

Involvement of Employees in Private Enterprises in Four Nordic Countries

Örjan Edström

1	Introduction	160
2	Denmark	161
	2.1 General Background	161
	2.2 The Co-operation Agreement	162
	2.3 The Trade Union Representative	164
	2.4 Employee Representation at the Board Level	165
3	Finland	166
	3.1 General Background	166
	3.2 The Act on Co-operation within Undertakings	166
	3.3 The Trade Union Representative	170
	3.4 Employee Representation in Company Administration	170
4	Norway	171
	4.1 General Background	171
	4.2 The Co-operation Agreement	172
	4.3 The Trade Union Representative	175
	4.4 Employee Representation at the Board Level	176
5	Sweden	177
	5.1 General Background	177
	5.2 The Act on Co-determination	177
	5.3 The Trade Union Representative	181
	5.4 Employee Representation at the Board Level	182
6	Conclusions	183
	6.1 Collective Regulations the General Basic Pattern	183
	6.2 Forms and Procedures	183
	6.3 Issues for the Involvement of Employees	184
	6.4 The Trade Union Representatives	185
	6.5 Board Representation	186
	6.6 Concluding Remarks on the Impact from EU Labour Law	186
	References	188

1 Introduction

In the Nordic countries the involvement of employees on the workplace is considered to be of great importance for workers' engagement and commitment in company affairs and for the gaining of productivity and efficiency. The matters that in accordance with national regulations or collective agreements should be subject to workers' involvement are characterized by reciprocity or mutual interests between the parties rather than a conflict of interests. At the same time the regulations on the involvement of employees imply restrictions on the employer prerogatives, even if these prerogatives basically remain.¹

The aim of this article is to analyse the national systems for the involvement of the employees in the employer's decision-making process in private enterprises in Denmark, Finland, Norway and Sweden. In this context there is also reason to focus on the national regulations concerning workers' or trade unions' representatives, which are fundamental for how the systems for the involvement of employees works. Further, I will comment on the involvement of workers in the decision making at the Board level.

Comparatively, in the Nordic countries the collective agreements are very important for the regulation on the involvement of workers in private enterprises. However, there is a growing impact from EU labour law on these matters since Denmark, Finland and Sweden are Member States and Norway is associated as a part in the Agreement on the European Economic Area (the EEA Agreement).²

The Council has taken several EC Directives where regulations of relevance for the involvement of employees in private companies are to be found, and in short I will touch upon the way these regulations have been implemented in the four Nordic countries.³ Further, in March 2002, the Directive (2002/14/EC) of the European Parliament and of the Council establishing a general framework

¹ See Reinhold Fahlbeck's article in this volume.

² Concerning the relationship between Nordic and EU labour law, see Ruth Nielsen's contribution in this volume.

³ Regarding the involvement of employees, the EC Directives to be considered in this article are the *Council Directive (98/59/EC) on the approximation of the laws of the Member States relating to collective redundancies*; which replaced former Directive (75/129/EC), amended by Directive (92/56/EC), and *Council Directive (2001/23/EC) on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses*; which replaced former Directive (77/187/EC), amended by Directive (98/50/EC). There is also reason to mention *Council Directive (94/45/EC) on the establishment of European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees*. Finally, in *Council Directive (2001/86/EC) supplementing the Statute for a European company with regard to the involvement of employees* there are regulations on the involvement of employees, but so far the Directive has not been subject to implementation in national law and I will not make any comments on it. Neither will I comment on the regulations on information and consultation concerning safety and health on work to be found in *Council Directive (89/391/EC) on the introduction of measures to encourage improvements in the safety and health of workers at work*.

for informing and consulting employees in the European Community was taken. The deadline for the implementation of the Directive is 23 March 2005.

There are some delimitations to be pointed out. Hence, I will not deal with collective bargaining or negotiations on industrial disputes or right issues. Another matter, which I will not comment on, is the co-operation on working environment matters.

Regarding terminology I would like to make three introductory remarks. The use of the term involvement of employees covers different national terms and aspects of employee involvement such as co-determination, information and consultation as well as board representation.⁴ The term trade union representative will be used even though there are differences in the Nordic countries depending on if the trade union representative is representing all employees, the trade union members only or the trade union as an organisation. Finally, when I discuss employee involvement on the top level I will use the term Board representation, although this term is not fully appropriate regarding the situation in Norway and Finland.

2 Denmark

2.1 General Background

A fundamental starting point to observe on the beginning of the process towards the today situation on the involvement of workers in Denmark is the September Agreement (Septemberforliget), concluded between the *Danish Employers' Confederation* (Dansk Arbejdsgiverforening; DA) and the *Danish Federation of Trade Unions* (Landsorganisationen i Danmark; LO) in 1899.⁵

The first collective agreement in order to establish representation for the employees at the shop floor level was concluded in 1926–1927 between the parties in the iron and metalworking industry. Several agreements in the same spirit of co-operation have been concluded since then. In 1947 an agreement entitled the employees access to information on company affairs was concluded. A base for the distinguishing of a difference between conflict matters and matters where the employer and the employees had a common interest was established and Co-operation Committees were agreed upon. In 1965 a Works Council Agreement was concluded and later on in 1970 an agreement opened up for further involvement of workers in companies.

Today the most important agreement on matters concerning co-operation on the work place is the Co-operation Agreement concluded in 1986 between DA

⁴ The term “involvement of employees” is used in Council Directive (2001/86/EC) supplementing the Statute for a European company with regard to the involvement of employees.

⁵ For an elaborated account of the development of Nordic labour law in a historical perspective, see Ole Hasselbalch's article in this volume. Concerning the labour market organizations in the Nordic countries, union density rates etc., see Reinhold Fahlbeck's article.

and LO. The Co-operation Agreement replaced the former agreements on co-operation as well as an agreement concerning technology matters.

Already this short introduction implies that the collective agreement in practice is the dominant form for “labour law” in Denmark. However, there are also certain legislation following from Council Directive (75/129/EC; now 98/59/EC) on collective redundancies and the Council Directive (2001/23/EC) on the employees’ rights at transfers of undertakings etc. (former Directives 77/187/EC and 98/50/EC).

Concerning collective redundancies the Directive mentioned is implemented in Danish law through the Act no. 414/1994 on notice at redundancies of a larger scale (Lov om varsling i forbindelse med afskedigelse af større omfang) amended in 1997.

Regarding the employees’ right to information and consultation at the transferring of an undertaking, there is a special Act no. 111/1979 on the protection of wage earners in case of transfer of the ownership of enterprises (loven om lønmodtageres retsstilling ved virksomhedsoverdragelse) taken in order to implement the Directive in Denmark. The Act was amended in 2000 because of the new Directive from 1998.

2.2 The Co-operation Agreement⁶

In the introduction to the Co-operation Agreement (Samarbejdsaftalen) it is stated that the parties agree that a “continuous improvement of the activities’ competitiveness and the employee’s job satisfaction are a prerequisite for a continued development of enterprises and for enhancing the employee’s comfort and well-being”. Development and improved efficiency at the activity is said to be a common interest for the employer and the employees.

Further, it is stated that management forms and forms for co-operation and information shall involve as many employees as possible in order to engage the employees in the shaping and organising of the daily work. Decentralization and delegation to the worker or groups of workers shall be a part of the course of action.

The Co-operation Councils

The Co-operation Councils (Samarbejdsudvalg) play an important role in the system for the activities aimed at involving the employees at the work place. If the number of employees is 35 or more within the same geographical unity in an undertaking, a Co-operation Council shall be established for the development and following of the daily cooperative activities. The number of representatives is enlarged depending on the number of employees according to a scale stipulated in the Co-operation Agreement.

The number of persons representing the employer (Group A), supervisory staff included, shall according to the table presented in the Agreement be equal

⁶ The following comments on the Co-operation Agreement are based on the 1999 edition of the agreement.

to the number of representatives for the employees (Group B). The management appoints the representatives for the employer and the employees elect the rest for a period of two years. The trade union representative is however *ex officio* member of the committee.

