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REVISED EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF SWEDEN

(Articles 2, 4, 5, 6, 21, 22, 26 and 29
for the period 01/01/2005 – 31/12/2008)

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CYCLE 2010

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Arbetsmarknadsdepartementet

Ninth Report

Submitted by the Government of Sweden

in accordance with Article 21 of the Revised European Social Charter on the measures taken to give effect to the following provisions of the

Revised European Social Charter

Accepted provisions of Articles 2, 4, 5, 6, 21, 22, 26 and 29 for the period 1 January 2005 to 31 December 2008.

Article 24 has not been ratified by Sweden.

In accordance with Article 23 of the Charter copies of this Report have been communicated to

(1) *Svenskt Näringsliv* (Confederation of Swedish Enterprise)
(2) *Sveriges Kommuner och Landsting* (Swedish Association of Local Authorities and Regions)
(3) *Arbetsgivarverket* (Swedish Agency for Government Employers)
(4) *Landsorganisationen i Sverige* (Swedish Trade Union Confederation)
(5) *Tjänstemännens Centralorganisation* (Swedish Confederation for Professional Employees)
(6) *SACO, Sveriges Akademikers Centralorganisation* (Swedish Confederation of Professional Organisations).

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Article 2 - The right to just conditions of work

Article 2:3 - Annual holiday with pay

Questions in the form
Question 1
Reference is made to previous reports, with the following addition:

On 1 November 2008 a Government Inquiry presented a report *Enklare semesterregler* (Simplified Annual Holiday Rules) (Official Government Report – SOU 2008:95), by which it is proposed that the Annual Leave Act be simplified and amended in minor respects, primarily to improve the opportunity for fixed-term employees to get paid annual holiday. The Inquiry's proposal is now being processed and has not yet resulted in legislation.

Questions 2-3
Reference is made to previous reports.

Information in respect of Conclusions 2007
In Conclusions 2007 the Committee asks Sweden to provide information on the rules for postponement of annual holidays.

According to Swedish law, an employee is entitled to five weeks' annual holiday every year. This corresponds to 25 days of annual holiday. The employer has an obligation to ensure that the employee gets four weeks' annual holiday every year. As a main rule, this should be taken out in a block during the period June to August. If the employee is absent during this period owing to, for instance, sickness or parental leave, the annual holiday is scheduled following agreement with the employee when the employee has returned to work.

If the employee is completely absent from work throughout an entire annual holiday year and the annual holiday for that year cannot be scheduled, the paid annual holiday instead becomes payable as holiday pay. This is paid to the employee by the end of the annual leave year. By the report '*Enklare semesterregler*' (Simplified Annual Holiday Rules) (SOU 2008:95) it is proposed that the employee's paid annual holiday in some such cases should be carried over to the following holiday year, in order to give the employee a greater opportunity of having paid annual holiday during that annual leave year than today.

The employee can choose to save for a later year the number of annual holiday days that exceeds 20. When the employee chooses to use saved

annual holiday, as a main rule, where this comprises at least five days, such holiday should be taken out in conjunction with the ordinary annual holiday. Annual holiday can in a normal case be saved for at the most five years. This means that an employee who saves the maximum number of days for five years can request a ten-week long annual holiday leave when all the saved annual holiday is scheduled together with the ordinary annual holiday for the year.

Article 2:5 - Weekly rest period

Questions in the form
Question 1
Reference is made to previous reports, with the following addition:

It can be observed that the statutory amendment that entered into force on 1 July 2005, which has already been described in Sweden's Sixth Report, entered into force on 1 January 2007 in respect of those employers who on 30 June 2005 and up to and including 31 December 2006 were bound by a collective agreement governing matters related to working hours.

Questions 2-3
Reference is made to previous reports.

Article 2:6 - Information on employment contract

Questions in the form
Question 1
On 1 July 2006 certain amendments of the rules on the obligation to provide information contained in the Employment Protection Act (Swedish Code of Statutes – SFS 1982:80) (LAS) entered into force, whereby this information obligation was extended; see LAS Appendix 1.

The amendments and the underlying reasons were as follows:

Already prior to Sweden's entry into the EU amendments had been made to the Employment Protection Act with the aim of implementing the Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (the Information Directive). A new Section 6 c of LAS was introduced replacing the old Section 6 a. The rule then introduced had up to that date been considered to have implemented the Information Directive. Set against the background of, among other things, the rulings of the

European Court of Justice and the need for the provisions of the Directive to be more transparently expressed in the wording of the Act, it was considered that the implementation of the Information Directive should be clarified in certain points.

The statutory amendment introduced, among other things, an information obligation in the case of employment lasting longer than three weeks instead of the former four weeks.

Moreover, a rule was introduced whereby information was to be provided regarding conditions of employment of material relevance. The European Court of Justice has in the case C-350/99 Wolfgang Lange v Georg Schünemann GmbH, among other things stated that an employer shall, according to Article 2.1 of the Information Directive, notify an employee of the essential conditions of the contract or employment relationship. According to this ruling, the conditions listed in Article 2.2 of the Information Directive do not comprise an exhaustive list of the essential conditions referred to in Article 2.1 of the Directive. The provisions of Section 6 a of LAS stated that an employer should inform employees in writing of the conditions applicable to the employment. The second paragraph of the Section provides a list of seven points concerning which information must be provided. Set against the background of the fact that the European Court of Justice laid down in the above-mentioned case that all conditions that are of material relevance for the employment relationship are subject to the information obligation according to the Information Directive, the Government formed the opinion that it should be clarified that the employer's information obligation is not limited to the previous list. The amendments should not be viewed as a weakening or dilution of the employer's information obligation in relation to the provisions already applying. The main rule is that written information is to be provided concerning all conditions that are of material relevance for the employment relationship. The list contained in the second paragraph of the Section specifies the minimum requirement regarding which conditions the employer must in the normal case provide information about.

An employee who considers that the employer has not provided information about all conditions of material relevance may bring an action for damages under Section 38 LAS for violation of the information obligation. The employer should in the normal case provide written information in any situation where there is risk that the rights of an employee will be violated if the employee is not informed about what he or she is entitled to in some respect.

