

Country report: (3) Transposition process

Sweden

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The object of this national report is to provide a brief overview of Swedish implementation of the SE Directive. This report also presents some of the committee's proposals on optional issues contained in the Directive, some of which may be put forward as legislation by the government. The final government proposal for legislation on employee involvement in the SE has not yet been published.

Implementation by law or by collective agreement

A committee inquiry (SOU 2003: 64) proposed that the Directive on employee involvement in an SE should be transposed into Swedish law by special legislation.

The committee asked the social partners whether they wanted to make a collective agreement in accordance with Art. 14 of the Directive. The social partners did not find this appropriate, which meant that transposition by legislation was the only option.

When it comes to implementing the rules of the Directive (the act proposed by the committee) the committee took the Swedish labour market as their point of departure, as a result of which the trade unions have been given a decisive role in the appointment of employee representatives.

Opt-out clause

It seems that the Swedish government does not intend to make use of the opt-out.

Position of the social partners

The social partners in Sweden take a different view on what should happen when employees cannot form a body to negotiate with the employer concerning arrangements for employee involvement (a

negotiating delegation). According to SE Statute art. 12.2, an SE may not be registered unless an agreement has been reached on arrangements for employee involvement.

The employers find the legal situation governing the case in which employees cannot form a negotiating delegation ambiguous and unsatisfactory. They find it unacceptable that employees should have what amounts to a veto of an SE registration process and that national rules should be laid down to circumvent “flaws” in the SE Directive.

The employees’ side, however, is content with this state of affairs. In their view, it is important that employees be involved in forming a delegation. Art. 12.2 of the SE Statute puts reasonable pressure on enterprises to participate in board-level participation and information and consultation. The employees’ side shares the committee’s view that has no solution to the case of what should apply in the event of a negotiation delegation not being established at all.

The committee’s position is that the Directive does not resolve this issue. At the same time, they believe that to “make good” this defect would be to supersede the Directive. They have therefore left this issue unanswered, to be discussed either as part of the work to be done by the Commission’s working group or in conjunction with a review of the Directive.

The committee’s proposal on the employee delegation

National rules shall dictate how the places in the employee delegation allocated to employees in each country are to be distributed nationally. The distribution of such places in Sweden, after the geographical allocation, will therefore be a Swedish issue, regardless of where the SE’s registered office will be located. The committee proposes to ‘allocate the seats among the employees in the participating companies and in subsidiaries and establishments in such a way as to give priority, in principle, to the employees of participating companies and then to allot places to those in subsidiaries and establishments’.

The issue of which members are to be appointed to the delegation is likewise a national matter. The committee proposes that selection be carried out according to the Swedish model of trade union representation in the workplace. If a collective agreement applies the members are appointed by the relevant trade union organisations. If these organisations cannot agree, the committee proposes that the Swedish regulation on the selection of employee members in accordance with the Board Representation Act should form the basis of the procedure. If there is no collective agreement at any of the workplaces, the local employee organisation representing the most employees at the participating companies, subsidiaries and establishments shall appoint the members, if the organisations cannot agree on an alternative course of action.

The committee's proposal on employee involvement

The committee's legislative proposal stipulates the different areas to be discussed by the parties in order to reach an agreement on employee involvement in the SE. There are no restrictions on what such an agreement can contain, but the voting rules differ depending on what issues the draft agreement covers.

According to the basic rule in the committee's proposal, a draft agreement must be sanctioned by an absolute majority of delegation members, who also represent an absolute majority of the employees. A qualified majority is needed to sanction a draft agreement that implies a reduction in employee participation on the boards or equivalent company bodies of the relevant companies. The same applies to a decision to relinquish employee involvement entirely.

There is no obligation to reach agreement on every point on the agenda. The parties can, on the contrary, themselves decide the extent to which they feel it is appropriate to regulate the various issues. However, if the negotiations result in the employees relinquishing effective involvement, the prescribed requirement of a majority in favour must be observed.

An agreement should regulate the circumstances under which said agreement shall be renegotiated, for example in the event of changed conditions within the SE, its subsidiaries and establishments. It should also include information on what shall apply in the event of new negotiations, as a result of changed conditions or expiry of the agreement period, not leading to the conclusion of a new agreement.

The participating companies shall pay the costs of the delegation, within reason, including costs associated with establishment of the delegation.

The committee's proposal on what should happen if agreement is not reached

If the parties do not conclude an agreement, the reference provisions on information and consultation will apply, on condition that the delegation has not decided to relinquish employee involvement. Such application depends on the fulfilment of various conditions related to the way in which the SE was established. If different forms of participation exist in the various company bodies, the negotiating delegation shall decide on the applicable form of participation. The committee proposes that the companies themselves should decide if the delegation fails to do so. The committee takes the view that this is better than no decision being taken at all.