Chairman for the committee is a senior executive and the employees elect the deputy chairman. The secretary at the meetings – which shall be held at least six times per year – is jointly elected by members of the two groups respectively. The Council may be extended by representatives for groups that are not members of a trade union under the LO.

In enterprises with less than 35 employees the management together with the employees shall search for ways to cooperate in order to fulfil the goals etc. stipulated in the agreement.

In the Co-operation Agreement it is specified the kind of matters that shall be subject to information or further engagement by the Co-operation Council:

- The development of principles for local work and welfare conditions and the principles on personnel policy.
- The principles for education and retraining of personnel who will work with new technology.
- The establishment of principles for the collection and use of personal data.
- Suggestions concerning the broad outlines for the production, the shaping of work and larger rearrangements in the activity.
- The consequences of larger changes in the use of technology from economic, personnel, educational, and environmental points of view.
- An orientation on certain aspects when there are suggestions on new wage system in order to promote productivity and more.

For specific or ad hoc matters the Co-operation Council can establish Lower Councils (underutvalg), for instance certain Department Councils, Technology Councils and Education Councils.

At the dealing with principles in force or when developing new principles, the parties at the Co-operation Council shall endeavour unanimous action. When trying to reach unity the Council also can search for guidance from the Co-operation Board (see below).

A demarcation of the Co-operation Council's activity is that the Council shall not deal with matters concerning wage agreements, which normally is dealt with in dispute negotiations between the employers and the trade unions.

The employer shall regularly *inform* the Co-operation Council on some specific matters such as:

- The enterprise's financial position and future prospects, including the volume of orders and market conditions, as well as production matters.
- The employment outlook.
- Major changes and any reorganisation contemplated, e.g. the application of new technology in production and administration, including the introduction of computer-aided technology and systems.

Further, concerning information the Co-operation Council shall develop forms of information and systems for information on the Council's work to the employees.

Finally, if the employer is a multinational company under the scope of Council Directive (1994/45/EC) on European Works Councils, there are certain regulations following the Directive in the Act no. 371/1996 on European Works Councils (loven om europæiske samarbejdsutvalg).

The Co-operation Board

Between DA and LO on the national level there is a Co-operation Board (Samarbejdsnævnet) established, which is regulated by the Co-operation Agreement. The Board consists of seven members from each side. The matters for the Board to consider are information activities and development work in order to promote co-operation on the enterprise level. The Board shall promote and facilitate the establishment of Co-operation Councils in undertakings and provide guidance for such councils.

Finally, the Co-operation Board is the instance to deal with local disagreements on co-operation matters within the framework of the Co-operation Agreement and the Board shall also consider situations when representatives for groups – not members of the LO – might take place in Co-operation Councils in the enterprises.

2.3 The Trade Union Representative

The first collective agreement on trade union representatives (Tillidsrepresentanten) was concluded in the iron industry at the turn of the century and since the beginning of the 20th century trade union representatives have been recognised by the employers. In the General Agreement (Hovedaftalen) between DA and LO in 1960 it was recommended that regulations on trade union representatives should be part of every collective agreement; today this regulation is found in § 8 of the Agreement.

In line with the General Agreement there are regulations on trade union representatives in collective agreements covering different branches. Their duties are only vaguely regulated although a trade union representative shall do his best to contribute to a satisfactory collaboration between the employer and the employees. Further, the trade union representative participates in negotiations between the employer and the employees on most matters concerning for instance wages and remuneration, other conditions on work and disputes between the parties.

Normally, all employees in an undertaking – members as well as non-members of the trade union – elect the trade union representative. Hence, the trade union representative is considered to represent all employees rather than only the members of the union.

The trade union representative must be qualified for his or her position. For instance, typically in order to fulfil the requirement for being a “qualified employee”, the employee shall be a member of the trade union, he or she should

have been employed for at least one year and shall be recognised as a capable worker.

According to the General Agreement a trade union representative has a certain employment protection. He cannot be subject to dismissal because of shortage of work unless the trade union has got a possibility to try the dismissal and to negotiate it in the normal procedure for dispute resolutions. The negotiation shall take place within one week and shall be carried through as soon as possible.

2.4 Employee Representation at the Board Level

In Danish joint-stock companies the Supervisory Board (Bestyrelsen) shall deal with decisions on policy, the budget and other principal matters at the enterprise. The Board of Management (Direktionen) shall deal with the day-to-day decisions realising the policy, budget etc.

According to the Danish Companies Act no. 370/1973 (Aktieselskabsloven; reprinted 2000-05-07 no. 324) the Supervisory Board shall have at least three members (Ch. 9 § 49). The Board shall be elected by the General Assembly of the company. Further, the company's articles of association may provide a possibility for public authorities to nominate members of the Board.

Concerning the right to representation for the employees a basic prerequisite is that the company during the past three years have employed an average of not less than 35 employees. If so, the work force is entitled to elect an additional number of members and deputy members for the Supervisory Board (§ 49). The number of workers' representatives shall correspond to half the number of the members elected by the General Assembly, but a minimum figure is two employee representatives. Normally, a Board with more than a total of five members has one-third employee members.

The employee representatives as well as their deputies are elected for a four-year period and the election should be carried out in a written voting procedure. Further, to be elected the employee should have been employed at the enterprise for at least one year.

In an affiliated company of a group, the employees have the right to elect representatives to parent company's Supervisory Board.

The right to representation for employees on the board level in other private companies than joint-stock companies, such as smaller business firms with comparatively less formal requirements, is regulated in the Private Companies Act no. 371/1973 (Lov om anpartsselskaber; reprinted 2000-05-07 no. 325).

Even in such companies the requirements for the employees' right to representation at the Board level are that the company during the past three years have employed an average of not less than 35 employees (Ch. 5 § 22). The managing structure in companies ruled by the Private Company Act is not necessarily similar to the structure present in joint-stock companies.

The company can have a Supervisory Board or a Board of Management or both these levels. The employees have the right to be represented at the Supervisory Board. The share of employee members shall be one-third or at least

two members. Further, the employees in an affiliated company are entitled to elect representatives to the parent company's Supervisory Board.

3 Finland

3.1 General Background

After the Second World War there were far-reaching plans to reduce the employers' power in enterprises and to give power to so called Production Committees. Originally the intention was to give these committees the power to overrule or veto many important decisions taken by the management in an undertaking. However, these ambitions were not realized in the coming Act on Production Committees of 1949, renewed from an Act previously taken in 1946.

The Production Committees were constituted of 6–10 representatives for the employees, the employer and management personnel. All members in each group elected their own representatives in the Committee. The Committee should be informed and consulted for instance in matters concerning the financial reports, the production situation etc. The aim was to increase the company's productivity, efficiency, working methods and more.

However, the discussion on industrial democracy continued and the possibility to find a new participatory system aimed to involve the employees in the decision-making was realized in 1977. This year the Government and the labour market organisations agreed upon a new co-operation system heavily inspired by the Swedish Co-determination Act taken in the year before. The result was the Act 1978/725 on Co-operation within Undertakings, which was in force on 1 July 1979 and replaced the former legislation on Production Committees.

Concerning agreements on workers involvement a national Co-operation Agreement was concluded in 1981 between the Confederation of Finnish Employers (STK) and the Central Organization of Finnish Trade Unions (SAK). In 1986 a new Agreement on the Promotion of Co-operation and Information Activities in Undertakings was concluded, replacing the 1981 agreement and superseding also the Information Agreement from 1977. Later on in 1989 the agreement on the promotion of co-operation etc. from 1986 was replaced by another agreement with the same name. Further agreements on rationalization and training have been concluded in the light of the new system for co-operation.

3.2 The Act on Co-operation within Undertakings

The aim of the Act on Co-operation within Undertakings (*Lagen om samarbete i företag*) is to promote the development of the enterprise and working conditions as well as to make the co-operation between the employer and the employees more efficient (§ 1). Further, the employees' influence on the employer's dealing with different matters shall be made more efficient.

