

## **VORTRAGSREIHE**

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**European Union influence on Swedish labour law  
(with special regards to the Temporary Agency Directive)**

Referent:

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## The "Swedish Model" – three main features

- The social partners (trade unions and employers' organisations) have a strong position
- The Swedish State has traditionally been in the background
- Collective agreements are important for regulating the labour market

## the Social Partners

- Strong and well organised on both sides
- Trade union membership rate is (still) very high (70%)
- The employers' organisation rate is very high
- The relationship between the parties is built on mutual trust and responsibility (Saltsjöbaden Agreement 1938, Industrial Agreement 1997)
- Large and centralised organisations

## Collective Bargaining and Collective Agreements

- Collective agreements cover almost all employees (90%)
- The parties to the agreement – in the first instance the trade unions – are responsible for controlling compliance
- Negotiations between the parties is a central element
- The employees' rights of information and consultation are exercised through the unions (established trade union = party to the collective agreement)
- The right to take collective action is rather wide in an international perspective (sympathy/secondary action)

## Labour Legislation

- Very limited until the 1970s
- Legislative "explosion" during the 1970s
- Became more extensive after EU membership 1995
- Often possible to agree on something else in a collective agreement (semi compulsory legislation)
- Overall aim is that legislation shall apply to all employees in the same way (white-/blue collar, state, private)

## Other Main Features of the "Model"

- The employers' managerial prerogative (accepted 1906)
- The employer applies the collective agreement also to unorganised employees and employees belonging to trade unions without collective agreement
- Weak constitutional protection of labour rights

## What Does the Model not Have?

- Minimum wage legislation
- A proportionality principle applicable to collective action
- The possibility to declare collective agreements universally applicable (no erga omnes-effect)
- State authorities controlling that labour law is followed (except – traditionally – work environment – Labour Inspectorate)

## Problems meeting EU law

- Implementation of EU law should be done by legislation
- New phenomena introduced by EU law requires control by State authorities (free movement)
- The transfer of undertakings Directive introduces a new principle when it comes to the change of parties to the employment contract

## problems.....

- Anti-discrimination legislation – individual rights
- Detailed legislation (the working time Directive)
- Legal activism from the Court of the EU
- The Posting of Workers Directive and the Laval-case

## Traditional Swedish model for combating social dumping

- The trade union invites the employer to negotiate
- The trade union asks the employer to sign the collective agreement
- The trade union gives notice of industrial action
- Industrial action
- Sympathy actions

## The PWD and the Laval-case

The most highlighted and controversial situation where the Swedish labour market system have been challenged by EU law

- Only "core" employment conditions
- Minimum levels, including wages
- Collective action restricted

## Implementation of the Agency Work Directive

- Temporary work agencies illegal in Sweden until a new Act entered into force 1992
- Some restrictions during 1992 (need, time-limits, restricted fixed-term)
- From 1993 no restrictions at all
- Collective agreements for the sector since the 1980s!
- Today about 1,5 % of the labour force

## temporary agency work....

- Today collective agreements cover about 92 % (low rate of unionisation)
- Treated like any other business
- Treated like any other employee – all labour legislation applies (and social security law)

### temporary agency work....

- The employment contract is between the temporary agency and the employee
- The contract between the agency and the user is a contract under ordinary contractual and business law, and there is no contractual relationship between the user and the temporary employee

### temporary agency work.....

Relationship temporary employee - user employer

- managerial authority
- good labour market practice
- user responsible for safety and work environment on the work-place (Directive 91/383/EC)
- user responsible for non-discrimination on the work-place



## temporary agency work ....

Implementation of the Directive with the least possible interference with the Swedish model:

New Act on Hiring Out of Employees  
("staffing")

- Applies to all kinds of employees and to the whole labour market
- Equal treatment from the first day (basic working and employment conditions at least that would apply if recruited directly by the user undertaking to occupy the same job)

## temporary agency work ....

Exceptions from the equal treatment principle:

- Pay – if there is a permanent employment contract and the employee is paid between assignments
- Collective agreements (92 % coverage)

## temporary agency work.....

- Information about vacant posts in the user undertaking
- Prohibition on preventing the conclusion of an employment relationship between the user and the temporary agency employee (not new)
- Prohibition to charge agency workers any fee in exchange for recruitment by a user (not new)
- Access for the agency workers to amenities in the user undertaking

## Most important change following implementation of the Directive

- The relationship between the Posting of Workers Directive and the Agency Work Directive?
- Posted agency workers can claim equal treatment within the "hard core" of the Posting of Workers Directive
- This means among other working conditions: equal pay

## Restrictions or prohibitions(article 4.1)

- Removed - an employee who starts to work for an agency must not be hired out to the former employer within 6 months
- Justified on the ground that the labour market functions properly - the trade union veto
- Still restrictions in collective agreements

## Collective agreements in the temporary agency sector

- Three largest and most important: blue-collar, white collar, health-care
- Wage guarantees normally 80-90 %
- Working conditions especially applicable to temporary agency work, for example: when can the employee refuse

### Opinions from the parties:

- Trade unions traditionally negative (not professional employees), especially the Swedish Trade Union Confederation (LO)
- LO still wants some restrictions regarding length of hiring and a special need
- Controversial when an employer dismiss because of redundancy and then hires in agency workers

### Conclusion:

- Swedish trade unions are pragmatic
- Collective agreements in the temporary work agency sector shows that the social partners are able to combine flexibility and security