Finland

*by Jari Hellsten**

Legal aspects

1. Overview of national corporate governance system

The Finnish general Stock Corporation Act (osakeyhtiölaki) requires only one tier of corporate governance in the shape of a compulsory executive board. Supervisory boards are thus rare and can be found in only about a dozen big industrial companies with a significant state ownership (though no longer necessarily a majority shareholding). IT is important to note that the CEO and other directors can be full members of the executive board.

Purpose and scope

In Finland the representation of the personnel in *corporate bodies* is arranged by law: the “Act on Personnel Representation in the Administration of Undertakings” (725/90), hereinafter “APRA”.

The act states that the personnel has the right to participate in decision-making in executive, supervisory or advisory bodies of the undertaking when they are handling matters of importance to business operations, finances and the personnel’s position in the undertaking in order to advance the functioning of the undertaking, to intensify co-operation between the undertaking and its personnel and to increase the personnel’s possibilities to exert influence in the undertaking (Section 1).

APRA is applicable to Finnish joint-stock companies, co-operatives and other economic societies, insurance companies and banks that have a regular staff of at least 150 working in Finland (Section 2). Enterprises of single traders, general partnerships, commandite companies and non-profit associations are not covered by APRA.

APRA is different to the Act on Co-operation within Undertakings (725/78, several times amended, at last by law 478/2001), hereinafter “ACU”. The latter covers in principal anything influencing the position of personnel within an undertaking (with a staff more than 30) but grants no seat in corporate bodies for personnel representatives. ACU is a diluted version of the Swedish Medbestämmande or of the German Mitbestimmung system. ACU also especially implements the EC Directive on Collective Redundancies (98/59/EC), as well as the Directives on EWC and the Representation of Personnel (01/23/EC). ACU is essentially a procedural act, highlighting co-operation between management and labour while APRA ‘simply’ means to ensure personnel representation in corporate bodies. I shall come back to the relationship between ACU and APRA later in the text.

* Legal Adviser SAK (Central Organisation of Finnish Trade Unions)

Implementation through Agreement

APRA prefers implementation through an agreement between the undertaking and the personnel. If no agreement can be reached, personnel is entitled to demand the application of the statutory minimum requirements (Section 3).

APRA notes that the agreement on personnel representation can be concluded in the ACU-procedure, hence either in a special meeting under ACU or in the co-operation committee under ACU. On the personnel side, there must be at least two personnel groups, in practice this means one blue-collar and one white-collar group or two white-collar groups. The groups supporting the agreement must represent the majority of the personnel (Section 4).

APRA does not limit - in principle - the contents of the agreement. The overall position of agreements concluded under ACU are not strictly defined. However, APRA sets up compulsory requirements on qualifications of representatives, protection against dismissal, professional secrecy and sanctions. This, in the context of the purpose of the Act, leads to the conclusion that an agreement giving a commitment by the personnel to skip the whole representation procedure would be null and void – as there could be a new majority of the personnel claiming an agreement or the application of statutory minimum requirements. However, there is no legal precedent for this. Still, the Act notes that application of the statutory minimum conditions can at any time be replaced by an agreement (APRA, Section 5(4)).

In this framework the essential point for an agreement under ACU is to agree upon *in which body the personnel shall be represented*. It is possible to cover every essential body: supervisory board, board of directors, management groups or similar bodies that together cover the profit units (economic entities) of the undertaking. Vice versa: any of these bodies may be left without personnel representatives.

Naturally, a binding agreement under ACU about personnel representation can be concluded also in companies with a staff less than 150.

Implementation by Statutory Minimum Requirements (Section 5)

If no agreement is reached, and the staff is at least 150, *two* personnel groups, representing the majority of personnel, have the right to demand the implementation of APRA – in the form of the minimum requirements set up by APRA, Section 5. This means in practice the right to nominate their representatives, with personal deputies, to one or more administrative bodies, *selected by the undertaking*, among the supervisory board, board of directors, or such management groups or similar bodies that together cover the profit units of the company. It is essential to see that *one* personnel group, that of blue-collar workers, cannot impose the implementation, even if it is in a majority position among the personnel.

It is also important to note APRA does not guarantee any representation in the board of directors (in separate companies or in groups of companies) and it is always up to the management to define the bodies to be equipped by personnel representatives. In so doing, it is enough to ‘let them in’ at the level of the management group in profit units of a company or a group.

Personnel representatives are always additional to the other members of the bodies concerned. They may total one quarter of the number of other members but never amount more than four. They have the normal term of office, unless agreed otherwise. Lacking any other provision, the term shall be three years. Statutes under Joint-stock Company Act have to be amended, when necessary, to allow at least one personnel representative into the body concerned.