Generally, the Act applies to all enterprises having at least 30 employees (§ 2). The public sector as well as political, religious and other non-profit organisations is excluded from the scope of application (concerning the public sector a certain law on these matters is taken). However, following the Directive (75/129/EC, now 98/59/EC) on collective redundancies the scope of application embraces even smaller companies with at least 20 employees, if the employer considers redundancies comprising at least 10 employees.

Parties on the local level are the employer and on the other hand the employees and their representatives in accordance with § 3. The employee representatives – elected in accordance with the collective agreement – are head trade union representatives, floor or department trade union representatives etc. The employee representative must not be a member of the trade union, but in practice he or she normally has such a position. (Further, see below!)

Co-operation Matters and Procedure

In the Act on Co-operation within Undertakings there are developed regulations on the negotiation procedure. The negotiations with the employees' representatives concerned or the employees shall deal with the reasons for the action envisaged, its effect and possible alternatives. If the matter is of general concern to the employees in a particular unit or department of the undertaking, it shall be negotiated with the appropriate staff representatives. However, if a matter affects a particular employee it shall in first be discussed between the employer and the person concerned (§ 7).

The most important issues to be dealt with in the co-operation procedure are the employer's decisions or policy having a direct or indirect impact on the activity as well as the employer's decisions or policy that will affect employment security or the employees' working conditions.

The following issues specified in § 6 (if no other reference is made) shall be subject to consultations in the co-operation procedure, which is carried out through negotiations:

- Any major changes in duties, working methods or arrangement of work that affect the position of the staff and any transfers from one job to another.
- Any major acquisitions of machinery and equipment, insofar as they affect the staff, and any major rearrangements of the working premises and changes in the range of goods and services provided, affecting the position of the staff.
- The closure of the undertaking or any part of the undertaking, its transfer to another place or any major expansion or reduction of its activities.
- After a business transfer or merger, any ensuing reduction of contracts of employment into part-time contracts, lay-offs and termination of contracts, and the related arrangements for training and reassignments.
- Reducing contracts of employment into part-time contracts, lay-offs and termination of contracts referring to the production or economy of the undertaking, and the related arrangements for training and reassignments,

- including the personal arrangements referred to above to be made in connection with the reorganisation of an undertaking.
- The plans for rationalisation, staff and training, industrial safety, equality matters etc.
 - The start and end of normal hours of work including breaks for rest or meals.
 - The principles governing recruitment, the procedure to be followed and the information to be obtained, the information to be given to new recruits and the arrangements to be made for their assignment to work.
 - Matters connected with internal information services (broadsheets, notice boards and the arrangement of information meetings).
 - The working rules of the undertaking, comparable rules of order, and rules for suggestion schemes.
 - Budget estimates for training in codetermination and vocational training.
 - The organisation of codetermination training.
 - The general principles to be followed in the allocation of service-related accommodation, and the determination of the shares to be enjoyed by the different groups of staff, but not insofar as such accommodation is allocated to members of the management.
 - Matters concerning the limits for the funds earmarked by the undertaking for various welfare purposes.
 - Further, the determination through a co-determination procedure whether a transfer or a merger has effects falling within the obligation to negotiate (§ 6 a).

In an employee involvement perspective a very important rule is that – according to § 7 – the negotiations shall be accomplished before the employer takes a decision on matters that are under the scope of the law. Further, before the negotiation or the corresponding procedure begins, the employer shall provide the appropriate staff representatives and the employees concerned with the information necessary for the negotiation.

However, if there are particularly serious and unforeseen circumstances that causes disruption in the production or the finances of an undertaking, representing an obstacle to the codetermination procedure, the employer may resolve a matter that according to the law shall be subject to co-determination, without first following the negotiation procedure (§ 10).

Almost all provisions of the Act on Co-operation within Undertakings can be replaced by agreements and such agreements shall have the same effect as collective agreements under the Act 1946/436 on Collective Agreements (*Lagen om kollektivavtal*). Hence, the employer and the staff representatives can agree that the negotiation procedure shall be carried out in some other way than what is following from the law. For instance, the parties can decide on other rules concerning the proposal to negotiate which – according to § 7 a – must be made in written form etc.

Further, Joint Councils (“Delegation”) can be established on the enterprise level according to the Act § 4. The employer and the employee representatives can agree upon that the co-operation procedure should be worked out in such a Council. At the same time the parties shall agree on what matters the Council

shall deal with. Concerning the composition of the Joint Council the number of the employer's representatives must not be more than half of the number of the employee representatives.

Finally, concerning the involvement of employees in multinational companies referring to the Directive (94/45/EC) on European Works Council, the Act on Co-operation within Undertakings has been amended in 1996 (see §§ 11 b–g, amended by law 1996/614).

Information

The employer has an obligation to provide the employees with continuous information on some matters specified in the Act on Co-operation within Undertakings (§ 11).

Hence, the information shall embrace:

- The undertaking's balance sheet and profit and loss account as soon as they have been up and, at least once in the course of the financial year, with a comprehensive report on the undertaking's economic situation, showing the prospects for its output, employment situation, profit margins and cost structure.
- Within the framework of the undertaking's wage statistics, with wage statistics for each group of the staff, which shall be prepared in accordance with the relevant provisions contained in the national collective agreement for the branch concerned and which shall be provided for the representatives of the group concerned.
- Any changes that are significantly different from the trends indicated in the documents referred to above. (Amendment in 1996 referring to Directive 75/129/EC; now Directive 98/59/EC.)
- Further, at a transfer of an undertaking the employee representatives shall be informed on the reason for the transfer, the judicial, economic and social effects and planned measures on the employees concerned. (This amendment through law 1993/236 referred to former Directives 77/187/EC and 98/50/EC; now Directive [2001/23/EC] on the employees' rights at transfers of undertakings.)

Regarding the Directive (98/59/EC) on collective redundancies there is a specification in § 7 of the Act concerning the information the employer shall provide before the co-operation procedure on the matter begins. If the employer considers that there will be a termination of employment contracts and the measure will affect at least ten employees, then the information shall be in written form, indicating the number of employees that might be subject to dismissals, the point of time for the measure to be taken etc.

Further, before the employer takes a decision to contract labour not to be employed by the employer, he shall provide information on the arrangement (§ 9). On the request from the employee representatives the matter shall be subject to the co-operation procedure. However, there is an exception to the rule for instance if the work is of short duration or if there are urgent reason for the work to be executed.

3.3 *The Trade Union Representative*

Also in Finland the trade union representative (*Förtroendemannen*) is of great importance for the development of industrial democracy. Until 1970 regulations on trade union representatives were only in collective agreements. Today there are – apart from the collective agreements – even regulations in law that presuppose the existence of trade union representatives. For instance, both in the Employment Contracts Act 1970/320 (*Lagen om arbetsavtal*) and in the Co-operation within Undertakings Act there are such regulations.

The union members elect the trade union representatives and the elections are carried out in accordance to collective agreements. However, if the trade union representative's position is based on law all employees elect the trade union representative under certain preconditions (see the Co-operation within Undertakings Act § 5).

Under certain circumstances even unorganised employees can have the right to elect a representative according to the Act on Co-operation within Undertakings (§ 5). However, certain prerequisites must exist. There should be no trade union representative representing the employees, or a trade union representative may have been elected under the precondition that only members of the trade union were entitled to participate in the election procedure. Further, in order to bring the matter under § 5 the unorganised employees must be in majority among the employees and there must be a majority of the unorganised demanding their own representative.

3.4 *Employee Representation in Company Administration*

Finland was the last of the four Nordic countries to introduce a legislation concerning employee representation on the Board level. In the debate before the legislation on these matters was taken, the employers rejected the idea of legislation on employee representation. Instead the employers advocated a voluntarily system referring to the practice developed in many private companies, where the employees had representatives in the Supervisory Board based on agreements.

However, the result from the debate was the approval of the Act 1990/725 on Personnel Representation in Company Administration (*Lagen om personalrepresentation i företagens förvaltning*). According to the Act the employees have the right to be represented and to participate in decision-making in enterprises.

