

Sweden

In July 2011, the Swedish Parliament adopted a law amending the rules on working time. The new provisions make it easier *inter alia* to introduce overtime. For instance, the requirement of prior administrative authorisation for overtime beyond 150 hours a year has been abolished. No prior authorisation is needed when overtime is the result of a temporary and unforeseeable increase in work, or is needed to cover the absence of another worker or a lack of competent workers, which cannot be rectified immediately by hiring other workers. Employers must also always be able to justify the overtime by proving that they had no other solution.

In early 2012, a project on the sustainability of the Nordic system for the coming years was launched, bringing together researchers from five countries - Iceland, Norway, Sweden, Finland and Denmark. They will reflect on the future of the Nordic system, defined as a welfare state with a comprehensive social security system, high taxes and strong unions, with gender equality and an ambitious environmental policy, and how it can be adapted to better face the challenges of increasing global competition, the rapid development of new highly-populated industrial countries (China, India), global warming, demographic ageing, the financial crisis and the increase in unemployment, thereby enabling the Nordic countries to remain competitive in terms of skills and knowledge. The focus is on:

- The cornerstones of the Nordic system: past, present and future, allowing researchers to analyse the threats to the system's fundamental elements, such as domestic changes (notably the impact of demographic ageing) and external changes (the impact of global warming and energy policies, ways to maintain a high taxation level and the comprehensive protection system).
- Developments in the individual countries (Iceland, Norway, Sweden, Finland and Denmark) to define the status quo of the system in 2012. This will later be used to compare the countries. The point will be to highlight how the system in the individual countries is affected by national changes in terms of population, employment, social protection, gender equality, infrastructures, aspirations, standards, requirements and international changes due to the economic situation, development and political governance.
- Thematic issues: 1/ the prospects for stable economic growth; 2/ decent labour and the future of the collective agreement system (working conditions, state of the trade unions, collective bargaining and the definition of wages); 3/ integration and challenges (how can the countries guarantee equal and high participation in employment, education and civil society, particularly for minorities); 4/ finance and

sustainability; 5/ democracy, and in particular the future of the social protection system. The first results should be revealed in 2014.

In September 2011, at the request of the government, a committee was asked to evaluate the regulations governing redundancies and resultant disputes, to put forward suggestions allowing employers to lower costs and encouraging them to recruit new workers. The committee submitted its report in mid-2012, recommending three major legislative changes to make the law more flexible. These were to be implemented on 1st January 2014:

- Protecting SMEs and providing that the amount of damages due when failing to comply with the LAS (recruitment security act) is lower for businesses with less than 50 employees.
- Considering that dismissals on economic grounds cannot be invalidated simply because the provisions on redeployment have not been respected.

Another Governmental Inquiry Report on disputes concerning dismissals was presented on 28 September 2012 (SOU 2012:62, *Uppsägningstvister. En översyn av regelverket kring tvister i samband med uppsägning av arbetstagare*). The aim of the Governmental Inquiry was to review the rules on disputes over dismissals and to present proposals on how to reduce costs for employers and to promote employment.

Today, as a general rule, if a dispute arises on the validity of a dismissal, the employment relationship shall not be terminated by reason of the dismissal prior to the final adjudication of the dispute. Nor may the employee be suspended from work as a consequence of the circumstances that caused the dismissal in the absence of special reasons for such suspension. The employee shall be entitled to pay and other benefits for the duration of the employment relationship (cf. section 34 of the (1982:80) Employment Protection Act). A dismissal without just cause can be declared null and void (cf. section 34 of the (1982:80) Employment Protection Act). This is not the case, however, if an employee is dismissed for reasons of redundancy and the rules regarding years of service are only violated. In addition, economic and general damages can be paid (cf. section 38 of the (1982:80) Employment Protection Act). Where an employer refuses to comply with a court order declaring the dismissal to be null and void, the employment relationship shall be deemed as having been dissolved. As a consequence of the employer's refusal to comply with the court order, the employer shall pay (additional) damages to the employee (up to a maximum of 32 months of pay), (cf. section 39 of the (1982:80) Employment Protection Act).

