehensive and thoroughly conducted research study in history, was published in 2013.

1992 Rio Conference

16. At the World Summit on Environment and Development in Rio de Janeiro in 1992 the UNFCCC (United Nations Framework Convention on Climate Change) was signed by 154 states. The Convention came into force on 21 September 1994. It is a global treaty on measures to combat climate change. The Convention states that the parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change. The Convention is not legally binding but calls for a change in those who have signed and thereby approved it. Each year the countries that signed the Convention meet for further negotiations (Conference of the Parties, COP).

1997 Kyoto Protocol

17. The UNFCCC is the basis for the Kyoto Protocol, an international agreement that was signed in Kyoto, Japan, in December 1997 and which entered into force in February 2005. In contrast to the Convention, the Protocol is a binding document, which includes commitments for Annex 1 countries, including Sweden, to reduce greenhouse gas emissions by a total of at least 5.2 percent.

The path towards the Kyoto Protocol's ultimate goal is divided into so-called commitment periods. The first period was from 2008 to 2012. The second commitment period, until 2020, includes the

possibility of raising the level of ambition, which means that countries can raise their commitments when the review take place in the middle of the commitment period. The Kyoto Protocol is a first step towards the UNFCCC's long-term objective.

The UNFCCC now has 195 member parties and the Kyoto Protocol was ratified by 192 parties. However, a group of Annex 1 (industrialized) countries withdrew from the Kyoto Protocol's second commitment period. Sweden has ratified both the UNFCCC and the Kyoto Protocol and our commitment in the first period was to limit the average emissions increase over the period 2008–2012 to no more than four percent above 1990 levels.

The first meeting of the Parties (MOP) to the Kyoto Protocol took place in December 2005, and since then annual meetings have focused on the path to a new global climate agreement to succeed the Kyoto Protocol. The meetings are usually organized in connection with the UNFCCC COPs.

The Bali COP in 2007

18. The UN Climate Change Conference in Bali in 2007 (COP13) aimed to agree a plan for negotiating the successor to the Kyoto Protocol, which would expire in 2012, and which parts should be included in the new agreement to be concluded at the COP in Copenhagen in 2009.

The Copenhagen COP in 2009

19. The main objective of the Copenhagen COP (COP15) was to agree on measures that could curb global warming. At the meeting it was agreed that the global average temperature increase must not be greater than 2°C and that global emissions must be reduced. The various commitments that countries made before and during the meeting are included in the final minutes, but there are no binding requirements. Annex 1 countries pledged to provide \$30 billion to developing countries in the form of climate aid. China along with several developing countries opposed a binding agreement as the outcome of the meeting. The meeting was considered generally as a failure partly because of China's and the USA's cautious attitudes and the gap between developed and developing countries.

The Cancun COP in 2010

20. At the COP in Cancun, Mexico, the parties confirmed that climate change represents an urgent and potentially irreversible threat to human societies and the planet, requiring immediate action. The agreement stated that climate change is one of the greatest challenges of our time and that all parties must share a vision for long-term cooperation and measures to achieve the objective of the Convention, including achievement of a global goal. It concluded that climate warming is scientifically proven and that the increase in global average temperatures since the mid-1900s is very likely due to the increase of greenhouse gases. It requires major reductions in greenhouse gas emissions to keep the increase in global average temperature below 2°C over pre-industrial levels. The agreement at Cancun urged rich countries to reduce their greenhouse gas emissions in relation to the Copenhagen Accord and developing countries to plan for reducing their emissions.

Conference on Sustainable Development in Rio de Janeiro in 2012

21. 2012 was held the UN Conference on Sustainable Development in Rio de Janeiro. The meeting was a follow up to the Rio summit in 1992. The purpose was to discuss the green economy in the context of sustainable development and poverty eradication, and the institutional framework for sustainable development. The meeting resulted in the outcome document *The Future We Want*.

The Warsaw COP in 2013

22. The COP in Warsaw in 2013 (COP19) was devoted to preparatory negotiations for COP21 in Paris in 2015, where a new binding agreement was to be concluded as the successor to the Kyoto agreement to come into effect in 2020. This required a timetable for how much different countries must reduce their emissions. The conference was seen as a failure because many countries lowered their ambitions for emissions reductions.

Agenda 2030, September 2015

23. On 25 September 2015, the UN General Assembly adopted the new global sustainability goals: the Sustainable Development Goals, SDGs, as part of Agenda 2030. The SDGs include 17 goals and 169 targets to replace the Millennium Development Goals, which expired in 2015. The new agenda has 2030 as the target year, hence its name. Agenda 2030 aims at eradicating poverty and hunger, realizing human rights for all, achieving gender equality and empowerment of women and girls and ensure lasting protection of the planet and its natural resources. The global goals are integrated and indivisible and balance the three dimensions of sustainable development: economic, social and environmental.

Goal 13 relates to climate change:

Climate change is one of the greatest challenges of our time. A large proportion of the increased emissions of greenhouse gases in the atmosphere comes from the way we extract, transform and use of fossil energy. as a result of the increase in emissions we risk going against an average global warming exceeding two degrees Celsius, which would have serious consequences for the ecosystem, ocean acidification, human security, food production, water supply, health and increasing the risk of weather-related natural disasters. Climate change must be limited in order to create the conditions for poverty reduction and sustainable development.

The targets under Goal 13 include strengthening resilience and adaptive capacity to climate-related hazards and natural disasters in all countries, and integrating climate change measures into national policies, strategies and planning.

