



Country report:

Sweden

**The SCE Regulation and the associated Directive on
employee involvement in European Cooperative
Companies**

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The Directive on takeover bids

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The SCE Regulation and the associated Directive on employee involvement in European Cooperative Companies

The SCE Regulation and the associated Directive on employee involvement in European Cooperative Companies (SCEs) has now been transposed in Sweden. The Directive was transposed through the Act on employee involvement in European Cooperative Companies (unofficial translation: Lag (2006:477) om arbetstagarinflytande i europakooperativ) and entered into force on 18 August 2006.

One interesting issue is the establishment of a time-limit in the transposition of Article 3.2 of the Directive. The SCE Directive, like the SE Directive, lacks any sort of information on the formation of an SCE if there is no special negotiating body, particularly if the employees refuse to participate in the creation of such an organ or stall it. In effect, such a refusal gives the employees a right of veto since the creation of a special negotiating body is a prerequisite for the formation of an SCE. In the preparatory work before transposition of the SE Directive the Swedish government assessed the issue and stated that it probably wasn't the European legislators' intention to give veto such powers to the employees. However, no solution was presented. When transposing the SCE Directive the Swedish government instead looked at the 10th Directive on mergers, taking inspiration from the statement on p. 13 of the Preamble: 'A prompt start to negotiations under Article 16 of this Directive, with a view to not unnecessarily delaying mergers, may be ensured by Member States'. The Act transposing the SCE Directive now contains a 10-week limit. If the participating legal entities have taken the necessary measures to create such a negotiating body, the employees must appoint their representatives within 10 weeks; after that, the clock starts ticking in accordance with Article 5 of the Directive. At the same time, the Swedish act implementing the SE Directive was amended, introducing the same time limit, thus ensuring that no veto powers are given to the employees in the event of the formation of an SE company.

Another interesting issue concerns the transposition of Article 10.3 of the Directive, where it is stated that '(e)ach Member State may lay down particular provisions for SCEs in its territory which pursue directly and essentially the aim of ideological guidance with respect to information and the expression of opinions, on condition that, on the date of adoption of this Directive, such provisions already exist in the national legislation.'

In Sweden such provisions have existed since the 1970s. In the Co-Determination Act (1976: 580) it is stated that '(a)n employer's activities that are of a religious, scientific, artistic or other non-profit making nature, or that

have co-operative, labour union, political or other opinion-forming aims shall be exempted from the scope of this Act with respect to the aims and focus of such activities.’ The reason for these provisions is that employees should not be given the right to co-decide in matters where ‘company democracy’ might conflict with other forms of democratic influence or where the employees pursue a political agenda.

These provisions were also included in the act transposing the SCE Directive. The question was raised in the submission of the University of Uppsala whether the activities of an SCE would not always be considered of a cooperative nature and thus whether the aim and focus of the SCE would be excluded. This could mean that co-determination in an SCE would be merely on paper. On the other hand, according to Swedish case law the rules in the Co-determination act should not be seen as a general limitation on employee influence in cooperatives.

Another point worth mentioning concerns the possibility of entitling employees to participate in general meetings or in the section or sectoral meetings of the SCE. According to Article 4.5 of the Directive agreements on arrangements for employee involvement in the SCE can include such an entitlement, taking into consideration the limitations in Article 59(4) of the Regulation. A prerequisite for this entitlement is that it was provided for in national legislation at the date of the adoption of the Regulation. According to the Swedish legislation employees and others can be given the right to participate (to ‘sit in’), but not to vote; the prerequisite for voting is membership of the cooperative.

The Directive on takeover bids

The Directive on takeover bids has been transposed in Sweden mainly through the Act on public takeover bids (unofficial translation of Lag (2006:451) om offentliga uppköpserbjudanden på aktiemarknaden) and entered into force on 1 July 2006.

The provisions in the Directive for employee involvement have not been much debated in Sweden; one of the few employment-related issues arising when the Directive was transposed was the question of where the regulations would fit systematically. One of the reasons that the rules on employee information were not seen as belonging to the Co-determination act (1976: 580) was that, according to the draft Swedish takeover act, the employer can be responsible for informing the employees on issues where a decision has been made by someone other than the employer.

According to the Swedish interpretation in the draft, the Directive provides for information for both organised and non-organised workers directly, which was another reason the rules on employee information in a takeover situation would fit poorly into the Co-determination act, which deals mainly with relations between employer and employee organisations. The issue of where to put the rules on employee information was solved by making them part of the new act on takeover bids.