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Implementing an EU  
Directive in Sweden**

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## **Abstract**

The study examines how policies travel between the EU and Sweden. The aim of the study is to investigate the workings and dynamics of policy-making in the area of employment. What happens with an EU Directive when it has gone through the negotiations, discussions and decision-making process in the EU and it is time to put it into operation in member states' institutional environments? Particular focus is placed on the implementation of the EC Directive 2002/14/EC: Establishing a general framework of informing and consulting employees in the European Community (from now on referred to as the IC Directive) and its implementation into Swedish law as well as in the Swedish labour market, in this case, the technical and engineering industries and the social services in Sweden. Notwithstanding, the report also brings forward that even though there are room for manoeuvre and possibilities to interpret EC policies in line with national policies some changes have occurred. In this way, policies travel between the EU and the member states working as passageways for cultural flows of ideas and viewpoints and blurs the boundaries between the EU and the member states. At the same time, the interpretations of what the IC Directive means differ in different member states (Didry and Meixner 2007). Maybe it is not a case of europeanisation, but rather europeanisations, in the plural.



## **Glossary/Abbreviations**

Arbetsgivarverket – the Swedish Agency for Government Employers

CEEP – the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest

ETUC – the European Trade Union Confederation

IFMetall – Industrifacket Metall (in English: Swedish Industrial Workers' and the Swedish Metalworkers' Union)

LO – Landsorganisationen (in English: the Swedish Trade Union Confederation)

MBL – Medbestämmandelagen (in English: Employment Co-determination in the Workplace Act)

SACO – Sveriges Akademikers Centralorganisation (in English: the Swedish Confederation of Professional Associations).

Sif – Sveriges Industritjänstemännaförbund (in English: the Swedish Union of Clerical and Employees in Industry)

SKL – Sveriges Kommuner och Landsting (in English: the Swedish Association of Local Authorities and Regions)

Svenskt Näringsliv – the Confederation of Swedish Enterprise

Sveriges Ingenjörer – the Swedish Association of Graduate Engineers

TCO – Tjänstemännens Centralorganisation (in English: the Swedish Confederation for Professional Employees)

Teknikföretagen – the Association of the Swedish Engineering Industries

UNICE - Union des Industries de la Communauté européenne (now named BUSINESSSEUROPE, The Confederation of European Businesses)





## **Introduction: National and postnational tensions**

Within the European Union today, the European Commission and the member states are working to form joint EU employment and social policies. In EU policy-making, employment and social policies are of particular interest, since they have to do with the perception of citizens and their social rights. Policies are channels for the cultural flows of ideas and notions and are in this way a part of forming 'society' (Shore and Wright 1997:4, 7). The process of policy-making is consequently an important subject for scrutiny.

Furthermore, policy-making in the EU employment and social policy brings to the surface the tensions and relationships between a postnational EU and an EU made up of sovereign nation states. I have elsewhere focused on the policy-making process in the EU and how policy-making in the EU is, on the one hand, about positioning and clarifying national priorities; on the other hand, about creating elbowroom for the protection of national independence as well as keeping that which is *culturally intimate* (Herzfeld 1997) invisible from the other member states (Thedvall 2006). Here I want to focus on how EU Directives are transformed into Swedish law, i.e. how postnational decisions are made national again. The study examines how policies cross borders between the postnational EU and the national, in this case Sweden. The aim of the study is to investigate the workings and dynamics of policy-making in the area of employment. What happens with an EU Directive when it has gone through the negotiations, discussions and decision-making process in the EU and it is time to put it into operation in member states' institutional environments? Particular focus is placed on the implementation of the EC Directive 2002/14/EC: Establishing a general framework of informing and consulting employees in the European Community (from now on referred to as the IC Directive) and its implementation into Swedish law as well as in the Swedish labour market, in this case, the technical and engineering industries and the social services in Sweden.

The notion of the national and the postnational is the theoretical backdrop to this study. In an organisation such as the EU it is difficult to understand, for example, the discussion on 'national' identity or 'national' positions without assuming that the EU is an organisation of nation states. It is also difficult to understand the negotiations and discussions in the EU committee, working group and council meetings without taking into consideration that the members represent nation states. This *national order of things* (Malkki 1999[1997]:53ff) is so rooted and unambiguous in the way of thinking in the member states' representatives that the idea of, as they say, a 'national' interest is seen as natural. In fact, organisations such as the EU assume and even reinforce the national order of things (also see Ben-Ari and Elron 2001:275-276). Jacobsson and Mörth (1998:199) argue that the work in the EU has forced the member

states to adopt a 'national' position where there has not been a need for one before. In this way the notion of the 'national' and the 'nation state' is upheld in the work of the EU. At the same time, the policy-making process and the EU decisions made on common policies constitute a postnational EU, in which policies become something more than just the sum of national interests.

To enable a thorough analysis the study first explores the Swedish institutional environment. What rights did employees in Sweden have access to before the IC Directive was implemented into Swedish law?

Second, the report examines how the IC Directive was implemented into Swedish law. Particular focus is placed on the different arguments and discussions regarding possible changes that lead up to the final decision. It starts off with the Swedish Government and the social partners' position in the EU. It then moves on to the Swedish Government Committee investigation, which began in November 2003. In the Swedish Government Committee investigation different voices are heard from the social partners, the Swedish government and the investigators on what changes are needed in order to meet the Directive. The section ends with the final decision in the Swedish Parliament on 1 July, 2005.

Third, the study then investigates what the alterations in Swedish law have meant for employees' representatives, in this case the unions, and individual employees. Two sectors are focused in the study. First, the public sector with special attention to social workers. Second, the private sector with particular focus on the technical and engineering industries, especially the automobile industry. The study shows that in the public sector the IC Directive has had no impact at all. In the private sector it is different. The IC Directive is implemented into Swedish law so that it gives rights to information to employees that are members of a union that before were only given to employees that were covered by collective agreements. The automobile industry has a long tradition of co-operation with the trade unions and are almost all covered by collective agreements. This is especially true of large firms such as Scania or Volvo Trucks, but also of their suppliers. In the technical and engineering industries in general, though, some changes have occurred. As a result of the specific writing on rights being given to 'employees' representatives' in the IC Directive the implementation resulted in some unintended consequences (more on this below).

Finally, the report concludes that even though elbowroom for the protection of national independence is created in the context of EU decision-making EU Directives still have consequences for national policy-making. Changes kept to a minimum can still alter ways in which member states traditionally have dealt with, in this case, employment policies.

### **The Swedish model: Historical and institutional background**

Whilst employment and social policies have emerged as significant policy areas within the EU, especially since the re-writing of the Treaty of the European Union in Amsterdam in 1997, they have traditionally been connected with the nation state. In Sweden, for example, there is a long tradition of valuing the importance of work for the development of social identity and of placing great value on employment and labour market politics for the imagining of the 'national'. 'The Swedish model' as an employment policy instrument has had great symbolic value in the creation of a Swedish national identity. This Swedish national identity is, if not challenged, then at least affected by the work on employment and social policy within the EU.

Still, the member states have different visions of what the state, or in this case the EU, should be involved in, in these areas. Even if the EU has included the Employment title and the Protocol on Social Policy in the Treaty of Amsterdam in 1997, and the member states have agreed that social cohesion is a prerequisite for economic prosperity, there is still room for interpretation of what employment and social policy should be about. However, and as we shall see below, these national interpretation are still influenced by what happens at the EU level.

In regards to organising the Swedish labour market, the 'Swedish model' is still prevalent even though significant changes have occurred during the last 15-20 years (see Lindvert 2006). One of the Swedish model's cornerstones, the use of collective agreements between the social partners, is still the dominant solution to employee, employer relationships in the Swedish labour market. However, in the 1970s three laws were adopted, which strengthen the employees' security and influence in their individual jobs. The Employment Protection Act (in Swedish: Lagen om anställningsskydd – LAS (SFS (Swedish Code of Statutes) 1980:80) regulates the individual employees' right to her employment. The Board Representation (Private Sector Employees) Act (in Swedish: Lagen om styrelserepresentation för de privatanställda (SFS (Swedish Code of Statutes) 1987:1245) gave employees the right to representation in the Board of the workplace. And the Employment Co-determination in the Workplace Act (in Swedish Medbestämmandelagen – MBL) (SFS (Swedish Code of Statutes) 1976:580), from now on referred to as the MBL gave employees the right to co-determination in the workplace.