Oslo Principles 2015

24. On 1 March 2015 a number of experts in environmental law, human rights, international law and environmental science adopted the Oslo Principles on Global Climate Change Obligations. The intention was to clarify the legal obligations of the countries of the world to take action to combat climate change and to provide a basis for climate work based on legal foundations. The starting points for the Oslo Principles was that it is scientifically set out through IPCC and World Bank reports that climate change can have disastrous consequences; that governments and politicians have failed to implement measures needed to achieve the 2°C target; that the situation is urgent and effective measures must be implemented immediately. The Oslo Principles state that states have an obligation to reduce their emissions above a certain permitted level, that the reductions should be based on per capita calculations, that the most vulnerable countries should be at the centre and that States have the right to decide on how to effect the reductions. The Oslo Commission noted that different legal sources together provide the grounds for legal challenges regarding the responsibility of States to take action: international law, with its responsibility for transboundary impacts; environmental law with its precautionary principle; laws and conventions on the protection of human rights; and national and international tort law. The Expert Group noted that the principles of "no harm" and the protection of human rights are mutually reinforcing and that it would be unsatisfactory if the protection of human rights could be applied in relatively unimportant issues, but not in serious inequity that affects a large part of humanity. The conclusion was that the international climate agreements do not in themselves constitute binding legal obligations towards

the citizens, but combined with other legal grounds, they fill constitute enforceable obligations of the State. States thus has a legal obligation to their citizens to reduce their greenhouse gas emissions.

The Paris COP in 2015

25. In November–December 2015 the countries of the world gathered in Paris for COP21. At the meeting, countries agreed on a new global climate agreement, which will apply from 2020. The agreement is intended to become legally binding and contains a common long-term goal for reducing climate emissions. The global average temperature increase should be kept below 2°C, with an aim of limiting it to 1.5°C in order to significantly reduce the risks and effects of climate change. The agreement will provide the basis for global climate cooperation for a long time to come, and is important not least because all countries are required to submit commitments, that a review of these will be made every five years, and that stated objectives cannot be diluted but only strengthened.

C. SWEDISH CLIMATE POLICY

26. In the Statement of Government Policy in 2014 Prime Minister Stefan Löfven stated the following:

Climate change is a time-critical issue. The temperature increase could lead to very serious consequences for life on earth. We already have a global crisis of biodiversity, where one of the biggest extinctions of species in the planet's history is underway. In Paris the international climate meeting next year must make our generation's crucial decision. The time for failures and excuses is long past. The countries of the world must stop investing in that which destroy our planet. Climate change is a global security threat. It is time for responsibility.

To stop pollution, reduce greenhouse gas emissions and develop new green technologies are among our generation's greatest challenges. Investing in a better environment creates jobs and future opportunities.

Sweden will reduce emissions at the pace needed for global sustainable development.

27. Sweden's work on climate change and reduction of greenhouse gas emissions began in the late 1980s. An early parliamentary decision in this area was the 1987 decision on "Environmental policy for the 1990s", and climate policy decisions in 1991 and 1993. The parliamentary energy policy decision in 1997 gave guidelines for a climate-energy strategy.

28. The Government Bill 1997/98: 145 "Swedish environmental objectives - environmental policy for a sustainable Sweden" government proposed 15 environmental objectives, which was approved by Parliament in April 1999. The environmental quality objective "Reduced Climate Impact" says that international action work should focus on the content of carbon dioxide in the atmosphere should be stabilized at a level lower than 550 ppm, and that the concentrations of other greenhouse gases in the atmosphere should not increase. The so-called Generational Goal was adopted as an overriding objectives of environment policy: "The overall goal of environmental policy is that the next generation a society in which the major environmental problems have been solved, without causing increased environmental and health problems outside Sweden's borders." The goal gives guidance on the values to be protected and the societal transformation required to achieve the desired environmental quality.

29. To achieve the Generation Goal requires an ambitious environmental policy in Sweden, the EU and international context. The Generation Goal implies environmental action at all levels of society. The Generational Goal means that the prospects for solving environmental problems should be achieved within a generation after the system was introduced in 1999.

30. The Government Bill 2000/01: 130 "Swedish environmental objectives - interim targets and action strategies" stated that the Generational Goal should be met by 2020. According to the 2002 climate policy decision of the Parliament, Swedish emissions of the six greenhouse gases averaged for the period 2008-2012 should be at least four per cent lower than emissions in 1990.

31. On 1 July 2010 the Swedish Government decided to appoint a parliamentary committee, the Environmental Objectives Council, whose task is to submit proposals on how Sweden's environmental quality objectives and the Generational Goal can be reached.

32. In September 2015 the Government declared a goal of becoming one of the world's first fossil-free welfare states and has therefore started the initiative "Fossil-free Sweden" with stakeholders from industry, municipalities, regions and organizations from across the country.

33. In June 2016 the Environmental Objectives Council submitted its final report on the climate policy framework and overall air pollution control policies to the government (SOU 2016: 47). The Council's key proposals are:

Sweden should be a leading country in the global efforts to implement the Paris Agreement's ambitious goals and take responsibility for the country's historical emissions. Sweden will also conduct an ambitious and sustainable national climate policy and be a model for other countries, while maintaining competitiveness and a ways that do not involve the emission of greenhouse gases increases abroad. in order to succeed in the task, it is important that the EU and the rest of the world tightens its climate policy.

34. The annual monitoring of the Swedish Environmental Protection Agency noted in 2016 that 14 of the 16 Environmental Quality Objectives, including the objective Reduced Climate Impact, will not be achieved by 2020 with existing and policy instruments and measures:

Concentrations of greenhouse gases in the atmosphere and contributes to an increased climate change. In order to keep the global temperature rise as far below two degrees as possible and reduce the risk of dangerous climate change needs global emissions eventually reach down around zero. To cope with this major shift requires both social change and technological development. strengthened ambitions in international climate cooperation is needed, as well as bright and new national policies.

Greenhouse gas concentrations in the atmosphere reached in 2015 a record high, well above the long-term limit required for the change in temperature should be kept below two degrees. The elevated levels have led to a significant warming of the Earth's climate. The current level of carbon dioxide in the atmosphere is the highest for at least 800,000 years. The effects can be seen more clearly at the global level, and may also indirectly affect Sweden. Here the climate becomes warmer and wetter. It influences including agriculture and forestry, as well as sensitive ecosystems especially in the mountains and the Baltic.

