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SWEDEN

Collective agreements

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1. Definitions

1.1 What is the definition of the collective agreement in your country?

Section 23 of the 1976 Employment (Co-Determination in the Workplace) Act (Medbestämmandelagen) states that the term “collective bargaining agreement” means an agreement in writing between an employers’ organisation or an employer and an employees’ organisation in respect of conditions of employment or otherwise about the relationship between employers and employees. According to the same section an agreement shall be deemed to be in writing when its contents have been recorded in approved minutes or where a proposal for an agreement and acceptance thereof have been recorded in separate documents.

1.2 Is there a distinction made between different types of collective agreements according to their source, content or scope (occupational or territorial)?

The abovementioned definition covers all types of collective agreements.

2. Please summarize the history of collective agreements in your country.

Around 1870: trade unions in a modern sense began to appear with strikes and collective agreements as means of exerting influence on labour conditions.

During the 1890s collective agreements began to be used more frequently as a form of regulation.

At the beginning of the 1900s collective agreements on a national level were entered upon, e.g. 1905 for the metal industry.

The Act 1906 on Mediation in Industrial Disputes might be seen as an acknowledgement of collective agreements.

Sweden was among those countries which originally characterized collective agreements as merely giving rise to moral obligations.

In 1915 the Swedish Supreme Court declared that a collective agreement was a legally binding contract. If a collective agreement contained an express strike prohibition, the trade union could be subject to liability for damages for breach of the peace obligation.

During the 1920s, the system of collective agreements was well established.

In 1928 the Collective Bargaining Agreements Act was adopted, and at the same time the Swedish National Labour Court was set up. Initially there was strong labour opposition to these laws, but they were soon largely accepted.

The Labour Court made in its early years some important rulings on questions relating to the regulation in the Collective Bargaining Agreements Act.

In 1936 the Right of Association and Negotiation Act was passed, which completed the legal framework for self-regulation and collective bargaining covering the whole private sector. In 1938 the “Saltsjöbaden spirit” was established on the labour market through the Saltsjöbaden Agreement, concluded between the dominant parties on the private sector, and further state intervention measures in order to promote industrial peace could be avoided.

In the 1960s, the collective agreement system was extended to cover also the public sector, with some exceptions, and in 1976 further steps were taken in order to make regulations in bargaining in the public sector more equal to the private sector.

The 1970s is characterised by demands on joint decision followed by the new regulation on consultation and information as well as certain restrictions on the employer’s prerogatives. The Employment (Co-determination in the Workplace) Act came into force on 1 January 1977. One major part of the act constitutes a revision of the labour legislation mentioned above, i. a. the provisions concerning collective bargaining agreements and the rules on prohibition against industrial action while a collective agreement is in force.

3. Collective agreement as a source of law

3.1 What are the constitutional or/and legal grounds of collective agreements?

The Swedish Constitution and the Employment (Co-Determination in the Workplace) Act.

3.2 Does a collective agreement have a contractual or statutory status (or both)?

It has only a contractual status.

3.3 The relationship between collective agreements and other sources of law

3.3.1. How do collective agreements receive legal status from the Constitution and the constitutional principles in force in your country?

According to the Swedish Constitution provisions concerning contracts have to be issued by an act of Parliament. The Employment (Co-Determination in the Workplace) Act contains provisions on collective agreements.

3.3.2. Relationships between collective agreements and general principles

A) Hierarchy of standards

1) Principle of hierarchy

a) Are collective agreements and covenants subject to superior standards?

Yes.

b) Does a hierarchy of levels exist between collective agreements?

Yes.

2) Derogations

- a) Are collective agreements subject to the “principle of favour” (exemption “in melius” from the laws or higher-ranked agreements)?

Yes.

- b) Can they be less favourable than the latter or is it acceptable that lesser ranked agreements contradict unfavourably (“in pejus”) to higher ranked agreements?

Yes, if and to the extent that the laws or higher ranked agreements allow such a derogation.