The purpose of the Act is – according to § 1 – ”to advance the functioning of the undertaking, to intensify co-operation between the undertaking and its personnel and to increase the personnel's influence in the undertaking”. In order to realize these ambitions “the personnel has the right to participate in decision-making, executive, supervisory or advisory bodies of the undertaking when they are discussing matters of importance to the business operations and finances of, and the personnel's role in, the undertaking”.

The Act's scope of application is Finnish joint-stock companies, cooperatives and other economic societies, insurance companies, commercial banks and

savings banks that have a regular staff of at least 150 employees working in Finland.

The provisions on personnel representation can be implemented by an agreement concluded at a meeting under the Act on Personnel Representation in Company Administration (§ 5) or on the basis of the provisions concerning a Joint Council or Delegation (see § 4). However, if there is no agreement or other arrangement and if there is a request from the personnel, the representation shall be organised as stipulated in the Act.

The personnel has – according to the Act – the right to nominate their representatives, personal deputies included, to one or more administrative bodies such as the Supervisory Board, the Board of Directors as well as to management groups or similar bodies that together cover the profit centers of the undertaking. The share of personnel representatives in an administrative body may be one quarter, but the minimum number of personnel representatives stipulated is one and the maximum number is four.

A personnel representative must be a legally competent person and he or she must be an employee at the undertaking (§ 6).

The personnel representatives in an administrative body have the same rights and duties as other members of the body but there are some exceptions. The personnel representatives do not have the right to participate in the handling of matters concerning the election, dismissals or contract terms of the management of the undertaking, the personnel's terms of employment, or industrial actions. Further, the personnel representative's voting rights may be restricted through an agreement.

4 Norway

4.1 General Background

In Norway there is a tradition of both legislative initiatives as well as regulations through collective agreements. In 1920 a law on Works Councils in trade and industry was promulgated. The regulation comprised enterprises with more than 50 workers, but in practice it never became important (and later on in 1962 the law was withdrawn).

After 1945 Production Committees were elected and the representation from the employer and the employees was equalized. The Committee only had a consultative function and a right to information and the focus was on the productivity at the enterprise. Later on, in 1966 the Production Committees were reconstructed into Works Councils.

However, already in 1902 LO and NAF concluded the first nation-wide collective agreement and in 1907 an important collective agreement was concluded in the metal industry. Despite the legislative initiatives collective agreements later on developed to be the main regulation form for employee involvement in working life.

In the following I will focus on the agreements on workers' involvement negotiated between the Norwegian Federation of Trade Unions (Landsorganisasjonen i Norge, LO) and the Norwegian Employers' Confederation

(Norsk Arbeidsgiverforening; NAF), which after a fusion in 1989 was included in the new organization the Confederation of Norwegian Business and Industry (Næringslivets Hovedorganisasjon; NHO).

The most important document is the Basic Agreement (Hovedavtalen) concluded between LO and NHO. It has been in force since 1935 with many amendments and gradually a system for information and consulting at various levels within the enterprise has been established. The Agreement has a general character and it is automatically part of every LO–NHO (former LO–NAF) contract.

Since 1966 the Basic Agreement is divided into three parts. In Part A there are regulations on trade union representatives that are of great importance for the function of the workers' involvement system in undertakings. Also regulations on the freedom of association, the dealing with industrial disputes and more are part of the Basic Agreement. In part B – headed the Co-operation Agreement – there are regulations on Works Councils and other stipulations on co-operation between the parties.

Regarding industrial democracy there is also a provision on workers' involvement in Constitutional law (the Constitution § 110). The provision stipulates that further regulations concerning the employees right to co-determination on the work place is appointed in law. However, this regulation mainly points at employee representation in bodies taking decisions in the enterprises, for instance joint-stock company boards.

4.2 *The Co-operation Agreement*⁷

The Co-operation Agreement (Samarbeidsavtale) between LO and NHO has been a model for many other collective agreement areas on the private sector. In the Agreement the parties declare their unity on the necessity of a good and trustful relationship between the employees, the trade union representatives and the employer (Ch. IX § 9-1). The employees shall have the right to co-determination, and co-operation is considered to contribute to the economic prerequisites of the undertaking and to the development of the activity, which will secure safe and good working conditions.

Co-operation and Consultations

According to the Co-operation Agreement the employees shall have a real influence on the leading of the activity, possibly canalized through their elected representatives. The influence shall focus on measures concerning increased efficiency, decreased costs and improved competitiveness, the use of new technology and the facilitating of necessary changes in the activity.

The organizing of the co-operation shall be worked out in different ways in the enterprise, for instance through decentralization and delegation of decision-

⁷ The following comments on the Basic Agreement are based on the Agreement in force 2002–2005.

making (§ 9-2). The employees concerned shall have an influence at the establishment of working groups, project teams and steering groups.

As soon as possible or at least once every month the employer shall consult the trade union representatives (arbeidsutvalget) concerning the ordinary running of the undertaking, the financial position etc. (§ 9-3). Further, as early as possible the management of the enterprise shall consult the trade union representatives in matters that are important for the workers' working conditions including for instance changes in the production and working methods (§ 9-4).

The trade union representatives shall as early as possible be consulted also in matters like fusion, selling or the laying down of the enterprise (§ 9-5). An important explicit clarification is that the trade union representatives shall be consulted before the employer takes the decisions in matters concerning employment and working conditions (§ 9-6).

Concerning changes that will have an impact on many undertakings that is part of the same group of companies, the management for the group shall inform and consult the trade union representatives from the activities (§ 9-17).

Especially in joint-stock companies or other private associations under the Basic Agreement there is a regulation on contact meetings in the Agreement. Such meetings shall be held when there is a request for a meeting in order to have consultations between representatives for the trade union and members of the company's Board representing the owners (§ 9-18).

Following from former Directive (75/129/EC; now 98/59/EC) on collective redundancies there are regulations on information and consultations in § 56 A of the Working Environment and Workers Protection Act 1977 no. 4 (Lov om arbeidervern og arbeidsmiljø). A prerequisite for the regulation to be applied is that at least 10 employees are subject to collective redundancies within a period of 30 days.

Further, concerning the right to information and consultation following from Directive (2001/23/EC; former Directives 77/187/EC and 98/50/EC) on the employees' rights at transfers of undertakings etc., there are regulations in § 73 E of the Working Environment and Workers Protection Act in accordance with the Directive mentioned. The trade union representatives shall as early as possible be subject to information and consultation aiming to reach an agreement.

Works Councils

An important organizational instrument aimed at realizing the ambition on employee influence is the Works Council (Bedriftsutvalg). This institution is in line with the tradition of the previous Production Committees from 1945, even though there are many important differences from a principal point of view. The Works Councils shall be established in all enterprises with at least 100 employees and representatives for the employees as well as the management shall take part in the Council (Part B of the Basic Agreement; the Co-operation Agreement § 12-1). According to the Basic Agreement § 14-1 there shall also be Works Councils for a group of companies.

In activities with 100–400 employees the employees shall – according to the Basic Agreement § 12-2 – have up to five representatives appointed to the

Works Council; the workers are entitled to elect three representatives (the chairman of the Committee of the Trade union representatives shall be one of them), the foremen one representative and finally the technical and administrative staff is entitled to elect one representative. Up to five representatives can be appointed by the management. If the number of employees is more than 400 the number of representatives increases to seven from the employer and the employees respectively. Also in undertakings with less than 100 employees a Works Council can be established if certain circumstances are present. Otherwise the employees normally are consulted through the trade union representatives. However, if a Council is established in a smaller company the composition of the Council might be three employee representatives and three representatives for the employer.

The chair of the Works Council shall alternate between the management and the employee representatives (§ 12-6). When a representative for the employer is the chairman, an employee representative shall be the secretary of the Council and vice versa.

The representatives shall be elected for a two-year period according to a procedure specified in the Basic Agreement (§ 12-3). The election shall be in written form and it shall be carried out under the secrecy of the ballot. All employees are entitled to vote and in practice the group trade union representative has a key position in each individual group where the election procedure takes place.

