Project for the study of conciliation, mediation and arbitration.

National report: Sweden

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Conciliation, mediation and arbitration

I. The system of labour relations

Initially, it is worth noting that the Swedish labour law system rests om four pillars:

1) *Independent organisations with a high rate of membership.*
There is no legislation regulating the internal activities of the trade unions or employer organisations. These activities are regulated by the organisations´ statutes and it is the organisations that decide their content. More than 85 per cent of wage earners belong to a union organisation.

2) *There is little government interference in the relations between the social partners.*
Tradionally, it has always been agreed that the chief responsibility for wage formation and for the formation of conditions of employment lies with the social partners. The right to take industrial action is enshrined in the Constitution. Swedish labour law describes the circumstances under which industrial action may be taken and also specifies certain formal procedures such as the obligation to notifying the opposing party.

3) *Collective agreements as regulatory instruments.*
Collective agreements are concluded at three levels: at national level, at industrial or sectoral level and at company level. Collective agreements are binding on the social partners´ members and ensure industrial peace during the contractual period. Collective agreements cover about 90 per cent of the Swedish labour market.

4) *Negotiations as a means of settling disputes.*

Both collective agreements and national legislation stipulate that the social partners must negotiate should disputes arise.

1. The actors

Both employers and employees in Sweden are organised in national associations, which in turn are affiliated to a confederation on each respective side.

Employers

In the *private sector*, the main organisation is the Confederation of Swedish Enterprise (incorporating the former Swedish Employers' Confederation, SAF). It comprises 52 sectoral and employer associations with together more than 46,000 member companies. These companies employ some 1.5 million employees. The Confederation of Swedish Enterprise does not negotiate on pay. This is the remit of the employer associations in each sector. The largest of these is the Association of Swedish Engineering Industries, VI.

In the *public sector*, the Swedish Agency for Government Employers represents central government bodies in the collective bargaining process. At local government level, county councils and primary municipalities are independent bargaining parties but are represented by the Federation of County Councils and the Association of Local Authorities respectively.

Employees

The Swedish Trade Union Confederation, LO, comprises 18 national unions that organise *blue-collar workers*. Membership numbers almost 2.1 million, which corresponds to around 85 per cent of all blue-collar workers. Previously, LO negotiated with SAF on pay. Nowadays, the national unions negotiate directly with the employer associations, but their negotiations are still coordinated to a certain degree within the LO framework.

White-collar workers are organised in the Swedish Confederation of Professional Employees, TCO. It has 18 affiliated national unions with a total of 1.2 million members. The level of organisation is the same as for LO, i e 85 per cent. The TCO is not a partner in the collective bargaining process. Agreements are negotiated by the various member associations.

Professional (university-trained) employees are organised in 24 national unions affiliated to the Swedish Confederation of Professional Associations, SACO. Membership totals almost 500,000.

Negotiating coalitions

The fact that national unions belong to different national federations does not prevent them from collaborating in negotiating cartels or coalitions when they share a common adversary.

One such grouping in the private sector is the Federation of Salaried Employees in Industry and Services, PTK, which has 580,000 members. It comprises a number of national unions from the TCO and SACO. The PTK negotiates with the Confederation of Swedish Enterprise on pensions and insurance.

Ten national unions in the public sector have joined together in the Public Employees' Negotiation Council (OFR), which is a collaborative body. The unions represent some 120,000 central government employees and around 410,000 local government employees. The OFR is made up of unions from both SACO and the TCO. It is primarily a forum where the unions can plan, coordinate, complete and evaluate bargaining rounds and negotiations.

In March 1997, the negotiating parties in Swedish industry – 12 employer organisations and seven trade unions – reached a collaboration agreement on industrial development and wage formation. The agreement covers some 800,000 employees.

2. Rules

a) *The role of legislation*

Historically, the Swedish state has always avoided involving itself in dealings between the social partners whenever possible. When the blue-collar unions stepped up demands for collective agreements in the late 19th century and early 20th, the number of industrial disputes grew. As a result, the state saw no alternative but to intervene. The first legislative measure in the field of industrial law was the 1906 Mediation Act. It was based on voluntary compliance. This is another common feature of government involvement in the labour market in Sweden. The state has sought to remain neutral and avoid introducing unnecessarily severe measures. By stages, however, legislation in this field (now the Co-Determination Act) has become more stringent. The present rules allow the National Mediation Office under certain circumstances (e g when industrial action has been taken) to appoint mediators even when the partners oppose such a course. But the fundamental principle is still that mediation should be introduced voluntarily and that the social partners are responsible for bargaining and for collective agreements. The function of the law is to make it easier for the partners to assume this responsibility by offering them mediation when their negotiations become deadlocked.

