GERNANDT & DANIELSSON

G&D Monthly Digest

March 2025

This news overview is compiled by Gernandt & Danielsson's specialist team and is updated month by month. Added news for this month are highlighted in beige.

Data and Tech

ARTIFICIAL INTELLIGENCE

- On 5 March 2025, the organisation Finance Watch published a report titled "*Artificial intelligence in finance: how to trust a black box?*". The report examines challenges and vulnerabilities arising with the adoption of AI in financial services along with policy proposal to address such issues in the EU.

- On 4 March 2025, the Government Offices published the referral process for inquiry SOU 2025:12 (the AI Commission's roadmap for Sweden, in Sw. "*AI-kommissionens Färdplan för Sverige*"). The roadmap was released in November 2024 and aims to give Sweden a more defined direction for the future of AI and to inspire the Swedish society to embrace the common challenges and opportunities of AI development. In the roadmap, there are 75 different proposals relating to investigations, government assignments to authorities and financial initiatives in a variety of areas. The referral process ends on 4 June 2025.

- On 11 February 2025, the European Commission adopted its 2025 work program. It was therein communicated that the Commission decided to abandon the proposed AI Liability Directive (Sw. *direktivet om skadeståndsansvar gällande AI*). The Commission saw no foreseeable agreement on the proposal which intended to establish uniform rules for certain aspects of evidence and non-contractual civil liability for damages caused with the involvement of AI systems.

PRIVACY

- On 1 April 2025, the amendments to the Camera Surveillance Act (2018:1200) (Sw. *kamerabevakningslagen*) entered into force, expanding law enforcement's surveillance powers and removing the need to obtain a permit for camera surveillance from the Swedish Authority for Privacy Protection (IMY) (Sw. *Integritetsskyddsmyndigheten*). Organisations that previously required authorisation must now carry out documented assessments and are required to keep surveillance records instead. Sensitive surveillance activities will still require consultation with IMY.

- On 13 March 2025, IMY published its prioritised areas for supervision and guidance in 2025 (IMY-2025-5238). The five areas are: (i) working life, as new technologies enable expanded workplace monitoring and background checks; (ii) AI, as its increased use raises privacy risks; (iii) health and care providers, as sensitive personal data is processed and it is essential that health and care providers can use appropriate digital tools; (iv) camera surveillance, as the amended Camera Surveillance Act removes the obligation to obtain a license for camera thus warranting increased supervision and guidance; and (v) children and youth, as their personal data requires particular protection.

- On 25 February 2025, the Swedish Supreme Court (Sw. *Högsta domstolen*) delivered two important rulings in cases nos. Ä 3457-24 and Ä 3169-24 (Sw. "*GDPR och brottmålsdomarna I och II*"). The majority of the court held that Regulation (EU) 2016/679 (GDPR) (Sw. *dataskyddsförordningen*) may impact the confidentiality of personal data relating to criminal judgments even if constitutional protection in the form of freedom of information applies.

Employment and Incentives

- On 21 January 2025, the Swedish Arbitral Tribunal for Invention and Non-competition Disputes (Sw. *Skiljenämnden i uppfinnar- och konkurrensklausulstvister*) published a summary of an award rendered in November 2024. The tribunal assessed the enforceability of a non-compete clause (Sw. *konkurrensklausul*) in an employment agreement concerning a sales representative. Following a collective bargaining agreement in 2015, a nine-month restrictive period is generally

accepted in cases where the underpinning trade secrets warranting a non-compete clause are deemed to be short-lived and as long as the employee is entitled to 60 % of his or her average monthly salary. Nonetheless, in the present case, the non-compete clause was declared null and void in its entirety partly because the remuneration amounting to 60 % of the employee's previous monthly salary of around SEK 40,000 was considered too low.

- On 14 January 2025, the Advocate General (AG) presented its opinion in case C-19/23 before the Court of Justice of the European Union (Sw. *EU-domstolen*). The case concerns the Directive (EU) 2022/2041 on adequate minimum wages (Sw. *minimilönedirektivet*). Said directive should have been transposed by 15 November 2024. However, Denmark and Sweden have objected to the directive on the basis that the EU does not have the authority to adopt legislation regulating wages. The AG assessed that the directive, in its entirety, should be declared invalid. Depending on the final outcome of the proceedings, the consequences for Swedish employment law could be significant.