The implementation term is *one year* following the demand of the personnel. Changes in the company structure need to be reflected accordingly, also *ipso jure* in case of transfer of undertaking or merger. These provisions can be set aside by agreement.

In the case that the undertaking neglects to respect the demand of the personnel to implement APRA, the county government may impose a penalty fine. The application for the penalty may be lodged by the representatives of the personnel groups, as well as trade unions representing them, and by the Ministry of Labour which is a supervisory authority.

Provisions on Personnel Representatives (Sections 6 – 11)

The reps have to be legally capable (not bankrupted, neither under a business ban), Section 6. If personal groups cannot agree on rep(s), election takes place, applying the procedure in electing the compulsory safety and health representatives (Act 131/73 etc.). The personnel groups under ACU nominate the candidates (Section 7).

Basically, the personnel reps have the same rights and duties and receive the same fees as the other members in the body concerned, including the ultimate duty to pay compensation for mismanagement or to be punished if breaking insider rules. These rights and duties are mainly prescribed by the relevant company law. However, the personnel reps are not entitled to participate in matters concerning election, dismissal or contract terms of the management, the personnel's terms of employment, or industrial action. Their voting rights may be restricted by agreement under Section 4. If a representative is nominated to board of directors, the deputy can participate in the meetings and voice his opinions (Section 9).

It is not possible to free the personnel representatives of the corporate bodies from the duties established by company law or other provisions outside APRA through agreement.

The undertaking must grant release from regular work for ordinary meetings, as well as for necessary preparatory work of the personnel representatives together. Accordingly, the employer must compensate for any loss of income. Further time off and compensation requires consent of the undertaking. Relevant expenses are compensated and a fee is paid for attending meetings outside normal working hours (Section 10).

According to the Stock Corporation Act the shareholders' general assembly may dismiss any board member (supervisory board included) or the whole board and appoint a new one. Representatives of personnel have no special status in this sense. Note that relevant changes may also occur in situations such as mergers cases. The law does not include special provisions on that although general civil law principles in mergers justify the assumption that a reasonable period for changes must also applied for personnel representation.

If there is an agreement on personnel representation, as is normal in companies that apply it, the agreement remains in force in the case that a representative of the personnel is dismissed from board. This leads to the appointment of a new board member. However, no case-law exists on this kind of situation.

APRA grants the reps the same protection against dismissal as that granted by the Act on Working Contract for shop stewards and elected representatives for academic professionals (Section 11). This protection under APRA means protection in terms of *job security*. As long as they are in the position of a personnel representative they can be dismissed from their job, thus from the whole

company, only under extremely limited conditions, in practice just when closing down the whole company. Any violation is punished under Penal Code, Chapter 47, Section 4.

Confidentiality

Under APRA, any information declared by the undertaking to "constitute trade and professional secrets and deemed potentially harmful to the undertaking or its contracting parties if disclosed to outsiders, may only be discussed by the workers, employees and personnel representatives who are affected by the said information. Even then, the information may not be disclosed to outsiders." (Section 12)

However, while this wording of APRA is strikingly strict and refers to the bold announcement, only, it is clear that trade or professional secrecy is ultimately assessed *objectively*. At the same time, the personnel representatives have the overall secrecy rules applicable to any members of the body concerned. The possibilities to discuss matters with workers concerned are *lex specialis* in relation to these general rules.

Individual's financial position, state of health or other private matters are equally subject to confidentiality – unless the person removes it himself.

Provisions for groups of companies

APRA doesn't include special provisions for groups of companies. No board members are compulsory on the group (corporate) level. I recall that neither are they compulsory at the level of the board of a daughter company. What exists is the right to get information and be consulted by the group management on the basis of ACU. Its provision transpose also the provisions of the EWC-Directive.

2. Who are employee actors?

The representatives need to be members of personnel. Trade unions or any other outside organisations have no right to nominate candidates. However, in practice the representatives in most cases are union members, and nominating the candidates is a usual issue for union members and their union bodies, but, only within the company concerned.

APRA does not prevent the workers' and employees' representatives under ACU or the collective agreement concerned becoming representatives under APRA, too.

3. How do they interact?

There are no general rules on the interaction of the employee representatives. Neither of these laws (APRA and ACU) defines the ways how these representatives have to proceed inside their 'own' side, hence among the personnel groups, or how they have to act in the body in which they are personnel representatives. Hence, all this is left to unofficial or company-related procedures. However, it is clear that the undertaking may not intervene in the internal reasoning between the representative and personnel or workers and employees concerned. On the other hand, whether an agreement under Section 4 may validly include procedural *rules* for personnel representatives, so

as to legitimate their mandate, is a moot point. On the personnel side the prevailing interpretation is that such rules are not valid.