When the statute was reviewed it was also considered, upon a comparison of the Information Directive and the former Employment Protection Act, that further clarification should be provided regarding Section 6 a of LAS. According to Article 2 item 2 c) of the Information

Directive, the employer must provide information about the title, grade, nature or category of the work for which the employee is employed, and also provide a brief specification or description of the work. According to Section 6 a of LAS, information should be provided about the employee's work tasks, professional title or official title. It is indicated by the wording of the statute and the *travaux préparatoires* that the details now listed were alternatives. As the Information Directive requires an employee to be provided with information about both the title and about the content of the work, the statutory wording was amended to correspond more closely with the Directive.

A supplement was also introduced prescribing that information should be provided concerning the form of fixed-term employment. It has already been prescribed under the former rules that the employer must, according to Section 6 a, second paragraph, item 3 of LAS, state whether the employment applied indefinitely, for a fixed term or whether it was a probationary employment. A supplement was made whereby the employer also has to state which form of fixed-term employment the employment relates to.

Moreover, compared with previously, further information must be provided to posted employees. According to Section 6 a of LAS, an employer should provide information about the conditions of an employee's posting abroad, if the posting related to a period exceeding one month. The conditions to be specified are indicated in the *travaux préparatoires* regarding this Section, and correspond to the conditions mentioned in the Directive. The intention was that the statutory wording should itself indicate which information posted employees are entitled to obtain and when it is to be provided.

Moreover, the employer must state the conditions applicable under Section 8 of the Posting of Workers Act (SFS 1999:678). It was considered appropriate that the employer should also in such cases provide information to the employee about these conditions or the rules that are to apply.

Information should also be provided in the event that the preconditions for the employment alter. According to the former Section 6 a of LAS, the employer had to provide new written information within one month if the preconditions for the employment alter owing to a decision by the employer or through an agreement between the employer and the employee and the change relates to any of the information about which the employer had provided information. In the former rules, reference is only made to the information listed in the Section. Through the new regulation, the employer should not only provide information about the details

specified in the Section but rather about all of the conditions that are of material relevance for the contract or employment relationship. The provision had to be reformulated to ensure that the obligation of the employer to provide information in the event of an alteration to the preconditions for the employment should still apply in the future in all situations where the employer previously provided information.

Finally, the wording was for legal technical reasons divided into several shorter sections. So that those sections that deal with employers' information obligation could be placed close to each other, the old Section 6 a of LAS was repealed and the provisions on information were instead included consecutively after Section 6 b of LAS.

Questions 2-3
Reference is made to previous reports.

Article 4 - The right to a fair remuneration

Article 4:1 - Adequate remuneration

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2007
In Conclusions 2007 the Committee wished to have information about how great a per cent of Sweden's wage earners receive minimum wages.
Reference is made to previous reports, with the following addition:

Such detailed statistics are unfortunately not available. Sweden has previously provided information about the fact that the very low minimum wages found in some collective agreements are seldom paid in practice. If these wages are paid, it is to young holiday workers without experience or training, and in Sweden parents have a payment obligation for their children up to the age of 18.

According to wage statistics from Statistics Sweden for 2008, the average wage in Sweden is SEK 27 100 per month (20 600 net). According to statistics, the 10th percentile is SEK 18 600 per month (14 500 net). This means that 10 per cent of all employees have wages equal to or below this amount, which is almost 70 per cent of the average wage. According to statistics of the National Mediation Office from 2008, the lowest average monthly wages SEK 16 700 (13 100 net) can be found in restaurants. This is 64 per cent of the average net wage.

According to the report '*Hur Höga är minimilönerna'* (How High are Minimum Wages) (IFAU 2005:18), Swedish minimum wages are among the highest in Europe. Furthermore, their real value has increased significantly over the last ten years. In the collective agreements examined, which cover 74 per cent of the Swedish Trade Union Confederation's members, minimum wages during 2006 lay between SEK 12 790 per month (10 390 net) and SEK 15 340 per month (12 140 net) for a 20-year-old person without training or experience. This puts Sweden at the top in Europe, followed by the Netherlands with SEK 11 560 (9 460 net) per month.

In Sweden there is an entitlement to financial support, which functions as a protective net for those who have temporary financial problems. Moreover, for those who have difficulties in paying their housing costs it is possible to apply for housing allowance. It is not possible to specifically state which wage level affords a right to an allowance. The level of the allowance depends, among other things, on the value of the assets held by the applicant, number of children and housing costs.

Article 4.4 - Reasonable notice of termination of employment

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2007
In Conclusions 2007 the Committee asks Sweden to indicate how the new collective agreement in the metal working industry brings the situation into line. The Committee also notes that the relevant clause of the painting industry collective agreement remains in force and that the Government has invited the parties to discuss the issue of notice periods. The Committee concludes that the situation in Sweden is not in conformity with Article 4 § 4 of the Revised Charter on the grounds that, in the painting industry, employees under 30 with five or more years' service are only entitled to one month's notice of termination of employment.

Information on the Sheet Metal Agreement
Reference is made to previous reports, with the following addition, as regards periods of notice in the Sheet Metal Agreement:

Since 1 April 2001, according to the present collective agreement between the National Federation of Sheet Metal Industries (*Plåtslageriernas Riksförbund*) and the Swedish Building Workers' Union (*Svenska Byggnadsarbetarförbundet*) – the 'General rules for the

Sheet metal industry' (*Allmänna bestämmelser för Byggnadsplåtslageri)* – the periods of notice stipulated in the Employment Protection Act are to be applied . This is stated in an appendix to the agreement, called 'Agreement under the Employment Protection Act (1982:80)'; see Appendix 1 in Appendix 2.

The present agreement relates to the period from 1 April 2007 to 31 March 2010.

Information on the Painters' Agreement
Reference is made to previous reports, with the following addition, as regards periods of notice in the Painters' Agreement:

At the time that the question was dealt with in the Government Committee, in September 2003, the Painters' Agreement was to be renegotiated during the autumn of the same year. The Swedish Government then thought that the provision in question would be changed. But it was not.

Representatives for the Ministry of Employment have since then repeatedly been in contact with the representatives for the Swedish Painter's Union (*Svenska Målareförbundet)* and the Federation of Painting Contractors (*Målaremästarna*) regarding this question.

As Sweden stated in our Sixth Report from April 2006, the Minister of Employment had a meeting with representatives for the parties to the Agreement. The purpose of the meeting was, among other things, to provide information about the negative observations presented to Sweden as a result of the provisions of their agreement.

After having waited for the results of the latest round of negotiations, the Government of Sweden noted that these provisions are still included in the Painters' Agreement, which has been in force from 1 April 2007 and runs until 31 March 2010. According to information received from the parties to the Agreement, the issue of terms of period of notice was not dealt with because numerous other difficult issues had to be resolved.