The Governmental Inquiry Report proposes three amendments to the (1982:80) Employment Protection Act, which 'aims to speed up the handling of disputes concerning dismissals to lower the costs for the employer and to safeguard employment protection and the employee's rights': 1) the duration of an employment relationship during an ongoing dispute on the validity of a dismissal shall not last more than one year, 2) economic damages according to section 39 of the (1982:80) Employment Protection Act shall be reduced proportionately to the number of employees of the employer, 3) it shall no longer be possible to declare a dismissal for reasons of redundancy to be null and void because the employer has not fulfilled its responsibility to find the employee alternative work within the company. The trade unions have harshly criticised the proposals, which they argue will undermine employment protection, result in more dismissals and an increased number of disputes.

In February 2012, an evaluation of the 'crisis agreements' concluded to overcome the economic crisis of 2008 was carried out. These agreements had been negotiated between union and employers' organizations in industry,

providing for cuts in working time and wages in return for maintaining employment. On the basis of this evaluation, several union and employers' organizations negotiated a new system and proposed it to the government for legislative action in late 2012.

The proposed new system is called "*korttidsarbete*" (short-time working) and is directly inspired by the "krisavtal" (crisis agreements) negotiated in a number of manufacturing companies during the 2008 crisis (cuts in working time along with wage cuts not exceeding 20%), even though, in several instances, the agreements signed were not enough to avoid layoffs. In addition, and this is new, the Swedish State would pay part of the wage costs to the company so that the wage cuts would not be proportional to the working time cuts. Pay would thus be a combination of wages and special short-time benefits (*korttidsersättning*) not subject to social security contributions. Workers' pay cuts would have no impact on retirement, social security or possible unemployment contributions. The State would have three options:

- For a 20% working time cut, employees would receive 90 % of their salary, 10 % of which would be borne by the State.
- For a 40% working time cut, employees would receive 85 % of their salary, 20 % of which would be borne by the State.
- For a 60 % working time cut, employees would receive 80 % of their salary, 30 % of which would be borne by the State.

At national level, the joint acknowledgment of union and employers' organizations that the economic crisis is severe enough may justify the appeal of the proposed system and the request for government approval. At the end of the day, management and union representatives negotiate at local level. At most, any agreement will last for 12 months per company. Businesses and unions may negotiate additional agreements providing for training outside the company. In the absence of an agreement, employees may choose to use their free time for training. A working committee made up of union and employer representatives is currently listing training needs.

On December 17, 2012, the Ministry of Finance presented the bill for short-time working" (*korttidsarbete*), providing for state support for businesses. Compared to the initial proposals described above, the bill foresees the following:

- For a 20% working time cut, the company would cover 1% and the State 7% of lost income, meaning that employees would suffer a 12% pay cut;
- For a 40% working time cut, the company would cover 11% and the State 13% of lost income, meaning that employees would suffer a 16% pay cut;
- For a 60% working time cut, the company would cover 20% and the State 20% of lost income, meaning that employees would suffer a 20% pay cut.

This would not apply to employees earning more than SEK 40,000 (€4,638) a month in 2011. State support would initially last for 6-12 months, with the option of a single 12-month extension bringing the possible total to 24 months. The system would only apply in the event of "extremely weak economic conditions," e.g. a 3% or more downturn in activity. Two criteria will be used to assess the economic situation: whether the economy is facing or

about to face imminent recession, and that the system must not prevent desirable social/economic structural changes. The bill does not however tackle the issue of the impact these wage cuts will have on social security contributions or on the level of sickness or parental benefits.

