

THEME 2

WORKERS' REPRESENTATION AND SOCIAL DIALOGUE AT THE WORKPLACE LEVEL

SWEDEN

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Introduction

Theme 2 for the XIX World Congress of the International Society for Labour Law and Social Security Law in 2009 is *workers' representation and social dialogue at the workplace level*. Here, social dialogue is broadly defined as 'any form of institutionalised interaction between the workers or their representatives on the one side and the employer and his or her representatives on the other side',¹ and encompasses *inter alia* information, consultation and negotiation rights and collective bargaining. All institutions and machineries of social dialogue aiming at expressing and defending the workers' viewpoints and interests – whether they are established by statutory regulation or collective agreement – are to be discussed in the report. The focus is on the workplace level, not the enterprise level. The workplace level refers *inter alia* to the level of the establishment, worksite, site, plant or office. The agents of social dialogue on the worker's side can be both individual workers and workers' representatives (from staff representative bodies or trade unions).² In the report I will use the terms worker and employee alternately.³ Thus, the goal of this report is to discuss and analyse workers' representation and social dialogue at the workplace level in the context of Swedish labour law and industrial relations.

In their traditional sense, Swedish industrial relations – also known as the 'Swedish Model' of industrial relations – are characterised by a high degree of self-regulation, state non-intervention, and autonomy of the social partners, i.e. social dialogue. The two central labour-market organisations, LO (the Swedish Confederation of Trade Unions) and the Confederation of Swedish Enterprise (Svenskt Näringsliv, formerly the Swedish Employers Federation (SAF)), were founded in 1898 and 1902 respectively, and the cornerstone of today's collective labour law emerged through the interactions of these social partners. The relationship between the social partners was characterised by co-operation, concert and social partnership (which was manifested *inter alia* in the conclusion of master agreements such as the basic Saltsjöbaden Agreement (*huvudavtal*) in 1938, see Section 3). Furthermore, Swedish industrial relations display elements of corporatism, with the social partners co-operating with the state and sharing social responsibility. The Swedish labour market is strictly organised. Seventy to seventy-five percent of all employees are members of a trade union.⁴ The Swedish trade union movement is centralised and well-constructed. Industry-wide industrial unions dominate, and in practice, the existence of competing trade unions has been removed with the help of trade union demarcation agreements. As a result, there are only few minority trade unions. Moreover, the trade union movement in Sweden

¹ Cf. the introduction of the questionnaire.

² Board-level representation for employees (as regulated *inter alia* in Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees OJ L 294 10 November 2001, p. 22–32 and the (1987:1245) Swedish Act on Board Representation for Employees in Private Employment) and European Works Councils (as regulated in Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees OJ L 254 of 30 of September 1994, p. 64–72 and the (1996:359) Act on European Works Councils) are excluded from the report. Cf. the introduction of the questionnaire.

³ Cf. Section 2.3 for a discussion on the Swedish notion of an employee.

⁴ In 2007 there was a dramatic drop in the trade union organisation rate, from 77 to 73 percent in one year. This is believed to be mainly the result of a recent reform by the centre-right government of the unemployment insurance system, leading to increased fees to be paid by the employees to the system administered by the trade unions. In 1993 the trade union organisation rate was 85 percent. See Kjellberg 2007.

is not expressly divided in ideological, religious, or political terms.^{5 6} There are three central trade union confederations: LO (the Swedish Confederation of Trade Unions), organising blue-collar workers; TCO (the Swedish Confederation for Professional Employees), organising white-collar workers; and SACO (the Swedish Confederation of Professional Associations), organising university graduates and academics. There is also a strong element of information and consultation. Here, worker participation is channelled through trade unions and their representatives, at local and central levels, in a so-called *single-channel system*. Trade unions both negotiate and conclude collective agreements on wages and other working conditions, and take part in information and consultation at workplace level.⁷ The ‘Swedish Model’ of industrial relations has been described in a comparative context as a *social-collectivist model* and a *consensual industrial relations system*.⁸

The development since the beginning of the 1970s, including individualisation, decentralisation, the partial ‘corrosion’ of the Swedish tradition of social partnership, and corporatism, has brought about important changes that challenge Swedish industrial relations in their traditional sense. The 1970s witnessed a ‘boom’ in legislative activity, and since then labour law legislation is frequent in the Swedish context (EC labour law has added to this legislation). This poses a challenge to Swedish industrial relations, considering the importance of self-regulation, state non-intervention, and autonomy of the social partners. Together with legislation collective agreements constitute the most important legal source of Swedish labour law. Traditionally, collective bargaining has been centralised. Collective agreements are entered into at different levels. Nationwide collective agreements are concluded at sectoral level, and supplemented by local collective agreements concluded at workplace level. Some master agreements, such as those regarding co-operation and co-determination, are concluded at national top level. The yearly wage increases are set at national and sectoral levels, and implemented at the local workplace level. Since the 1980s, there has been a clear tendency towards individualisation and decentralisation of industrial relations in general, and of wage negotiations in particular (see Section 3).⁹

Industrial relations and labour law in the Nordic countries share many characteristics, such as collectivism, strong trade unions, a high organisation rate, a tradition of co-operation and social partnership, and an emphasis on collective bargaining. In the EU context, this Nordic model contrasts with the Romano-Germanic model and the Anglo-Saxon model of industrial relations and labour law. However, the Nordic countries also display differences; for example, regarding the degree to which the labour law area is regulated by legislation and collective bargaining.¹⁰

⁵ See Bruun *et al.* 1992, Kjellberg 1998, Kjellberg 2003, and Numhauser-Henning 2001.

⁶ With the exception of a small, independent, syndicalism trade union movement with marginal influence on the overall labour market, see Fahlbeck 2002.

⁷ See Weiss 2004, Industrial Relations in Europe 2006, pp. 60 ff., and Biagi and Tiraboschi 2007, pp. 503 ff.

⁸ See van Peijpe 1998, and Bamber and Lansbury 1998.

⁹ See Numhauser-Henning 2001, Kjellberg 1998, Fahlbeck 2002, and Ahlberg and Bruun 2005.

¹⁰ See Bruun *et al.* 1992.

1. Legal sources

Swedish labour law displays an intricate relationship between legislation and collective bargaining. The cornerstone of today's collective labour law emerged through the interactions of the social partners during the 20th century. Today central aspects of collective labour law, workers' representation and social dialogue, such as freedom of association, the collective agreement and collective bargaining, right to information, consultation and co-determination, and industrial action, are statutorily regulated. The main piece of legislation is the (1976:580) Co-determination Act, which is complemented *inter alia* by the (1974:358) Act on Trade Union Representatives.¹¹ In addition, different collective agreements on co-operation and co-determination and negotiation, collective bargaining, wage formation and industrial action, such as the Agreement on Efficiency and Participation (*Utvecklingsavtalet*) from 1982 and the Agreement on Industrial Development and Wage Formation (*Industriavtalet*), or the Industrial agreement, from 1997, cover large parts of the labour market.¹²

In principle, the function of labour law legislation in Sweden is to set mandatory minimum standards for terms and conditions of employment. However, collective agreements can be used to adapt statutory provisions to specific conditions in a certain sector, company, or workplace. In Sweden, most labour legislation is *semi-mandatory* in this way, and allows for deviations (both to the advantage and detriment of individual employees) by way of collective agreements.^{13 14}

The Swedish Labour Court was established in 1928, originally aiming at resolving disputes relating to the collective bargaining system and promoting industrial peace. Nowadays the jurisdiction of the Labour Court is the broadest possible and encompasses all kinds of labour disputes concerning the application of labour legislation or collective agreements, for example disputes regarding employment protection, collective bargaining, information and consultation, employment conditions, working time, and discrimination. The Labour Court is a tripartite body comprised of judges with judicial background and of members from both sides of the labour market. The representatives of the social partners always constitute the majority of the court.¹⁵ The Labour Court acts as the Supreme Court in labour-law disputes. It is also the first, and only, instance in all proceedings filed by an employer's or employee's organisation. In the majority of cases the Labour Court thus serves as the first and only instance, leaving no room for an appeal.¹⁶

The constitutional aspects of Swedish labour law are in many ways undeveloped. It is true that the Swedish Constitution includes a 'catalogue' of fundamental rights and freedoms, including the freedom of association and right of industrial action (cf. Chapter 2 of the 1974

¹¹ Cf. also the (1977:1160) Work Environment Act and the (1982:673) Working Hours Act.