- On 1 January 2025, new delegated regulations of the Swedish Work Environment Authority (Sw. *Arbetsmiljöverket*) entered into effect. The new set of rules is divided into 15 different delegated regulations (Sw. *Arbetsmiljöverkets författningssamling*). The overall purpose of the new set is to renew the previous regulations without entailing any material changes to the obligations stipulated therein.

Environmental, Social and Governance

- On 19 March 2025, the European Securities and Markets Authority (ESMA) published data on compliance by national competent authorities with ESMA's Guidelines on funds' names using ESG or sustainability-related terms. The guidelines specify when funds' use of such terms in their names are deemed to be unfair, unclear or misleading. The compliance data indicates that a significant majority of member states consider themselves to be compliant with ESMA's guidelines, while a few number (4) intend to comply and are in process of taking legislative measures to ensure compliance. Only one jurisdiction (Czech Republic) reported that it does not comply with ESMA's guidelines, citing that the existing legal order lacks a sufficient legal basis to require fund managers to meet the specific numerical thresholds.

- On 26 February 2025, the European Commission introduced the Omnibus Simplification Package, proposing amendments to the Corporate Sustainability Due Diligence Directive (Directive [EU] 2024/1760) (CDDD) (Sw. *EU:s direktiv om tillbörlig aktsamhet för företag i fråga om hållbarhet*). The proposal limits due diligence requirements to companies' own operations, subsidiaries, and direct business partners (with a few exceptions), reducing the need for extensive supply chain assessments. Additionally, companies would only need to evaluate their due diligence measures every five years instead of annually. The amendments are now under review by the European Parliament and the Council.

- On 26 February 2025, the European Commission proposed amendments to the Corporate Sustainability Reporting Directive (Directive [EU] 2022/2464) (CSRD) (Sw. *EU:s direktiv om företagens hållbarhetsrapportering*) as part of the Omnibus Simplification Package. The proposal limits the mandatory sustainability reporting requirements to large EU undertakings with more than 1,000 employees. Furthermore, it delays reporting requirements for large companies and listed SMEs by two years, to avoid a situation in which some of these companies are required to report for financial year 2025 or 2026 and are then relieved of this requirement. It also reduces mandatory data points and removes plans for sector-specific reporting standards. For undertakings not subject to mandatory sustainability reporting requirements, the European Commission proposes a proportionate standard for voluntary sustainability reporting. The proposed changes are now under review by the European Parliament and the Council.

EU, Competition and FDI

COMPETITION

- On 21 March 2025, the Patent and Market Court (Sw. *Patent- och marknadsdomstolen*) upheld in case no. PMÄ 404-24 the Swedish Competition Authority's (Sw. *Konkurrensverket*) order for Tapwell, a supplier of bathroom and kitchen fixtures, to pay SEK 16.9 million in administrative fines (Sw. *konkurrensskadeavgift*). The Court found that Tapwell infringed the competition rules by restricting retailers' ability to independently set prices for the company's products when sold online. This is the first case of its kind since the Competition Authority was granted power to impose administrative fines.

- On 7 March 2025, the governmental inquiry SOU 2025:22 (in Sw "*Förbättrad konkurrens i offentlig och privat verksamhet*") was presented with legislative proposals to improve competition in Sweden. The proposals include a new broader competition tool which would enable the Competition Authority to direct measures towards markets or sectors instead of just individual undertakings. According to the proposal, the competition rules should be supplemented with capabilities for the Competition Authority to decide

on forward-looking and pro-competitive measures as a supplement to existing competition rules and other legislation. Furthermore, a duty to provide information about mergers, not currently covered by a notification obligation, is proposed for companies operating in markets characterised by high concentration. The proposal may enter into force on 1 August 2026.

- On 7 March 2025, the Patent and Market Court of Appeal (Sw. *Patent- och marknadsöverdomstolen*) annulled in case no. PMÄ 16560-24 the Competition Authority's decision to prohibit Apotekstjänst's acquisition of Svensk dos. The Court of Appeal found that the concentration is not likely to significantly impede the existence or development of effective competition. Furthermore, the court also found that the barriers to market entry are low and that the price level will remain the same or lower after the merger. This was the first time the Court of Appeal overturned a deal block since the Competition Authority gained merger decision-making powers in 2018.