As a result of the dialogue between the Swedish Ministry of Employment and the parties to the collective agreement, the latter advised in 2008 that the parties themselves appoint a joint working group, which was to discuss the rules.

During the autumn of 2009 the Ministry of Employment has, at officer level, provided information to the parties about the repeated criticism by the European Committee of Social Rights. The Government of Sweden has ensured that the parties of the agreement in question are aware of Sweden's obligations to comply with the applicable rules of the revised Social Charter.

The parties are well aware of their responsibility according to the Swedish model and to resolve the problem as parties to the collective agreement. This problem will consequently be an item for discussion at the agreement negotiations that the parties will commence this year. The parties are aware of the consequences that may ensue for Sweden if no change is implemented.

Furthermore, the Painters' Agreement is the only known agreement in the Swedish labour market where this kind of provision exists.

Very few of the Swedish employees are affected by the provision referred to. The number of employees (excluding apprentices) concerned is estimated by the parties to be about 12 800 persons. The parties to the agreement do not have any exact figures, but make an estimation that the group affected comprise approximately 2 300 persons.

Article 5 - The right to organise

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2006
In Conclusions 2006 the Committee concludes that the situation in Sweden is not in conformity with Article 5 of the Revised Charter because certain pre-entry closed shops remained in existence during the period concerned.

Reference is made to previous reports, with the following addition:

The Government has been in contact with the relevant trade unions and obtained the following information.

Information from the Electricians' Union
According to the Swedish Electricians' Union (*Svenska Elektrikerförbundet*), this criticism is founded on the issues involved not having been correctly described for the Monitoring Committee. There are two versions of the tie-in agreements currently applicable; one older and one with the current wording. It is provided by the older wording of the tie-in agreements that:

"The employer undertakes to encourage all employees working under the collective agreement to become members of the Swedish Electricians' Union."

From this wording it is not possible to conclude, according to the Swedish Electricians' Union, that the individual employer has undertaken an obligation to only employ electricians who are members of the Swedish Electricians' Union. Instead, the tie-in agreement shall be understood that the employer and the Union agree on the value of union membership. The employer may consequently not discourage unionisation, which is already prescribed by Section 8 of the Employment (Co-Determination in the Workplace) Act (SFS 1976:580) (MBL); see Appendix 3. It is consequently not possible, according to the Swedish Electricians' Union, to compare this obligation with those that the employer undertook in the case Sörensen and Rasmussen v Denmark.

However, during 2005, the Swedish Electricians' Union changed the wording of the relevant provision of the tie-in agreements. The new wording is:

"The parties agree on the value of employees being unionised."

This wording more accurately reflects the Union's understanding of the implication of the former tie-in agreements.

The Swedish Electricians' Union points out that they notified the Union's local organisations, clubs and branches about the Union's interpretation of the wording of the tie-in agreement obligations previously signed. At this time the older wording currently covers approximately 312 companies. In those cases where a company wished to sign a new tie-in agreement obligation incorporating the revised wording, the Union has accommodated everyone who has presented such a request.

Since the older wording was replaced, approximately 503 tie-in agreement obligations have been signed; including about 412 companies that are still active. Of the original 503 companies, 34 have transferred to membership of organisations affiliated to the Confederation of Swedish Enterprise (*Svenskt Näringsliv*). The tie-in agreement has then been replaced with a collective agreement that does not include the provision under discussion.

Information from the Swedish Painter's Union (Svenska Målareförbundet)
The tie-in agreement, type 94, for Vehicle & Industrial Painters contains the following contract provisions:

"Employers undertake to encourage all employees working under the collective agreement to become members of the Swedish Painter's Union."

The Swedish Painter's Union states the following regarding the clause and its application:

The Swedish Painter's Union has not applied the provision in such a way that it in any way obligates the employer to only employ members of the Union. Employers who employee non-union manpower are consequently not adversely affected by any sanction as a result of the said provision. The Swedish Painter's Union's intention with this provision is mainly only to protect the right of association, which can be a real problem in certain smaller companies where employers more or less consciously act against the right for employees to organise themselves. The Swedish Painter's Union has today 250 tie-in agreements with the wording in question, which cover about 300 employees. The Union's branches and elected officials are fully aware of both the Union's interpretation and of the application of the tie-in agreement provision in question.

Following analysis of the text and comments from the European Committee of Social Rights, the Swedish Painter's Union states that it will amend the tie-in agreement obligation so that it corresponds more closely with the intention that the Swedish Painter's Union has with the provision. They will consequently substitute the disputed text in the agreement obligation with the following text:

"The parties agree on the value of employees being unionised."

Comments by the Swedish Government
The Swedish Government wishes to emphasise that the European Convention is incorporated into Swedish law and judgments of the European Court of Justice constitute primary data for interpreting the law. The protection of the negative right of freedom of association that the European Convention safeguards represents part of Swedish law and is therefore applied by Swedish courts.

Article 6 - The right to bargain collectively

Article 6:1 - Joint consultation

Questions in the form
Reference is made to previous reports, with the following addition:

See also Article 21.

Article 6:2 - Negotiation procedures

Questions in the form
Reference is made to previous reports.

Article 6:3 - Conciliation and arbitration

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2006
In Conclusions 2006 the Committee concludes that the situation is in conformity with Article 6, item 3 of the Revised Charter, but also asks Sweden to provide updated information on the machinery for conciliation and voluntary arbitration for the settlement of labour disputes in Sweden.

Reference is made to previous reports, with the following addition:

There is no new information regarding the machinery for conciliation and voluntary arbitration for the settlement of labour disputes.

Article 6:4 - Collective action

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2006
In Conclusions 2006 the Committee notes from a previous report that an evaluation of the activities of the National Mediation Office for the period between 2000 and 2004 has been carried out to assess their power to levy a penalty payment for non-compliance. The Committee wishes therefore Sweden to specify whether penalty payments for non-compliance still may be imposed, under which circumstances, with respect to which employees' and employers' organisations, and what may be their amount.

Reference is made to previous reports, with the following addition:

In March 2006 a Government Inquiry presented the report *God sed vid lönebildning* (Good Practice in Wage Formation) - an Evaluation of the National Mediation Office (Official Government Report – SOU 2006:32). The Inquiry's proposal is being processed and has not yet resulted in legislation.