¹² See Nyström 2004.

¹³ See Bruun 2002, and Industrial Relations in Europe 2006.

¹⁴ The aim of labour law reforms during the last 30 years has been to achieve equality between the private and public sectors. In principle the same rules and industrial relations system should apply on all sectors of the Swedish labour market. The relationship between the employer and the employee in the public sector is viewed as a civil law relationship, and most restrictions as regards collective bargaining, collective agreements and industrial action for state employees have been removed. See Nyström 2004, pp. 10 f.

¹⁵ In a recent reform the composition of the Labour Court in discrimination cases has been changed. Here the social partners are no longer in majority. See Government Bill prop. 2008/09:4.

¹⁶ Cf. the (1974:371) Labour Disputes (Judicial Procedure) Act.

Instrument of Government); but this catalogue has never really taken effect. In part this is because, in principle, the Constitution only applies to the state and its authorities. The provisions of the Constitution are not applicable to employment relationships in the private sector of the labour market, and their significance in legal relationships between individuals is marginal. However, the incorporation of the European Convention on Human Rights into Swedish law in 1995 and membership in the EU has increased the attention paid to fundamental rights and strengthened their protection.¹⁷

International and supranational norms, such as norms originating from the ILO and the EU, have not been a driving force in establishing social dialogue machineries and institutions in Sweden. As was discussed earlier in this report the Swedish system of workers' representation and social dialogue developed between the social partners during the 20th century in the national arena (see Section 3). International and supranational norms are increasingly important though, not least EC law and case law from the European Court of Justice and the European Court of Human Rights. Since 1995 when Sweden became a member of the EU, implementation of different EC Directives has added to the existing Swedish labour law legislation (see Section 2.3).¹⁸ The emphasis on individual rights in EC law – as opposed to the 'collective character' of Swedish labour law – is often referred to as an important background for an ongoing individualisation process. At the same time, the development of EC labour law and EU industrial relations during the last ten years – the increased importance of social dialogue, European collective agreements and information and consultation – can be described in terms of an increased 'collectivisation'. In Sweden, for example, the implementation of the framework agreement on telework (an outcome of the social dialogue among the European social partners ETUC, UNICE/UEAPME and CEEP), and the adoption of guidelines in this respect have been achieved by negotiations between the leading labour market organisations, perhaps marking a 'revitalisation' of centralised negotiations (see also the discussion on the negotiations on a new basic agreement (*huvudavtal*) in Section 3).¹⁹

2. Organisation and features of workers' representation and social dialogue institutions and machineries

2.1. Legal requirements for the establishment of workers' representation at the workplace level

Sweden represents a single-channel system and trade union-track when it comes to workers' representation and social dialogue. Trade unions both negotiate and conclude collective agreements on wages and other working conditions, at local and central levels, and take part in information and consultation at workplace level. There are no works councils, except for health and safety committees.²⁰ In 1946 a master agreement between the social partners in the private sector set up work councils, or company or shop floor

¹⁷ Cf. Herzfeld Olsson 2003, and Labour Court judgments AD 1998 No. 17 and AD 1998 No. 97.

¹⁸ See Bruun and Malmberg 2005. Implementation of EC Directives cannot be made exclusively by means of collective agreements. The *de facto* almost complete collective bargaining coverage in Sweden does not legally guarantee in a sufficient way the enforcement of individual rights, and therefore supplementary legislation is required for the implementation of EC Directives, see Nielsen 2002, pp. 49 ff.

¹⁹ See Nielsen 2002, pp. 49 ff., Nielsen 1996, and Ahlberg 2003.

²⁰ Questions 2.2.4 a–d in the questionnaire regarding a staff representatives track are thus not relevant in the Swedish context, and will not be discussed here.

committees. These were joint management-labour bodies aimed at providing information and consultation. Later on, the agreement was amended in order to include white-collar workers.²¹ However, when information and consultation were finally statutorily regulated in the (1976:580) Co-determination Act, works councils and joint committees were abandoned as ways to represent workers' interests.²²

The purpose of the (1977:1160) Work Environment Act is to prevent illness and accidents in the course of employment and to achieve a sound work environment, Chapter 1 Section 1 of the Act. The employer is responsible for securing a healthy and safe work environment. At every workplace where five or more employees are regularly engaged one or more of the employees shall be appointed as safety officers, Chapter 6 Section 2. Safety officers shall be appointed by the local trade union which is bound by a collective agreement with the employer (or the federation of employers), a so-called *established* trade union (see Section 2.2). The safety officer shall represent the employees on work environment matters and strive for a satisfactory work environment. The safety officer shall participate in the planning of new premises, equipment, work processes and work organisation. If a particular task involves immediate or serious danger to the life or health of an employee and if no immediate remedy can be obtained through representations to the employer, the safety officer may order the suspension of that work pending a decision by the Swedish Work Environment Authority, Chapter 6 Section 7. At a workplace where fifty or more employees are regularly engaged, there shall be a health and safety committee consisting of representatives of the employer and the employees. A health and safety committee shall also be appointed at other workplaces if the employees so require. Employees' representatives in the health and safety committee shall be appointed by the same trade union as appoints the safety officer, Chapter 6 Section 8. The health and safety committee shall participate in the planning of work with respect to the work environment at the workplace and follow up the implementation of that work.²³

In Sweden, the assignment of workers' representatives generally has no link to a staff threshold. If at least one of the employees (or a former employee) at the workplace is a member of a trade union a social dialogue machinery will be put in place.²⁴ The establishment of workers' representation and social dialogue at the workplace can thus be said to be mandatory for the employer, i.e. not subject to agreement or voluntary recognition. Therefore, in general, the Swedish tradition is not to link or restrict social dialogue institutions or machineries to enterprises or establishments of a certain size (even when an EC Directive and its implementation allows for such restrictions, for example, Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community).²⁵

²¹ See Edström 1994, pp. 103 ff. and Fahlbeck 2008, p. 32.

²² Works councils may be set up voluntarily by employers and employees. This seems to happen very rarely or not at all, see Fahlbeck 2008, p. 32.

²³ See Fahlbeck 2008, pp. 33 ff., and Adlercreutz and Mulder 2007, pp. 283 ff. Cf. also the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, p. 1–8, which has been implemented in Swedish law through amendments to the (1977:1160) Work Environment Act.

²⁴ In addition, a trade union has the right to take industrial action in order to conclude a collective agreement even if none of the employees is a member of the trade union (see Section 2.3).