Still, these laws and their compliance are heavily dependent on the unions, since most of the laws are connected to collective agreements. Regarding the Employment Protection Act the local organisation of employees has to be notified in case of dismissal and the employers are obligated to negotiate

according to the MBL. In relation to the Board Representation Act the unions carrying the collective agreement decide if they want representation on the board. The Swedish model of organising the labour market through collective agreements between the social partners was then partly preserved by the particular protection employees covered by collective agreements have in these laws.

Nevertheless, the MBL was effected and it is the story of how the changes came about in the MBL and how and if it has had an impact on the technical and engineering industries and social workers that will be followed in the sections below.

### ***The Employment Co-determination in the Workplace Act (MBL)***

The IC Directive specifically addresses the Swedish labour law, the MBL. The MBL regulates the employees' right to association, to information and to consultation (or negotiation as it is referred to in Sweden). However, according to the Swedish model, the employees' rights to information, negotiation and co-determination are connected to collective bargaining and collective agreements in the MBL. Employees without collective agreements are not covered by the MBL – except in §13 where the employers have to inform employees when there are severe and important changes taking place in the firm, which also include workplaces that do not have collective agreements.

As mentioned above, collective bargaining and collective agreements have a particular role in the Swedish model. Most Swedish employees are organised in unions and employers are part of employers' associations. The Swedish labour market is also signified by a high number of collective agreements that cover a high number of employees.

What is interesting in this case is that the state has issued legislation (that employees have the right to co-determination), but these rights are distributed through the unions and are connected to collective agreements. It is only employees covered by collective agreements that are protected by the MBL (except §13). It is thereby possible to argue that the position of the unions is strengthened through the MBL, since it gives employees an incentive to be a member of a union and struggle for collective agreements. What happens to the Swedish model if these rights are extended to employees not covered by collective agreements? One of the issues discussed in the Government Committee investigation was if the right to information and consultation should be extended to employees not covered by collective agreements in order to correspond to the Directive? The report discusses this more below.

### **Method**

The study focuses on how the IC Directive has been implemented in Swedish law and how it has affected the Swedish labour market. It examines the Swedish

implementation process of the Directive into Swedish law. It follows the standard procedure of appointing a Government Committee to investigate if and what changes have to be made in Swedish law to accommodate the Directive. The Government Committee's proposal is then used as a foundation for the writing of a Government Bill that in turn is scrutinised by the Council on Legislation. When possible changes suggested by the Council on Legislation are considered the Government Bill is turned over to the Swedish Parliament (in Swedish: Riksdagen) where it is discussed and examined by a Parliamentary Committee. The Committee suggests a proposal for decision in the Parliament. Finally, the proposal is voted on in Parliament.

The report closely examines the policy process in the Government Committee, since it was in the Government Committee that the decision on what changes should be made was decided on in practice. I have studied this work through interviews with the concerned parties. In this case the Secretary of the Committee and the representatives of the major employers' and employees' associations in Sweden represented in a Reference group to the Government Committee. On the employers side there were the private confederation of the Swedish employers' associations, the Svenskt Näringsliv (in English: the Confederation of Swedish Enterprise) as well as one of their biggest employer associations, the Teknikföretagen (in English: the Association of the Swedish Engineering Industries). Also included were organisations representing the public sector employers – the Sveriges Kommuner och Landsting (SKL) (in English: the Swedish Association of Local Authorities and Regions) and the Arbetsgivarverket (in English: the Swedish Agency for Government Employers).

The employees were represented by the biggest employees' confederations covering most of the trade unions in Sweden: the Tjänstemännens Centralorganisation (TCO) (in English: the Swedish Confederation for Professional Employees) and the Sveriges Akademikers Centralorganisation (SACO) (in English: the Swedish Confederation of Professional Associations). Unfortunately, it was not possible to interview the representative from the Landsorganisationen (LO) (in English: the Swedish Trade Union Confederation), since he is deceased. I have also interviewed an expert on labour law in the Ministry of Industry, Employment and Communication taking part in the work of writing the Government Bill

To examine if the Directive has changed the Swedish labour market two sectors were targeted: the National Board of Health and Welfare and in particular social workers representing the public sector and the technical and engineering industries in particular the automobile industry and small technical and engineering firms representing the private sector. In the study interviews with four of the unions representing these groups are represented: the Akademikerförbundet SSR representing social workers, the Industrifacket

Metall (IFMetall) (in English: Swedish Industrial Workers' and the Swedish Metalworkers' Union) representing industrial and metal workers in the automobile industry and the Sveriges Ingenjörer (in English: the Swedish Association of Graduate Engineers) and the Sveriges Industritjänstemännaförbund (Sif) (in English: the Swedish Union of Clerical and Employees in Industry) representing engineers in the technical and engineering industries. Furthermore, interviews have been conducted with social workers and employees in the automobile industry. It was, however, difficult to get access to employees in small private technical and engineering firms without collective agreement. This group was important since it was in this group that the IC Directive actually made a difference. However, this was partly solved through the interview with the Swedish Association of Graduate Engineers, since the changes in Swedish law gave the unions an important role in the dissemination of information (more on that below).

All in all, 25 interviews have been conducted. The semi-structured interviews took between 30 and 80 minutes, were recorded on tape and partly transcribed. The interviews took place during working hours and were carried out at the place of work of the interviewee. In addition, thorough document studies of Swedish law, the MBL and the changes suggested in the MBL has been carried out.

### **Implementation of the IC Directive into Swedish law**

In this section the study examines the Swedish participation at the EU-level until an agreement on the IC Directive was reached in the EU in 2002. It then continues to scrutinise how the Directive was implemented into Swedish law.

#### ***Swedish participation in the EU-level process***

In 1997, the European Commission contacted the European Social Partners to ask if they were interested in negotiating, according to Article 138-139 in EC law, on Information and Consultation. The Swedish trade unions – in this case TCO, LO and SACO wanted to negotiate and so did ETUC (the European Trade Union Confederation) and they said yes. The UNICE (or BUSINESSSEUROPE as it is now named) on the other hand said no. The CEEP (European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest) was prepared to negotiate, but when the UNICE said no the CEEP did not insist on negotiations. The Svenskt Näringsliv, as part of the UNICE, was also against these negotiations. They did not think that this concerned the European Union.

In 1998, the Commission proposed a Directive for information and consultation. The Swedish trade unions believed that it was a weak proposal. They were against, among other things the thresholds. The Directive would, for example, only apply for firms with more than 50 employees and the public

sector was completely left out. They believed that the Swedish MBL was much more powerful than the suggestions in the Directive. The employers' associations were also against the proposed Directive, but for other reasons. They questioned if it was possible to propose such a Directive according to EC law. They argued, for example, that the Council of the European Union needed to be unanimous, not qualified majority, to be able to reach an agreement

In 1999, the European Parliament agreed on a resolution for information and consultation within the EU. This also put pressure on the European Commission to act on their proposed Directive. However, the governments of the United Kingdom, Ireland, Germany, Denmark and Spain were very much against the Directive. It was also in the United Kingdom and Ireland that the most changes would occur. On the other hand, the British and Irish trade unions were very much in favour of the Directive. The negotiations continued. During the Swedish Presidency, in 2001, the Swedes were very concerned that there would be an agreement. They were engaged in bilateral negotiations and compromises to make sure that there was an agreement during the Swedish Presidency, since this was considered an important Swedish question. At the same time, the Swedish position was that this was something that Swedish law already fulfilled. The point of departure for the Swedish position was that changes would not be needed in Swedish law.

During the Swedish Presidency the Council of the European Union came to an agreement on the Directive for Information and Consultation. The fact that they came to an agreement was considered a victory for Sweden. The new Directive was then passed and in March 2002 the Directive was published in the Official Journal of the European Communities.

The Swedish trade unions believed, as the Swedish Government, that this was a very strategically important Directive. They thought that EC law needed a more general law on information and consultation that included all questions where the unions have an interest in negotiating. However, it was important for them that our national system was respected since much of Swedish labour relations are regulated by collective agreements rather than law. They agreed with the Swedish Government that Sweden already fulfilled the Directive.