Article 21 - The right of workers to be informed and consulted within the undertaking

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2007
As regards the general provisions concerning information and consultation contained in MBL; see Appendix 3, refer to previous reports with the following addition:

Information concerning Section 19 a of MBL
As regards the more precise meaning of Section 19 a of MBL, applicable since 1 July 2005, the following is stated:

An employer who is not bound by any collective agreement at all shall continuously keep employees' organisations that have members who are employees of the employer notified of how the operation is developing, as regards production and financially, and similarly on the guidelines for personnel policy.

The provision only applies to employers who are not bound by any collective agreement at all. The employer's information obligation applies in relation to all employees' organisations that have members who are employees of the employer. The scope of the employer's information obligation under this paragraph is the same as according to Section 19, first paragraph, first sentence of MBL. It is intended that the issues or subjects covered by Section 19, first paragraph, first sentence of MBL are also to be covered by the new provisions contained in Section 19 a of MBL.

A general point of departure for the information obligation is that information should be provided concerning such more general factors concerning the operation that, in a normal case, are of importance for the employee side to be able to monitor development and to form their own opinion on the prospects for the future. The information obligation does not only cover information that is important for assessing future prospects. Information referable to what has already occurred, and similarly information about the current situation, is also subject to the information obligation. Information is to be provided on a continuous basis, which means that it is to be provided as soon as it can be. A manifest deterioration in incoming orders during the preceding year is viewed typically as such a matter that the employer should provide information about (cf. AD 1978 No. 84).

Employees' organisations and employees are responsible for the employer being given necessary information about there being employees at the workplace who are unionised. They should both participate in notifying the employer about there being employees who are unionised. The employer can nonetheless not escape from its obligations merely on the grounds that it has not been provided with information about the union affiliation of its employees. The employer must be deemed to be liable to, in any case at some time each year, ask employees whether they belong to any union. Such an inquiry can be presented generally to employees by a notice at the workplace or in some other way. The question of whether an employer's ignorance concerning the union affiliation of employees does not provide a release from liability in the event of a failure to satisfy the information obligation must be determined by the courts on a case to case basis. The information obligation under Section 19 a of MBL shall be performed in relation to local employees' organisations if there are any. If there is no local employees' organisation, the employer should instead inform the employees' organisation centrally in accordance with Section 20 of MBL.

According to Section 19 b of MBL, an employee who has been appointed to represent their organisation for the receipt of information under Section 19 a may not be refused reasonable leave to receive the information. This provision has a similar wording as Section 17 of MBL. The scope of the leave should not extend beyond what is necessary for the information in question. The scope of the leave should be in reasonable proportion to circumstances at the individual workplace. Leave should also be scheduled so that it does not involve significant impediments to the due progression of the work.

Information about union unionisation level
91% of all employees in Sweden are subject to a collective agreement according the National Mediation Office's Annual Report 2008. The unionisation level was 71% according to information from 2008. However, there is no information about the proportion of unionised employees that are employed at workplaces not subject to a collective agreement. However, one may assume that this figure is between 0-9%.

Any effects of Section 19 a of MBL
The effects of the new provision are difficult to assess. According to a study published in 2009 by Eurofond (Jenny Lundberg, Oxford Research), the Swedish trade unions could not yet report on any effect of the amendments introduced on 1 January 2005 (http://www.eurofound.europa.eu/eiro/studies/tn0710029s/se0710029q.htm)

Information about the Act on involvement of workers in European companies

The Employee Involvement (European Companies) Act (SFS 2004:559) entered into force on 10 October 2004; see Appendix 4. This Act contains provisions concerning involvement of workers in European companies. 'Involvement of workers' means the employees' rights to information, consultation and participation. Involvement of workers is established by a negotiation delegation being formed for the employees, which has the task of concluding an agreement, with the undertakings that directly participate in the forming of a European company, concerning worker involvement in the European company. Special provisions, known as 'reference provisions', that are to regulate worker involvement in the European company become applicable in the event that such an agreement is not concluded between the parties for some reason.

The Swedish employees in the negotiation delegation are appointed by the local employees' organisation(s) in Sweden bound by a collective agreement in relation to the European company, its subsidiaries or branches in accordance with Section 16 of the said Act. If the company is not bound by any collective agreement in relation to any employees' organisation, the Swedish members shall be appointed by the local employees' organisation representing the majority of employees located in Sweden, in accordance with Section 17 of the same Act. If there is no such organisation as referred to in Section 17 of the same Act, the Swedish members are appointed by the employees of the participating companies, subsidiaries concerned and the branches concerned.

There were 4 registered European companies in Sweden in 2008. The scope is therefore limited. We do not know the extent to which there are Swedish employees in Sweden who are employed by foreign European companies.

Information about the Act on involvement of employees in European cooperative societies

In the course of the reporting period a new Employee Involvement (European Cooperative Societies) Act (SFS 2006:595) also entered into force, on 18 August 2006; see Appendix 5. Through this Act the Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees was implemented. No European cooperative is registered in Sweden.

Information concerning the Act on participation of employees in cross-border mergers

In addition, an Employee Participation (Cross-border Mergers) Act (SFS 2008:9) entered into force on 15 February 2008; see Appendix 6. This Act implements Article 16 of the European Parliament and the Council Directive 2005/56/EC of 26 October 2005 on cross-border mergers of limited liability companies.

The European law Directive and the above-mentioned Acts linked to it are modelled on the rules for European Companies. The latter Act on employees' participation in cross-border mergers, however, only regulates employees' rights to participate. The right to information and consultation was not included in this Directive.

Article 22 - The right to take part in the determination and improvement of the working conditions and working environment

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2007
In Conclusions 2007, the Committee wished to have updated information about the workers' right to take part in the determination and improvement of the working conditions and the working environment in the undertaking.

Reference is made to previous reports with the following addition:

Amendments have been made to Section 10 of the Work Environment Ordinance (SFS 1977:1166) by SFS 2008:82, which entered into force on 8 April 2008; see Appendix 7. These amendments mean that the obligation to report the appointment of a safety delegate or safety committee to the Swedish Work Environment Authority is removed and that the notice at the workplace with the names of safety delegates and safety committee members can be replaced by some other appropriate means of announcement (website, intranet or the like).