²⁵ Cf. Government Bill prop. 1975/76:105 bil. 1, p. 195. However, the Swedish (1996:359) Act on European Works Councils applies to Community-scale undertakings with at least 1000 employees in EEA-countries, and at least 150 employees in each of at least two EEA-countries, and to groups of undertakings with at least 1000 employees in EEA-countries, at least two of its companies in different EEA-countries, and at least one of its companies with at least 150 employees in one EEA-country and at least one of its other companies with at least 150 employees in another EEA-country.

2.2. Agents of representation and social dialogue

In Sweden, representing a single-channel system and trade union-track, social dialogue institutions and machinery are directed towards trade unions. In principle, according to Swedish law collective rights of information, consultation and co-determination are given only to trade unions, as workers' representatives, and not to individual employees. There are only limited statutory and collectively bargained rights of information and consultation for individual employees. According to Section 6c of the (1982:80) Employment Protection Act the employer shall not later than one month after the commencement of work by the employee provide written information to the employee of all terms and conditions of employment.²⁶ In cases of dismissal or summary dismissal for personal reasons the employer is obliged to inform and consult the individual employee – and when relevant also the employee's trade union, Section 30 of the (1982:80) Employment Protection Act. In addition, the employer shall provide the employee with information on *inter alia* changes as regards the disposition of the working time,²⁷ the disposition of the annual holiday,²⁸ and the end of a fixed-term employment.^{29 30}

Naturally, an individual employee has the right to make complaints to the employer, the trade union or authorities regarding the work environment, discrimination, infringements of other labour laws and collectively or personally agreed terms and conditions of employment.³¹

Direct individual employee participation refers to individual employees taking part in workplace matters, for example by way of survey, feedback, project groups, quality circles, and self-steering team work. These non-legal forms of participation result from trends of quality of working life, human relations, human resource management, and knowledge and information society from the 1960s and onward, and are probably very common in Sweden. However, there is little knowledge and research about actual practices. The Agreement on Efficiency and Participation (*Utvecklingsavtalet*) from 1982 mentions direct individual employee participation. A subsequent master agreement from 1985 develops an employee suggestion scheme, encouraging employees to put forward different kinds of ideas regarding the company or the workplace.³²

Trade unions are voluntary, non-profit organisations. In Sweden there is no specific legislation for such organisations or labour market organisations in general. Section 6 of the (1956:780) Co-determination Act states that a trade union means an association of employees, that under its by-laws, is charged with safeguarding the interests of the

²⁶ Cf. Council Directive of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (91/533/EEC), OJ L 288, 18.10.1991, p. 32–35.

²⁷ Section 12 of the (1982:673) Working Hours Act.

²⁸ Sections 10 and 11 of the (1977:480) Annual Holiday Act.

²⁹ Section 15 of the (1982:80) Employment Protection Act.

³⁰ In 2002 a governmental inquiry investigating a possible reform of different labour law statutes proposed a strengthening of the individual employee's position and the introduction of a right for the individual employee to be informed and consulted as regards particularly far-reaching decisions in the area of the direction and allocation of work, see Government White Paper Ds 2002:56, pp. 419 ff. The proposal has not resulted in any legislation.

³¹ Cf. questions 2.2.1 and 2.3.1 of the questionnaire relating to the right of expression.

³² Cf. *Utvecklingsavtal med överenskommelse om förslagsverksamhet 1985-09-09* and Fahlbeck 2008, pp. 45 f.

employees in relation to the employer. There are minimal formal requirements for forming a trade union, and recognition of trade unions is automatic. As regards their internal affairs trade unions enjoy extensive freedom of self-regulation. There are no statutory or common law procedures or criteria for deciding the representativity of trade unions. Employees may join a trade union of their choice, and every trade union represents its members. All trade unions enjoy the same basic rights regarding freedom of association, general negotiation, collective bargaining, and industrial action (see Section 2.3). Instead of establishing certain procedures or criteria for representativity, Swedish law affords privileges to so-called *established* trade unions, i.e. trade unions which are currently or customarily bound by a collective agreement with the employer (or the federation of employers). In practice, owing to the principles of labour market organisation, the dominance of nation-wide industrial unions, and the policies and practices of the central trade union confederations and the Confederation of Swedish Enterprise, employees seldom have much choice when it comes to choosing a trade union to join. Consequently, established trade unions organise the majority of Swedish employees.³³

Workers' representation is normally performed separately by several trade unions at the workplace. An employer is often bound by different collective agreements with three trade unions: members of the trade union confederations LO, TCO and SACO.

Established trade unions are privileged and enjoy far-reaching rights of primary negotiation and co-determination: for example, when it comes to management decisions regarding important alterations in the working conditions of employees or in the employer's activities and business, Section 11 of the (1976:580) Co-determination Act.³⁴ Furthermore, representatives of established trade unions are given paid time off for their assignment, and enjoy a far-reaching protection against dismissal, deteriorated terms and conditions of employment, and harassment from the employer according to the (1974:358) Act on Trade Union Representatives. This protection extends to a period of time after she has stopped acting as a representative of the employees (so-called *efterskydd*), Section 4 of the (1974:358) Act on Trade Union Representatives.³⁵

Due to the often semi-mandatory character of Swedish labour law legislation, important individual rights (e.g. seniority rules) can be deviated from (disadvantaging the employee) by means of a collective agreement, often entered into by the employer and the trade union at local workplace level. In this way, established trade unions may legally bind not only their members, but also unorganised employees and members of other trade unions. In these cases established trade unions de facto represent all employees at the workplace.³⁶

Collective agreements signed by large and influential established trade unions cover the majority of employees and most of the Swedish labour market (see Section 2.3). Employers and trade unions alike are free to refrain from signing collective agreements. An employer is therefore under no obligation to sign a collective agreement with a minority or competing trade union, even if the agreement is identical to collective agreements already signed.

³³ See Government Bill prop. 1975/76:105 bil. 1, pp. 219 f., Fahlbeck 2002 and Schmidt *et al.* 1997, pp. 97 ff. and p. 139.

³⁴ Christensen has analysed how the (1976:580) Co-determination Act affected the power relationship between established trade unions and minority trade unions, cf. Christensen 1983.

³⁵ See Government Bill prop. 1975/76:105 bil. 1, pp. 219 f., Fahlbeck 2002 and Schmidt *et al.* 1997, pp. 97 ff. and p. 139.

³⁶ See Numhauser-Henning 2001, Bruun *et al.* 1992 and Schmidt *et al.* 1997, pp. 98 ff. and p. 139.

Employers are often reluctant to conclude such collective agreements. However, trade unions may make use of industrial action in order to persuade the employer to sign a collective agreement.³⁷

2.3. Content and scope of workers' and workers' representatives' prerogatives in social dialogue

The primary aim of the (1976:580) Co-determination Act is to enable an increased element of co-operation and co-determination for employees and trade unions in the area of the managerial prerogative. Information, consultation and negotiation with trade unions shall become a normal element in the employer's decision-making process when addressing important issues.³⁸

The positive side of freedom of association is protected by the Swedish Constitution (Chapter 2 Sections 1 and 17 of the 1974 Instrument of Government) and the (1976:580) Co-determination Act. In Section 7 of the (1976:580) Co-determination Act, the freedom of association is defined as a right of the employer and the employee to belong to an employers' organisation or a trade union, to exercise the rights of membership, and to participate in such an organisation and the establishment thereof. A violation of the freedom of association is deemed to have occurred when an employer or employee, or the representative of either, engages in such conduct detrimental to the other party as a consequence of such party's exercise of her freedom of association, or when an employer or employee, or the representative of either, engages in conduct toward the other party for the purpose of inducing that party not to exercise her freedom of association, Section 8 of the (1976:580) Co-determination Act. The violation of the freedom of association of an individual member also constitutes a violation of the activities of the employers' organisation or the trade union.^{39 40}

There is a wide scope for industrial action in Swedish labour law. The mutual right to take industrial action is protected by the Constitution, Chapter 2 Sections 1 and 17 of the 1974 Instrument of Government, and is more specifically regulated in Sections 41–44 of the (1976:580) Co-determination Act. The right to take industrial action can be further specified or limited by way of legislation or collective agreement. A peace obligation, and social truce, follow from the collective agreement – and this is strictly upheld by the Swedish Labour Court – and during the period of validity (often one to three years) of a specific collective agreement, industrial action must not be taken, Section 41 of the

³⁷ See Fahlbeck 2002. Edström 2003, p. 20 and Schmidt *et al.* 1997, pp. 97 ff. and p. 139.