### *New Swedish legislation?*

When the IC Directive had been decided on in the Council of the European Union it was discussed in the Swedish Ministry of Industry, Employment and Communication. The Swedish Government was reluctant to make any changes in the MBL, but according to the jurists looking into the EU directive they might have to. Soon it was decided that the government did not have sufficient information about existing Swedish law and a Government Committee was appointed to investigate if any changes in Swedish law were needed. The Government Committee's work was regulated by the Government's Committee

Directive where it was stated that an investigator should be appointed and that he/she should work in close co-operation with the social partners.

An investigator, a jurist in labour law with a long history as a jurist in different unions, was appointed and began her work in 1 November 2003. In January 2004, a Committee Secretary was also employed full-time with the investigation. An expert on labour law from the Ministry of Industry was also included in the investigation. She was there as an expert on labour law, but as one interviewee said the expert from the Ministry also regularly informs the Minister on what is happening in the Government Committee and make sure that the investigation moves in the right direction, according to the Government (Interview with representative from the Ministry of Industry). A reference group was also selected including the major union and employers associations in Sweden. As mentioned above, on the employers' side there was the private confederation of Swedish employers' associations: the Svenskt Näringsliv as well as one of their biggest employer associations, the Teknikföretagen. Also included were organisations representing the public sector employers – the SKL and the Arbetsgivarverket.

The employees were represented by the biggest employees' confederations covering most of the trade unions in Sweden: the Swedish Trade Union Confederation, the Swedish Confederation for Professional Employees, and the Swedish Confederation of Professional Associations.

#### *The Government's Committee Directive*

In the Government's Committee Directive it was stated that Swedish regulation regarding employees' participation in a firm's decision-making was included in the MBL. Other laws that might be affected by the Directive were the Board Representation (Private Sector Employees) Act (SFS 1987:1245) and Personnel Representation Act (in Swedish: Personalföreträdarförordningen (SFS 1987:1101) for public employees regulating the right for employees to have a representative on the board of the workplace. In addition, it was unclear if the Trade Union Representative Act (in Swedish: Förtroendemannalagen) (SFS 1974:358) regulating union representatives in firms with collective agreements was in line with the Directive. Furthermore, there was in the Directive a regulation on confidential information which in private firms is regulated by the MBL and in public organisations is regulated by the Public Employment Act (in Swedish: Lag om offentlig anställning) (SFS 1994:26). In addition, in the Act of Secrecy (in Swedish: Sekretesslagen) (SFS 1980:100) there are rules that have to do with consultation (SOU 2004:85, pp 139-141).

The Government's Committee Directive clearly stated that the investigator's assignment was to examine if the Swedish regulation was in line with the Directive. If it was not, the investigator should propose changes. However, the Committee Directive pointed out that in the EU Directive it was stated that the



Directive should be implemented according to national praxis and laws. Furthermore, the employees' level of protection in existing regulation was not to be lowered. The investigator should also take into consideration in her analysis and suggestions the special position collective agreements have in Sweden (SOU 2004:85, pp 141-142).

### ***Working with the Government Committee report***

The investigator's assignment was clear. She was going to investigate if any changes were needed in Swedish law to accommodate the IC Directive. After some thought it was apparent that if any changes were needed it would be in the MBL.

In the beginning the Committee investigator, the Committee secretary and the Ministry expert met every other week to discuss texts that the Secretary had produced as well as how they should proceed with the work. When they started the investigation it was unclear if any changes in the MBL were needed at all. They mainly discussed two things. One was the definition of 'employee representatives' in article 2e of the Directive and the other was if Sweden needed to expand the right to be consulted. On the first question the MBL only covered the right to information for employees covered by collective agreements. According to article 1 in the Directive all employees have the right to information through employee representatives.

It was one of the most difficult questions. Does EC law demand a change? Or is it possible, according to EC law, to keep the solutions we have in Sweden? (Secretary of the Committee).

Regarding the other question, the MBL §10 gave the right to all unions to negotiate. However, according to MBL §11 employers were only obligated to negotiate with employees covered by collective agreements except when employees are threatened by collective redundancies as well as in the event of transfers of undertakings, businesses or parts of undertakings or businesses according to the MBL §13. Then the obligation to negotiate is extended to all unions. Still, the obligation to negotiate was mainly connected to employees covered by collective agreements. Again, according to article 1 all employees have the right to consultation through employee representatives. Would they have to change the writing in the MBL so that employers' obligation to negotiate was extended to employee representatives not covered by collective agreements?

Furthermore, the issue of confidentiality needed to be examined to see if Swedish law was in line with EC law. In the Directive it was specified that employers may keep certain issues of sensitive character confidential, article 6 in the Directive. According to the MBL the union representatives have the right

to be informed about issues that concerns the employees. The employers may decide that some issues fall under the duty of professional confidentiality, but the employees' representatives have the right to be informed.

They discussed these issues and the Government Committee also had three meetings with the Reference group to get input from the social partners. During the first meeting they talked about how the investigation should be organised. At the second meeting they discussed a text and the Reference group gave their opinions and then in the third meeting the text was almost finished. The Reference group was also consulted along the way to give their input on specific issues that the investigator group needed to know.

During the whole process the trade union representatives and the employers' representatives all agreed that no changes were needed in the MBL, but for different reasons.

### *The Swedish employers arguing for confidentiality*

The Swedish private employers all agreed that the Swedish MBL was enough. They were worried that they would get involved in more bureaucratic processes if employees without collective agreements also would have to be informed. They were afraid that there would be double regulation.

It has to be either or. It is not possible to keep the whole MBL and then lay another layer of other issues [referring to the Directive]. They [the Directive and the MBL] have different legal foundations. Either we have information and consultation with the employees as the Directive presupposes or we negotiate with the unions as the MBL presupposes. It is not possible to have both. Double regulation. That's unacceptable! (Representative of the Teknikföretagen).

They would not mind replacing the MBL with the Directive, since the Directive included less regulation than the MBL. However, the Swedish private employers understood the political situation and to substitute the MBL with the Directive would not be possible in Sweden. Instead they argued for as few changes as possible. Furthermore, the representative from the Teknikföretagen said that information and consultation might be good. She continued and said that the firms probably would do it anyway, since they think it is important for the organisation to get the employees on board. However, when it is part of a law it is prescribed how these processes should be handled and the firm does not have a say in how they want to inform and consult their employees. And that is negative, she thinks. However, it was not an important question enough to start a conflict. They accepted the situation and as the representative from the Svenskt Näringsliv said:

The most important was to keep them [the changes] at a minimum-level. Preferably nothing (Representative of the Svenskt Näringsliv).

Still, the private employers did suggest a few changes in Swedish law during the discussions in the Government Committee. Yet, with diminutive anticipation to succeed. In the Directive the Confidentiality rule was more favourable for the employers. In Swedish law, as pointed out above, the trade union representatives have the right to be informed on everything that might be of concern for the union and the employees. In the Directive, the employers had the right to keep certain issues confidential during, for example, negotiations. The Svenskt Näringsliv, as well as the Teknikföretagen, argued for using the confidentiality rule in the Directive instead of the more generous one in the MBL. This was not accepted in the end, but it shows that EC law sometimes can give space to argue for lowering the employees' rights in member states with already strong labour laws or collective agreements in this area.

Another area the employers' representatives thought was problematic was the suggestion that all unions within all firms have to be informed regardless of whether the employees have collective agreements or not. In the Directive, there was room to exclude small firms with less than 20 or 50 employees depending on the type of firm according to article 3. The MBL did not give room for making such a distinction, all firms were included. The representative of the Teknikföretagen brought up the fact that there might be problems for small firms to inform and consult their employees through employee representatives. In the interview, she gave me an example of a hot dog stand with three employees, without collective agreements, all belonging to three different unions. According to the suggestion for changes in the MBL article 19a (see appendix) the employer would have to inform all three union representatives that might be located in the corridors of the trade union organisation instead of informing the employees directly. She wondered if the unions really wanted to have all this information. Would they be able to handle it and disseminate it to their members? This was also something that became problematic as we shall see later when the Directive was implemented into Swedish law.

Still, both the Svenskt Näringsliv and the Teknikföretagen were content with the final result, the changes in MBL. It was not something that, for their members, would be too difficult to handle even if they would have preferred to have no changes at all. As the representative of the Teknikföretagen said:

I can't say that we are satisfied, but it could of course have been much worse (Representative of the Teknikföretagen).