There are some specific requirements according to the persons who might be elected to the Works Council (§ 12-5). An eligible person should be more than twenty years old and he or she should be acknowledged as a capable worker and, if possible, have been an employee in the undertaking for the last two years.

The Works Council shall meet once every month during working hours, but in that respect also the activity's need shall be considered. The management shall provide the Council with information and confidential reports on the financial status of the enterprise and of its standing in industry. Further, the Council shall be informed on matters concerning conditions of production and sales. A guideline is that the information must be the same as the information given to the shareholders of the enterprise.

The main task of the Works Council is to promote the most efficient production and to gain maximum well-being of those who work in the activity. Other tasks for the Works Council to deal with are rationalization, vocational training and the implementation of safety or social welfare measures. Matters concerning wages, working hours or disputes on the interpretation of the collective agreement shall not be subject to considerations by the Council, since they are dealt with in the ordinary negotiation procedure.

The Council's opinion shall be considered as early as possible before decisions are taken on matters that are of real importance to the employees and the working conditions or if the matter is related to the activity of the enterprise. Examples on such matters are substantial investments, changes in the production system, methods utilized in the activity, quality product development and plans for expansion as well as reduction or restructuring the enterprise.

An important matter is the follow-up of the efforts on involving the employees taken at the enterprise level. In 1990 the Co-operation agreement was

amended by regulations concerning the parties responsibility for the follow-up of the practising of the Agreement at the enterprise level (§ 17-1). At the same time the national Co-operation Council, established in 1969 by LO and the then NAF, was abolished.

Finally, in Norway the Directive (1994/45/EC) on European Works Councils was implemented by a collective agreement concluded between the Norwegian LO and NHO. The foundation for this arrangement was a special Act (1966 no. 63) giving the Government a right to extend a collective agreement to be applied generally at the labour market or for a specific sector. The Agreement between LO and NHO is now attached to the Basic Agreement as the Supplementary Agreement VIII (see also the Basic Agreement § 14-4).

4.3 The Trade Union Representative

The trade union representative (Tillitsvalgte) has a key position in the involvement of workers system on the work place as a representative for the employees who are members of the trade union (compare for instance the Basic Agreement ch. V, VI and IX). In practice a trade union representative can be seen as an “ambassador” for the organization. In the Basic Agreement the parties agree that it is of vital importance that the co-operation between the employer’s representatives and the trade union representatives goes on in rational and adequate forms. Further, it is considered to be important that the trade union representatives can fulfill their tasks in accordance to the Basic Agreement.

Trade union representatives shall be elected in all enterprises on the request from the employer or the employees (§ 5-1). Only members of the trade union are entitled to take part in the election procedure (however, compare my comments above on the election of employee representatives for the Works Council). Persons that might be elected as trade union representatives should be “workers of recognized ability, with experience of and insight into ... working conditions” (§ 5-9). The employee who is to be elected should if possible have been working at the enterprise for at least two years and be over 20 years of age.

Also the employer must – in accordance with the Basic Agreement § 6-3 – have a representative in charge to which the trade union representatives can turn to in different matters. Further, even in a group of companies the parties can agree on trade union representatives if the number of employees in the group of companies is more than 200 (§ 14-3).

Concerning the number of trade union representatives there is a connection to the number of employees in the activity in an ascending scale (§ 5-2). For instance, if there are up to 25 employees the number of trade union representatives is two, and if the number of employees is more than 750 the number of trade union representatives is twelve. Only employees who are members of LO or unorganized shall found the base for the calculation. The local parties can conclude a local agreement on a greater number of trade union representatives if there are specific reasons for doing so.

The trade union representative represents the organized employees in contact with the employer and he or she has the right to deal with and try to settle disputes etc. between the employer and the employees. Hence, the trade union

representative shall not promote or participate in prohibited industrial actions. Further, according to the Basic Agreement § 6-5 the trade union representative is under the obligation to do his best to maintain a smooth and peaceful co-operation between the parties.

The trade union representative is the receiver of the information that the employer must present to the trade unions according to the Basic Agreement. The trade union representative also has special entitlements in order to fulfill the duty connected to the position, for instance he or she shall be given time to exercise the assignment during regular working hours.

In accordance to the Supplementary Agreement attached to the Basic Agreement, the trade union representatives can have special responsibilities. For instance he or she can have special positions in matters concerning vocational training, technology etc. Further, a trade union representative is entitled to special protection, for instance he or she might not be subject to dismissal without just cause.

4.4 Employee Representation at the Board Level

In the Act 1997 no. 44 on joint-stock companies (Lov om aksjeselskaper) – in force in 1999 – it is stipulated that a company must have a Board (Styre; § 6-1). The Board can be described to be more like a Supervisory Board than a Management Board, even though this can vary between companies. The managing director is in charge of the daily management and can be given instructions and orders issued by the Board.

Further, if the number of employees is more than 200 a Corporate Assembly (Bedriftsforsamling; § 6-35) shall be elected. Compared to the Board, the Corporate Assembly fulfills more of a controlling function and it adopts recommendations to the Board on any matter, for instance concerning substantial investments, rationalization, relocation of the workforce following from restructuring measures etc. The Corporate Assembly shall have at least twelve members elected by the General Assembly (§ 6-35). However, the company can come to an agreement with a majority of the employees or the trade unions organizing at least two third of the employees, that there shall be no Corporate Assembly.

The Board is appointed by the General Assembly (§ 6-3) and shall have at least three members, the smallest number if the share-capital is 3 million Norwegian kronor or more (§ 6-1). If the company has a Corporate Assembly the number of members of the Board must be at least five.

The employees are entitled to representation at the Board on the request from the majority of the employees (§ 6-4). The number of representatives at the Board is dependent on the number of employees and whether the company has a Corporate Assembly or not:

- If the company has at least 30 employees and no Corporate Assembly, the employees can make a request for one member of the Board and one observer.

- If the company has more than 50 employees and no Corporate Assembly, a majority of the employees can make a request for one third but not less than two representatives at the Board.
- If the company has more than 200 employees and there is an agreement that there shall be no Corporate Assembly, the employees shall elect one member of the Board or two observers.
- Further regulations can be promulgated for instance on the number of employee representatives.

In a group of companies the employees might be entitled to representatives, even on the managerial level.

Finally, in the Basic Agreement (§ 9-17) there is a regulation especially concerning a group of companies. In addition to what I have touched upon above, the management in a joint-stock company shall inform the trade union representatives if there will be a change in the ownership (exceeding 1/10 of the share-capital or shares representing more than 1/10 of the voting rights in the company).

5 Sweden

5.1 General Background

As in the other Nordic countries the establishment of organizations on the labour market begun in the 19th century. In 1906 a basic arrangement – the so-called December compromise – was agreed upon between the Swedish Trade Union Confederation (Landsorganisationen i Sverige; LO) and the then Swedish Confederation of Employers (Svenska Arbetsgivareföreningen; SAF). The trade unions and the workers won the right to organize and in exchange the employer's right to lead and distribute work and to hire and fire workers was recognized by the trade unions. (In 2001 SAF and the Federation of Swedish Industries made a fusion and the Confederation of Swedish Enterprise – Svenskt Näringsliv – was founded.)

In the 1920's there was a discussion on legislation especially concerning industrial democracy. In 1923 a public investigation presented a proposal on an Act on Co-operation Committees in Private Companies, but the proposal was never realized. In the so-called Saltsjöbaden Agreement in 1938 between LO and SAF a system of co-operation was established in order to deal with industrial conflicts and dispute settlements. In 1946 a collective agreement on Works Councils (företagsnämnder) was concluded between SAF and LO. In 1958 also the white-collar workers' organizations concluded an agreement that was equivalent to the Agreement between SAF and LO.

5.2 The Act on Co-determination

After a period of industrial unrest on the labour market a public investigation was appointed in 1971. Later on, after an intense debate the Act 1976 no. 580 on

Co-determination in Working Life (Lagen om medbestämmande i arbetslivet) was approved by the Riksdag. In the Act also former regulations were incorporated, such as the 1928 Act on Collective Agreements and the 1936 Act on the Right of Association and the Right of Collective Bargaining, together with the new rules on co-determination. Hence, the Co-determination Act also regulates for instance the general right to negotiation utilized at, for instance, wage negotiations between the employers and the trade unions.