³⁸ The provisions of the (1976:580) Co-determination Act, for example, provisions on information and consultation, are not applicable when they relate to the aims and focus of the employer's activities, which are of a religious, scientific, artistic, or other non-profit making nature, or which have co-operative, trade union, political or other opinion-forming aim, Section 2 of the (1976:580) Co-determination Act.

³⁹ See Bergqvist, Lunning and Toijer 1997, pp. 142 ff., Schmidt *et al.* 1997, pp. 104 ff., and Holke and Olausson 2008, pp. 75 ff. See also Labour Court judgments AD 2004:49 and AD 2007:53, examples from recent case law. The negative side of the freedom of association is protected only by Article 11 of the European Convention on Human Rights. Important cases in this area have been brought before the Swedish Labour Court and the European Court of Human Rights. See Bergqvist, Lunning and Toijer 1997, pp. 131 ff., and Herzfeld Olsson 2003. See also, for example, Labour Court judgment AD 1998:17 and judgments from the European Court of Human Rights; Gustafsson v Sweden, judgment of 25 April 1996, AB Kurt Kellerman v Sweden, judgment of 26 October 2004, Evaldsson m fl v Sweden, judgment of 13 February 2007.

⁴⁰ Cf. the protection offered by the (1974:358) Act on Trade Union Representatives and Section 2.2.

(1976:580) Co-determination Act. There is no exhaustive statutory definition of industrial action. Section 41 of the (1976:580) Co-determination Act mentions, by way of example only, strike, lockout, and blockade.⁴¹

If no peace obligation prevails, industrial action is permitted. A measure of industrial action must always be decided upon by the relevant organisation in due order, Section 41(1) of the (1976:580) Co-determination Act. Furthermore, industrial action may not contravene peace obligation provisions in collective agreements. The possibility to extend and specify the statutory peace obligation by way of collective agreements has been frequently used, and agreements on industrial action and social truce cover large parts of the Swedish labour market. In addition, according to Section 41 of the (1976:580) Co-determination Act it is contrary to the law to take or participate in an industrial action while a collective agreement is in effect, if the purpose of the industrial action is 1) to exert pressure in a dispute over the validity of a collective agreement, its existence, or its correct meaning, or in a dispute as to whether a particular procedure is contrary to the collective agreement or of the (1976:580) Co-determination Act, 2) to bring about an alteration of the collective agreement, and 3) to affect the adoption of a provision, intended to come into operation when the collective agreement has ceased to apply.⁴² Sympathy action is allowed, Section 41(1) 4p of the (1976:580) Co-determination Act. There is no general principle of proportionality in Swedish law on industrial action.⁴³ The National Mediation Office mediates in labour disputes and should also promote an effective wage formation process, Sections 46–53 of the (1976:580) Co-determination Act.⁴⁴

In the context of workers' representation and social dialogue, Swedish law distinguishes between disputes of rights and disputes of interest. Disputes of rights, for example regarding the interpretation or alleged violation of a statutory or collectively or individually bargained norm, are to be resolved by negotiation, and if the parties cannot reach an agreement by taking the dispute to arbitration or to the Labour Court. Industrial action may not be used. Disputes of interest, mainly regarding the establishment of pay and other terms and conditions of employment, are also to be resolved by negotiation. Here, on the other hand, industrial action may be used. These disputes cannot be taken to the Labour Court.⁴⁵

The employer is obliged to keep the established trade union continuously informed of the manner in which the business is developing with respect to production and finance, and as to the guidelines for personnel policy, Sections 18–22 of the (1976:580) Co-determination Act. The right of information is vital to the trade union's possibilities to influence the employer's decision-making. The implementation of Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community⁴⁶

⁴¹ See Governmental Bill prop. 1975/76:115 bil. 1, pp. 102 ff., and Bergqvist, Lunning and Toijer 1997, pp. 411 f.

⁴² See Governmental Bill prop. 1975/76:115 bil. 1, pp. 102 ff., and Bergqvist, Lunning and Toijer 1997, pp. 418 ff. In addition, industrial action may not be taken toward a company which has no employees or which employs only family members of the owner of the company, Section 41b of the (1976:580) Co-determination Act, cf. Labour Court judgment AD 2008:5.

⁴³ See Fahlbeck 2002, Schmidt *et al* 1997, pp. 97 ff. and 139, and Labour Court judgment AD 1998:17.

⁴⁴ See Bergqvist, Lunning and Toijer 1997, pp. 411 ff.

⁴⁵ See Nyström 2004, pp. 3 f.

⁴⁶ Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint Declaration of the European Parliament, the Council and the Commission on employee representation OJ L 80 of 23 of March 2002, p. 29–34.

has given rise to new provisions on the right of information, Sections 19a and 19b of the (1976:580) Co-determination Act. When the employer is not bound by any collective agreement, he is obliged to keep all trade unions, whose members are employees of the employer, continuously informed of the manner in which the business is developing with respect to production and finance, and as to the guidelines for personnel policy. Representatives of these trade unions also enjoy a right to time off in order to receive this information.

In Sweden, and within the framework of the (1976:580) Co-determination Act, one can distinguish between three different types of bargaining and negotiations: collective bargaining aimed to regulate matters concerning the relationship between the negotiating parties by means of collective agreement (cf. Section 10 of the (1976:580) Co-determination Act and disputes of interest), negotiations in legal disputes (cf. Sections 64 – 68 of the (1976:580) Co-determination Act and disputes of rights), and co-operation negotiations aiming at giving employees and trade unions information and influence on the employer's managerial decisions (cf. Sections 11–13 of the (1976:580) Co-determination Act).⁴⁷

The workplace level is central here. Negotiation starts first at the local level. If agreement cannot be reached negotiation continues at the central level. Before the Labour Court can deal with a legal dispute, local and central negotiation must have been conducted and must have failed. As a result of this rule an overwhelming number of disputes are resolved by negotiation between the parties.⁴⁸

All trade unions (with at least one member, or prior member, at the workplace) enjoy a statutory right of general negotiation with the employer on any matter relating to the relationship between the employer and a member of the trade union, Section 10 of the (1976:580) Co-determination Act.⁴⁹ A principal function of the general right of negotiation, which is mutual, is to initiate collective bargaining and promote the concluding of collective agreements.⁵⁰

Established trade unions enjoy far-reaching rights of information, primary negotiation, and co-determination. According to Section 11 of the (1976:580) Co-determination Act on primary negotiations, the employer is obliged to negotiate with the trade union on her own initiative before making decisions regarding important alterations in the employer's activities and business, such as restructuring, redundancies, work organisation changes and appointments of new managers, or the employment conditions or employment relationship of a member of the trade union, such as transfers and working time changes.⁵¹ In addition, when the established trade union requests it, the employer is obliged to negotiate with the trade union before making other decisions regarding a member of the trade union, Section 12 of the (1976:580) Co-determination Act.⁵² It follows from the preparatory works that the employer is obliged to negotiate with the trade union in this way, whenever the decision at

⁴⁷ Cf. Schmidt et al 1997, pp. 141 ff., Nyström 2004, pp. 4 f., Edström 2003, p. 5.