35. In 2016, the Environmental Objectives Council submitted its final report on climate policy framework (SOU 2016: 21), and an overall air pollution policy (SOU 2016: 47) to the government. The final report presents the formulation proposed several new goals for climate policy: Emissions outside the EU trading scheme should by 2030 be at least 63 percent lower than emissions in 1990.

A maximum of eight percentage points of emission reductions may, but need not, be done through so-called "accompanying measures", for example, increased uptake in soils and forests or measures in other countries.

By the year 2040, emissions should be at least 75 percent lower than in 1990, of which more than two percentage points may be made through complementary measures.

The emissions for domestic transport shall by 2030 be at least 70 percent lower than the 2010 level.

36. The State has in a remarkable way consistently avoided discussing its responsibility for Vattenfall's lignite operations, despite the fact that this is the Swedish operation with by far the greatest climate impact. It is remarkable that the Environmental Objectives Council report, totaling 758 pages including appendices, mentions Vattenfall only once, and then in a separate statement from the senator Jens Holm.

Activities that are wholly commonly owned should be tasked with moving in a more sustainable direction. Vattenfall's holdings of lignite power plants and mines in Germany is an example of how progressive shareholder activism could be exercised through a project of gradually phasing out of fossils instead of as sale.” - SOU 2016: 47 Page 657

Apart from this note, there is no discussion of Vattenfall. It is as if the problem does not exist.

D. VATTENFALL'S SALE OF GERMAN LIGNITE OPERATIONS

37. Sweden is pursuing a climate policy that is ambitious and forward-looking and is well ahead compared to other countries. Sweden also has a clearly stated ambition to be a model for other countries in the climate work.

Sweden should be a leading country in the global efforts to implement the Paris Agreement's ambitious goals and take responsibility for our historical emissions. Sweden will continue to be an international model through its national climate work and by contributing to the financing emissions reductions and adaptation in developing countries.

As an industrialized country, Sweden has a special responsibility both to reduce its own greenhouse gas emissions and to help in developing solutions that other countries may adopt and to finance mitigation and adaptation measures in developing countries. In a global perspective, the Swedish emissions of greenhouse gases are small in absolute terms, but per capita emissions sustainable levels.

Sweden's main contribution to the international efforts to reach the Paris Agreement's ambitious goals is to act as a role model. It can do this by participating and contributing actively in international cooperation, by being proactive in reducing emissions in the EU, and by implementing a sustainable national climate policy that fully or partially is possible to follow by other countries.

Sweden has, in many areas, particularly favourable conditions for achieving low emission levels and may therefore also adopt ambitious long-term emissions targets. Sweden has already reduced greenhouse gas emissions to low levels in much of the country's energy system. At the same time it is assumed that measures in Sweden will be implemented in such a way that they do not lead to increased emissions in other countries.

38. At the same time, the state has responsibility for Vattenfall, a business that is one of Europe's largest emitters of greenhouse gases and thus has a major impact on climate change and whether the EU's climate targets will be reached or not. CO₂ emissions from Vattenfall's operations abroad are also larger than all combined Swedish territorial emissions. It is therefore remarkable that this

“elephant in the room” has been passed over in total silence in virtually all government policy documents on climate.

Corporate governance of Vattenfall

39. Vattenfall AB is an energy company that is wholly owned by the Swedish State. The company is a producer of electricity, a district heating supplier and an electricity distributor.

The State has a clear ambition to be an active and responsible owner of state-owned companies. The Government Offices have in the Ministry of Industry an organization specializing in corporate governance and company management. It is responsible for the development and management of most state-owned companies.

40. Vattenfall's articles of association, decided by Parliament, has long been a topic of political discussion. The National Audit Office has repeatedly criticized the design as unclear in several respects. This has mainly been about whether the economy or sustainability is prioritized.

41. The wording was changed in 2010 and the activities paragraph incorporated the following wording: *“Vattenfall’s assignment from its owner is to generate a market rate of return by operating an energy business in such a way that the company is among the leaders in developing sustainable energy production.”*¹³

42. The Parliamentary starting point for the environmental subsection was that the company will contribute to meeting the EU's climate targets, that is 20 per cent lower greenhouse gas emissions, 20 per cent renewable energy and 20 per cent more efficient energy use.

43. The formulation can still be considered unclear. The paragraph can be read as if the commercial approach is superior, but also the opposite: that the business should be conducted within the framework of the mission to be a leader in energy conversion. Nevertheless, it is obvious that environmental and climate considerations should weigh heavily in the company's entire business.

44. State regulation of Vattenfall's operations are conducted primarily through ownership directives. Partly as a reaction to Vattenfall's involvement in the German lignite operations directives were clarified 2009. The amendment was added to control Vattenfall's operations against the production of renewable forms of energy and more climate action. Moreover, the new directives clarified that Vattenfall's responsibility is not only limited to the Swedish territory:

“The geographical demarcation is vague. Vattenfall is today an international company with more than half of production and revenue from markets outside Sweden. The Nordic electricity market is so integrated that it is difficult to define exactly what is meant by “Swedish” energy. The Government considers that the Swedish state should be a responsible owner of the group Vattenfall, and the company will conduct exemplary operations based on current conditions regardless of the market in which the company operates. Thus all geographical boundaries should be deleted from the Articles of Association.

The threat of major climate change is one of our greatest challenges. The Swedish government was proactive in efforts to shape common, legally binding climate and energy targets for the European Union by 2020. These objectives will be translated into national action plans in 2010 to increase the share of renewable energy in all the countries where Vattenfall is active. "

¹³ From Vattenfall's homepage, 2106-09-28

<https://corporate.vattenfall.com/about-vattenfall/strategy-and-strategic-objectives/targets-and-target-achievements/>

45. State ownership policy and guidelines for state-owned companies, the so-called "ownership policy", specifies the framework for corporate management and clarifies the relationship between owners, board and management.