B) Principle of equality: non-discrimination and “equal pay for equal work”

- 1) May collective agreements set conditions of unequal treatment and are these upheld as legal?

They are not upheld as legal if they are in conflict with provisions prohibiting discrimination in acts on non-discrimination.

- 2) Are collective agreements subject to the principle of equality?

Only in the meaning described in answer to B) 1 above.

C) Law and order

- 1) Is there a definition of “social” law and order (which is different from “economic” or “management” law and order)?

The concepts “general principles of law” and “good praxis” are used in labour law: There is no statutory definition of those concepts.

- 2) Is there a distinction between absolute and relative law and order?

We are not familiar with such a distinction.

D) Is there a duty of good faith in collective bargaining?

Yes.

3.3.3. Collective agreements and other sources of law

A) Collective agreements and law

- 1) Are collective agreements allowed to abridge rights that employees have been given by law?

Yes, if that is allowed according to provisions in the law. Normally it is allowed only if the collective agreement is concluded on a central level.

- 2) May the law itself annex a collective agreement?

It might be technically possible, but this method is not used in Sweden.

- 3) May a law delegate some of its powers to a collective agreement?

Yes.

B) Collective agreements and regulations

- 1) Should collective agreements be extended by a regulation to govern the whole profession, even businesses that are not members of the signatory unions?

Such regulation does not exist in Sweden. But collective agreements have normally an impact on other businesses as a standard of fair conditions.

- 2) Are some collective agreements subject to approval by ministerial order?
No.

C) Collective agreements and customs

- 1) Does a collective agreement challenge custom when its object is the same?

No.

- 2) Does the voluntary enforcement by the employer of a collective agreement that normally does not apply to him/her constitute a custom?

Yes.

- 3) Have you something else to say about this point?

Custom might under certain circumstances play an important role if the collective agreement is subject to interpretation dispute.

E) Collective agreements and the labour contract

- 1) Is the contract of employment allowed to contain clauses less favourable to the employee than the relevant collective agreement?

Section 27 of the Employment (Co-Determination at the Workplace) Act says that employers and employees who are bound by a collective bargaining agreement may not enter into any contract which does not comply with such collective bargaining agreement.

- 2) Is the collective agreement incorporated into the contract of employment or does it remain independent from it?

Answer: A collective agreement which has been concluded by a trade union is binding upon a member of the trade union according to Section 26 of the Employment (Co-Determination in the Workplace) Act. Clauses in the collective agreement on conditions of employment are thus considered to be part of the individual contract of employment for members of the trade union which is a party to the agreement. In practice the employer bound by collective agreement applies the same terms to unorganized employees, although there is no ban preventing the employer reaching an agreement with unorganised employees with other conditions. However, applying other terms to organised workers could risk a conflict with the trade union that is bound by collective agreement with the employer stipulating certain terms for the work in question. Further, to apply different terms depending on if a worker is a member

of a certain trade union or not, could be considered as a breach of the principle of freedom of association.

3) May a new collective agreement modify the contract of employment?

Yes.

4. Elaboration of collective agreements

4.1. Collective bargaining

4.1.1 How many levels of bargaining exist in your country?

Traditionally collective bargaining in Sweden has been much centralised. However, in the last decades there has been strong tendencies to decentralisation.
– Collective bargaining takes place on three levels: the national level, the industry-wide or branch level and the local level.

4.1.2 How are they related?

It depends on the intentions of the organisations involved.

4.1.3 Is collective bargaining freely decided or mandatory?

It is freely decided.

4.1.4 What subjects may collective bargaining include?

Conditions of employment. Other subjects concerning the relationship between employers and employees. Provisions on rules governing negotiation procedures between trade unions and employers' organisations.

4.2. Conclusion of collective agreements

4.2.1. Signatories

a) Who can be parties to the collective agreement?

(1) Only unions (or their representatives)?

Only unions (see question 1.1.)