In its 2012 country-specific recommendations of March 2012, the European Commission stressed that 'Sweden should 'Take further measures to improve the labour market participation of youth and vulnerable groups by focusing on effective active labour market policy measures, encouraging increased wage flexibility, notably at the lower end of the wage scale, and reviewing selected aspects of employment protection legislation like trial periods to ease the transition to permanent employment'. These points have been tackled in Sweden's 'National Reform Programme 2012, Europe 2020 – EU's strategy for smart, sustainable and inclusive growth'¹. However, it is mentioned that "low resource utilisation in the labour market and the weak economic development in 2012 will likely lead to moderate wage increases in the current wage negotiations, even if the increase is expected to be higher as a result of these pay talks than in the round of wage negotiations in 2010. Keeping in pace with the labour market improvements, wages are forecast to increase somewhat faster during the period 2014–2016", while reaffirming that "the social partners are responsible for the formation of wages on the Swedish labour market and they safeguard their autonomy as a party". The National Reform Programme furthermore mentions that "it should be easy to hire, and permanent employment shall be the foundation of the Swedish labour market. At the same time, temporary employment plays an important role and can serve as a bridge to the labour market, especially for weaker groups such as young people and foreign-born people. However, it's important that short-term employment is not exploited. A proposed change to the Employment Act (1982:80), given the requirements in the short-term employment directive, has been developed for referral. The proposal is currently being prepared by the Government Offices. In addition, a public investigation is examining if employer costs related to employment termination disputes can be reduced. The goal for labour law, generally, is to create conditions in the labour market that meet the needs for security, influence and flexibility of employees and employers. The labour market rules in Sweden offer a good climate to combine stable conditions in the labour market with a high level of employment." Furthermore, "the Government is of the opinion that fundamental elements of the labour law should continue in the future. However, certain elements of the labour law are designed in a manner that may render it more difficult for certain groups, such as young people, to get established in the labour market. Therefore, there are reasons to make minor adjustments to the existing rules to mitigate those problems. The Government wants to introduce two special employment forms for apprentices to facilitate entry into the labour market for young people. The question of a new employment form for students enrolled in an upper secondary school apprentice education is being prepared now by the Government Offices. With regards to apprentice probation employment, the Government has called for a special inquiry. The assignment will be presented at the latest on 30 November 2012."

Against a background of high unemployment rates among young people, Prime Minister Fredrik Reinfeldt put forward a proposal in July for a job pact with unions and employers during his traditional summer speech at Sweden's annual political summit. All social partners welcomed the offer made by the Prime Minister. Although not all details of the pact are known so far, three aspects will surely form part of it: agreements on vocational training; adjustment agreements concerning the termination of contracts due to redundancy; and agreements on short-time working. One source of inspiration sources seems to be the youth agreement as it forms part of the agreement

¹ http://ec.europa.eu/europe2020/pdf/nd/nrp2012_sweden_en.pdf

between the Swedish industrial workers' trade union IF Metall and the Association of Swedish Engineering Industries on "vocational introduction" concluded in November 2010. Under the youth agreement, a vocational introduction provides people under the age of 25 with a fixed one-year contract with the possibility of a one-year extension. The salary is 75% of the minimum wage agreed between the social partners. The contract terms are flexible and the framework for individual contracts is set at the workplace. If the employer does not wish to take on the trainee permanently, the trainee must be notified no less than one month before the end of the agreement. The youth agreement also stipulates that work must be combined with education or training under supervision, and an individual VET plan must be created. The government also stated that it was prepared to provide financial support for companies or payroll tax relief to ensure the success of the scheme. Another source of inspiration will most likely also be the report of a Governmental Inquiry, which was appointed in November 2011, on the introduction of a new form of fixed-term employment contract, the apprentice probationary employment contract (*lärlingsprovanställning*). The remit of the Governmental Inquiry is to 1) analyse which rules are to apply for this form of employment contract; 2) analyse and present proposals on how the educational content in such an employment contract shall be regulated and guaranteed; 3) analyse possible opportunities to combine apprentice probationary employment contracts with other employment contracts; and 4) analyse relevant aspects of EU law and Sweden's obligations under international conventions, etc., thereby guaranteeing that the proposed rules on apprentice probationary employment contracts are in compliance with these international norms. The resultant Governmental Inquiry Report on Education Employment Contract/Training Position (*utbildningsanställning*) was presented on 29 November 2012. It proposes introducing a new provision, section 5a of the (1982:80) Employment Protection Act, on a new form of fixed-term employment contract, the Education Employment Contract. The aim of such a contract would be, according to the report, to make it easier for young people to enter the labour market, and, in particular, to provide an incentive for smaller companies to employ young people. This new fixed-term employment contract is meant to complement existing measures and employment contracts for workplace-based learning and labour market policies for young people. Even now, many collective agreements already contain provisions on employment contracts linked to IVET. Education Employment Contracts will be available to persons under the age of 23 for a maximum of 18 months. Such a contract presupposes that an agreement has been concluded between the employer and the employee on a training dimension. An Education Employment Contract (probationary employment comes under section 6 of the (1982:80) Employment Protection Act and is at present only permitted for six months) will automatically be transformed into a permanent employment contract after 18 months. Up to that point, the employer may terminate the contract without having to show just cause or provide objective reasons (it is also worth noting that the Governmental Inquiry Report does not, as is usually the case, clearly state that the employer may not contravene non-discrimination legislation in this respect or the principle of good labour market practice). Wages and employment conditions are to be regulated by means of collective agreements and employment contracts. The Governmental Inquiry Report does not propose any restrictions to hiring the same employee more than once on an Education Employment Contract, nor does it propose any other limitations as regards the combination of the Education Employment Contract with other fixed-term employment contracts.