⁴⁸ Cf. Edström 2003, p. 8.

⁴⁹ From the employees' perspective the general right of negotiation can be said to encompass also a right of expression, cf. question 2.3.1 of the questionnaire.

⁵⁰ See Government Bill prop. 1975/76:105 bil. 1, pp. 36 ff., and Schmidt, F. *et al.*, pp. 141 ff.

⁵¹ See Bergqvist, Lunning and Toijer 1997, pp. 169 ff., Holke and Olausson 2008, pp. 107 ff. and Schmidt *et al.* 1997, pp. 157 ff.

⁵² See Schmidt *et al.* 1997, pp. 165 f.

hand is of such a character that it is likely that the trade union would be interested in negotiating.⁵³ In addition, the employer is obliged to negotiate in this way with a trade union to which the employer is not bound by a collective agreement, before making decisions dealing with important alterations in the employment conditions or relationship primarily affecting one or more of the trade union's members, Section 13 of the (1976:580) Co-determination Act.⁵⁴ As for the timing, negotiation must take place *before* the employer makes a decision. The negotiation initiative must be taken at such a time as to ensure that the negotiation becomes a natural and effective part of the employer's decision-making process. When it comes to the form and performance of the negotiation, the parties must attend the negotiation, state and motivate their position, and listen to the other party's information and arguments supporting their position. Even if the aim of the negotiation is to reach an agreement, the parties are under no obligation to compromise. There is no 'duty to bargain in good faith' or to conclude a collective agreement (even if the parties actually agree on an issue). Negotiations are conducted, in the first instance, at the local, workplace, level. If agreement cannot be reached, the employer shall upon request also negotiate with a central trade union organisation. The subject matter of primary negotiations, in principle, refers to the area of the managerial prerogative, where the employer enjoys a unilateral right of decision-making. Therefore, if the parties, after having negotiated at local and central levels, cannot reach an agreement, the employer decides on his own.⁵⁵ If there is a difference of opinion between the trade union and the employer as regards the content or performance of the duty of information, general negotiation or primary negotiation the parties can bring the legal dispute to court. If the employer violates the provisions of the Act she is liable to pay economic and punitive damages, Sections 54 and 55 of the (1976:580) Co-determination Act. Because of the peace obligation resulting from the collective agreement, trade unions have no right to take industrial action in order to protest against the employer's decision or to try and force the employer not to make the decision or to change the decision or its implementation. Such industrial action is never sanctioned by the trade union. In addition, Swedish trade union policy has been not to prevent or obstruct technological change.⁵⁶

On the face of it, provisions in EC Directives regarding information, consultation, and worker participation have been relatively easily implemented into Swedish law, and integrated with Swedish industrial relations.⁵⁷ Compared to the EC Directives, rights to information, consultation, and worker participation in Swedish law are generally stronger and more extensive; for example, as regards the degree of influence, the subject matter and the timing. The Directives on collective redundancies (Dir. 98/59/EC) and transfers of undertakings (Dir. 2001/23/EC) brought about only minor changes to the (1976:580) Co-determination Act, as did the Directive on the establishment of a general framework for informing and consulting employees (Dir. 2002/14/EC).

The provisions regarding information and consultation in the Directives on collective redundancies (Dir. 98/59/EC) and transfers of undertakings (Dir. 2001/23/EC) were implemented by amendments to

⁵³ See Government Bill prop. 1975/76:105, bil. 1, p. 354, , Bergqvist, Lunning and Toijer 1997, p. 185, and Schmidt *et al.* 1997, p. 163. See also Labour Court judgment AD 1978:60.

⁵⁴ See Government Bill prop. 1975/76:105 bil. 1, pp. 360 f., and Bergqvist, Lunning and Toijer 1997, pp. 252 ff. See also Labour Court judgments AD 1984:98 and AD 1992:7.

⁵⁵ See Bergqvist, Lunning and Toijer 1997, pp. 194 ff., Government Bill prop. 1975/76:105, bil. 1, pp. 354 f., and Rönmar 2006. See also, for example, Labour Court judgment AD 1997:110.

⁵⁶ See Fahlbeck 2008, pp. 21 ff.

⁵⁷ Cf. Bruun and Malmberg 2005.

the (1976:580) Co-determination Act. A new subsection 2 was inserted into Section 13 of the (1976:580) Co-determination Act, obliging the employer to inform and consult all relevant trade unions in relation to collective redundancies and transfers of undertakings, where the employer is not bound by any collective agreement. Existing general provisions on information and consultation applied in situations where the employer was bound by a collective agreement (Section 11 of the (1976:580) Co-determination Act). Section 15 of the (1976:580) Co-determination Act was amended, and now clarifies that the employer is obliged to give all necessary and relevant information, such as information on the reason for the collective redundancies. The information is to be given in good time. The Directive requires the employer to negotiate with a view to reaching an agreement, Article 7(2). This is not expressly stated in the (1976:580) Co-determination Act. The legislative preparatory works to the Act, however, clarify that the employer is obliged to negotiate with this intention. This lack of express implementation has been criticised in the legal doctrine.⁵⁸

A critical issue when it comes to EC labour law involves the privileges of the established trade unions. The Swedish concept of workers' representatives builds on 'formal' trade union representation and reflects long-standing traditions. In some ways, the right to information and consultation for trade unions not bound by a collective agreement with the employer has been strengthened, but some claim that they have perhaps not been strengthened enough. Bruun and Malmberg argue that the right way to interpret and implement the Directive on the establishment of a general framework for informing and consulting employees (Dir. 2002/14/EC) 'in accordance with national law and industrial relations practices in individual Member States' (Article 1(2)) would be to extend the right of primary negotiation in Section 11 of the (1976:580) Co-determination Act to *all* trade unions, including those not bound by a collective agreement by the employer. The legislator, however, took another stance and extended only the right of information.⁵⁹ A related issue concerns the absence of rights to information and consultation at workplaces, and in companies where the employer is not bound by any collective agreement, and all of her employees are non-union members. According to Swedish labour law and the industrial relations system, in principle, in the absence of trade unions there are no workers' representatives. To challenge this, in light of declining trade union organisation rates and the right of information and consultation being a fundamental right,⁶⁰ would be to challenge the very foundations of the Swedish labour law and industrial relations system.

The right to general and primary negotiations is complemented by other provisions in the area of co-determination, such as provisions on priority of interpretation (a right to decide *ad interim*, for example, in disputes on the employee's obligation to work, Section 34 of the (1976:580) Co-determination Act) and a limited trade union right of negotiation and veto in cases where the employer wants to engage a particular person to perform certain work on her behalf, without such a person becoming an employee of the employer (this includes engaging temporary agency workers), Sections 38 and 39 of the (1976:580) Co-determination Act. Trade unions may use their veto when the engagement can be assumed to be in contravention of statutory or collectively agreed provisions for the work in question or when it is otherwise contrary to generally accepted practices in the industry in question.⁶¹ All the same, *co-determination* is really a misleading concept in the Swedish

⁵⁸ See Government Bill prop. 1994/95:102, pp. 58 ff., and Government Bill prop. 1975/76:105, bil. 1, p. 357 and p. 362. See also Nyström 2002, pp 295 ff., and Edström 2003, p. 9.