It was actually after the reporting period, but on 5 March 2009 the Government forwarded the Bill *Elevers och studerandes medverkan i arbetsmiljöarbetet, m.m.* (Participation of pupils and students in work environment work, etc.) (Government Bill 2008/09:138) to the Riksdag, where it also has been taken. The amendments to the Work Environment Act (SFS 1977:1160) entered into force the 1 January this year and afford great influence to pupils and students. This involves a particularly great change for the representatives of adult students. At the same time certain opportunities for the employees' safety delegate were introduced, but not for the student safety delegate, to intervene

formally in favour of manpower that comes from outside, for example staffing agencies.

Article 26 - The right to dignity at work

Article 26:1 - Sexual harassment

Questions in the form
Question 1
Reference is made to previous reports, with the following addition:

On 1 July 2005 the Equal Opportunities Act (SFS 1991:433) and the Prohibition of Discrimination Act (SFS 2003:307) were made more stringent and far reaching. These changes involve, among other things:
– harassment owing to gender and sexual harassment are defined as two separate phenomenon (the term 'sexual harassment' was previously used as a common designation);
– an expressed prohibition against discrimination in the form of harassment owing to gender and sexual harassment was introduced into both Acts;
– gender was added as a ground for discrimination in the Prohibition of Discrimination Act in the prohibitions of discrimination relating to, among other things, labour market political activities, the commencement or operation of business operations and practice of a profession.

The aim of making a distinction between the terms 'harassment' and 'sexual harassment' was, first, to clarify that sexual harassment is in part of a different nature than harassment, second, in order for the Swedish legislation to correspond to the structure of EU law. The feature that distinguishes sexual harassment from the other kinds of harassment is that the conduct should be of a sexual nature and may be verbal, non-verbal or physical. The fact that harassment and sexual harassment are defined as a form of discrimination and that protection against discrimination has been extended to new areas of society is in line with the protection against discrimination that other grounds of discrimination enjoy according to the EU Anti-discrimination Directive.

New Discrimination Act and new authority
On 1 January 2009 a new Act, the Discrimination Act (SFS 2008:567), entered into force; see Appendix 8. The provisions of the previous discrimination laws, see below, have basically been transposed to the new Discrimination Act.

On 1 January 2009 a new authority was established, the Equality Ombudsman (DO), which is responsible for supervising compliance with the Act. In conjunction with the new Ombudsman being established, the four former Ombudsmen against discrimination (the Equal Opportunities Ombudsman (JämO); the Ombudsman against Ethnic Discrimination (DO); the Disability Ombudsman (HO) and the Ombudsman against Discrimination on grounds of Sexual Orientation (HomO) were phased out.

The new Act replaced the following Acts:
– the Equal Opportunities Act (SFS 1991:433)
– the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Religious Faith (SFS 1999:130)
– the Prohibition of Discrimination in Working Life on Grounds of Disability Act (SFS 1999:132)
– the Prohibition of Discrimination in Working Life on Grounds of Sexual Orientation Act (SFS 1999:133)
– the Equal Treatment of Students at Universities Act (SFS 2001:1286)
– the Prohibition of Discrimination Act (SFS 2003:307)
– the Children and School Students (Prohibition of Discrimination and Other Degrading Treatment Act (SFS 2006:67)

'Discrimination' in the new Act is defined in the same way as in the former discrimination Acts. The term covers direct and indirect discrimination, harassment connected to one of the grounds of discrimination, sexual harassment and instructions to discriminate. The new Act contains prohibitions against discrimination that apply within most areas of society, among other things working life.

The Discrimination Act aims to counteract discrimination owing to gender, ethnicity, religion or other belief, disability, sexual orientation, transgender identity or expression or age. The two latter are new grounds for discrimination since 1 January 2009.

As of the new Discrimination Act, the protection against discrimination in the field of working life is extended to apply also to when a person makes an inquiry concerning work. It will also be possible for a person who is applying for or is carrying out a traineeship with an employer and when the work is performed by temporary or borrowed labour to refer to the prohibition.

It is stated in Chapter 1, Section 4 of the Discrimination Act that harassment is conduct that violates the dignity of someone and which is related to one of the grounds of discrimination gender, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The same provision also states that sexual

harassment is conduct of a sexual nature that violates someone's dignity.

According to Chapter 2, Section 3 of the Discrimination Act (as according to the former Acts against discrimination), an employer who becomes aware that an employee considers that he or she has been subjected in connection with work to harassment or sexual harassment by someone who is performing work or carrying out a traineeship at the employer's establishment, the employer is obliged to investigate the circumstances surrounding the alleged harassment and, if it is the case, take such measures as may reasonably be required to prevent harassment in the future. This obligation also applies in relation to a person carrying out a traineeship or performing work as temporary or borrowed labour. An employer who does not fulfil this obligation must pay compensation for discrimination, see below, for the offence resulting from the infringement.

The employer is also, according to Chapter 3, Section 6 of the said Act, liable to take measures to prevent and impede any employee being subjected to harassment or sexual harassment. Which measures are necessary or which measures the employer intends to initiate or implement during the forthcoming years must be reported in a gender equality plan.

Question 2
Reference is made to previous reports, with the following addition:

The former Equal Opportunities Ombudsman (JämO) was, during the period in question, responsible for supervision concerning the Equal Opportunities Act (SFS 1991:433). Dealing with complaints concerning discrimination, including harassment, among other things within working life, and similarly providing legal advice within this area, comprised part of the authority's core operation.

During the reporting period in question, JämO also exercised supervision of employers' discharge of their obligation to conduct goal-oriented work to actively promote equality at work, among other things the obligation of taking measures to prevent and impede any employee being subjected to sexual harassment or gender-related harassment.

The new the Equality Ombudsman has received special funds for training and information initiatives concerning the new Act. Moreover, approximately 17 anti-discrimination offices receive government support to counteract and prevent discrimination.

Question 3
Reference is made to previous reports, with the following addition:

The former JämO received during the reporting period in question 94 complaints concerning sexual harassment or harassment owing to gender in working life.

During the same period JämO started a project with the aim of enhancing knowledge about gender-related and sexual harassment at work and also to produce tools to prevent and counteract harassment for employers, union organisations and employers' organisations. A book *Handbok om sexuella trakasserier och trakasserier på grund av kön i arbetslivet* (Manual on sexual harassment and gender-related harassment at work) was published. This book brings to life in some reports the true nature of the problem. It goes through the applicable rules and provides methods and approaches for preventive work and for when investigation is required.

Jämo also conducted a working life oriented training series "*Låt ingen kränkning passera – AGERA*" (Don't ignore harassment – TAKE ACTION).

In addition, within the framework of Pride festivals, JämO has conducted siminars relating to the protection of transsexual and transgender people as regards discrimination and harassment.