FOREIGN DIRECT INVESTMENTS

- On 5 March 2025, the European Commission published a Call for Evidence seeking feedback on the main objectives, scope and context of its upcoming guidelines regarding the implementation of Regulation (EU) 2022/2560 (Foreign Subsidies Regulation) (Sw. *Förordningen om utländska subventioner*). The regulation entered into force on 13 July 2023 and enables the Commission to address distortions caused by foreign subsidies and ensures a level playing field for all companies operating in the internal market. The upcoming guidelines will clarify key concepts such as determination of a distortion caused by a foreign subsidy and the application of the balancing test. This is a first step towards the publication of the guidelines, expected to be finalised by 13 January 2026.

- On 10 January 2025, Ramsbury Invest became the first entity to be sanctioned under the Swedish FDI Act (2023:560) (Sw. *lagen om granskning av utländska direktinvesteringar*). The basis for the sanction was that Ramsbury Invest failed to notify the Inspectorate of Strategic Products (ISP) (Sw. *Inspektionen för strategiska produkter*) about its investment in a Swedish defence technology group in December 2023. The sanction imposed on Ramsbury Invest amounted to SEK 200 000. Sanctions under the Swedish FDI Act may amount to between SEK 25 000 and SEK 100 000 000. The company has publicly stated its intention to appeal ISP's decision.

- On 7 January 2025, Shanghai Putailai (PTL), a Chinese provider of battery materials, announced that it is appealing the ISP's decision to stop PTL's plans for an anode (battery) plant in Sweden. In its appeal, PTL argued that it is impossible for the company to fulfil the tough requirements laid out by ISP in accordance with the prescribed timeframe. The requirements included that the company could not be the majority shareholder and that both the CEO and the chairman of the board must be Swedish citizens. On 6 March 2025, PTL ultimately announced that it is giving up the plans and is withdrawing from the venture in Sweden.

Financial Services

- On 18 March 2025, the Swedish Government published the bill prop. 2024/25:138 (Sw. *Stärkt konsumentskydd på kreditmarknaden*) with a number of proposed amendments with the purpose of improving consumer protection in the lending business. The focal point in the proposal is to repeal the current order in which consumer credit brokers and consumer lenders operate as consumer credit institutions under the authorisation by the Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*). In the interest of fair competition, consumer protection and lowering consumer indebtedness, the bill proposes that consumer lending and consumer credit brokerage henceforth will require a licence as a regular credit institution (Sw. *kreditinstitut*) instead of as a consumer credit institution. The amendments are proposed to enter into force on 1 July 2025. However, businesses currently operating with a consumer credit institution licence will be offered a grace period.

- On 13 March 2025, the Financial Supervisory Authority published its decision to reprimand the Swedish Pensions Agency (Sw. *Pensionsmyndigheten*) with a remark for deficient risk control of investments in Heimstaden Bostad AB. The decision concludes a supervisory investigation initiated in January 2024 focusing on the Pensions Agency's management of the risk that the invested funds would be lost. The Financial Supervisory Authority concluded that the Pensions Agency's measures had not been sufficient for appropriately managing the risk inherent in the investments and therefore issued a remark (which is the most severe form of supervisory intervention available under the present circumstances).

- On 26 February 2025, the European Securities and Markets Authority (ESMA) published two sets of guidelines under the Regulation (EU) 2023/1114 on markets in crypto-assets (MiCA) (Sw. *EU:s förordning om marknader för kryptotillgångar*). The first set of guidelines relate to reverse solicitation and comments on situations in which a third-country firm is deemed to solicit clients, established or situated, in the EU and the supervision practices to detect and prevent circumvention of the reverse solicitation exemption. The second set of guidelines clarify certain requirements for crypto-asset

service providers providing transfer services for crypto-assets on behalf of clients, for instance pre-contractual information and transfer-specific information to clients.

Intellectual Property and Marketing

INTELLECTUAL PROPERTY RIGHTS

- On 25 March 2025, the Swedish Intellectual Property Office (Sw. *Patent- och registreringsverket, PRV*) reported that the total number of patent applications during 2024 decreased for the first time since 2016. Nevertheless, Sweden is ranked second in Europe and tenth worldwide when it comes to the number of filed patent applications per million inhabitants. The top three Swedish patent applicants are Ericsson, Volvo Cars and Volvo Group.

- On 28 February 2025, the Swedish Supreme Court (Sw. *Högsta domstolen*) rendered a ruling (case no. T 5449-23 "Deckarserien") concerning the interpretation of copyright agreements under the Copyright Act (1960:729) (Sw. *upphovsrättslagen*). The court held that no specified guiding principles (commonly referred to in Sw. as "*specifikationsprincipen*") should be applied exclusively when interpreting copyright agreements. Instead, general guiding principles under contract law shall be applied as well.