⁵⁹ See Bruun and Malmberg 2005, pp. 24 ff. Cf. Government White Paper SOU 2004:85, and Government Bill prop. 2004/05:148.

⁶⁰ Cf. Article 27 of the EU Charter of Fundamental Rights and the Community Charter of Fundamental Social Rights of 1989 and the European Social Charter 1996 of the Council of Europe.

⁶¹ See Holke and Olausson 2008, pp. 258 ff. and pp. 288 ff.

context. Trade unions are not – as, for example, German works councils – afforded genuine rights of co-determination or veto.⁶²

The legislator also encourages the social partners to increase the element of co-determination in working life by concluding collective agreements on co-operation and co-determination, Section 32 of the (1976:680) Co-determination Act. Large parts of the Swedish labour market are covered by such master agreements – the Agreement on Efficiency and Participation (*Utvecklingsavtalet*) from 1982 has been discussed earlier in this report.⁶³

Basic functions of the collective agreement are, for example, to create a peace obligation and social truce, to regulate wages and other employment and working conditions, to protect individual employees, and to regulate and facilitate negotiations and other collaboration between the social partners. The principle of *autonomy* of the social partners – the right of the social partners to negotiate and conclude collective agreements without state intervention – is central, not only to the Swedish system of labour law and industrial relations, but also to corresponding systems in most Member States of the EU (cf. concepts such as *collective laissez-faire* in the United Kingdom and *Tarifautonomie* in Germany). Freedom of association and the right to industrial action reinforce this autonomy. Even if the basic functions of the collective agreement are principally the same in large parts of Europe, the view on the collective agreement differs to some degree. In Sweden and the other Nordic countries, a *private law* view of the collective agreement dominates. The collective agreement is seen as a private law contract entered into by two private law entities: the employer/employers' organisation and the trade union.^{64 65}

In the Swedish *autonomous collective bargaining system* the greater part of an employee's terms and conditions of employment is regulated by collective agreements.⁶⁶ Collective agreements are entered into at different levels. Nationwide collective agreements are concluded at sectoral level, and supplemented by local collective agreements concluded at workplace level. In addition, some master agreements are concluded at national top level. A collective agreement is statutorily defined as 'an agreement in writing between an organisation of employers or an employer and an organisation of employees about conditions of employment or otherwise about the relationship between employers and employees', Section 23 of the (1976:580) Co-determination Act. Within its area of application, a collective agreement is legally binding not only for the contracting parties to the agreement, but also for their members, Section 26 the (1976:580) Co-determination Act. A collective agreement has both a mandatory and normative effect, for which reason its rules automatically become part of the contract of employment of an individual employee being legally bound by the collective agreement, Section 27 the (1976:580) Co-

⁶² Cf. Edström 2002.

⁶³ See, for example, Edström 1994, and Schmidt *et al.* 1997, pp. 207 ff.

⁶⁴ In countries such as France, Spain and Belgium, a *public law* view on the collective agreement is more prevalent. The collective agreement is seen rather as a form of public law regulation, having more in common with legislation than with a private law contract. This is reflected in the practice of having the state and its authorities declare collective agreements universally applicable.

⁶⁵ See Bruun 2002, Schiek 2005, Norberg 2002, and Ahlberg and Bruun 1996.

⁶⁶ The scope for regulating terms and conditions of employment by way of individual employment contracts has traditionally been limited. The conclusion of an individual employment contract has mainly marked the start of the employment relationship, and has otherwise remained silent on the issue of material terms and conditions of employment, see further Malmberg 1997.

determination Act. Unless otherwise provided for by the collective agreement, employers and employees being bound by the agreement may not deviate from it by way of an individual employment contract. Such a contract is null and void, and breaches of the collective agreement are sanctioned by the payment of economic and punitive damages. In most cases collective agreements set minimum standards only, allowing employers, trade unions, and employees to agree on better terms and conditions of employment by way of a local collective agreement concluded at workplace level or an individual employment contract.⁶⁷

Swedish labour law does not provide for an extension *de jure* of collective agreements. However, in practice, the coverage of collective bargaining is almost complete and a *de facto erga omnes* effect is achieved.⁶⁸ Important reasons for this are the high organisation rates on both sides of the labour market and the far-reaching legally binding effects of the collective agreement. Furthermore, unorganised employers often conclude collective agreements – application agreements (*hängavtal*) – at local workplace level, undertaking to apply the terms and conditions of the leading national sectoral collective agreement. Even if no such local collective agreement is concluded, the terms and conditions of the leading national sectoral collective agreement may be applicable as constituting established custom and practice. In addition, in practice employers bound by a collective agreement apply its terms and conditions also to unorganised employees.^{69 70} There is no minimum wage legislation in Sweden. Instead it is the sole responsibility of the trade unions to safeguard a general level of pay and employment conditions through collective bargaining and collective agreements.

This autonomous collective bargaining system was put to the test in the context of free movement of services and posting of workers in the much debated *Laval* case, referred by the Swedish Labour Court to the European Court of Justice (ECJ) for a preliminary ruling.⁷¹ In May 2004, *Laval un Partneri Ltd*, posted workers from Latvia to work on Swedish building sites. In June 2004 Laval and the Swedish Building Workers' Union started negotiations with a view to concluding an application agreement to the collective agreement for the building sector. In September and October, Laval instead signed collective agreements with a Latvian trade union. In November the Swedish Building Worker's Union started industrial action in the form of a blockade at all Laval building sites. In December the Swedish Electrician's Trade Union took sympathy action, which prevented electrical work and services being performed for Laval.

The judgment addresses questions on the free movement of services, the right to take industrial action and the Swedish implementation of the Posted Workers Directive

⁶⁷ See Malmberg 2002. Cf. also Nyström 2004, and Edström 2003.

⁶⁸ According to a survey from 2001, the collective bargaining coverage in Sweden is as high as 90–95 percent; see Kjellberg 2003, p. 350, and Kjellberg 2007. According to the 2007 yearly report from the National Mediation Office 600 collective agreements are in force at the national sectoral level. In addition, about 53 500 employers have concluded application agreements, covering about 260 000 employees, see Medlingsinstitutet 2008, pp. 32 f.

⁶⁹ In relation to the trade union having concluded the collective agreement, the employer is obliged to apply the terms and conditions of the collective agreement uniformly to all employees, regardless of trade union membership.

⁷⁰ See Bergqvist, Lunning and Toijer 1997, pp. 310 ff., Malmberg 1997, pp. 144 ff. and Fahlbeck 2002.

⁷¹ C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet* [2007] ECR I-000 and Labour Court judgment AD 2005:49.