46. State ownership policy 2015 states:

The companies with state ownership should act exemplary in regard to corporate sustainability, which primarily means that the companies will work strategically, integrate issues in its business strategy and define strategic sustainability goals; to act transparently in matters relating to significant risks and opportunities and pursue an active dialogue with its stakeholders in society ; cooperate with other companies and relevant organizations; and comply with international guidelines.

The Government believes that the work on the environment and climate is important and is devoted to meeting generational target and the environmental quality objectives, decided by the Riksdag (the Swedish Parliament). State-owned companies should set a good example in the environmental field which, inter alia, means that companies should strive to reduce climate and environmental impact through sustainable and non-toxic resources.

State-owned enterprises will work to adhere to international guidelines on environmental, human rights, labor, anti-corruption and business ethics. The government has identified the following international principles and practices essential to follow the state-owned companies; the ten principles of the UN Nations Global Compact, the UN guiding principles for business and human rights and the OECD guidelines for multinational companies. These principles and guidelines are based on international conventions and agreements and have been formulated in cooperation between states, businesses, unions and other stakeholders in order to provide business guidance in the management of risks and opportunities in the field of sustainable business.

As in the drafting of the Articles of Association it is evident in the state's ownership policy that issues of sustainability and the environment are central.

47. The state has thus also commissioned Vattenfall to comply with the regulatory regime in the United Nations Global Compact, which was formed at the request of UN Secretary General Kofi Annan in 1999 at the "World Economic Forum" in Davos. The aim was to create international principles regarding human rights, labor, environment and corruption directed at businesses. The principles are based on the UN Declaration of Human Rights, fundamental ILO Conventions on Human Rights at Work, the Rio Declaration and the UN Convention against Corruption.

48. "The case for action is clear - climate change has begun to impact all regions of the world and Sectors of Society, threatening global development and undermining the foundation of the global economy. Yet addressing the climate challenge overpriced ice opening up new opportunities for societies to grow and prosper.

Through Caring for Climate, the UN Global Compact, together with UNEP and the Secretariat of the UNFCCC, Helps Shape the engagement of businesses with climate change. Mobilizing a critical mass of business leaders to Implement climate change solutions and help shape public policy, Caring for Climate is the World's Largest Initiative for Business Leadership on Climate Change with over 400 companies from 60 countries.

Caring for Climate signatories are taking action. They are committed to set greenhouse gas emissions reduction targets, to work collaboratively with other companies and Governments, and to publicly report on performance on an annual basis. A set of leading companies is going further, Becoming Carbon-pricing champions Increasing Investments in renewable energy and low-carbon technologies, and speaking up against negative lobbying on climate action. "

49. Vattenfall has actively worked against its mission located in the Directive to follow the framework of the UN Global Compact. In the middle of October 2013 Vattenfall, together with nine other European energy companies, encouraged EU to end the support schemes for renewable energy. The reason is, according to the companies calling themselves "Magrittegruppen," that there is an excess of renewable energy in the European market and that this will push out the fossil production.

The German lignite

50. When Vattenfall decided to expand internationally in the late 1990s, Germany was one of the first countries it approached. It started with nuclear power, but in 2001 also began to buy into companies involved in coal mining and coal power. Even then, this triggered criticism from a broad political spectrum in parliament.

51. Coal power came to dominate in Vattenfall's electricity production in Germany and thus became a major source of income. In the process, the state-owned company became one of Europe's largest emitters of greenhouse gases.

52. Vattenfall today owns ten lignite-fired power plants in Germany. Included in the current sale is four power plants with four associated active open pit mines and five so far unopened mines at different stages of development. In 2013 the then five active open pits (Cottbus-Nord was closed in 2015) held just over 1 billion tonnes of lignite. The five new open pits together contain 1.2 billion tonnes of lignite (see table below), which if burned would release emissions equivalent to 22 years of Sweden's total national emissions at the current rate.

53. Today, the four Vattenfall-owned power plants and the related lignite mines release more greenhouse gas emissions than Sweden's total domestic emissions every year; annual emissions from the power stations and mines total around 60 million tonnes of greenhouse gases,¹⁴ while Sweden releases about 55 million tonnes of greenhouse gas emissions within its borders.¹⁵ The open pit mines that supply the power plants with lignite are many square kilometers in surface area, laying waste to the countryside for an indefinite period, and affect groundwater and air quality. The business is a global and local environmental disaster.

54. Vattenfall and the State's energy adventures on the European energy market became one of the 2000s' most controversial environmental issues in Sweden. Combustion of fossil fuels in general and of lignite in particular is the largest single cause of climate damage, but Vattenfall has been a relatively good owner of this environmentally harmful operation.

55. As previously mentioned, Vattenfall's coal mining operations in Germany have been quietly overlooked in the state's climate reporting. In order to meet the Swedish climate goals and to build the credibility of Sweden's climate work, it became increasingly necessary to deal with the Vattenfall problem.

There were two main options:

1. To instruct Vattenfall to implement a responsible and controlled dismantling of its lignite operations in Germany,
2. To sell the business to a responsible buyer.

¹⁴ Ekopolitan, 2016, A list with all Vattenfall's fossil-fuelled power plants and their CO2-emissions 2010-2015, <http://www.ekopolitan.com/climate/vattenfalls-fossil-fuelled-co2-emitting-power-plants>

¹⁵ Swedish Environmental Protection Agency, Statistics on Sweden's emissions of greenhouse gases. <http://www.naturvardsverket.se/Sa-mar-miljon/Statistik-A-O/Vaxthusgaser--nationella-utslapp/>