Information in respect of Conclusions 2007
Liability of employers and means of redress
1. In Conclusions 2007 the Committee asks for the meaning of the term 'outsourced workers'.

'Temporary or borrowed staff' means, in the discrimination and work environment legislation, persons who are hired or borrowed from another employer for a period, or who are employed by a staffing agency and often perform fixed-term assignments with someone else, that is to say with a client company.

2. In Conclusions 2007 the Committee asks again whether employers have the same obligations with regard to persons, other than employees and job applicants, who might suffer sexual harassment from personnel under their responsibility or at premises under their responsibility from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.

Reference is made to previous reports, with the following addition:

The obligations according to the Regulations concerning measures to combat victimisation (Swedish Work Environment Authority Regulations – AFS 1993:17), are directed towards employers. Employers

must counteract employees being subjected to offensive discriminatory treatment. Among other things, employers must make it clear that offensive discriminatory treatment is not accepted in the operation. It is only bullying directed towards employees that is covered by these rules. The Regulations on Systematic Work Environment Management (AFS 2001:1) also provide supplementary provisions in certain respects. According to Chapter 3, Section 4 of the Work Environment Act (SFS 1977:1160), the employee shall participate in work environment management and shall take part in the implementation of the measures needed in order to achieve a sound work environment. There are consequently obligations for employers, employer representatives and for employees.

Harassment in relation to employees by customers, clients, outsourced workers, etc. is to be counteracted by the employer according to other rules, for instance the Regulations on Systematic Work Environment Management (AFS 2001:1) or the Regulations on Solitary Work (AFS 1982:3) or Regulations concerning violence and menaces in the working environment (AFS 1993:2).

As regards the prohibition on employers discriminating against a job seeker or an employee by harassment, which is related to gender or sexual harassment, this prohibition can also be referred to by temporary or borrowed personnel or by someone seeking or carrying out a traineeship.

Moreover, according to the Discrimination Act, employers have an obligation to investigate and take action against harassment between employees (see also above answer under general questionnaire under Article 26:1). The protection against harassment for employees not only applies to harassment of other employees but also between employees and other persons who are carrying out a traineeship or performing work at the workplace and between such persons. The obligation to investigate and take action applies as regards harassment in connection with work. The meaning of the 'in connection with work' is that the employer must react in relation to harassment at the workplace and also in respect of harassment which occurs outside working hours and outside the workplace if the occurance has a natural link to the work, for example, in conjunction with business travel. An employer who has not satisfied their obligations to investigate and implement measures against harassment or sexual harassment must pay compensation for discrimination for the offence resulting from the infringement.

It should be added to the above that the employer is liable to implement active measures to prevent and impede any employee

being subjected to harassment that is related to gender, ethnicity, religion or other belief or to sexual harassment.

Harassment between two employees may also entail criminal liability according to the provisions of the Swedish Penal Code.

As regards harassment in relation to customers, clients or when someone comes into contact with a public authority, it is prohibited under the Discrimination Act for a business operator or public authority to harass their customers, clients, etc. if this is done within the operation. The employer is also liable for the employees' harassing actions in relation to customers, etc. A violation may entail an obligation for the employer to pay compensation for discrimination. However, the criminal law rules apply if an employee has been subjected to sexual harassment by, for instance, a customer or visitor.

Burden of proof
3. In Conclusions 2007 the Committee asks for more information on the burden of proof according to the law in force.

Reference is made to previous reports, with the following addition:

If a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred; see Chapter 6, Section 3 of the Discrimination Act.

If the plaintiff consequently verifies facts that give cause to assume that he or she has been discriminated against, there is a *prima facie* case of discrimination. This means that discrimination appears to exist and it is consequently an obligation of the defendant to prove that this does not involve any offence against the Discrimination Act, for example by showing that the actual disadvantaging is not related to the grounds of discrimination referred to.

The current evidential rule was transferred without amendment from the former legislation against discrimination to the new Discrimination Act. This rule on evidence was established to implement the 'Burden of Proof Directive', Directive 97/80/EC. The aim was to relax the rules on evidence for the plaintiff (for instance the employee) so that the discrimination prohibitions could actually be upheld in practice.

In the *travaux préparatoires* to the former discrimination acts, the rule of evidence was described as a rule imposing a shared burden of proof, while the Supreme Court designated the rule as a rule of presumption (see the law reports *Nytt Juridiskt Arkiv* - NJA 2006 p. 170). This means

that the circumstances shown by the plaintiff in the first stage of the review of the evidence create a presumption that discrimination exists. The defendant can thereafter rebut the presumption by counterargument and relevant evidence.

Damages
4. In Conclusions 2007 the Committee asks if damages are sufficiently deterrent for the employer.

Reference is made to previous reports, with the following addition:

A person who breaches a prohibition against discrimination or reprisals or does not satisfy their obligations to investigate and implement measures against harassment or sexual harassment according to the Discrimination Act must pay compensation for discrimination for the offence resulting from the infringement. When the compensation is determined, particular regard shall be taken to the aim of counteracting such violations of the Act. An employer who breaches the prohibition against discrimination or reprisals must also pay compensation for loss that arises. This involves compensation for financial loss, for instance loss of pay and other benefits.

There is no right of employment if, for instance, someone is given notice of termination. If an employee is discriminated against by notice of termination the notice may, however, be declared invalid if the employee so requests. The following applied according to the labour law discrimination legislation in force during the reporting period. Section 39 of LAS applied in the event that someone brought proceedings at court and requested that a notice of termination or a summary dismissal should be declared invalid. The rule contained in LAS relates to what should happen if an employer refuses to comply with a judgment of a court concerning a declaration of invalidity of a notice of termination or a summary dismissal and refuses the employee work. The employment relationship shall then be deemed to have been dissolved. The employee cannot once again request a declaration of invalidity or through the Enforcement Service seek to apply compulsory means for return to their old workplace. It is for the particular reason that this is not possible that the employee may present through second proceedings against the employer a demand for special damages.

The damages are calculated on the basis of how long the employee has been employed by the employer and fixed at an amount corresponding to
- 16 months' pay in the case where they were employed for less than five years,

- 24 months' pay in the case where they were employed for at least five years but less than ten years,
- 32 months' pay in the case where they were employed for at least ten years.

This possibility of claiming damages has been structured so as to deter employers from not complying with a judicial judgment. The damages are payable besides the damages that may have been awarded in the actual discrimination case.