(96/71/EC).⁷² The Posted Workers Directive has been implemented in Sweden through the Act (1999:678) on Posting of Workers. Section 5 of the Act refers to the Swedish legislation relating to terms and conditions of employment in Article 3(1) (a)–(b) and (d)–(g) of the Directive, such as working time, annual holiday and health and safety, to be applied to posted workers in Sweden. However, the Act makes no mention of the minimum rate of pay to be applied, cf. Article 3(1) (c). In line with the autonomous collective bargaining system the Directive was implemented through the right of trade unions to negotiate on and ultimately to take industrial action, to force foreign service providers to conclude collective agreements. In *Laval*⁷³ the ECJ recognises the right to take collective action as a fundamental right which forms an integral part of the general principles of Community law.⁷⁴ Industrial action falls within the scope of the Treaty, and Article 49 EC can be invoked against trade unions. The ECJ concludes in *Laval* that the industrial action at hand constitutes a restriction on the free movement of services in Article 49 EC. A restriction of the free movement of services is warranted only if it pursues a legitimate objective compatible with the Treaty and is justified by overriding reasons of public interest. If that is the case it must be suitable for securing the attainment of the objective which it pursues and not go beyond what is necessary in order to attain it.⁷⁵ The ECJ declares that the right to take industrial action for the protection of the workers of the host State against social dumping may constitute an overriding reason of public interest.⁷⁶ However, the specific obligations linked to the signature of the collective agreement in the building sector in *Laval* – going beyond the nucleus of mandatory rules for minimum protection in Article 3(1) of the Directive – cannot be justified as necessary to attain such an objective.⁷⁷

The *Laval* judgment has several implications for Swedish labour law and social dialogue institutions and machineries. Industrial action must be balanced against free movement of services, and requirements for justification and proportionality must be met. This limits the right of industrial action. The ECJ accepts the autonomous collective bargaining system as a method to implement the Posted Workers Directive, even if the method is not mentioned in the Directive.⁷⁸ However, the lack of transparency and the case-by-case negotiation on wages implied in the Swedish system, at least in the building line of business, are not acceptable to the ECJ. There are thus problems with the method of implementation chosen by Sweden – and some of the other Nordic countries. Both the Posted Workers Directive and the ECJ in *Laval* emphasise transparency as regards minimum wages and other terms and conditions of employment. This emphasis has important consequences for future negotiations by the social partners and the framing of collective agreements and their wage provisions. A judgment by the Swedish Labour Court is expected to be given in the spring of 2009, and a governmental inquiry is considering future legislative reforms. As for the scope left after *Laval* for industrial action within the framework of the autonomous collective bargaining system in posting of workers situations it should, in my opinion, be

⁷² For a discussion on the ECJ's assessment of the Swedish 'Lex Britannia', see Malmberg and Sigeman 2008.

⁷³ And in *Viking*, case C-438/05 *International Transport Workers' Federation v Viking Line ABP* [2007] ECR I-000.

⁷⁴ *Laval*, para 91.

⁷⁵ *Laval*, para 101.

⁷⁶ *Laval*, paras 103 and 107.

⁷⁷ *Laval*, para 108.

⁷⁸ *Laval*, para 68.

possible for trade unions to use industrial action in order to force foreign service providers to sign 'adjusted' collective agreements which clearly and transparently specify minimum wages and the nucleus of mandatory rules.⁷⁹

In Sweden there is no statutory regulation on the use of referendum or any other form of vote by the workers at the workplace level as regards social dialogue institutions or machineries. Collective bargaining is based on the idea of representative democracy and individual employees at the workplace are not required to confirm or 'ratify' a collective agreement.⁸⁰

As has been discussed above, in relation to employees of other employers, who perform work at the workplace (temporary agency workers, employees of contractors and service providers), aspects linked to the calculation of staff thresholds, right to vote in staff elections, and selection for staff representation bodies are not relevant in the Swedish context.⁸¹ In principle, the employer's obligation to engage in information, consultation, negotiation, and collective bargaining activities applies only in relation to his or her own employees and their trade union representatives. In Sweden, temporary agency workers are unionised to a great extent. The temporary agency work sector is covered to a large degree by collective agreements between employers' organisations, representing temporary work agencies, and trade unions, representing temporary agency workers. As a result, an absolute majority of the temporary agency workers are covered by a collectively bargained wage guarantee.⁸² The employer's obligations according to *inter alia* health and safety and non-discrimination legislation been extended in different ways also to temporary agency workers, and sometimes also self-employed workers, who perform work at the workplace.⁸³

In addition, the personal scope of collective labour law in Sweden has been extended to one category of 'quasi-employees', so-called dependent contractors (*jämställda/beroende uppdragstagare*). This category of 'quasi-employees' was introduced in collective labour law in the 1940s. Today Section 1 (2) of the (1976:580) Co-determination Act states that: 'the term "employee" as used in this Act shall also include any person who performs work for another and is not thereby employed by that other person but who occupies a position of essentially the same nature as that of an employee. In such circumstances, the person for whose benefit the work is performed shall be deemed to be an employer'. In respect to the provisions of the Act regarding *inter alia* freedom of association, collective agreements, rights to information, negotiation and co-determination and industrial action dependent contractors are afforded the same rights (and duties) as employees.⁸⁴ However, as the extent of the notion of employee has widened in general in Sweden, the importance of the category dependent contractor has diminished. Most of the workers that the legislator originally intended to protect are nowadays covered by the notion of employee and labour law in general. Many argue therefore that the category of dependent contractors lacks practical relevance, or even is obsolete. Others suggest that the category of dependent contractors can be interpreted in new and extensive ways, in order to extend the personal scope of collective labour law to new workers in need of protection, for example, to persons working in the franchising business.⁸⁵

⁷⁹ Cf. Rönmar (forthcoming), Eklund 2008, and Malmberg and Sigeman 2008.

⁸⁰ See Edström 2003, p. 19.

⁸¹ Cf. question 2.4 of the questionnaire.

⁸² See Berg 2008, p. 186 and pp. 238 ff., and Nyström 2001.

⁸³ See Berg 2008, pp. 187 ff. Cf. Engblom 2003.

⁸⁴ See Edström 2002.

⁸⁵ See Bergqvist, Lunning and Toijer 1997, pp. 45 ff., Engblom 2003, p. 143 and Schmidt *et al.*, 1994, p. 70. Cf. also Rönmar 2005.

3. A socio-historical perspective

3.1. Law and political history

The evolution of workers' representation and social dialogue in Sweden – by way of a single-channel system and trade union-track – is to a large extent the result of self-regulation and state non-intervention (cf. Introduction). Fundamental institutions and machineries, and rules and procedures for the interaction between employers/employers' organisations and trade unions were created by the social partners themselves during the early 20th century. In the 1906 master agreement *the December Compromise*, freedom of association and managerial prerogative were legally established. Already early on, these self-regulatory developments were complemented by supportive legislative action. In 1906 a Mediation Act building on voluntary compliance was enacted (and replaced and reformed in 1920). In 1928 an Act on Collective Agreement was enacted, and in 1936 an Act on the Right of Association and the Right of Collective Bargaining. In 1938, following a period of industrial unrest, the social partners concluded *the Saltsjöbaden agreement*, a basic agreement (*huvudavtal*) on negotiations and industrial peace. The subsequent '*Saltsjöbaden spirit*' – characterised by co-operation and social partnership – was probably the most important outcome of the basic agreement, and resulted in a long period of industrial peace. In a 1946 master agreement between the social partners in the private sector work councils, or company or shop floor committees were set up, aimed at providing information and consultation in the workplace.⁸⁶ In the 1970s, Swedish labour law became the object of 'juridification', and legislation on such subjects as co-determination, employment protection, and working time was enacted. In the collective labour law area, the (1976:580) Co-determination Act gathered the legislation from 1920, 1928 and 1936, and, building on trade union influence and representation, added provisions on co-operation negotiations and co-determination.⁸⁷ In 1995 Sweden became a member of the European Union, and the implementation of numerous EC Directives, as well as influence of the case law of the European Court of Justice, have added to the labour law legislation (see Section 2.3).⁸⁸ In 1997 the social partners within Swedish industry – some twenty employer's organisations and trade unions – concluded a historic agreement on negotiations and wage formation: the Agreement on Industrial Development and Wage Formation (*Industriavtalet*), or the Industrial agreement. One aim of these social partners is that the competitive export industry, by means of early settlements, should set the pattern for wage formation and wage norms in other bargaining areas. The intention is also that negotiations should be conducted in ways to ensure that these negotiations are completed before the previous collective agreement expires.⁸⁹ In 2008 the leading labour market organisations started negotiations on a new basic agreement, seventy years after the Saltsjöbaden agreement (still in force today, in part). The social partners emphasise that this agreement is the responsibility of the social partners, not of the government or different political parties, and that existing problems in the Swedish labour market must be solved between themselves in order to prevent legislation. The background for these historical negotiations is found *inter alia* in the Laval dispute, debate and judgment of the ECJ and a new centre-right government coming into office in September 2006, representing a partly new approach to regulation in

⁸⁶ See Aldercreutz 1954, Edström 1994, pp. 80 ff., and Fahlbeck 2008.