Table 5: Overview of surface mining in the Lausitz region and central Germany

Surface mines	Mining began in [year]	Reserves (2013) [Mt raw lignite]	Maximum annual mining [Mt raw lignite]	At maximum coal output, mined-out by [year]	German state	Power plants supplied
Lausitz: surface mines licensed early in 2013		1,085	69			
Cottbus-Nord	1981	11	6	2015	Brandenburg	Jänschwalde
Jänschwalde	1976	103	12	2020	Brandenburg	Jänschwalde, Klingenberg
Welzow-Süd I	1966	326	21	2027	Brandenburg	Schw. Pumpe, Jänschwalde, Boxberg, Klingenberg
Nochten	1973	301	20	2027	Saxony	Boxberg
Reichwalde	1987	344	10	2046	Saxony	Boxberg and others
Planned surface mines in the Lausitz region		1,180	90			
Welzow-Süd TF II (licensed in June 2014)	2025	200	21	2042	Brandenburg	Schw. Pumpe, Jänschwalde, Boxberg
Jänschwalde Nord	2025	270			Brandenburg	Jänschwalde, Klingenberg
Nochten II (licensed March 2014)	2025	300	69	2048	Saxony	Boxberg
Bagenz-Ost		230			Brandenburg	
Spremberg-Ost		180			Brandenburg	

Table. Part of the table from Greenpeace Germany's report "Vattenfall's Opportunity" (p 16), showing that the amount of coal in 2013 in the active mines that are now for sale amounted to over 1 billion tonnes, and in the five planned mines to 1.2 billion tonnes.¹⁶

56. The first option could be implemented in a socially responsible manner, to minimize the impact on the climate, and preferably be combined with the transition to climate-friendly energy – something Vattenfall says in its sustainability policy it wants to be a leader in. The phasing-out could then have been done in close cooperation with the German government. This was the option espoused by a largely united environmental movement.

57. The second option would have been acceptable if the sale was to an equally responsible buyer; if the conditions of sale contained a requirement that the operations would be managed responsibly; and if the agreement included prohibition of opening new mines in the areas covered by the sale. The sale would thus be neutral compared with continued ownership of Vattenfall.

58. On 1 October 2014 the Government announced that Vattenfall's goal is that the company "should be a leader in alternative energy sources. Corporate governance shall be tightened so as to increase the share of renewable energy and a powerful contribution to the transition." As part of this, the Government decided to "direct Vattenfall to cancel the expansion of lignite that the previous government allowed."¹⁷

59. On 30 October 2014 Vattenfall's board announced that it would launch an inquiry to examine the options for ownership of the lignite operations, primarily their sale.

¹⁶ Greenpeace, 2015, *Vattenfall's Opportunity: A Future for Lusatia without Lignite* http://www.greenpeace.org/sweden/Global/sweden/klimat/dokument/2015/Vattenfalls_opportunity_study_04_2015_engl.pdf.

¹⁷

<http://www.socialdemokraterna.se/Pressrum/nyheter/Vattenfall-ska-vara-ledande-pa-fornybar-energi/>.

The sales process

60. The mission to move towards fossil-free electricity production together with uncertainty about future electricity prices to coal meant that in September 2015 Vattenfall decided that the Group would greatly reduce its involvement in German lignite.

61. On 22 September 2015, Vattenfall announced (the sale of) the two German subsidiaries, Vattenfall Europe Generation AG and Vattenfall Europe Mining AG, and their activities in Jämschwalde, Nochten, Welzow-Süd, Reichwalde and the recently closed Cottbus-Nord, as well as power plants Jämschwalde, Boxberg and Schwarze Pumpe, and Vattenfall's half share in the power plant Lippendorf. At the same time, Vattenfall's CO₂ emissions increased due to commissioning of a new coal power plant at Moorburg near Hamburg.

62. Following a criticized tendering process, Vattenfall announced on 18 April 2016 that it intended to sell the subsidiaries to the Czech company Energetický A Průmyslový EPH Holding and its financial partners PPF Investments. Vattenfall Group would transfer all its shares in the subsidiaries to the buyers. The same day, the board of Vattenfall sought the government's approval of the sale by submitting a request for ownership coordination.

63. On the sale of state-owned companies, the Government should make an assessment of the buyer. "In connection with the sale of state shares in non-listed companies, offers are assessed with regard to commercial viability. In making this assessment, the buyers' approach to so-called sustainability issues is among the factors taken into account."¹⁸

64. The due diligence process informally called "wholesome and clean" is supposed to ensure that the purchaser is acceptable according to several criteria related to sustainability, and that Vattenfall's handling of the deal meets the requirements of the law, the state's ownership policy and other regulations, such as the OECD Guidelines for multinational companies.

65. A reasonable starting point is that the State, from a sustainability standpoint, should put the same demands on the buyer as on their own operations:
"State-owned companies should set a good example in the field of sustainable business and otherwise act in a way so that they inspire public confidence. The Government's work with sustainable business is based on the Brundtland Commission's original definition of sustainable development from 1987: Sustainable development is development that satisfy the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable business includes the areas of human rights, labour, environment, anti-corruption and business ethics, equality and diversity. Companies' responsibility in the field of sustainable enterprise contributes to their competitiveness. The integration of sustainability issues in business is therefore a natural part of a long-term business strategy and business development."¹⁹

66. The State ownership policy identifies the ten principles of the UN Global Compact as important to follow in the sustainability work. According to the Global Compact, companies shall, among other things, support a precautionary approach to environmental challenges, undertake initiatives to promote greater environmental awareness, encourage the development of environmentally friendly technologies, and to combat all forms of corruption, including extortion and bribery.

¹⁸ Regeringens skrivelse 2013/14:140. 2014 års redogörelse för företag med statligt ägande.

¹⁹ Om Vattenfall's goal:

<http://www.regeringen.se/contentassets/b1b0024ec35d40329e4446bf0ddcb770/statens-agarpolicy-och-riktlinjer-for-foretag-med-statligt-agande-2014>

67. The OECD Guidelines for Multinational Enterprises should be followed for a company's work to be considered compatible with sustainability. Sweden is one of 42 countries behind the guidelines for corporate responsibility that have been developed within the OECD. The guidelines contain a series of recommendations to companies concerning labour, the environment, corruption, transparency, etc.

EPH does not meet the requirements of a responsible owner

68. The Czech energy company EPH is an independent holding company for some 30 companies with various forms of energy business. The core business has been the distribution of gas from Russia to the EU, but in recent years the company has expanded significantly in energy in Europe through the acquisition of power plants and companies. It mainly concerns fossil power plants in Eastern Europe.