Prevention

5. In Conclusions 2007 the Committee asks for additional information on the ombudsman's powers.

The former JämO had, as does the current Equality Ombudsman, a power to on behalf of a complainant bring court proceedings claiming damages for violations of the discrimination legislation, for instance in the form of sexual harassment or gender-related harassment at work. During this period, JämO successfully brought one case in the Labour Court (*Arbetsdomstolen*) concerning inadequate performance of the investigation obligation concerning sexual harassment. In this case the employer was ordered to pay damages of SEK 50 000.

JämO had, as does the current Equality Ombudsman, a power to order, subject to a default fine, an employer to draw up an action plan to prevent and impede sexual harassment or harassment on grounds of gender occurring at the workplace.

Article 26:2 - Moral harassment

Questions in the form

Question 1

Reference is made to previous reports, with the following addition:

Besides the prohibition against sexual harassment, the Discrimination Act (like the former legislation against discrimination) also contains a prohibition against harassment. 'Harassment' means conduct that violates someone's dignity and which is associated to one of the grounds of discrimination sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

The employer is, according to the Discrimination Act, liable to conduct goal-oriented work to actively promote equal rights and opportunities in working life regardless of ethnicity, religion or other belief, including the obligation to take measures to prevent and impede any employee being subjected to harassment associated with ethnicity, religion or other belief.

For more information about harassment and the employer's obligation to investigate and take action; see the answer provided regarding Article 26:1, under item 1 of the general questionnaire.

Question 2

The former ombudsmen against discrimination - the Disability Ombudsman (HO), the Ombudsman against Ethnic Discrimination (DO) and the Ombudsman against Discrimination on grounds of Sexual Orientation (HomO) - had during the reporting period, each of them within their respective area, responsibility for supervising legislation containing prohibition against discrimination, including harassment, in working life. Dealing with complaints concerning discrimination, among other things within working life, and similarly providing legal advice within this area, comprised part of the core operation of these agencies during this period.

During the period, DO also examined the performance by employers of the obligation to conduct goal-oriented work to actively promote equality in working life regardless of ethnicity, religion or other belief, including the obligation to take measures to prevent and impede any employee being subjected to harassment associated with ethnicity, religion or other belief.

The Ombudsmen also conducted during this period extensive information work oriented towards protection against discrimination. This included protection against discrimination, including harassment, within working life. The Ombudsmen provided information about the protection against discrimination, among other things through press releases, brochures, reports and information on the Ombudsmen's websites. The authority has also conducted various kinds of targeted education initiatives (among other things, in relation to employers and union organisations) and also arranged and participated in various kinds of seminars and conferences.

As examples of such special information and knowledge enhancement measures, reference may be made to the fact that the Swedish National Institute of Public Health (*Statens Folkhälsoinstitut*) (FHI), JämO, DO, HO and HomO completed during the period a joint project on the theme 'discrimination and health'. In February 2006 a preliminary report '*Särbehandlad och kränkt – en rapport om sambanden mellan diskriminering och hälsa*' (Discriminatory and offensive treatment – correlations between discrimination and health) was issued and in October the final report '*Diskriminering – ett hot mot folkhälsan*' (Discrimination – a threat to public health) was published. This contains a report on the results of the project and also proposals for future work.

The Ombudsmen also participated in the steering group for the European Year of Equal Opportunities for All, EY07. This campaign culminated in two 'meeting places' for dialogue and exchange of experience concerning matters of discrimination and equality at local and regional level. The target groups were both those who were at risk of being discriminated against and those who were at risk of discriminating, for instance officers of local government authorities, county administrative boards and other authorities and trade organisations and the general public.

Question 3

As stated above, the three Ombudsmen conducted extensive information work during the period, which among other things was aimed at protection against discrimination in working life. There is no statistical information regarding the scope of these initiatives.

During the reporting period, HO received 356 complaints about discrimination at work. 39 complaints about discrimination at work were received by HomO. It is not possible to, in the statistics available, distinguish those complaints that related to discrimination in the form of harassment.

On the assignment of DO, HO and HomO, Statistics Sweden (SCB) conducted a questionnaire survey during the period, which was addressed to a sample comprising 6000 people divided into three groups. This questionnaire showed that approximately half of those who responded in all three groups had experienced discrimination. Working life was the area where most felt that that they had been discriminated against.

During the reporting period, DO received 316 complaints of ethnic and religious harassment at work. Most of the complaints came from employees. A small proportion of the complaints related to harassment during the appointments procedure. The majority of complaints were concluded on the grounds that there was not a sufficiently clear link between the harassment and the complainant's ethnicity or religious affiliation or that this was not possible to prove. In several cases it was possible with the assistance of DO or the union to find a solution to the situation for the individual.

During the period, DO brought proceedings at court claiming damages in five cases concerning harassment at work. Two of these cases were concluded by DO making settlements with the employer. In two cases the Labour Court rejected DO's action. One of the cases is still being processed at the Labour Court.

Information in respect of Conclusions 2007

1. In Conclusions 2007 the Committee asks to receive precise information on laws, administrative acts or case laws' motivations to prohibition and repression regarding harassment creating a hostile working environment characterised by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career in the same way as acts of discrimination.

Reference is made to previous reports, with the following addition:

As regards harassment related to any of the grounds of discrimination or sexual harassment, see the answer under the heading 'Burden of Proof' under the special questions contained in Conclusions 2007 under Article 26:1 and under question 1 the general questionnaire under Article 26:2.

There have not been any directly relevant legal cases concerning harassment in working life, in addition to those mentioned above, during the reporting period.

2. In Conclusions 2007 the Committee asks for the meaning of the term 'outsourced workers'.

See answer under the heading 'Liability of employers and means of redress' under the special questions contained in Conclusions 2007 under Article 26:1.

3. In Conclusions 2007 the Committee asks whether there is a combination of liabilities between the employer and the perpetrator.

See answer under the heading 'Liability of employers and means of redress' under the special questions contained in Conclusions 2007 under Article 26:1.

4. In Conclusions 2007 the Committee asks for information on preventive actions in this field.

Reference is made to previous reports, with the following addition:

Questions concerning offensive discriminatory treatment form part of the ongoing compliance work of the Swedish Work Environment Authority. Special initiatives have been taken during the reporting period regarding pupils and staff at school, see answer under Article 22.