### *The Public employers: bystanders in the process*

The Arbetsgivarverket and the SKL represented organisations that all have collective agreements. All government public authorities are obligatory members of the Arbetsgivarverket and are automatically included in the central

collective agreements. The local and regional authorities are voluntary members of the SKL, but all employees working in local and regional authorities are covered by collective agreements. For this reason the public employers' representatives became more of bystanders in the process since no one of their members would be affected by the suggested changes in the MBL. However, they were both against changes by principle. They thought it was important to look at the big picture and not make changes if it was not absolutely necessary.

The Arbetsgivarverket was mostly concerned with more technical issues such as making sure that their situation was correctly described in the Government Report. The SKL thought it was important to take part in the process since there are over a million employees in the municipalities and counties. For them the Directive was important by principle, since it had to do with participation in decision-making. Their view was also that changes should be kept to a minimum.

What did matter to them both was to make sure that the Confidentiality Act was respected in the changes in the MBL. Still, this was not a big question for them. The suggested changes concerned the MBL and the MBL did not concern them in this respect since public authorities had to follow the principle of public access to official documents. Furthermore, the representative of the SKL pointed out that the relation between confidentiality and consultation was solved in the middle of the 1990s when the Act on Public Procurement was agreed. Then it was decided that confidentiality in public procurement negotiations was extended to the union representatives according to the MBL. In other words, the union representatives were able to take part in public procurement negotiations, but were required to keep the negotiations secret to their members and others.

In the end, both public employers' associations were pleased with the changes, since the changes did not concern them.

#### *The Swedish trade unions agreed that no changes were needed*

The Swedish employee representatives: the LO, the TCO and the SACO all agreed that no changes were needed in Swedish law. The TCO, for example, argued that the Directive gave room for interpretation to keep the rules Sweden has today. The Swedish employers interpreted the unions' unwillingness to touch the MBL as a sign that the unions believed they would lose power if the right to information and consultation was extended not only to employees with collective agreements but to employee representatives in general. However, the trade unions pointed out that if a union has the strength to form a collective agreement it is considered to be representative of the employees and this is important for the peace and stability in the labour market. They believed that if the collective agreements position on the labour market is hamstrung the individual employees' position in the labour market is undermined in the long run. The TCO pointed out that this was important since it was connected to the

Swedish model. TCO and LO, both had the same position, that the MBL was enough.

The SACO thought that the MBL was working and they did not see a need to change the MBL. However, compared to the TCO and the LO, the SACO's members are to a lower degree covered by collective agreements. For that reason they looked at it from a more practical point of view. How should the dissemination of information be performed? What kind of workplaces is this? Often, they are small workplaces. And what does it mean then? The representative of the SACO said that there might be a workplace, where they have one member belonging to one union. How should the information be handled? Should it go directly to the member or to the union? She continued and said that if you have a collective agreement there is a co-operation body or a local union in the workplace. But if there is none the individual have to handle the information. It can be good to receive information, but it can also be heavy to receive this type of information, she thought. Furthermore, the MBL (paragraph 13) already include workplaces that do not have collective agreements. In these workplaces employers have to inform employees when there are severe and important changes taking place in the workplace. The SACO's opinion was that no changes were needed. But if the proposed changes were accepted they wanted a specific writing that the employee would be able to receive information with maintained salary. The representative from the SACO said that in the present writing they have the right to time to receive information. The SACO thought that if employees without collective agreement should be given these rights then they should be given all rights. They did not want it to be a situation where the employer might say: 'of course you will get information but you will not be paid when you get it and when you are working with the information' (Representative of SACO). However, this was not accepted by the Government Committee investigators.

Another problem for the SACO was that some of their members were working in organisations where there are collective agreements with other unions, but not for the SACOs' unions. The employees, who are members in a SACO union, are then not covered by collective agreements. However, since the workplace has collective agreements the changes in the MBL will not apply for them. The representative from the SACO said that they had a pedagogical problem of explaining to their members that with the new changes it would be better for them to work in a workplace where there are no collective agreements at all than a workplace where there is collective agreement, but with a union that is not a SACO union. As long as the principle has been collective agreements then it is easy to explain. When the system is changed in one corner then there might be problems in another. Still, this was not a priority for the SACO. They were not completely happy with the result, but they thought it was acceptable.

As seen the Swedish Government and the social partner all agreed that no amendments of the MBL were needed. However, the Government Committee Investigator believed that a few changes had to be made in the MBL in order to meet the Directive.

***Conclusions in the Swedish Official Report (SOU 2004:85) produced by the Government Committee***

There were, as mentioned above, mainly two questions that concerned the investigator group. One was the definition of employee representatives in article 2e of the Directive and the other was if Sweden needed to expand the right to be consulted. On the first question the MBL only covered the right to information for employees covered by collective agreements. According to article 1, in the Directive, all employees have the right to information through employee representatives. The Committee concluded that changes were needed in the MBL in §19a, b and 20 (see appendix for details) to include employers' and employees' representatives not covered by collective agreements.

On the other question the MBL §11 declare that employers are obligated to negotiate with employees covered by collective agreements. Again, according to article 1, in the Directive, all employees have the right to consultation through employee representatives. However, here the Committee suggested that no changes were needed. All labour unions have the right to institute negotiations, according to MBL §10 and if they get information (according to the changes in §19 and 20) the unions themselves can start negotiations based on that information, they argued.

Furthermore, the issue of confidentiality needed to be examined to see if Swedish law was in line with EC law. In the Directive it was specified that employers may keep certain issues of sensitive character confidential, article 6 in the Directive. According to the MBL the union representatives have the right to be informed about issues that concerns the employees. The employers may decide that some issues fall under the duty of professional confidentiality, but the employees' representatives have the right to be informed. The public sector has a similar right under the provision of the Instrument of Government, the Freedom of the Press Act and the Act of Secrecy. The Committee proposed that the Swedish rules of confidentiality in both private and public sector correspond to the provisions of article 6 in the Directive and that no changes were needed.

The Committee then suggested revision in §4, 19a, b and 20 in the MBL (see appendix).

***Government Bill 2004/05:148***

The suggested changes in the Swedish Official Report Series were discussed in the Ministry of Industry and then the Government Bill was written. The Swedish Government initially agreed with the Swedish trade unions that no amendments

were needed, but were convinced that the changes suggested by the Government Committee had to be taken on board to fulfil the EU Directive. In the Government Bill, the suggested changes in the legal text were, as suggested in the Swedish Official Report, included in §4, 19a, b and 20 (see appendix).

The Government Bill was then sent to the Council on Legislation. The Council on Legislation consists of three higher judges, who read the Government Bills and then give their opinion. In this case, they believed that the Directive was not fully implemented since the right to consultation had only been solved indirectly. They believed that changes were needed also in §11 and 13 of the MBL, which both address the right to consultation before the employers decide on changes in the firm. This was not taken into consideration by the Swedish Government and changes were only made in the above mentioned paragraphs.

### ***The Swedish Parliamentary Committee report***

The Government Bill was then sent to the Parliament where it was prepared by a Swedish Parliamentary Committee. In this case, they did not suggest any other changes than the ones suggested by the Government and the changes in the MBL were formally decided on in the Swedish Parliament and came into force 1 July, 2005.

### **At the Firm level: Is there any changes?**

As presented above, the changes in the MBL according to the IC Directive includes extended rights to information to employee representatives not covered by collective agreements. This arrangement has some practical consequences in the Swedish labour market. One significant consequence is that if an employee is a member of a union, but her firm does not have collective agreements the information should be given to the employees' representative, i.e. her union. In a middle size firm there might be a representative within the firm. In smaller firms it is not necessarily the case, which means that information has to be sent to a representative at the central union organisation instead. How did this affect the social workers and the technical and engineering industries and their employees?

### ***Visible changes in the private sector***

#### *The employees in the automobile industry*

In the Swedish automobile industry the IFMetall represents most blue-collar workers and the majority of the white-collar workers belong either to the Sif or the Sveriges Ingenjörer. In a big firm, such as Scania Trucks in Södertälje, the employees are always covered by collective agreements. And the smaller firms are almost always suppliers to bigger firms, such as Scania Trucks, and these big companies often make sure that the small firms have collective agreements (interview with the IFMetall representative).