Concerning the terminology there is reason to point out that the term “co-determination” might be misleading (compare the German term “Mitbestimmung”). In practice the meaning of the term co-determination shall be considered as an end for the endeavor to involve the employees through negotiations or other arrangements agreed upon in collective agreements.

Co-determination, Negotiations and Information

Concerning workers involvement, the Act on Co-determination stipulates a duty for the employer to negotiate with the trade unions on important changes in the employer’s activity. According to § 11 of the Act the employer is obliged to initiate consultations through negotiations *before* a decision is taken on major changes concerning both company and labour management issues. For instance, negotiations shall precede decisions concerning dismissals, rearrangements in production, the laying down of the activity, the introducing of new technology, the change of work organization and decisions on budget and financial investments.

Other examples on labour management issues under the regulation are the transfer of a worker, recruiting a foreman, the distribution of work etc. Following the preparatory works the Labour Court in several cases has stated that the obligation to consult the workers embraces all matters in the employer’s activity where the trade union typically can be expected to have an interest in consultations.

However, the application of § 11 is restricted to major changes in the employer’s activity or the employees’ working conditions. According to § 12 the right to negotiations before a decision is taken also embraces other changes considered to be of less importance and not covered by § 11. Hence, it is up to the trade union to take the initiative to negotiations referring to § 12 in order to call forth a duty for the employer to negotiate.

A requirement for the right to consultation and information is that the trade union has a collective agreement with the employer. However, according to § 13 of the Act even other trade unions not having a collective agreement are entitled to negotiations corresponding to §§ 11 and 12. A prerequisite is that a member of such a union is directly involved in a change, in practice an alteration specifically concerning his or her working conditions.

In 1994 § 13 of the Act was amended through law 1994 no. 1686 meaning that an employer not bound by any collective agreement is obliged to negotiate with all trade unions organizing employees in the activity before certain measures are taken on the termination of employment contracts because of shortage of work or the transfer of an undertaking. The amendment was referring to Directive (75/129/EC; now 98/59/EC) on collective redundancies and to

former Directive (77/187/EC) on the employees' rights at transfers of undertakings (later completed by Directive 98/50/EC; now Directive 2001/23/EC). However, compared to the Directive on collective redundancies the regulation in § 13 covers all collective redundancies disregarding the number of employees that might be subject to the measure.

An important procedural rule is that negotiations in accordance to §§ 11–13 shall first take place between the employer and the local trade union at the enterprise, but if the dispute is not settled continued negotiations on the central organizational level could take place on the request from the trade union (§ 14).

In order to secure a possibility for the trade union to have influence information on what is going on in the employer's activity is fundamental. In accordance to § 19 the employer has a duty to keep the trade union continuously informed concerning the production, the economic situation of the activity and the guidelines for his personnel policy. The trade union representatives shall have the insight in order to be able to have serious discussions with the employer on the same level. The trade union can also – referring to § 19 – for instance require access to the undertaking's business records, as far it is necessary for the trade union safeguarding its members' interests. In the first place the information shall be provided to the local trade union (§ 20).

The right to information is restricted to conditions concerning the employer's activity and, for instance, it does not cover the employer's private matters. Further, there are restrictions concerning circumstances referring to industrial conflicts between the parties. On the private sector the employer also has a possibility to take up negotiations on the confidentiality of the information provided (§ 21).

Regarding the information the employer must provide the trade union with at the negotiation, that shall be held before measures on collective redundancies are taken, an amendment in § 15 through law 1994 no. 1686 was made. Following from this amendment, that was partly implementing the former Directive (75/129/EC; now 98/50/EC) on collective redundancies, a detailed list was introduced in the paragraph on the information to be presented.

Concerning the involvement of employees co-determination in an enterprise that belongs to a group of companies, an employer in a subsidiary undertaking must negotiate if a matter discussed in the parent company is considered to lead to a major change in the subsidiary undertaking. On account of the Directive (1994/45/EC) on European Works Councils, a special Act 1996 no. 359 on European Works Councils (*Lagen om europeiska företagsråd*) has been taken concerning the involvement of employees in multinational companies under the scope of the Directive mentioned.

Collective Agreements on Co-determination

The regulations on co-determination negotiations etc. are optional, and on the labour market there are co-determination agreements for different lines of businesses. Regarding the employees' rights a collective agreement must not be lower than the rights that follows from the EC Directives concerning collective redundancies or the transfer of an undertaking (§ 4 of the Co-determination Act). Further, in many companies and other activities there are local co-determination

agreements taken in the same spirit as the relevant agreement on the central level.

In this perspective, an important regulation in the Co-determination Act is § 32. At the trade union's request a collective agreement on co-determination ought to be concluded. A regulation supporting the trade union's position is to be found in § 44, where the trade union concerned is entitled to a residual right to take industrial action if the parties could not come to an agreement in accordance with § 32. Otherwise the normal situation is that there is a peace obligation between the parties when a collective agreement on wages and other employment conditions has been concluded.

In principle, today the whole labour market is covered by collective agreements on co-determination. An important agreement on the private sector is the Agreement on Efficiency and Participation (or the Development Agreement; Utvecklingsavtalet). The Agreement was signed in 1982 between SAF and the LO together with an association of trade unions for white-collar workers on the private sector.

In the Agreement the parties identify common goals, which shall guide the co-operation: "Developing and improving the efficiency of the business enterprise are, together with safeguarding employment, matters of common interest to the company and its employees". Further, the parties agree on "that efficiency, profitability and competitiveness require a constant development in all aspects and at all levels of the company's activities...".

In the Development Agreement "Development areas" concerning new technology, work organization and the financial affairs of the enterprise are defined and goals are specified on these areas in general terms. Different ways to co-operate in such matters are negotiations in accordance to the Co-determination Act, line-negotiations (where trade union representatives participate in the company's ordinary line-organization) and finally bipartite participation and information bodies.

On the national level two Joint Councils have been established by the parties in the Development Agreement in order to perform certain tasks, such as the follow-up and further development of the co-operation. Another task is the dealing with disputes about the agreement.

Trade Union's Veto Right

Concerning the employer's engaging of a contractor or a decision to "have someone who is not in his employment to perform certain work for him or in his business" (§ 38), there is a right for the central trade union to veto such a decision in accordance to § 39. The idea behind the regulation on consultations and a trade union veto is to prevent work either violating the law, the collective agreement regulating the work concerned or what is generally accepted on the area of the agreement.

Before the employer takes a decision on sub-contracting etc. he shall – in accordance with § 38 – provide information to the trade union concerned on the plans for the arrangement and negotiations shall be carried through on the employer's initiative. However, if the work is of short-term duration or temporary nature or largely similar to previously taken measures accepted by the

trade union, the employer does not have to consult the trade union. Further, if there are urgent reasons for implementing a decision before consulting the trade union, the employer may do so taking a risk for damages if the reason was not in accordance with the law.

The Priority Right of Interpretation

Concerning the interpretation of such an agreement referred to in § 32 of the Co-determination Act, the local trade union has a preferential right of interpretation at disputes on matters concerning the application of a co-determination agreement (§ 33). Further, there is a trade union priority right of interpretation at disputes about a trade union member's contractual duty to work (§ 34). The union's view at such a dispute shall prevail until the dispute is definitely settled. However, if there is "urgent reasons" for the employer against the postponing of the disputed work, the employer may, notwithstanding the rule mentioned, demand performance of the work in accordance with the employer's view in the dispute.

The trade union's right of interpretation shall be exercised by the local trade union (if there is one). However, disputes might be subject to negotiation between the parties, firstly on the local level and secondly, if the dispute was not settled, on the central level. If negotiations on that level are requested, the rights discussed shall be exercised by the national trade union.