The repealed discrimination acts, and the current Discrimination Act, contained provisions concerning active measures. Active measures can

generally be described as measures that are taken to first, prevent discrimination, and second promote equal rights and opportunities. The provisions concerning active measures are not primarily intended to be applied in individual cases. They are instead forward-looking and of a general or collective nature. The provisions concerning active measures impose requirements for active work, for example as regards goal-oriented work, working conditions, preventing harassment and recruitment. As regards the ground of discrimination 'gender', there are provisions concerning more extensive active measures, for example concerning the facilitation for both female and male workers to combine gainful employment and parenthood, to survey pay and to draw up action plans for equal pay and gender equality plans. Employers who do not comply with the provisions of the Act concerning active measures can be ordered, subject to a default fine, to perform their obligations.

Generally, refer to the answers under question 2 in the general questionnaire under Article 26:2 and below concerning the contact and collaboration of the Ombudsmen with the parties to the labour market.

5. In Conclusions 2007 the Committee also asks how far the social partners are consulted on measures to promote knowledge and awareness of, and prevent, psychological harassment in the workplace.

The Swedish Work Environment Authority activities include regular consultation with the social partners.

It is also provided by the Discrimination Act that employers and employees should cooperate concerning active measures to achieve equal rights and opportunities in working life regardless of gender, ethnicity, religion or other belief and particularly to counteract discrimination in working life on these grounds. This normally means that the employee is represented by the union organisations present at the workplace. The employer should also supply an employees' organisation, in relation to which the employer is bound by a collective agreement, with the information required as regards the work to prevent unfair pay differentials between men and women.

Both the Equality Ombudsman and anti-discrimination offices have received special funds for training and information initiatives concerning discrimination issues. DO will conduct some of this work in consultation with the labour market parties.

As mentioned above, DO, HO and HomO conducted during the period various kinds of education initiatives directed towards employers and union organisations. The Ombudsmen have also collaborated in project form with, among others, employers and union organisations to counteract discrimination in working life.

For instance it may be mentioned that HomO has, during this period, together with representatives for among others employers and union organisations, formed part of the steering group for the cooperation project *Fritt Fram* (All Clear), which aimed to counteract discrimination in working life owing to sexual orientation. Together with, among others, union organisations, public authorities universities and university colleges, HomO also participated in the project *Under Ytan* (Beneath the Surface). The object of this project was to establish a clear focus on the issue of sexual orientation in the systematic work environment management in education. Both projects were part of the EU programme 'Equal' and were partly financed by the Swedish ESF Council.

In March 2006, DO commenced the project *Den svenska modellen - för lika rättigheter och möjligheter* (The Swedish Model- for equal rights and opportunities). This project was financed entirely by the Swedish ESF Council through Växtkraft Mål 3. This project was oriented towards the industrial sector. The aim of the project was to develop appropriate methods for the local preventive work for equal rights and opportunities at the workplace and to disseminate the results of the project to stakeholders at national, regional and local level. The project was owned by DO and implemented in collaboration with JämO and the relevant local parties within the industrial sector. The experience and methods from the local parties' work has been gathered together as a working model for the preventive work planned.

As mentioned above, it was part of DO's mandate to exercise supervision of the performance by employers of their obligation to conduct goal-oriented work and to actively promote equal rights and opportunities at work irrespective of ethnicity, religion or other belief, including the obligation to take measures to prevent and impede any employee being subjected to harassment associated with ethnicity, religion or other belief. DO has during the period in this respect applied a working method aimed to involve and engage the local and central union organisations in the supervisory work of the Ombudsman. This approach has, among other things, meant that the trade unions, as the object being examined, have been invited to meeting during the ongoing compliance work and then offered an opportunity to provide views on how the work against discrimination functions in practice at the workplaces being examined.

Article 29 - The right to information and consultation in collective redundancy procedures

Questions in the form
Reference is made to previous reports.

Information in respect of Conclusions 2007
In Conclusions 2007, the Committee concludes that there must be at least some possibility of recourse to administrative or judicial proceedings before redundancies are made to ensure that they are not put into effect before the consultation is concluded.

Reference is made to previous reports, with the following addition:

Workers' involvement in the decision-making process in Swedish workplaces has a long and successful history. It was first introduced through collective agreements as early as in 1946. Legal requirements were introduced in 1976. The Swedish law on workers' involvement has been very influential. Informing and consulting employees before important decisions are taken is a well-established practice and legal requirement in Swedish working life. The Swedish law is considered to be a far-reaching and properly functioning tool from a European perspective. The employer is obliged to initiate consultation with the workers' representative in good time before decisions on collective redundancies are taken and the consultation must be considered to have been completed before the decisions are taken.

If the employees considered that these rights were not accompanied by guarantees securing their exercise in practice, the powerful Swedish trade unions would probably have raised the issue, but they have not. It is also hard to find case law from the Labour Court which deals with companies that have completely ignored their consultation obligations. During the reference period, two cases on this issue have been dealt with by the Labour Court, AD No. 3 2008 and No. 98 2007. The current case law dealing with issues on failure to fulfil these obligations shows that the level of the non-punitive damage is high. In the case law referred to where the companies made the decisions before the consultations were completed, the companies were ordered to pay non-pecuniary damages of SEK 75 000. In the case AD 1984 No. 75, the greatest general amount of damages was awarded to date, namely SEK 900 000, to be shared between three trade unions for breach of the negotiation obligation.

Taken overall, the Swedish system must be considered to guarantee these rights in practice.

Appendices

Appendix 1 –	Lagen om anställningsskydd (Employment Protection Act) (SFS 1982:80)
Appendix 2 –	Byggnadsplåtavtalet(the Sheet Metal Agreement)
Appendix 3 –	Lagen om medbestämmande i arbetslivet (Employment (Co-Determination in the Workplace) Act) (SFS 1976:580)
Appendix 4 –	Lag om arbetstagarinflytande i europabolag (Employee Involvement (Europeal Companies) Act) (SFS 2004:559)
Appendix 5 –	Lag om europakooperativ (Employee Involvement (European Cooperative Societies) Act) (SFS 2006:595)
Appendix 6 –	Lag om arbetstagares medverkan vid gränsöverskridande fusioner (Employee Participation (Cross-Border Mergers) Act) (SFS 2008:9)
Appendix 7 –	Förordning om ändring i arbetsmiljöförordningen (Ordinance Amending the Work Environment Ordinance) (SFS 2008:82)
Appendix 8 –	Diskrimineringslag (Discrimination Act) (SFS 2008:567)

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