- On 13 February 2025, the Swedish Patent and Market Court of Appeal (Sw. *Patent- och marknadsöverdomstolen*) issued a rare ruling on the eligibility of obscene and offensive marks for trademark protection (case no. PMÄ 8122-24). Under European trademark law and as transposed in the Trademarks Act (2010:1877) (Sw. *varumärkeslagen*), trademarks conflicting with public policy or accepted principles of morality (Sw. *goda seder eller allmän ordning*) shall not be registered. In the present case, the court held that a surprising combination of word elements may gives rise to a humoristic effect that can reduce the overall obscene perception of a word element.

MARKETING AND CONSUMER PROTECTION

- On 27 March 2025, the Swedish Patent and Market Court of Appeal (Sw. *Patent- och marknadsöverdomstolen*) upheld a ruling on the maximum administrative fine (Sw. *marknadsstörningsavgift*) for infringements of the Swedish Marketing Act (2008:486) (Sw. *marknadsföringslagen*) in case no. PMT 8445-24. Since September 2022, an administrative fine may amount to up to four percent of the trader's annual turnover. In the present case, a Norwegian company and its Swedish subsidiary were respectively ordered to pay the highest fine possible. The judgment is the first of its kind by the Court of Appeal since the amendments to the Marketing Act entered into force.

- On 13 March 2025, the Patent and Market Court of Appeal rendered its judgment in case no. PMT 12383-21. The case concerns a lawsuit filed by a Swedish trade association and the defendant is a German trader offering cosmetics online using a Swedish domain name and website. It was in the lawsuit alleged that the trader infringed the Swedish Marketing Act. However, the applicability of Swedish law, based on a principle known in Sw. as *effektlandsprincipen*, was disputed by the German defendant. The case was referred to the EU Court of Justice (case C-88/23 Parfümerie Akzente) for a preliminary ruling, which was rendered on 19 September 2024. The Court of Appeal ultimately found that Swedish law only could be applied in part.

- On 11 February 2025, the Swedish Consumer Agency (Sw. *Konsumentverket*) issued new rules applicable when marketing consumer credits. The rules (KOVFS 2025:1, Sw. *Konsumentverkets föreskrifter om näringsidkares upplysningsskyldighet vid marknadsföring av konsumentkrediter*) apply from 1 March 2025 when the amended Consumer Credit Act (2010:1846) (Sw. *konsumentkreditlagen*) entered into force. Pursuant to the new rules, advertising of most consumer credits must be accompanied by a warning disclosing general risks related to loans

Real Estate and Environment

- As of 17 March 2025, the legislative processing of governmental inquiry SOU 2024:38 (Sw. *Digitala fastighetsköp & Förköpsrätt vid fastighetstransaktioner*) is still ongoing. According to the Government Offices, it is too early to predict when a finalised bill can be presented. The inquiry includes proposals on pre-emption rights in real estate transactions related to military and civil defence (either as a complement or alternative to municipal pre-emption rights with regards to civil defence). The proposals also include pre-emption rights for municipalities for crime prevention. Real estate transactions would henceforth be required to be reported, with the acquirer responsible for the reporting, in line with the Foreign Direct Investment Act (2023:560) (Sw. *lagen om utländska direktinvesteringar*).

- On 29 January 2025, the Supreme Court (Sw. *Högsta domstolen*) ruled in a commercial lease dispute (case no. T 557-24 "Skytteholmsbutiken"). The dispute concerns a termination by a landlord in order to pursue other plans for the property. In such cases under Swedish law, commercial tenants are, as a rule, entitled to compensation. While the Land Code (1970:994) (Sw. *jordabalken*) allows for certain compensation exemptions for demolition

or reconstruction, the Supreme Court clarified that the general clause for exempted compensation can be invoked by landlords, alongside other grounds, to deny compensation. In such cases, there must essentially be a balancing of interests and the result thereof must differ from the result of other applicable exemption provisions.

- On 25 January 2025, a proposal for amendments to the Plan and Building Act (2010:900) (Sw. *plan och bygglagen*) was referred to the Council on Legislation (Sw. *lagrådet*) by the Swedish government. The government has accordingly decided to proceed with a large portion of the legislative proposals presented in governmental inquiry SOU 2021:47 (Sw. *Ett nytt regelverk för bygglov*). The changes aim to introduce a new, simpler, more efficient, and more purpose-driven regulatory framework primarily for building permits. The proposal may enter into force on 1 October 2025.