5.3 The Trade Union Representative

In 1974 the Act 1974 no. 358 on the Position of Trade Union Representatives at the Workplace (*Lagen om facklig förtroendemens ställning på arbetsplatsen*) was taken. A basic aim was to secure the prerequisites for a functional employer – trade union relationship on the work place. The main task for the trade union representative is to represent the employees in their relationship to the employer, to participate in negotiations and to represent the employees in different situations related to the relationship between the employer and the employees.

Normally, it is the trade union members who elect their representative on the local level, but for many positions the representative in an undertaking can be designated by for instance a trade union board. Outermost it is the trade union who will decide how many representatives that will be elected etc. and a person chosen shall be notified to the employer.

An employer must not prevent the trade union representative from performing his or her duty. Further, the employer shall facilitate the trade union representative's work, for instance by providing office space or similar facilities. Another important matter is the trade union representative's right to time off for dealing with trade union matters without loss of pay. The law is completed through collective agreements specifying for instance the number of trade union representatives in an enterprise, their further entitlements to be realized on the work place etc.

According to the law the trade union representative is protected against interference from the employer in his or her activities. Further, the trade union

representative is entitled to a certain protection against the deterioration of his or her working conditions because of the commission. At dismissals because of shortage of work the trade union representative shall be given priority to continued employment if it is of special importance for the trade union activity at the work place.

5.4 *Employee Representation at the Board Level*

The Act 1987 no. 1245 on Board Representation for Employees in the Private Sector (*Lagen om styrelsrepresentation för de privatanställda*) came into force in 1988, and it was the third in a line of acts giving the employees the right to representation at the Board of an enterprise.

The area of application for the Act is joint stock companies and co-operative associations, including banks, having at least 25 employees in Sweden (§ 2). Also in parent firms there is a right for the employees to have representatives at the Board.

The employees have the right to elect two employee representatives and for them two deputy members to the Board (§ 4). If the company is in different lines of businesses and the number of employees is more than 1000, the employees have the right to elect three representatives and three deputies. However, the number of employee representatives must not exceed the number of representatives for the employer.

The decision to utilize the right to Board representation shall be taken by the local trade union, which shall be bound to the employer by a collective agreement (§ 6). The decision shall be communicated to the Board of the company. Further, it is the trade union that shall appoint the delegates for the Board. There are also certain procedural rules for the election of trade union representatives, for instance if 4/5 of the employees under a collective agreement are members in the same trade union, that union has the right to nominate all employee members at the Board.

The term of office should be decided by the nominating trade union, but the term must not be longer than four years (§ 10). An employee representative appointed for a position at the Board must be an employee at the company. In a group of companies he or she should be an employee at some of the companies in the group.

The employee representative is in the same position as other members of the Board as long as nothing else is stipulated (§ 11). However, the employee representative do not have the right to take part in the dealing with collective agreements, industrial disputes or other matters where the trade union interest could be contrary to the company's interest (§ 14).

6 Conclusions

6.1 *Collective Regulations the General Basic Pattern*

A common denominator for the four Nordic countries dealt with in this article, is that the base for the involvement of employees at the workplace is collective agreements concluded between the parties on the labour market. Most consistently this is the situation in Denmark and Norway whereas the systems in Sweden and Finland primary are based on law. However, both in Sweden and Finland the legislation is optional and the parties on the labour market themselves are in practice expected to develop further activities based on collective agreements, and such agreements have been concluded to a very large extent.

If the parties on the labour market in Finland and Sweden cannot agree on other regulations on the involvement of the employees, the legislation will provide a structure for these matters. Furthermore, in Sweden there is a non-peace obligation in advance for the trade union if the employer does not want to comply with a request for an agreement on co-determination. A prerequisite for the application of the clause on a residual right to take industrial action – which in practice as far as I know is rather unapplied – is that the trade union's request for an agreement has been made before a collective agreement on general terms on employment has been concluded between the parties.

To sum up, generally the collective agreement is fundamental in the four Nordic countries as a means for the establishment of systems for involvement of employees in private companies. This way to regulate the kind of matters discussed in the present article is fully in line with the self-regulative traditions characterising the labour markets in these countries. (However, as I will comment on below there is a reverse strategy based on legislation when it comes to employees' right to take seat in the boards.)

6.2 *Forms and Procedures*

Regarding the forms and procedures for the involvement of the employees there are differences looking at the regulations superficially. In Denmark and Norway Co-operation Councils or Works Councils are established through collective agreements, and in the agreements there are regulations for workers participation, co-operation etc. at the enterprise level. In Sweden and Finland the main procedure prescribed in law is negotiations and the law in detail elaborates the negotiation procedure. But at the same time the legislation is optional and in collective agreements on co-determination or co-operation other forms are frequent such as Works Councils, Joint Councils as well as other forms of bipartite bodies.

Hence, in practice there are great similarities in the four Nordic countries regarding both the forms and procedures for the involvement of employees. An important difference is, however, that if an employer is not bound by a collective agreement giving priority to Works Councils etc., the law in Sweden and Finland will determinate the procedure based on formal negotiations in order to

secure the employees collective rights to information and consultations on a basic level.

A crucial issue in an EU perspective is the determination of which trade union or organization which shall have the right to represent the employees in information or consultation activities vis-à-vis the employer. In Denmark, Finland and Norway the laws implementing the EC Directives mentioned stipulate that the employer shall inform and consult the trade union representatives or the employees. In Sweden the legislator gives priority to the trade union bound by a collective agreement or the functionaries of that trade union. According to the Directive (98/59/EC) on collective redundancies, the Directive (2001/23/EC) on the transfer of undertakings and the Directive (2002/14/EC) of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community, there is no reason for such a demand on a collective agreement as a prerequisite for the right to be consulted. However, if the employer in Sweden is not bound by any collective agreement at all, the employer must negotiate with all trade unions having members employed by the undertaking if the matter is under the scope of the first Directives mentioned.

Another matter to comment on is that – except for Swedish law – the legislation in the Nordic countries implementing the EC Directives referred to above stipulates that the negotiations etc. shall be carried through with the intention of reaching an agreement. In this particular the Swedish law does not fully correspond to EU labour law.

6.3 *Issues for the Involvement of Employees*

The kinds of issues that shall be subject to information or consultation procedures are specified in law or collective agreement or in both. Generally speaking, the same matters will be dealt with in all Nordic countries independently of if the basic regulation is law or a collective agreement. For instance, concerning information the employers must provide the Co-operation Council or corresponding (depending on the country or collective agreement discussed), the trade union or the employee representatives with information on the development, the financial situation and more of the enterprise. Especially in Finnish law the kind of matters that the employer must provide information on are defined very much in detail. In Sweden the Co-determination Act has a much more general character even though there is judicial practice elaborating the application of the law.

Further, the matters that shall be subject to more engagement through consultations or formal negotiations are more or less defined. A common feature is that both matters concerning the overall planning of the enterprise, the financial situation etc. as well as matters concerning the employees' working situation in a vast meaning is included. In Finnish legislation these issues are listed very concrete whereas they are very generally defined in Swedish law (although it should be emphasized that the judicial practice is rather elaborated). In Denmark and Norway the corresponding issues are listed in the collective

agreements with the exception of matters on collective redundancies etc. that are specified in law following from the implementation of EC Directives.

When dealing with the matters in negotiations, in Works Councils or in other forms of co-operation, there are usually guidelines expressing common values for the interaction between the employer and the trade union representatives. The co-operation activities generally have an overall focus on the strengthening of the enterprise, improving its ability to compete etc., which at the same time is said to contribute to employment as well as safe and good working conditions.

Such standpoints and objects manifesting the reciprocity of the kind of matters dealt with are part of the Co-operation Agreement in Denmark as well as the Basic Agreement in Norway. In Sweden they are clearly expressed in the Co-determination agreements but not in the law. In the Finnish Act on Co-operation in Undertakings such goals are indicated in the prelude to § 1.

6.4 *The Trade Union Representatives*

The trade unions play an important role for the realization of the involvement of the employees at the work place in the Nordic countries. A common feature is also that at the work place the trade union representative is in the key position to exercise the trade union's rights.