(2) Also the employees, or work-council, or workforce delegates?

No.

(3) Other responses?

Employers not belonging to a union or employers' organisation (see question 1.1).

b) Must the parties meet a condition of representativity?

No.

c) May the agreement be signed by only one union, though in the minority, or is it necessary that a majority of unions do not oppose the text of the agreement?

It may be signed by only one union, though in the minority. But in reality this is quite uncommon.

- d) Does a right of opposition exist?

We are not familiar with that concept in connection with signatories.

4.2.2 Formal requirements

- a) Must collective agreements be made in writing?

Yes (see question 1.1)

- b) Must a notice be given?

No.

- c) Must collective agreements be registered?

No.

5. The enforcement of collective agreements

5.1. Scope of collective agreements

5.1.1. Geographic area

- a) National, regional, local?

Collective agreements may be national, regional or local, depending on the content of the agreement in question.

- b) International?

Normally a Swedish collective agreement shall not apply on work that is performed in another country. Collective agreements may explicitly cover work performed outside Sweden.

5.1.2 Professional sphere

What jobs, professions or branches are concerned?

All kind of jobs, professions and branches.

5.2 Determining which collective agreement is enforceable

5.2.1 Is the main activity of the business a criterion?

Yes.

5.2.2 What about the mandatory application of “extended” collective agreements?

This model is not used in Sweden.

5.2.3 Is it possible for an employer to voluntarily apply a collective agreement that does not apply to his/her business? Then, how to prove this voluntary enforcement?

Yes, it is possible. It has to be proved through evidence as usual.

5.2.4 Which collective agreement is to be enforced in case of coincidence of several agreements? According to what criteria?

The criterion is seniority, if several agreements are incompatible – that is, the first concluded agreement has priority. There is one exception to that principle: when the first concluded agreement is a “foreign” collective agreement, that is an agreement that does not have a strong connection to Swedish labour market.

5.3 Binding force of collective agreements

5.3.1 Are collective agreement enforceable upon signing?

Yes.

5.3.2 Do collective agreements apply automatically?

Yes.

5.3.3 Are collective agreements binding (imperative)?

Yes.

6. Content of collective agreements

6.1 Is the content mandatory, or can the parties choose it freely (or both)?

The parties can choose freely.

6.2 Different subjects dealt with

6.2.1 Freedom of collective industrial organization?

This subject is dealt with in the Employment (Co-Determination in the Workplace) Act, but might also appear in collective agreements.

6.2.2 Form and content of the contract of employment

- Requirements concerning the use of fixed-term contracts?

Yes.

- Form of the contract: in writing; compulsory mentions?

This subject is dealt with in the Employment Protection Act, but might also appear in collective agreements.

- Various clauses

- o Covenant not to compete?

Yes.

- o Compensation (financial) for covenant not to compete?

Yes.

- o Probationary period?

Yes, as complement to or derogation from the provisions of the Employment Protection Act.

6.2.3 Minimum wages?

Wages generally. If minimum wages exist, they are regulated in collective agreements.

6.2.4 Classification and career of staff members?

Yes.

6.2.5 Hours of work

- On-call time and hours of “equivalence”? Yes.

- Vacation? Yes.
- Overtime and fixed wages? Yes.
- Compensatory rest? Yes.
- Part-time work? Yes.
- Minimum rest time and maximum work time? Yes.
- 6.2.6 Rights of an employee who is on sick leave?
 - Suspension of performance of the contract of employment? Yes.
 - Guaranteed resources? Yes.
 - Job security? Yes.
- 6.2.7 Discipline
Yes.
- 6.2.8 Vocational training?
Yes.
- 6.2.9 Follow-up of the agreement?
Yes.