At Scania Trucks there are different local union organisations representing one or several unions. At Scania the blue-collar workers are member of the IFMetall local union organisation. The white-collar workers are members of either the Sif or Sveriges Ingenjörer's local union organisation. These local union organisations negotiate the local collective agreements and the union representatives take part in different co-operation groups with the management in the firm. The union representatives also have their own offices within Scania Trucks. The Sif union representative did, for example, work half-time with union issues at Scania Trucks.

The interviewed union representatives felt that there was good co-operation between management and union representatives. However, the employees seldom mention the unions when they were asked how they, as individuals, could influence their work situation. They instead mentioned the Toyota model inspired management system: Scania Production System (SPS). In the SPS, the employees are divided into different 'improvement groups'. The focus of the group is to improve their work. The production manager writes, together with the employees in the different improvement groups, 'action plans' for how the goals of the SPS should be reached. The interviewees were positive to the SPS and thought it was a good way to share information and solve conflicts in the group. And the blue-collar workers thought they had more possibilities to influence their work situation now than 20-30 years ago, through the SPS.

Still, one can imagine that for these employees the unions have an undeniable position as their representative against the firm in a conflict. The unions are rather seen as protector of their rights than influencing the employees' daily work situation.

### *The role of the unions in the automobile industry*

The trade unions and in this case the IFMetall also saw it as their main purpose to organise workers and make sure that there are collective agreements. Some workplaces do not have collective agreements, such as newly started firms. If a firm without collective agreements hires a union member then, if not before, the IFMetall becomes aware of the firm. Then they make sure that they sign collective agreements, which the employers almost always do right away. As an interviewee at the IFMetall said:

As soon as we find out that they exist we make sure that they sign a collective agreement (Representative at the IFMetall).

Sometimes the IFMetall has to give notice of a strike before the employers join an employer association and sign a collective agreement, but it hardly ever happens.



For the IFMetall, then, it is much more important to make sure that the firms have collective agreements than to make sure that they fulfil the new legislation in the MBL. The new legislation was of marginal concern for the IFMetall. So far the IFMetall had not heard anything from their members about this issue. They had not seen any effect at all.

The same was true for the Sif. The union members at Scania Trucks are all covered by collective agreements so the changes in the MBL did not concern their members at Scania Trucks. However, some of Scania Trucks' employees were also covered by the Sveriges Ingenjörer. Though they have collective agreements at Scania there is a rather large proportion of the members of the Sveriges Ingenjörer at large that are not covered by collective agreements.

*A new role for the unions: Circulating information*

Among the members of the Sveriges Ingenjörer there are relatively large groups of members that are not covered by collective agreements. This had some practical consequences for the Sveriges Ingenjörer, since the amendments in §19 and 20 in the MBL gave the right to information to all employees. The Sveriges Ingenjörer then gained an additional role. They became 'information providers' to their members, who are not covered by collective agreements. Information from the employers was coming into the central union office, since the employees often did not have an employee representative at the firm. To be able to handle the information one of the representatives at the central organisation were given the responsibility to keep track of this information.

He explained that the routine is to collect the information and put it in a binder. The first thing they ask themselves is if this is something that needs to be negotiated. However, so far it has only been relatively marginal issues such as the break-down of an organisation into different units, a change of a manager or a request to the Sveriges Ingenjörer to appoint an 'information receiver' at their firm.

Usually, the representative at the Sveriges Ingenjörer then telephone the person, who has sent the information to ask some complementary question to make sure that all information has been received. They also check in their list of members if they have any members in that firm, because sometimes they do not. The firm might have sent information to make sure that they do not break the law. If they find a member they might try to persuade the member to become 'information receivers' at their firm. The employers usually want this as well. The employers think it is a bit of a detour to give information to the employees via the unions. And the Sveriges Ingenjörer does not have any real interest in receiving this information either. They think it is much better if the employees receive it locally. So far, the interest among the members to become 'information receivers' has been limited, the representative from the Sveriges Ingenjörer admits. He thinks it is because the members think it might be too

much work. He continues and says that their members usually are quite well off, have quite good salaries, good working conditions and are used to negotiating themselves.

And so far the Sveriges Ingenjörer has not put too much energy into this. The Sveriges Ingenjörer instead understands their main purpose to be to initiate negotiations with the employer so that they can have a collective agreement. As the interviewee said, they cannot telephone all union members and inform them on information they received from their employers. They cannot use their resources for that purpose. He continued and said that if the employees do not chose an 'information receiver' then the Sveriges Ingenjörer cannot force them.

Still, the representative of the Sveriges Ingenjörer thinks this might be the first step towards an interest in union activity and maybe later an interest in forming a local union organisation and signing a collective agreement. He continued and said that their members often do not see a need to form a local union organisation and sign collective agreements. However, if they become 'information receivers' it might be an opportunity to make the members more interested in union work. So it could be positive, he said.

***The public sector remains the same: Everyone is covered by collective agreements***

In the public sector everyone is covered by collective agreements. Routines for information and consultation have been in place since the middle of the 1970s. There are different forms and structures for how co-operation and co-determination should be performed. There are also often local agreements for local co-operation systems. The EU directive has not meant any changes for employees in the public sector.

The study has mainly focused on the National Board of Health and Welfare and in particular on social workers and their work situation. As in the automobile industry the information and consultation practices are performed through standardised procedures regulated in the collective agreements and in the MBL. The employees meet regularly at workplace meetings to be informed on what is going on in the company. The union representatives are also part of different co-operation groups at different levels of the organisation, where the work situation is discussed, where possible changes in the organisation are ventilated and so forth. If there is something that is of concern for the employees and the union representatives cannot solve it at the local level then the central union organisation steps in to negotiate an agreement. Among the local union representatives of the social workers interviewed this had not happened as far back as they could remember. Usually their members concerns centred on work environmental issues such as a better chair or routines for assisting when they have violent clients. These issues had been solved locally.

However, as one of the local union representatives admitted the interest in union activities is very low. Information is generally distributed at the local voluntary personnel meetings as well as at the MBL-regulated workplace meetings. And sometimes the same issues are also repeated in the co-operation groups. One of the units in the Social Service had even abolished the regular co-operation group and decided that they should meet if it was needed.

Still, they have the right and if any problems arise these rights are included in the MBL and in the local collective agreements. One union representative also said that interest in union activities are always higher when there are a lot of problems and the Social Service in this municipality was working exceptionally well, she said.

### **A modest effect in the Swedish labour market?**

The Swedish Government and the Swedish social partners all agreed that the most effective implementation was to make no changes in Swedish law at all. This despite the fact that both the Swedish Government and the Swedish trade unions had been very active in making the EU member states agree on the IC Directive in the first place. They believed that Sweden already had a good law, the MBL, in place and they wanted the other member states to follow Sweden's example. The TCO, for example, felt that a directive on information and consultation would lay the ground for all future employee co-operation and co-determination EC labour laws, which made it particularly important.

Still, when the IC Directive was finally agreed on in the EU the Swedish Government had to accept that a few amendments had to be made in Swedish law. The MBL had to be changed to include the right to information to employees that are members of a union, but are not covered by collective agreements. However, since the Directive specified that information had to be given to employees' representatives – not individual employees – Sweden could keep most of her laws intact. This also meant that non-union members were excluded. No other changes were believed to be necessary even though researchers at the National Institute of Working Life as well as the Council of Legislation argued that amendments in the §11 and 13 in the MBL concerning consultation also needed to be changed.

Through these amendments in §19a, b and 20 in the MBL the trade unions gained a new role. They became 'information providers' to their members, who are not covered by collective agreements. The unions understood this to be an unpractical solution. However, since this concerned employees that were not covered by collective agreements and in general were quite uninterested in union activities one of the union representatives thought that if they could interest the employees in becoming 'information receivers' that would be a first step towards a deeper interest in union activities. This is still to be confirmed, though.

Still, in the firms and public services studied here most of the employees were covered by collective agreements and therefore already had the right to information, consultation and negotiation. Among the employees that were not covered by collective agreements the interest in becoming an ‘information receiver’ was minor. And if there is a modest interest among the employees to become ‘information receivers’ then the risk is that the information is left in a binder at the central union organisation instead of reaching the employees. However, this might have been due to the fact that the employees studied here that were not covered by collective agreements were highly educated people with a relatively stable position in the labour market. A fair guess would be that among employees with a more insecure situation in the labour market the changes in the MBL would be of greater importance. This would need to be further studied though.