⁸⁷ See Edström 1994, pp. 107 ff.

⁸⁸ See Bruun and Malmberg 2005.

⁸⁹ See Elvander 2002, and Nyström 2004.

the labour law and social security area. The social partners hope to reach an agreement (or a closure of negotiations) before the end of 2008.

From a labour law perspective, Edström points to three phases of development. In the first phase, basic regulation on workers' protection was developed in the first half of the 19th century. The second phase was characterised by self-regulation and collective agreements entered into by the social partners, and some elements of legislative interaction, developing a legal framework for freedom of association and collective bargaining. In the third phase, labour law legislation in the 1970s introduced elements of co-operation and co-determination, and some limitations of managerial prerogative.⁹⁰ From an industrial relations perspective, Elvander points to three labour market regimes. The Saltsjöbaden regime from 1938 to 1973/74 was characterised by self-regulation, collective bargaining and co-operation and social partnership. The subsequent conflict or legislation regime from 1973/74 to 1997 was characterised by massive legislative intervention and increased conflict between the social partners. The Industrial Agreement in 1997 introduces a new co-operation regime. Similarly, Lundh points to three regimes, dated 1930 to 1975, 1975 to 2000 and 2000 and onward, respectively. Murhem emphasises the importance of EU membership and Europeanisation, and points to a globalisation or Europeanisation regime from the middle of the 1990s and onward.⁹¹

Workers' representation and social dialogue in Sweden represent a long history of continuity. Changes to the legislation in this area since the 1970s have mainly been the result of EC law, and in this respect there has been no simplification or weakening of the competences of trade union representatives. Developments in the collective bargaining area, such as the Industry agreement, reflect the Swedish tradition of self-regulation, and in principle, result only in simplification measures when this is in the interest of both negotiating parties.⁹²

In relation to the overall political situation in Sweden one can point to the close links between the trade union movement, represented by LO, and the Social Democratic Party, which governed for an absolute majority of the 20th century. In addition, there are similarities between the Swedish representative parliamentary system and the representative trade union system.^{93 94}

3.2. Law and the union movement

For large parts of the 20th century, the trade union movement and the employers' organisations have shared an ideology and strategy of self-regulation, collective bargaining and social partnership. In the 1970s a radicalised trade union movement increased their demands for legislation, and the tradition of self-regulation and social partnership of the

⁹⁰ Cf. Edström 1994, pp. 80 ff. and Edström 2003, pp. 2 f.

⁹¹ Cf. Murhem 2003, Elvander 2000 and 2002, and Lundh 2002.

⁹² Cf. question 3.1.2 of the questionnaire.

⁹³ Cf. Fahlbeck 2008 and Adlercreutz 1997, pp. 33 ff.

⁹⁴ Despite the election in 2006 of a new centre-right government continuity continues. There have been no major changes to the Swedish labour law and industrial relations system, such as restrictions in the right to industrial action. Cf., however, the discussion on the implications of the Laval case, Section 2.3 above.

Saltsjöbaden regime was partly broken.⁹⁵ When it comes to, for example, restructuring and redundancies and information and consultation the trade union movement has taken a pragmatic stance to the managerial prerogative and the needs of the business. In a similar way, the employers' organisations, despite strong initial and principal objections to the (1976:580) Co-determination Act and its co-operation and co-determination agenda, have displayed pragmatic and practical support to trade union representation and information and consultation at the workplace.⁹⁶ In the beginning of the 1990s, in an ideological shift, the Swedish Employers Federation (SAF) (nowadays the Confederation of Swedish Enterprise (Svenskt Näringsliv)) withdrew from corporatist committees and structures (except for the Labour Court) and wage bargaining altogether, resulting in decentralisation of wage bargaining and a shift from three-tier to two-tier negotiations.⁹⁷ High on the political agenda of the Confederation of Swedish Enterprise today is a reform – and restriction – of the rules on industrial action.⁹⁸

However, in the last ten years there are tendencies toward increased co-ordination and centralised negotiations, such as the Industry Agreement, the implementation of the framework agreement on telework and the ongoing negotiations on a new basic agreement between the leading labour market organisations.

3.3. From legal rules to actual practice

Given the trade union-track for workers' representation and social dialogue in Sweden the current trade union organisation rate of 73 percent and collective bargaining coverage rate of 90 percent are some indication of the actual use of social dialogue institutions and machineries and the effectiveness of the legal rules that support them.⁹⁹ There is little or no research on the actual situation as regards *inter alia* information, consultation and negotiation in companies or workplaces without collective agreements.¹⁰⁰

Concluding remarks¹⁰¹

Self-regulation and historical continuity characterise the development in Sweden in the area of workers' representation and social dialogue. The single-channel system and trade union-track put trade union representatives and their role in safeguarding workers' interests in focus. Collective rights for trade unions – not individual rights for employees – are given priority. The workplace level is central. Local trade union representatives take part in

⁹⁵ Cf. Edström 1994, pp. 107 ff. Nycander points to the important and active role of the political parties, the Social Democratic Party and the Liberal Party, in this process, cf. Nycander 2002.

⁹⁶ Cf. Fahlbeck 2008.

⁹⁷ Cf. Nyström 2004, and Kjellberg 1998, pp. 84 ff.

⁹⁸ Question 3.2.2 in the questionnaire is not relevant in the Swedish context, since it involves a single-channel and not a dual-channel system of worker representation.

⁹⁹ Cf. Kjellberg 2007 and Medlingsinstitutet 2008.

¹⁰⁰ However, there are instances where even multinational US companies with 'anti-union ideology', such as Toys R Us, have been forced, by means of industrial action and media attention, to integrate themselves into the Swedish system of trade union representation and collective bargaining.

¹⁰¹ With regard to question 4 of the questionnaire I have experienced no particular difficulties in replying to the questionnaire. However, the Swedish single-channel system and trade union-track for workers' representation and social dialogue have made some questions unnecessary or not possible to answer.

information, consultation and co-determination procedures, and conclude collective agreements (regardless of whether they are agreements on seniority rules in redundancy situations, so-called application agreements with non-organised employers, or local agreements implementing collective agreements on wages concluded at the national-sectoral level). Established trade unions are privileged, and afforded more extensive rights on negotiation and co-determination, and their representatives are given specific protection. In the light of EC law and Directives on information and consultation the position of established trade unions – in relation to minority trade unions and employees at non-union workplaces and companies – is problematic.

The elements of Swedish social dialogue – machineries and institutions, such as information, consultation and negotiation, codetermination and collective bargaining (backed up by freedom of association and industrial action) – are mutually re-enforcing and can best be evaluated and analysed in their entirety. This report has been one attempt to do just that.

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