7. Interpretation of and litigations relating to collective agreements

7.1 Which bodies are responsible for interpreting the collective agreements?

7.1.1 Joint boards?

7.1.2 Other bodies or organizations?

It is the parties in the collective agreements that are responsible for the interpretation. If there is a dispute they primarily try to solve the question of interpretation by negotiation. If they cannot find a solution they bring the question of interpretation to the National Labour Court, or if the parties have such an agreement, the dispute may instead be referred for determination by an arbitrator.

There are no other bodies or organisations.

7.1.3 What is the scope of their interpretation?

a) Is it binding for the judge?

b) Can it be retroactive?

7.1.4 Is the judge entitled to interpret him/herself collective agreements?

7.2 Remedies against breach of collective agreements

7.2.1 Are penalties provided?

An employer, an employee or an organisation in breach of a collective agreement shall make compensation for any loss incurred as a consequence of such breach.

7.2.2 Which body or authority ascertains violations?

The National Court of Labour, but in certain cases a district court as court of first instance.

7.2.3 What are the civil remedies?

a) Individual claims?

An individual can institute and conduct proceedings before a district court concerning, for instance, compensation because of a breach of a collective agreement, if his or her organisation does not bring his or her case to the National Court of Labour, in which case it is the organisation who is the part in the process.

b) Collective lawsuits?

Normally a dispute concerning a question of interpretation of a collective agreement and damages are taken to the national Court of Labour by the organisations of employers and organisations of employees.

7.3 Proceedings related to collective agreements

7.3.1 Is there a distinction made between individual and collective litigations in this matter?

See answer above.

7.3.2 Which court(s) or body(ies) have jurisdiction over legal matters relating to collective agreements?

See answer above.

7.3.3 How is the judge informed of the existence and content of a collective agreement? What is the role of the judge and the parties in litigation relating to collective agreements?

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8. Altering and challenging of collective agreements

8.1 Cases and procedures

8.1.1 Do procedures exist for the review and termination of collective agreements?

Yes, in the collective agreements.

8.1.2 What happens to collective agreements in the case of a transfer of undertaking or change of employer?

Where an undertaking, a business or a part of a business is transferred from an employer who is bound by a collective agreement to a new employer, the agreement shall apply, where relevant, to the new employer. This is however not the case where the new employer is already bound by another collective agreement which may be applied to the employees whose contracts of employment are assumed by the new employer.

There are certain rules for notice of termination of the agreement in these cases.

Where an employee's employment agreement and terms of employment has been transferred to a new employer, the new employer shall be obligated, for a period of one year from the time of the transfer, to apply the terms and conditions for employment set forth in the collective agreement which applied to the previous employer. Such terms and conditions shall be applied in the same manner as the

previous employer was obligated to apply them. This shall however not be the case where the term of agreement has expired or where a new collective agreement has entered into force for the employees subject to the transfer.

8.1.3 What happens before and during the time of expiration of the agreement?

The agreement is still applicable during time of negotiations.

8.1.4 What is the procedure for substituting a collective agreement with another one?

The procedures are laid down in the collective agreements.

8.2 Can employees retain vested or established rights (“droits acquis”) in case of termination of collective agreements?

9. Conclusions

9.1 Is there a policy promoting collective bargaining and contractual collective law?

Yes, in the way the Swedish labour market is organised and regulated.

9.2 Are there problems concerning the relationship between contract of employment and collective agreements?

Not really. The collective agreement is often a part of the employment contract.

9.3 Does the connection between law and collective agreements operate in favour of employees (principle of favour, ratchet effect), or does it allow less favourable conditions?

Yes, if the employer and the employee are bound by a collective agreement it is not allowed with less favourable conditions than settled in the agreement. If the employee is not a member of the employees’ organisation which is a party in the collective agreement, the agreement often has a clause stating that the employer has to apply the agreement on that employee anyhow. If not, it is a breach of the collective agreement.

On the other hand, it is, in certain cases, possible for the parties in a collective agreement to, in the agreement, regulate certain questions less favourable for the employees than what is stated by the regulation in a law.

9.4 Are there any additional conclusions or problems you want to mention?