### **Conclusion: Policies blurring boundaries**

The study has examined how policies cross borders between the postnational EU and the national, in this case Sweden. The aim of the study was to investigate what happens with an EU employment directive when it has gone through the negotiations, discussions and decision-making process in the EU and it is time to it put into operation in member states’ institutional environments.

Having common employment and social policies within the EU creates a space for the ‘social’ to be connected to other spheres than the nation states. It may be seen as a basis for creating a postnational society in the EU. Employment and social policies are in this way *society-creating* (Hoskyns 1996:47) and may serve as the glue creating a sense of belonging among individual citizens in the EU. At the same time, EU employment and social policy-making brings to the surface the tensions and relationships between a postnational EU and an EU made up of sovereign nation states. Both nation and state as constructs, is losing sovereignty to the EU (Delanty and Rumford 2005:190). The creation of a monetary union, and the continued development of EU policies on employment and social issues, suggest that the EU member states can no longer be seen as ‘states’ in the classical Westphalian sense, i.e. as sovereign territorial states distinguishing between domestic and foreign affairs, and acting among each other with the imperative of ‘balance of power’ and the model of *raison d’état* as guiding principles (cf. Cooper 2003; Delanty and O’Mahony 2002; Habermas 2001). Still, as we have seen, the nation states have power to form and interpret policies to fit their system.

The Swedish model is based on the organisation of the labour market through collective agreements between the social partners. The rights in the MBL were also connected to collective agreements and the rights were in this way distributed through the unions. Now, the right to information is extended to employees not covered by collective agreements, but the right to information is

still given to the employees' representative, which means the unions. In this way the unions are still important. They have even gained a new role where they are informed about issues in workplaces, which do not have collective agreements.

Notwithstanding, the report also brings forward that even though there are room for manoeuvre and possibilities to interpret EC policies in line with national policies some changes have occurred. The implementation of the IC Directive in the Swedish institutional environment has slightly changed the position of collective agreements in the Swedish labour market. The Swedish model may not be endangered. In its core it still is a strong guiding principle in the Swedish labour market. However, the amendments in the MBL could potentially be a threat to the more well-established and well-known union organisations, which in turn could effect the position of collective agreements. A union could be two people agreeing that they are forming a union in the workplace. Then the employees no longer need to belong to one of the bigger unions and union confederations to gain the right to be informed.

In this way, policies travel between the EU and the member states working as passageways for cultural flows of ideas and viewpoints and blurs the boundaries between the EU and the member states. At the same time, the interpretations of what the IC Directive means differ in different member states (Didry and Meixner 2007). Maybe it is not a case of europeanisation, but rather europeanisations, in the plural.

## Appendix: IC Directive: Implementation in Swedish Law – in detail

### *The implementation in Swedish Law*

The Directive 2002/14/EC was implemented in The Employment (Co-determination in the Workplace) Act 1976:580 (Medbestämmandelagen (SFS 1976:580) MBL). The Directive's implementation was first analysed in a Government Committee and published in the Swedish Official Report Series. Second, a Government Bill was proposed, which was examined by a Parliamentary Committee before it was endorsed in the Swedish Parliament. The amended Employment (Co-determination in the Workplace) Act (SFS 2005:392) came into force in Swedish law 1 July, 2005.

### *Swedish Official Report Series 2004:85*

The Government Committee was led by a legal expert from the Swedish Ministry of Industry. The Committee also included legal experts from the employers' organisations: the Confederation of Swedish Enterprise (Svenskt Näringsliv) and employers' organisations representing the public sector, as well as employees' organisations: the Swedish Trade Union Confederation (Landsorganisationen, LO), the Swedish Confederation for Professional Employees (Tjänstemännens Centralorganisation, TCO), and the Swedish Confederation of Professional Associations (Sveriges Akademikers Centralorganisation, SACO). They suggested changes to be made in paragraph 19 and 20 in reference to the Directive (see sections marked with yellow).

Directive 2002/14/EC	Suggested changes in the Co-Determination in the Workplace Act (MBL) 1976:580 in the Swedish Official Report Series
Article 1: Object and principles	
1)“Purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community”	
“The practical arrangements for information and consultation shall be defined and implemented in accordance with national law and industrial relations practices in individual member states in such a way as to ensure their effectiveness”.	
“When defining or implementing practical arrangements for information and consultation, the employer and the employee	

<p>representative shall work in a spirit of cooperation and with due regard for their reciprocal rights and obligations, taking into account the interests both of the undertaking or establishment and of the employees”</p>	
<p>Article 2: Definitions</p>	<p>The Directive’s definitions of the concepts undertaking, establishment, employer, employee, employees’ representatives, information and consultation does not give rise to any changes in Swedish law. To judge if a public organisation is included in the Directive is dependent on what sort of economic enterprise it pursues [author’s translation] SOU 2004:85, p 63.</p>
<p>Article 3: Scope</p>	<p>The possibility to use threshold rules (i.e. the law should only apply to undertakings employing at least 50 employees or establishments employing at least 20 employees) as well as the exception of crews of vessels plying the high sea should not be used. The provision in 2 § MBL on the exception for charitable and political organisations is consistent with the special provisions regarding these kinds of organisations given in the Directive [author’s translation] SOU 2004:85, p 74</p>
<p>Article 4: Practical arrangements for information and consultation</p>	<p>The descriptions of what information and consultation should include in the Directive and how communication should be performed is covered by the MBL [author’s translation] SOU 2004:85, p 78.</p>
<p>“In accordance with the principles set out in Article 1 and without prejudice to any provisions and/or practices in force more favourable to employees, the Member States shall determine the practical arrangements for exercising the right to information and consultation at the appropriate level in accordance with this Article.”</p>	
<p>“Information and consultation shall cover:”</p>	<p>Organisations covered by collective agreements fulfil the demands for information and consultation in the Directive. They are covered by §§ 10, 11 and 19 MBL [author’s translation] (SOU 2004:85, 82). According to the investigators interpretations it is possible to interpret the Directive so that it only includes employees’ representatives and businesses covered by collective agreements.</p>

	<p>Unorganised workplaces do not have to be included in the Directive. However, the Directive does include workplaces where the employees are members of an employee organisation even if it is not covered by collective agreements. Therefore, they should have the right to information and consultation [author's translation] (SOU 2004:85, p 86).</p>
<p>“information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;”</p>	<p><b><i>Covered by collective agreements</i></b>  According to §19 the employer should keep employees' representatives informed on the enterprises production developments and financial situation [author's translation] (SOU 2004:85, 83).</p> <p><b><i>Not covered by collective agreements</i></b>  The right to information according to §19MBL does only cover collective agreements employees' organisations [author's translation] (SOU 2004:85, p 86).</p> <p><b><i>The suggestion in the SOU</i></b>  The obligation to inform in §19MBL, first sentence, should also include employee organisations in workplaces that are not covered by collective agreements. The obligation to inform shall, if a local employee organisation is present be fulfilled towards the same [author's translation] (SOU 2004:85, p 95).</p>
<p>“information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;”</p>	<p><b><i>Covered by collective agreements</i></b>  Does the situation arise, that in one way or another developments may have consequences for the employment in the company, the employer has to inform its employees according to §19 [author's translation] (SOU 2004:85, p 83).</p> <p>If the Directive is interpreted so that consultation should take place already before any decisions are made it is doubtful if §11 MBL fulfils the Directive. Negotiations according to §11 MBL is only actualised when the employer has different options or ideas for action. Still, according to §11 MBL, when more complicated decisions should be made negotiations should take place already at the planning stage. In addition, according to §10 MBL, the employees' representatives have the right to initiate negotiations. The questions are without a doubt within the framework of what is covered by §10 MBL and the employees' representatives should</p>