69. EPH is owned 66.6 percent by the J & T group, while EPH's chairman Daniel Křetínský owns the rest. Ownership is through companies based in tax havens and offshore companies. EPH's financial partner in the deal is PPF Investments - a company recently registered on the island of Jersey, a known tax haven in the English Channel. There is no publicly available information about the company's business, owners, management or finances.

70. EPH owns and currently operates 27 plants in five countries, the majority in the Czech Republic. Emissions of carbon dioxide from the plant amounted to 24 million tonnes last year, about 2.5 percent of Europe's emissions. If the company takes over Vattenfall's four German brown coal power stations and associated mines EPH's emissions will increase to about 90 million tonnes per year. EPH would become Europe's third largest emitter after RWE and ENEL. With the sale of the lignite operations in Lausitz, Vattenfall is trying to move towards its goal of reducing its emissions to about 65 million tonnes per year by 2020.²⁰

71. Since neither EPH, PPF Investments or any of its owners report having environmental, climate or sustainability policies, it is not possible to determine with certainty the companies' positions on sustainability issues. PPF Investments has released no public documents at all, while the annual reports from EPH mainly mention environmental standards as a factor that can reduce profitability and slow the company's growth.

72. The Lausitz field, where Vattenfall's power plants have the exclusive right to mine coal, is one of Europe's largest lignite fields and contains about 12 billion tonnes of recoverable lignite (which would generate about the same quantity of CO₂ emissions if burned). At present there are five new mining areas planned that Vattenfall cannot invest in due to national ownership directives and environmental objectives, but which could be exploited by EPH.

73. The risk that EPH will expand the mining and burning of the lignite is therefore great. EPH's chairman Daniel Křetínský has personally stated that EPH aims to explore the possibility of expanding the business, and that the buyers are hoping for a "coal renaissance" in Europe that allows operation until 2050.²¹

74. Vattenfall seems to want to get rid of the business at almost any price. The difficulty in finding a serious buyer has led to an option that is contrary to the State's and Vattenfall's own sustainability requirements. It involves a company that has been condemned by the European Commission for obstructing a corruption investigation; lacks any kind of environmental and sustainability accounts;

²⁰ On Vattenfall's goals see <https://corporate.vattenfall.se/om--oss/strategi-och--ambitioner/mal-och-maluppfyllnad/> (in Swedish).

²¹ Article in Svenska Dagbladet Näringslivet, <http://www.svd.se/miljardarer-jagar-brunkolet-ser-stora-mojligheter>.

seeks increased use of coal in Europe; is owned by three oligarchs through a brassplate company in a tax haven; and intends to finance the giant deal through a completely opaque company in a tax haven.

75. The absence of objectives, policies and reporting, and the admitted crimes in the EU's investigation into cartel formation means that EPH does not live up to the OECD's basic guidelines for multinational companies which Sweden stands behind, nor to the UN Global Compact. This means that EPH is a company that Vattenfall should not cooperate with according to its own code of conduct.

76. Vattenfall defends the transfer to EPH on the grounds that the company wants to reduce CO₂ emissions in line with its sustainability goals and parliamentary decisions. But the goal is not consistent with the parliamentary decision, as pointed out by the National Audit Office, as it does not contribute to the EU's targets for emissions reduction at EU level. The result will probably be the opposite: increased emissions in the EU. EPH has no ambition to reduce emissions and its owners are not interested in a far-sighted climate policy. On the contrary, the company hopes for a renaissance of coal in Germany,²² which probably means a longer lifetime for facilities and higher emissions. The agreement also enables EPH to resume operations at an abandoned mine, as well as to open four new planned lignite mines in the area.

77. In July 2016 environmental organizations wrote to nine different financial institutions (including Citibank, HSBC and JP Morgan), responsible for the loan of nine billion to EPH.²³ The organizations asked financial institutions to cease all further financing and blacklist the company, as their expansion in coal undermines international climate.

78. The Swedish National Audit Office, in its report RiR 2015 6, criticized the Government and Vattenfall for not following the conventional definition of sustainability, which is about reducing emissions globally, if they get rid of the German coal reserves.²⁴

Illegal state aid

79. The German-Mongolian energy company LMMG has reported the sale to the European Commission, arguing that it includes illegal state subsidies from the Swedish Government to EPH.

The ownership directives do not prevent a re-examination

80. As grounds for not stopping the Vattenfall deal the Government parties have claimed that the deal cannot be stopped without a change of ownership directives, which according to the climate minister would require a majority vote in parliament, and that the deal, according to the ownership directives, must be done on a strictly commercial basis. These claims have been virtually unanimously contradicted by legal experts, as well as by Vattenfall's own chairman Lars G Nordström.²⁵

81. Daniel Stattin, professor of civil law, writing in Dagens Industri in May 2016, said it was wrong to interpret the ownership directives as saying that commercial considerations must take priority over environmental.²⁶ "There is no legal principle of interpretation that says that what is said first

²² <http://www.svd.se/tjeckisk-miljardar-vill-lagga-bud--trots-svidande-forluster>.

²³ <https://www.e3g.org/news/media-room/environmental-organisations-call-on-major-european-and-american-banks-to-st>

²⁴ http://www.riksrevisionen.se/PageFiles/22081/RiR_2015_06_Vattenfall_Anpassad.pdf.

²⁵ Article in Dagens Industri, 10 May 2016,

<http://www.di.se/artiklar/2016/5/10/fritt-fram-att-stoppa-brunkolsaffar/>.

²⁶ <http://www.di.se/artiklar/2016/5/11/hemlig-rapport-ger-stod-for-kolaffaren/>

has the most weight. Company law says you can convene a general meeting very quickly. There is one shareholder here and it is the state. This can in principle be done by the Enterprise and Energy Minister's office. Under corporate law it is possible to overrule ownership directives or give additional directives. It could be done in half an hour or so."