The legislative rules on mediation apply throughout the labour market. The law makes no distinction between different sectors. It also applies in the case of state employers and employee organisations.

b) *The role of collective negotiations*

The regulatory system in Swedish industrial law has its roots in the collective agreements reached in the first half of the 20th century between the Trade Union Confederation and what was then the Employers' Federation. These agreements contained clauses whereby disputes were to be resolved by negotiation. The

rules subsequently provided the basis for the legislation (the Co-Determination Act) now in place concerning collective bargaining.

A basic principle of the Co-Determination Act is that disputes between employers and employees should be resolved by negotiation. Thus the union organisation has a statutory right to negotiate with the employer, and vice versa. An organisation is also entitled to negotiate with an organisation on the opposing side. The right of one party to negotiate is matched by an obligation whereby the opposing party must turn up for the negotiation. A party failing to appear is liable to damages.

c) *Conflicts*

Once a collective agreement has been concluded, the legal consequences are twofold: the members of the contracted organisations become bound by the agreement and both sides are obliged to maintain industrial peace during the contractual period. The obligation to maintain industrial peace means that industrial action/labour market disputes are only allowed when no agreement is in force. No industrial action may be taken unless it is the result of a decision by the appropriate body in the employer organisation or the union organisation. What may be defined as the appropriate body is specified in the statutes of the organisations concerned. As a rule, the right to decide on industrial action lies with the supreme decision-making body in each organisation. The possibility of industrial action usually arises in connection with negotiations on a new collective agreement at industrial or sectoral level. Very few disputes have occurred over the past five years. The partners have managed to reach agreement without having to resort to industrial action.

The above applies throughout the labour market. Some public sector employees, however, are subject to special regulation. Those engaged in work relating to the exercise of government authority may only engage in certain types of industrial action. Otherwise, no special restrictions apply.

There are two kinds of disputes that may arise in connection with collective agreements. One is when the negotiating parties fail to agree on the content of the new agreement they are discussing (conflicts of interest). The other type of dispute occurs when the parties differ on the interpretation and implementation of an agreement already concluded (conflicts of right). Such conflicts also frequently centre on the laws regulating the relationship between employer and employee, such as those concerning security of employment and co-determination for employees.

The Co-Determination Act gives the union organisations a say in employer decisions concerning work management and company management. They exercise this influence via negotiations. It is only natural that differences of opinion exist at these negotiations and that the parties cannot always agree on what decisions employers are to take.

II. Labour conflicts and the means for solution.

1. Legal typology of labour conflicts

As we have noted, Swedish legislation is based on the principle that disputes are to be settled at the bargaining table. Rather than categorising disputes, the Swedish system of rules refers to different types of negotiations. It distinguishes between three different types of negotiation:

a) co-determination negotiations
b) dispute negotiations
c) agreement-linked negotiations

The reason for these distinctions is that different solutions are applied in the event of disagreement, depending on the type of negotiation involved.

Co-determination negotiations

This type of negotiation generally refers to issues in the work supervision and management field where a decision by the employer causes a change in the company's activities or a change in the employment conditions of the individual employee. Before the employer makes a decision involving any *substantial* change, he is required of his own accord to seek negotiations with the union organisation at the workplace. The aim of this rule is to guarantee the employees a voice and give them the opportunity to influence the decision. Should the parties fail to agree on what decision the employer is to make, the union has the legal option of raising the matter at a higher negotiating level, between the organisations on each side. Should these organisations fail to reach agreement, the employer then has the final say. The employer's final decision cannot be appealed to a court of law. Nor is the union organisation entitled to take industrial action in support of its opinion in the matter.

Dispute negotiations

Dispute negotiations are primarily used in the event of disagreement on the interpretation or application of signed collective agreements or existing legislation. Such disagreements are normally termed legal disputes, and in the final instance are settled by a court or by arbitration. Before a court can agree to try the case, however, the parties must first have sought to settle their dispute by negotiation. A party to a collective agreement may not take industrial action to force through its own position in a legal dispute.

Agreement-linked negotiations

This refers to negotiations where the parties seek to conclude a collective agreement in order to regulate an unresolved difference of opinion. Agreement-linked negotiations (collective bargaining) can take place at different levels. The most important talks are those on pay and general employment conditions between organisations. These negotiations are a preliminary to national

collective agreements for whole sectors. Should the parties fail to agree at national level, industrial action is usually permitted.

Bargaining between an individual employer and the union organisation at the workplace often concerns matters that the parties in the national agreement have delegated to local parties for resolution. As a rule, both sides are required to maintain industrial peace during these negotiations. No industrial action is allowed.

2. Notion of collective conflict

In general, it may be said that Swedish legislation does not distinguish between collective and individual legal disputes. Both are solved by the same means: through negotiation where the organisations represent individual members in the same way as for disputes where the organisation in itself is one of the parties. Should the parties fail to agree, either is free to bring the dispute before a court to obtain a ruling. Formally speaking, it is the organisations that are the parties in such legal proceedings even if the dispute arose between an individual employer and his or her employees.