APRA does not include any clause on resignation of the representative based on any other reason than losing his formal qualifications (bankrupted or under business ban) or on being prevented (normally because of illness) from carrying out his duties. The personnel groups nominating have no right to recall their representatives.

While APRA does not include rules on the interaction, thus, on co-operation between the ordinary and deputy member. Accordingly, interaction between the two or more ordinary members is up to them. Every member is – in formal terms of law – independent also in that sense.

Practice

1. Practice / law

As a background factor a few words is needed about the trade union coverage and structure in Finland. The overall organisation rate is in the private sectors, too, over 80 %. During the latest decade especially the amount of organised salaried employees and managerial staff (academics) has grown.

Blue-collar workers are normally organised in the Central Organisation of Finnish Trade Unions (SAK), salaried employees in the confederation STTK and higher educated staff in their confederation AKAVA. Only a few marginal unions fall outside these three confederations. Notwithstanding some natural quarrels about their borderlines, the confederations are in co-operation at the national, industrial and company level. Depending on the number of personnel representatives they are normally able to agree upon the division of the seats, perhaps completed by a rotation or having a deputy from another personnel group. In traditional industry SAK is normally the biggest, followed by STTK and AKAVA. In some new branches recruiting specially educated employees, such as in IT-industry, STTK and AKAVA are sometimes bigger groups.

Hence, in most of the companies within the scope of APRA the organisation labour forms the majority within the personnel and is able – in principle – to launch the implementation of APRA. – I come back to the actual state of affairs below. Consequently, one can happily suppose that every single personnel representative is a union member while under the formal terms of APRA union members are by no means pre-qualified as personnel representatives. Such a pre-qualification would, besides, violate the principle of equal treatment.

I recall that the only official position the trade unions have under APRA is the right to demand the implementation of the minimum requirements before the county government which, by definition, means to give silent support to personnel groups. However, it is unclear if the unions thereby may challenge a *mala fide* implementation by a yellow agreement under Section 4. No precedent exists.

2. Studies

Researcher Kari Sairo of Finnish Metalworkers' Union published – in Finnish - in 2001 a study with survey method, called Personnel Representation in Companies of Metal- and Electronic Industry (Henkilöstön hallintoedustus metalli- ja elektroniikkateollisuuden yrityksissä,

Metallityöväen Liiton tutkimustoiminnan julkaisuja, ISBN 951-9470-66-2). I note – in brief – his conclusions in this report.

The Sairo report consisted of a survey sent to 262 blue collar shop stewards in metal and electronics out of which 203 replied. His conclusions were:

- In general terms, shop stewards are satisfied with the increased co-operation between management and labour.
- Personnel representatives' possibilities in the practical work of board of directors should be promoted.
- Trade unions should invest more in supporting training.
- Personnel representation fits well in the overall representation of interests.
- Personnel representation is lacking in too many companies.

The most important finding in the study was the amount of companies with no representation at all. Namely, in more than a half of companies with a staff of 150-200 there was no representation. Of bigger companies one third went without representation. Some of these problems stem from a failure of co-operation between the personnel groups. Namely, according to the law there must be *two* personnel groups inside the company demanding the implementation of APRA but it sometimes happens in smaller companies that salaried employees and managerial staff as groups are so small that they do not feel that they would be getting any added value through such representation and so they are not interested.

Another essential finding was that while the study covered 136 company entities (profit units), in 81 cases representation was realised in profit units, in 35 cases in the board of directors, in 8 cases in the supervisory board and in 12 cases in some other body.

History/culture/politics

1. Brief history

There were some experiments in state-owned companies during 70's and 80's, meaning mainly representation of employee representatives on the supervisory boards. In 1987 a State Committee Report (1987:18) was published and the first blue-red government of the country that started in spring 1987, pushed the law through the Parliament in 1990.

In the State Committee trade union members wanted above all an absolute right to representation in the board of directors. Industry highlighted the voluntary nature of any provisions. State officers were ready to allow a compulsory representation in the supervisory board if such a body existed.

The government had recourse to a typical blue-red compromise that endorsed and recognised the 'necessary' diversity, highlighted the agreement model and finally left the selection of bodies equipped with personnel representation up to management.

In sum, the Finnish model includes many possibilities but finally guarantees (for management) keeping personnel representatives outside the strategic bodies, board of directors in particular.

2. Actual Debate

There is no prominent public debate on board level participation in Finland for the moment. Various relevant actors are starting preparations with a view to implement SE Regulation with its consequent Directive on representation. This should also bring about some kind of debate on representation in other EC Member States, highlighting also the weaknesses of the Finnish system. There are no essential differing opinions among the national trade unions and their confederations.

At the time of writing, the programme of the next (centre-left) government was not known, only its composition. The aim of the trade union confederations has been to get a thorough redrafting all the representation systems (ACU, APRA, Act on Personnel Funds etc.) launched.