82. Joakim Nergelius, professor of constitutional law, has stated that the Green Party's claim that the government cannot stop the deal is wrong: "If the government were to change the owner directive and, for example, say that Vattenfall may not sell lignite, that would be valid without going to parliament."²⁷

Lack of transparency

83. The sale of Vattenfall's lignite operations is one of the most important energy deals in Sweden's history. It is also one of the most debated. The government has been clear about the need for transparency and accountability in environmental and climate action.

84. In July 2016 Greenpeace made a freedom of information request to the Government to release all the documents related to the assessment of the sale to EPH, but this was turned down. The reasoning was that it could be assumed that a company in which the government directly owns shares would suffer damage if the information were disclosed. All documents for the period 1 April to 11 June have been classified. Furthermore, even the document names and senders have been kept secret.

85. Greenpeace wished to access some of the documents to determine whether the Government had made an assessment of the environmental, climate and sustainability implications of the sale and if so, what this assessment involved and the outcome. Without this evidence there is no chance to examine how the Government dealt with the issue.

86. We believe that access to government documents is also of crucial importance for our action in this case, and our ability to prove the claim of causality between the transfer of businesses and the greatly increased risk of increased emissions of greenhouse gases and climate change. It would be highly objectionable if the State could prevent an objective examination of the case by using secrecy to withhold relevant factual information.

E. CLIMATE – A HUMAN RIGHT

87. Virtually all countries of the world agree that climate change today, "global warming" is to a decisive extent caused by human activities, primarily the emission of greenhouse gases. The notion that a non-harmful climate is a human right has in recent years gained a footing in different countries' legal systems and in international law.

88. The Swedish Protection of Human Rights are primarily found in the Constitution. The section on the environment can be found in Chapter 1, § 2: "The public authorities shall promote sustainable development leading to a good environment for present and future generations."

89. In the European Convention for the Protection of Human Rights and Fundamental Freedoms are found equivalent rights in Article 2 on the right to life and Article 8 on the right to respect for private and family life, and the European Social Charter Article 11 on the right to health. Although the right to protection against environmental degradation and climate change is not explicitly stated

²⁷ www.sydsvenskan.se/2016--05--12/regeringen-kan-stoppa-brunkolsaffar

in the statutes, a growing body of European and international case law demonstrates that these provisions can be invoked as grounds for claims.

90. Interpretation of the articles is developed through The Manual on Human Rights and the Environment, which gathers established practice in the area of human rights / environment and climate.

F. LEGAL GROUNDS

91. Climate change is one of the biggest threats to the Swedish people today and to future generations' welfare, health and property.

92. The State has a duty of care for its citizens based on the Constitution, the European Convention on Human Rights and general principles of law.

93. Climate change, according to the IPCC, is "extremely likely" to be caused by anthropogenic greenhouse gas emissions.

94. The State has a responsibility to reduce greenhouse gas emissions, according to Swedish and international climate goals and agreements.

95. The scope of the duty of care is determined by a combination of considerations such as Sweden's accession to international conventions, nationally adopted environmental goals, environmental legislation, government statements, etc.

96. As apparent from the Oslo Principles,²⁸ states have a legal obligation to reduce greenhouse gas emissions based on the "reasonable person" test, the Precautionary Principle and the need for measures to avoid or reduce harm.

97. The State has a critical role in the transition to a sustainable society and must exercise a high level of care. The State has the authority to control the collective national emission level and should exercise effective control over it.

98. By signing the UNFCCC and the Kyoto Protocol, the State has explicitly accepted a duty of care. In order to fulfil this duty, every individual State must to the highest extent possible, in accordance with its own circumstances, implement the best possible measures to reduce greenhouse gas emissions.

99. The State also has a responsibility to ensure that national activities do not contribute to increased greenhouse gas emissions abroad.

100. Through its ownership of Vattenfall, the State is responsible for the greenhouse gas emissions resulting from the company's operations both in Sweden and abroad.

101. In its corporate governance of Vattenfall, the State has set targets and conditions for the company's operations, specifically through the company's articles, owner directives and the State Ownership Policy.

102. The Swedish climate targets and Sweden's accession to international agreements are relevant to the interpretation of these directives.

²⁸ <http://globaljustice.macmillan.yale.edu/news/oslo-principles-global-climate-change-obligations>.

103. The State has been negligent

- in not ensuring that the company's operations are in accordance with the adopted directives, articles and agreements.
- in approving or at least not preventing Vattenfall's sale of its German subsidiary to EPH,
- in not carrying out an environmental and climate impact assessment in its examination of whether or not a sale should be allowed,
- in not attaching transfer conditions on the purchase, preventing the buyers from expanding operations by, for example, opening new mines.

104. The sale to EPH represents a major, immediate and foreseeable risk that greenhouse gas emissions from the company's sold operations will increase significantly, resulting in a direct impact on climate change and the possibility of reaching European climate targets.

105. Under the conditions of the sale EPH has the possibility to expand lignite operations in Germany in the four existing mines, extend production time, and open four new mines. Significantly increased greenhouse gas emissions are thus a predictable result of the sale. When assessing the likelihood of a link between the sale and increased climate damage, it should be taken into consideration that the Government has classified all relevant material; as long as this documentation remains classified, the risk of harm should be presumed.

106. In order to fulfill its duty of care, the State should ensure that operations are kept under Swedish ownership to allow for the responsible dismantling of lignite operations, or to ensure that the sale is to a responsible buyer who agrees to be bound by the restrictive conditions that applied to the operations under Swedish ownership.

107. The fact that greenhouse gas emissions from Vattenfall's lignite operations take place in another country is irrelevant because they will also impact Swedish territory and Swedish nationals, and because under the Kyoto Protocol and the Paris Agreement the State has a responsibility to ensure that policies aimed at reducing our own emissions levels do not increase emissions in other countries.

108. By allowing Vattenfall to complete the sale, the State has acted in a way that does not meet the requirements that can reasonably be attributed to its duty of care to Sweden's inhabitants and to the rights of future generations regarding environment, health and property.