	also be informed according to §19 MBL so they should be aware of the situation [author's translation] (SOU 2004:85, pp 84-85).
“information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9 (1).”	<p><b><i>Covered by collective agreements</i></b> This paragraph is included in the §19 MBL as well as by the obligation to inform that is included in the primary obligations when negotiating in §11 MBL [author's translation] (SOU 2004:85, p 84). The obligation to negotiate, according to §11 MBL, also include, apart from what has been mentioned before, important changes of the work- and employment situation for employees that are part of the organisation [author's translation] (SOU 2004:85, p 85).</p> <p><b><i>Not covered by collective agreements</i></b> The suggested widening of the definition of the obligation to inform in §19 MBL will also have the effect that the right to consultation is also fulfilled. If the non-collective agreement employee organisations are given information according to §19 MBL, first sentence, then they can demand a negotiation according to §10 MBL before the actual decision is taken [author's translation] (SOU 2004:85, p 102).</p>
“Information shall be given at such a time, in such a fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study, where necessary, prepare consultation.” i.e. the employees have to be informed and have the time to prepare to give a response.	Article 4.3 is primarily covered by MBL §19. According to §19 MBL information shall be continuously supplied i.e. as soon as possible. An employee representative has also the right, according to §19 to get the information needed to be able to safeguard the members common interests in relation to the employer. Apart from §19, the §§11-13 MBL include the obligation to inform in relation to primary negotiations. In addition, the general right to negotiate according to §10 MBL gives the right to get the information needed for the negotiations (§§15 and 18 MBL) [author's translation] (SOU 2004:85, p 80).
Consultation shall take place:	Article 4.4 is covered by MBL.
“while ensuring that the timing, method and content thereof are appropriate;”	Negotiations may take place whenever either part wants to according to §10 MBL. The right to negotiate also means an obligation to give relevant information needed for the negotiations according to §§15 and 18 MBL [author's translation] (SOU 2004:85, p 81).
“at the relevant level of management and representation, depending on the subject under discussion;”	Negotiations should, as a first option, take place at the local level but in case of disagreement it can move to the central level if the employees request it [author's

	translation] (SOU 2004:85, p 81).
“on the basis of information supplied by the employer in accordance with Article 2(f) and of the opinion which the employees’ representatives are entitled to formulate;”	Is covered by the general information obligation according to §19 MBL [author’s translation] (SOU 2004:85, 81).
“in such a way as to enable employees’ representatives to meet the employer and obtain a response, and the reasons for that response, to any opinion they might formulate;”	The right for employees’ representatives to meet the employer is covered by §15 MBL. In addition the right to obtain a response and reason for that response is also covered by §15 MBL [author’s translation] (SOU 2004:85, p 82).
“with a view to reaching an agreement on decisions within the scope of the employer’s power referred to in paragraph 2(c).”	That consultation should be performed in order to reach a common agreement is covered by the primary obligations at negotiations according to §11 MBL [author’s translation] (SOU 2004:85, 82).
Article 5: Information and consultation deriving from an agreement “Member States may entrust management and labour at the appropriate level, including at undertaking or establishment level, with defining freely and at any time through negotiated agreement the practical arrangements for informing and consulting employees. These agreements, and agreements existing on the date laid down in Article 11, as well as any subsequent renewals of such agreements, may establish, while respecting the principles set out in Article 1 and subject to conditions and limitations laid down by the Member States, provisions which are different from those referred to in Article 4.”	The space for deviating from rules of MBL through collective agreements is not in conflict with the Directive. However, the suggested changes of the rules in §§ 19a and b and in the second section of §20 of MBL regarding the right to information for employees’ organisations not covered by collective agreements and about the right to free time for getting the information should not be optional [author’s translation] (SOU 2004:85, p 106).
Article 6: Confidential information “1. Member states shall provide that, within the conditions and limits laid down by national legislation, the employees’ representatives, and any experts who assist them, are not authorised to reveal to employees or to third parties, any information which, in the legitimate interest of the undertaking or establishment, has expressly been provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorise the employees’ representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of	The Swedish rules on professional secrecy for employees in private firms are not in conflict with the Directive. §21 in MBL give the partners right to negotiate on professional secrecy concerning the information that should be disclosed. The difference between §21 and article 6.1. in the Directive is that according to Swedish law a wish from the employers to use professional secrecy has to be negotiated between the partners. If the partners are not able to agree the employer has the right to take it to court and then the court decides how long professional secrecy is valid. Of interest is also §22 in MBL, which states that information covered by professional secrecy that has been given to a local or central employee organisation can be

<p>confidentiality.</p> <p>2. Member States shall provide, in specific cases and within the conditions and limits laid down by national legislation, that the employer is not obligated to communicate information or undertake consultation when the nature of that information or consultation is such that, according to objective criteria, it would seriously harm the functioning of the undertaking or establishment or would be prejudicial to it.</p> <p>3. Without prejudice to existing national procedures, Member States shall provide for administrative or judicial review procedures for the case where the employer requires confidentiality or does not provide the information according with paragraphs 1 and 2. They may also provide for procedures intended to safeguard the confidentiality of the information in question.”</p>	<p>transferred to members of the board in that organisation. The member of the board is then also covered by professional secrecy (SOU 2004:85, pp 110-111).</p> <p>§§21-22 in MBL does not cover employees covered by the Public Employment Act 1994:260 (lagen om offentlig anställning (LOA). Instead, the Instrument of Government (Regeringsformen RF), the Freedom of the Press Act (Tryckfrihetsförordningen TF) and the Act of Secrecy 1980:100(Sekretesslagen) should be used. The Swedish rules on professional secrecy for public employment is consistent with the Directive (SOU 2004:85, p 115).</p>
<p>Article 7: Protection of employees’ representatives</p> <p>“Member States shall ensure that employees’ representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them”</p>	<p>In Swedish law there are extensive protection laws for employees’ union representatives in the Trade Union Representative (Status at the workplace) Act 1974:358. (lagen om fackliga förtroendemans ställning på arbetsplatsen (förtroendemannalagen). Other employees’ representatives are covered by the general right of association (föreningsrättsliga skyddet) in §§7-9 and §17 in MBL. The rules in §17 give relatively extensive protection even for employees’ representatives that are not appointed by a collective agreement employees organisation. However, they are not as extensive as in the Trade Union Representative (Status at the workplace) Act. The right to have time off includes for example only the actual negotiations. Therefore employees’ representatives that are given information according to the changes suggested in §19a in MBL should have the right to time off for being able to receive the information (SOU2004:85, pp 119-122).</p>
<p>Article 8: Protection of rights</p> <p>“1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by the employer or the employees’ representatives. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving</p>	<p>According to §54 in MBL shall employers, employees and organisations that break MBL or collective agreements compensate damage. According to §56 in MBL has the break of professional secrecy to be compensated. The sanction for breaking the MBL is the right to claim for damages. The rules are covered in §§54-61 in MBL (SOU 2004:85, pp 124-125).</p>

<p>from this Directive to be enforced.</p> <p>2. Member States shall provide for adequate sanctions to be applicable in the event of infringement of this Directive by the employer or the employees' representatives. These sanctions must be effective, proportionate and dissuasive."</p>	
<p>Article 9: Link between this Directive and other Community and national provisions</p> <p>"1. This Directive shall be without prejudice to the specific information and consultation procedures set out in Article 2 of Directive 98/59/EC and Article 7 of Directive 2001/23/EC.</p> <p>2. This Directive shall be without prejudice to provisions adopted in accordance with Directive 94/45/EC and 97/74/EC.</p> <p>3. This Directive shall be without prejudice to other rights to information, consultation and participation under national law.</p> <p>4. Implementation of this Directive shall not be sufficient grounds for any regression in relation to the situation which already prevails in each Member State and in relation to the general level of protection of workers in the area to which it applies."</p>	<p>The carrying through of the Directive in the way suggested will not affect the other Directives in Swedish law (SOU 2004:85, p 126).</p>
<p>Article 10: Transitional provisions</p>	<p>No comment in the SOU 2004:85.</p>
<p>Article 11: Transposition</p> <p>The Directive should be in force no later than 23 March 2005.</p> <p>Where Member States adopt these measures they shall contain a reference to this Directive.</p>	<p>No comment in the SOU 2004:85.</p>
<p>Article 12: Review by the Commission</p>	<p>No comment in the SOU 2004:85.</p>
<p>Article 13: Entry into force</p>	<p>No comment in the SOU 2004:85.</p>
<p>Article 14: Addresses</p>	<p>No comment in the SOU 2004:85.</p>

*Government Bill 2004/05:148*

The suggested changes in the Swedish Official Report Series was taken onboard in the Government Bill where the suggested changes in the legal text was included in paragraph 4, 19 and 20 (see sections marked with yellow).