There are however differences between the Nordic countries as indicated in the introduction to this article. One aspect is the way the trade union representatives are regulated. In Denmark, Norway and Finland there are regulations mainly in collective agreements concerning the trade union representatives dealing with the matters discussed in this article (work environment matters excluded). A particular regarding Finland is that the legislation refers to the representatives for the employees as persons who are elected in accordance to the procedure stipulated in collective agreements.

On the other side, in Sweden there is certain legislation on trade union representatives although the regulation aims at securing the trade union representative's activities on the work place. A restriction is that the entitlements according to the law are only for trade union representatives in organizations bound by a collective agreement in the relationship with the employer.

According to the agreements discussed in this article there are also some basic requirements on the employees representing the employees as trade union representatives in Denmark and Norway. The trade union representative must for example, according to the collective agreements, be "qualified", acknowledged as a "capable worker" etc. In Sweden on the other hand where legislation is the basic regulation there are no corresponding criteria in law.

Another aspect is connected to the question on who does the trade union representative represent? In Denmark all employees at the workplace elect the trade union representatives and in Norway all employees are entitled to vote in the election to the Works Council. Consequently, the trade union representatives both in Denmark and Norway are considered to have a position as "shop stewards". The meaning of that term is that the trade union representative could be characterized to be more of a general employee representative than a

representative for the union. Hence, the trade union representative in this respect has legitimacy as a representative for all employees at the workplace.

In Finland a difference is made depending on if the trade union representative's position is based on a collective agreement or the law. In the former situation only members of the union take part in the election procedure while all employees have the right to vote if the trade union representative's position is based on law. In Sweden the trade union representative more clearly has a position as a representative for the trade union and its members.

6.5 Board Representation

In all the Nordic countries dealt with in this article there is legislation giving the employees the right to representation in joint stock company boards as well as at the boards of other company associations. Yet in Finland the legislation discussed in this article entitles the employees to be represented also in other administrative bodies of the undertaking. Further, according to the Finnish legislation on these matters the provisions of the personnel representation can be subject to an agreement between the enterprise and the staff. In Norwegian companies the organization of the management can vary and agreements can be made with the employees on some particulars regarding the organization of the management in the company.

Even if there are some differences concerning the employee influence on the top level in the Nordic countries there are also great similarities to consider. For instance, when the employees take seat in the Boards they have the same responsibilities, and at least in principle the same influence and as the other members of the Board. (There are some explicit restrictions on matters referring to the employer – employee relationship, for instance concerning wage negotiations, industrial conflicts and more.)

A divergent particular regarding the Swedish legislation is that it is only a trade union bound by a collective agreement towards the employer, which is entitled to make a request for representation at the Board supported by the law. Comparatively, in Finland and Denmark it is the staff that is entitled to elect the representatives to take seat in the Board or – in Finland – likewise in other administrative bodies of the undertaking. In Norway it is the majority of the employees or a trade union organizing at least a two third of the employees, which can make a request for representation in the management.

6.6 Concluding Remarks on the Impact from EU Labour Law

The strong position for the collective agreement when regulating the involvement of employees in private companies in the Nordic countries is to some extent under pressure from the EU labour law. Generally, in the EU the basic strategy is that on the national level EU labour law shall be implemented through legislation.

This is a challenge for the Nordic tradition even if there is an opening up for a new attitude in the EU. Referring to Article 138 and 139 EC, there is a growing

role for the social partners in the EU legislative process. According to Article 137(4) there is also a possibility to implement EC Directives through collective agreements. At the same time one must be aware of the current legal situation established by the European Court of Justice. Hence, the implementation of EC Directives through collective agreements in the Nordic countries can be questioned for different reasons.

One reason is the possibility to extend the formal application of a collective agreement beyond the members of the trade union bound by the agreement. This possibility is very much limited in the Nordic countries. In an EU perspective objections may be anticipated if collective agreements are used for the implementation of Directives aimed at the securing of rights for all individual workers. (For a further analysis on these matters, see Ruth Nielsen's article.)

Regarding the involvement of employees in companies, EU labour law is founded through a number of Directives (see above footnote no. 3). As shown in the present article special legislation has been taken in Denmark and Norway whereas in Sweden and Finland already existing laws have been amended, in order to implement the Directives concerning collective redundancies and the transfer of undertakings. Regarding the establishment of European Works Councils certain legislation has been introduced in all the four countries.

The Nordic countries will now deal with the implementation of the Directive (2002/14/EC) of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community. One critical issue is the forms for regulating the involvement of employees through information and consultation activities. According to the Directive these forms for informing and consulting the employees shall be laid down in law. The national systems in Denmark and Norway will not correspond to the new Directive's demand on legislation concerning forms and procedures. At the same time the Directive provides an opening up for regulations through collective agreements on these matters. However, the doubtfulness in general regarding the Nordic collective agreements as used for the implementation of EU labour law is still not set aside. A special problem is the situation in Denmark where there is no definition in law of the term collective agreement.

On the other side, there is also reason to point out that in most respects the Nordic national regulations are not contrary to the new Directive on information and consultation. In certain respects the Nordic systems in practice even goes further considering the employees' right to information and consultation. For instance, according to Finnish law a criterion for applying the Act on Co-operation within Undertakings is that the number of employees shall be at least 30. In Denmark and Norway there are certain limits according to the collective agreements, but at the same time the agreements are open to ensure the employees also in smaller companies an influence. According to Swedish Co-determination Act there is no lower limit concerning the number of employees in the enterprise in order to activate the co-determination rights. However, concerning Swedish law the Directive may show itself to found the base for questioning the priority given to trade unions bound by a collective agreement to have the right to be consulted.

A general conclusion on the relationship between EU labour law and the Nordic countries is that the Nordic model based on collective agreements

gradually will change under the impact of EU labour law, even if this impact so far has not been dramatic. Also the new Directive on information and consultation will raise critical issues and challenges concerning the Nordic way of regulating the involvement of employees in company affairs. Hence, a well-founded judgment is that a proper implementation in the Nordic countries will require new or amended legislation.

References

- Bruun, N. et.al., *The Nordic Labour Relations Model. Labour Law and Trade Unions in the Nordic Countries – Today and Tomorrow*. Dartmouth, Aldershot 1992.
- Fahlbeck, R., *Labour and Employment Law in Sweden*. No. 125 Acta Societatis Juridicae Lundensis. Juristförlaget i Lund . Lund 1997.
- Ferner, A. & Hyman, R., *Changing Industrial Relations in Europe*. Second edition. Blackwell Publishers Ltd, Massachusetts 1998.
- Hasselbalch, O. & Jacobsen, P., *Labour Law and Industrial Relations in Denmark*. Kluwer, The Hague 1999.
- Industrial relations in Europe 2000*. European Commission, Directorate-General for Employment and Social Affairs, Directorate D, Brussels 2000.
- Jakhellns, H., *Oversikt over arbeidsretten*. 2. utgave. NKS/Forlaget, (Norway) 1996.
- Källström, K. & Sigeman, S., *Komparativ nordisk arbetsrätt i huvuddrag*. (NORD 1990:93). Nordisk Ministerråd, København 1990.
- Neal, A.C. (Editor), *European Social Policy and the Nordic Countries*. Ashgate, Dartmouth, Aldershot 2000.
- Neal, A.C. & Schmidt, F., *Collective Agreements and Collective Bargaining*, in International Encyclopedia of Comparative Law, Volume 15 (Chapter 12), 1984.
- Nielsen, R., *Lærebog i Arbejdsret*. 8. reviderede udgave. Jurist- og økonomiforbundets Forlag. København 2001.
- Nyström, B., *EU och arbetsrätten*. Tredje upplagan. Norstedts Juridik AB. Stockholm 2002.
- Sigeman, T. et. al., *Arbetsrätten i Norden*. (NORD 1990:42.) Reviderad upplaga. Nordisk Ministerråd 1990.
- Sigeman, T., *Arbetsrätten. En översikt av svensk rätt med europarätt*. Tredje upplagan. Norstedts, Stockholm 2001.
- Suviranta, A.J., *Labour Law and Industrial Relations in Finland*. Second edition. Kluwer, The Hague 1997.