In July 2011, the Swedish government presented another Governmental Inquiry Report, Ds. 2011:22, on clarifications regarding the prohibition of abuse of successive fixed-term employment contracts in the (1982:80) Employment Protection Act. This Governmental Inquiry Report followed a complaint made by the Swedish

Confederation for Professional Employees (TCO) to the European Commission on Sweden's failure to correctly implement the Fixed Term Work Directive (1999/70/EC) and the formal notification of the European Commission to the Swedish government. According to the Report's proposal, a fixed-term employment contract can be declared by a court to be an open-ended employment contract, when fixed-term employment contracts (i.e. general fixed-term employment, temporary substitute employment, seasonal employment, fixed-term contracts for employees above the age of 67, or in probationary employment) have been combined in a way constituting an abuse of successive fixed-term employment contracts. Many of the comments received on the proposal were however very critical and on 25 July 2012, the government presented a new Governmental Inquiry Report Ds. 2012:25 aimed at inserting a new, complementary provision into the (1982:80) Employment Protection Act, stating that a general fixed-term employment contract or a temporary substitute employment contract is to be converted into an open-ended employment contract when probationary employment contracts or fixed-term employment contracts have followed each other, and the employee has been employed on a general fixed-term employment contract for a total period of more than two years or as a temporary substitute employee for a total period of more than two years. Compared to the previous proposal, this proposal further limits the abuse of successive fixed-term employment contracts. However, and as fixed-term employment contracts concluded in accordance with the Higher Education Ordinance seem to be included in the category of fixed-term employment contracts covered by this proposed provision, the Swedish Association of University Teachers submitted a complaint to the European Commission as it considers that the new provisions – in combination with the general regulation on fixed-term employment contracts in the (1982:80) Employment Protection Act – make it possible to hire teachers in the higher education sector on fixed-term employment contracts for an unreasonably – and unforeseeable - long period of time.

Following a Governmental Inquiry Report on the implementation of the Temporary Agency Work Directive presented in January 2011, the government presented a Bill (Prop. 2011/12:178, *Lag om uthyrning av arbetstagar*) on 13 September 2012 transposing the Temporary Agency Work Directive the (2008/104/EC). The bill proposes that the Temporary Agency Work Directive be transposed via legislation with the creation of a new Act on Temporary Agency Work. The Act is to take the form of a regulatory framework, and some of its provisions will be 'semi-mandatory', with derogation allowed by way of collective agreements. It will apply to temporary agency workers employed both in the private and public sector. Exceptions to the principle of equal treatment will be possible with regard to pay in accordance with Article 5(2) of the Temporary Agency Work Directive on condition that the temporary agency worker is permanently employed by the temporary work agency and is paid between assignments. In addition, the Act shall contain a provision to the effect that the social partners may, in accordance with Article 5(3) of the Temporary Agency Work Directive, enter into collective agreements concerning working and employment conditions which deviate from the principle of equal treatment, provided that the overall protection for workers from temporary work agencies is respected. The bill does not introduce a provision stating that prohibitions or restrictions to the use of temporary agency work in collective agreements shall only be justified on general interest grounds. On 28 November, the Swedish Parliament approved the Governmental Bill and a new Act on Temporary Agency Work, which will enter into force on 1 January 2013.

At the same time, the Swedish Parliament called on the Swedish Government to request the EU to adopt a social protocol to protect fundamental trade union rights in the EU. Free movement within the EU should not be used to reduce or worsen wages and working conditions. A legally binding social protocol would make it clear that

fundamental trade union rights, such as freedom of association, the right to collective bargaining and the right to collective action, are not subordinate to the fundamental freedoms of the EU.

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Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)