<p><b>The former wording according to Employment (Co-Determination in the Workplace) Act (SFS 1976:580), including amendments up to and including</b></p>	<p><b>Suggested wording in the Government Bill 2004/05:148)</b></p>
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<b>2000:166.</b>	
§ 4 in MBL	§ 4 in MBL
An agreement shall be valid to the extent that it would result in the removal or limitation of rights or obligations under this Act.	The same wording as before.
Notwithstanding Sections 11, 12, 14, 19-22, and 28, Section 29, third sentence, Section 33-40, Section 43, second paragraph and Section 64 and 65, deviations may be made pursuant to a collective bargaining agreement. A collective bargaining agreement may not result in the application of provisions that are less favourable to employees than the provisions contained in the EC Council Directives 75/129/EEC of 17 February 1975, 77/187/EEC of 14 February 1977 and 92/56/EEC of 24 June 1992 (Employment (Co-Determination in the Workplace) Act (SFS 1976:580, including amendments up to and including SFS 2000:166).	Notwithstanding Sections 11, 12, 14, and 19, 20, the first paragraph, 21, 22 and 28, Section 29, third sentence, Section 33-40, Section 43, second paragraph and Section 64 and 65, deviations may be made pursuant to a collective bargaining agreement. A collective bargaining agreement may not result in the application of provisions that are less favourable to employees than the provisions contained in the EC Council Directives 75/129/EEC of 17 February 1975, 77/187/EEC of 14 February 1977 and 92/56/EEC of 24 June 1992 (Gov. Bill 2004/05:148, p 4).
A collective bargaining agreement may also prescribe more extensive labour-stability obligations than those mentioned in Sections 41, 41a, 41b and 44, as well as more extensive liability for damages than is prescribed by this Act (SFS 2000:166).	The same wording as before.
§19	§19
An employer is obliged to regularly inform an employees' organisation in relation to which he is bound by collective bargaining agreement as to a manner in which the business is developing in respect of production and finance and as to the guidelines for a personnel policy. The employer shall also afford the employees' organisations an opportunity to examine books, accounts, and other documents that concerns the employers' business, to the extent required by the labour union in order to protect the common interests of its members in relation to the employer. Where such can be accomplished without unreasonable cost or inconvenience, the employer shall, upon request, provide the employees' organisation with copies of documents and shall assist the organisation with any examination that it requires for the above-mentioned purposes (SFS 2000:166).	
	§19a

	<p>In Swedish: En arbetsgivare som inte är bunden av något kollektivavtal alls skall fortlöpande hålla arbetstagarorganisationer som har medlemmar som är arbetstagare hos arbetsgivaren underrättade om hur verksamheten utvecklas produktionsmässigt och ekonomiskt liksom om riktlinjerna för personalpolitiken. (Gov. Bill 2004/05:148, p 4).</p> <p>In English [author's translation]: An employer that are not bound by any collective agreement shall be obliged to regularly inform employees' organisation that has members that are working for the employer as to the manner in which the business is developing in respect of production and finance and as to the guidelines for personnel policy. (Gov. Bill 2004/05:148, p 4).</p>
	§19b
	<p>In Swedish: Arbetstagare som har utsetts att företräda sin organisation för att ta emot information enligt 19 a § får inte vägras skälig ledighet för att ta emot information (Gov. Bill 2004/05:148, p 5).</p> <p>In English [author's translation]: Employees that have been appointed to represent their organisation cannot be refused reasonable time off to be able to receive the information according to §19a (Gov. Bill 2004/05:148, p 5).</p>
§20	§20
Where a local employees' organisation exists, the obligation to provide information pursuant to Section 19 shall be fulfilled in relation to such organisation. In respect of negotiations pursuant to the second paragraph of Section 14, the obligation shall also be fulfilled in relation to the central employees' organisation to the extent that such information is of significance for the matter under negotiation (SFS 2000:166).	The same wording as before.
	<p>In Swedish: Informationsskyldigheten enligt 19 a § skall fullgöras mot lokal arbetstagarorganisation om sådan finns (Gov. Bill 2004/05:148, p 5).</p> <p>In English [author's translation]: The obligation to provide information pursuant to §19a shall be fulfilled in relation to local employees' organisation if such is in</p>

	existence (Gov. Bill 2004/05:148, p 5).
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*The Swedish Parliamentary Committee Report 2004/05:AU9*

The committee suggests a proposal for decision in the Parliament according to the suggested text in the Government Bill 2004/05:148. The law would come into force 1 July 2005. The Employment (Co-Determination in the Workplace) Act (MBL) 1976:580 is changed according to the Directive, SFS (Swedish Code of Statutes) (MBL) 2005:392. The law was passed and came into force 1 July 2005.

## References

- Act of Secrecy* (SFS (Swedish Code of Statutes) 1980:100.
- Ben-Ari, E and Elron, E., 2001, Blue Helmets and White Armor: Multi-nationalism and Multi-culturalism among UN Peacekeeping Forces. *City & Society*. 8 (2):275-306.
- Board Representation (Private Sector Employees) Act* (SFS (Swedish Code of Statutes) 1987:1245. <http://www.regeringen.se/sb/d/108/a/2510>
- Cooper, R., 2003, *The Breaking of Nations. Order and Chaos in the Twenty-First Century*. London: Atlantic Books.
- Delanty, G. and O'Mahony, P., 2002, *Nationalism and Social Theory. Modernity and the Recalcitrance of the Nation*. London: Sage Publications.
- Delanty, G. and Rumford, C., 2005. *Rethinking Europe. Social Theory and the Implications of Europeanization*. London: Routledge.
- Didry, C. and Meixner, M, 2007, *Démocratie économique et capacité des travailleurs, la mise en oeuvre de la directive européenne. Information-consultation dans 5 pays (Suède, Royaume-Uni, France, Belgique, Allemagne)*. Idhe ens-Cachan, Paris. Report for the European Commission.
- Employment Co-determination in the Workplace Act*. (SFS (Swedish Code of Statutes) 1976:580) including amendments up to and including SFS 2000:166. <http://www.regeringen.se/sb/d/108/a/2534>
- Employment Co-determination in the Workplace Act* (SFS (Swedish Code of Statutes) 1976:580) including amendments up to and including SFS 2005:392.
- Employment Protection Act* (SFS (Swedish Code of Statutes) 1982:80). <http://www.regeringen.se/sb/d/108/a/2544>
- Government Bill 2004/05:148. *Utvidgad rätt till information för arbetstagarorganisationer*.
- Habermas, J., 2001, *The Postnational Constellation. Political Essays*. Cambridge: Polity Press.
- Herzfeld, M., 1997, *Cultural Intimacy. Social Poetics in the Nation-State*. London: Routledge.
- Hoskyns, C., 1996. *Integrating Gender. Women, Law and Politics in the European Union*. London: Verso.
- Jacobsson, B. and Mörth, U., 1998, Europeisering och den svenska staten. In Ahrne, G. (ed) *Stater som organisationer*. Stockholm: Nerenius & Santérus Förlag.
- Lindvert, J., 2006, *Ihålig arbetsmarknadspolitik? Organisering och legitimitet igår och idag*. Umeå: Boréa.



Malkki, L.H., 1999[1997], National Geographic. The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees. In Gupta, A. and Ferguson, J. (eds.) *Culture Power Place. Explorations in Critical Anthropology*. London: Duke University Press.

*Personnel Representation Act* (in Swedish: Personalföreträdareförordningen (SFS (Swedish Code of Statutes) 1987:1101).

*Public Employment Act* (in Swedish: Lagen om offentlig anställning) (SFS (Swedish Code of Statutes) 1994:26).

Shore, C. and Wright, S., 1997, *The Anthropology of Policy. Critical Perspectives on Governance and Power*. London: Routledge.

SOU 2004:85. *Genomförande av direktivet om information och samråd. Betänkande av utredningen om information till och samråd med arbetstagare*. Swedish Official Report Series 2004:85. Stockholm: Fritzes offentliga publikationer.

Swedish Parliamentary Committee Report 2004/05:AU9. *Utvidgad rätt till information för arbetstagarorganisationer*.

Thekvall, R., 2006, *Eurocrats at Work. Negotiating Transparency in Postnational Employment Policy* (Stockholm Studies in Social Anthropology, 58). Stockholm: Almqvist & Wiksell International.

*Trade Union Representative Act* (SFS (Swedish Code of Statutes) 1974:350).