109. The Generational Goal, adopted in 1999, states that environmental problems in Sweden should be achieved within a generation.²⁹ Government Bill 2000/01:130, "Swedish environmental objectives – interim targets and action strategies", specifies that the Generational Goal should be achieved by 2020.

110. The scope of the duty of care is determined by a combination of factors such as Sweden's accession to international conventions, nationally adopted environmental goals, environmental legislation, government statements, etc.

²⁹ The Generational Goal states that:

The overall goal of Swedish environmental policy is to hand over to the next generation a society in which the major environmental problems in Sweden have been solved, without increasing environmental and health problems outside Sweden's borders.

G. RIGHT OF STANDING

111. The State has an obligation to protect its citizens in accordance with Chapter 1, Article 2§ of the Instrument of Government.

112. Effective work on climate change is of central importance for government agencies' ability to fulfill their obligations, and thus also of central importance for the judicial system to function under the law.

113. We are of the opinion that there is a significant and immediate risk that the sale will lead to increased emissions of greenhouse gases and that the State has thus violated its fundamental duty of care towards its citizens.

114. The Urgenda judgment (Rechtbank Den Haag, case number C / 09/456689 / HA ZA 13-1396) has demonstrated that a Swedish court already today can bring a claim based on the failure of the government to undertake sufficient measures to combat climate change and urge the government to undertake additional measures (see Swedish Government Official Report SOU 2016: 21, Appendix 7), based on an action brought by individuals or environmental organizations, and with the support of existing legislation and international agreements.

115. If the Swedish Government does not implement adequate measures to achieve national and global climate change, or acts/fails to act in a way that undermines the aim of achieving national and international climate goals, there is a basis for judicial review of the State's fulfillment of its duty of care towards its citizens.

116. Regarding an individual's right of standing in environmental matters any person who can suffer damages or is exposed to nuisance by a business has the right to appeal if the risk of harm is not merely transient and trifling. A broad group of interested parties can be considered well in line with the Aarhus Convention and the European Court of Justice practice. In assessing the right of standing, therefore, guidance should also be sought in current developments regarding adaptation of Swedish law to European law.

117. How far the right of standing can be extended in a European context is illustrated by the suit for damages that was submitted in December 2015 to the District Court of Essen, Germany. A property owner in the mountain town of Huaraz, Peru, located close to a large tropical glacier area, sued the German energy company RWE. His claim was that the company should be compelled to cover part of the costs of security measures against a possible tsunami that threatens his home, his family and property. The basis for the action was that climate change is causing the glaciers to melt, which is causing the adjacent Lake Palcacocha to overflow. This in turn means an acute threat to the 120,000 people in the surrounding area. The case has been accepted by the court. The hearing will be held on 24 November this year.

118. RWE accounts for the single largest greenhouse gas emissions in Europe, with annual emissions of 141 million tonnes of CO₂ (Vattenfall is the second largest, with 96 million tonnes). RWE accounts for about 0.5% of global historical emissions of greenhouse gases since industrialization began.

119. Regarding environmental organizations' right of standing, it should be assessed similarly to that of individuals. Environmental organizations can represent the public interest in situations where no individual can be considered directly affected, and for this reason a liberal assessment of the rules on standing is justified. The organizations who act as plaintiffs in this case represent mainly children and young citizens, with no autonomous standing. These young people also stand explicitly as holders of rights to a healthy environment under the Instrument of Government § 2 and State's

Generational Goal. It would not be consistent with the spirit or word of the law for these citizens to be denied the opportunity to also try their rights before the court.

H. FORUM

120. The Stockholm District Court is the proper forum according to Swedish Code of Judicial Procedure Chapter 10 § 2.

I. DISCLOSURE

121. The Government has classified all documents concerning the investigation and examination of sales to EPH/PPF Investments. The Government also has classified all information on the documents themselves; the only thing that is known is the number of documents, which is stated to be 100.

122. Our principals claim that the sale of EPH poses a major and immediate risk of greatly increased greenhouse gas emissions compared to the emissions that would occur if the operations were continued under the conditions that apply to Vattenfall's ownership.

123. The Government claims to have made an assessment of the environmental and climate impacts of a sale or that Vattenfall has made such an assessment. Furthermore the Government claims to have made an assessment of the buyers, EPH/PPF Investments, and followed its due diligence procedure (dubbed "hel och ren" in Swedish).³⁰ These analyses and studies have not been released publicly. If they exist they should be part of the classified documentation.

124. In order to establish their case our principals will ultimately need access to the documents held by the Government that may contain information about an environmental and climate impact assessment of the sale, and information on the "hel och ren" process. This documentation has a direct bearing on the principals' case. Because the Government refuses to release them, we urge that the District Court order disclosure, under the Judicial Code, Chapter 38 § 2.

J. CLAIMS

125. Our principals request that:

1. The District Court find that the State has failed in its duty of care towards us by allowing or not preventing the sale of Vattenfall's lignite operations to Energetický A Prumyslový Holding and PPF Investments,
2. The District Court find that Vattenfall AB's sale of its subsidiaries Vattenfall Europe Generation AG and Vattenfall Europe Mining AG to Energetický A Prumyslový Holding and PPF Investments is illegal.

³⁰ Translator's note: The "hel och ren" process is meant to ensure that the purchaser is acceptable from a sustainability perspective and that Vattenfall's handling of the transaction lives up to the requirements of legislation, the Policy on State Ownership and other regulations, as well as the OECD's guidelines for multinational enterprises.

Moreover, we seek that:

3. The District Court order the State to disclose copies of the Ministry of Industry documents that were drawn up or received during the period 1 April to 12 June 2016 and that might contain information about climate/environmental impact assessments relating to the sale and which might contain information on the inquiry into the suitability of EPH/PPF Investments as a purchaser.

K. EVIDENCE

126. Our principals request to be able to submit evidence after hearing the State's defence.

Stockholm, International Day of Democracy 15 September 2016

Jan Palmblad Pia Björstrand