Concerning conflicts of interest these are usually of a collective nature. Here, industrial action is the means available should the parties fail to reach agreement. Before such action is taken, a mediation process is usually initiated. This process is described in closer detail under III.3.

3. Means for solution

In legal disputes over the interpretation or implementation of a law or collective agreement, it is the *Labour Court* that is the final arbiter in cases involving parties that are, or usually are, bound by collective agreements. Adjudication of such cases must be preceded by negotiations in two stages: initially at the local workplace between the local union and employer and subsequently at central level between the national organisations on each side. Legal disputes at workplaces without collective agreements or affecting non-organised wage earners are settled by the district court (Sweden has 79) in the area where the dispute occurred. No prior negotiations are required for cases brought before a district court. The court's ruling may be appealed to the Labour Court as the final instance.

The Swedish Labour Court has been described as the partners' court, as four of its seven members are appointed by the Government on the recommendation of the social partners. Two of the members represent the employers and two the unions. The other three members are appointed from among disinterested parties. The chair and deputy chair are both experienced judges. The third impartial member is an expert specialising in labour market relations.

The Labour Court deals with 300-400 cases a year. Less than half of these are resolved by a court ruling. The remainder are settled through conciliation between the partners. Part of the Court's task is to try to persuade the partners

to settle their differences amicably, and it has often been successful in this, as may be seen from the above.

Collective agreements often contain provisions whereby certain kinds of disputes are to be settled through arbitration instead. This is common practice in the case of disputes over the interpretation of pension and insurance terms that the parties have agreed on in collective bargaining. Arbitration is also commonly used to settle legal disputes over collective agreements relating to employee participation and co-determination.

As regards disputes in connection with negotiations on new collective agreements, the rules concerning mediation are set out in the Co-Determination Act, see III.3. below.

III. Extra-judicial means for the solution of labour conflicts

1. The role of the state and social actors

The central authority responsible for state mediation activities in relation to labour disputes is the *National Mediation Office*. Otherwise, central government remains neutral vis-à-vis labour disputes. No legislation exists, for instance, restricting industrial action that might threaten key functions in society. Such rules are incorporated in collective agreements and apply virtually throughout the labour market. The partners are agreed that industrial action threatening key functions in society (such as public transport and healthcare) is to be avoided. Collective agreements stipulate that disputes concerning whether or not a strike or lockout is a danger to society are to be settled by special committees set up for the purpose. These comprise representatives of the parties concerned, occasionally supplemented by independent experts. One of these usually chairs the committee and has the casting vote. This set-up involving voluntarily constituted committees has been in existence for many years and the question of introducing legislation has not arisen.

2. Extra-judicial means

The solution made available by the Swedish state is mediation in disputes arising out of conflicts of interest, primarily in connection with bargaining on new collective agreements relating to pay and conditions of employment. To a great extent, the practice is based on voluntary participation, but in some situations the National Mediation Office has the right to appoint mediators without the consent of the parties concerned – see also section III.3. Mediators are appointed separately for each mediation assignment. The partners may also – at an early stage in the bargaining process – ask the National Mediation Office to appoint a negotiation manager. The role of this person is slightly different from that of a mediator. Mediators have certain powers and enter the

proceedings once a dispute has developed. The role of the negotiation manager is rather to chair the proceedings as an independent expert.

The costs of negotiation managers and mediators are defrayed by the state.

3. Conciliation and mediation in collective labour conflicts

In order to provide a correct picture of the system, we must first describe the partners' own solutions for achieving efficiency in the bargaining process. The existence of agreements in this area affect the powers of the National Mediation Office to prescribe mediation.

Collective agreement areas with collaboration agreements

A relatively new phenomenon in the Swedish labour market is the fact that the partners at sectoral or industrial level have increasingly reached agreement on the forms for bargaining. The collaboration agreement on industrial development and wage formation mentioned above is one such example. The agreement contains a timetable for bargaining. The purpose of this timetable is to ensure that bargaining gets under way in time for a new collective agreement to be negotiated before the old one expires. The timetable stipulates for instance that bargaining is to begin three months prior to the expiry of the current agreement and that the talks are to be led by an impartial chair. The task of the impartial chair is to assist the parties in the negotiations should they themselves fail to reach an agreement. The chair is empowered to order the parties to examine and identify individual bargaining issues. Further, chairs may present proposals of their own for a solution to the issues in hand. They are also entitled to order a cooling-off period for previously notified industrial action until such time as all possible avenues in the search for a solution have been explored, but for no longer than 14 calendar days. It should also be noted that an economic advisory council of four independent economists has been attached to the parties in the above-mentioned collaboration agreement. The council's task is to make statements and recommendations on economic issues.

The collaboration agreement in the industrial sector has been followed by similar accords elsewhere. Such agreements now pertain in the entire local and regional government sector. The Swedish state, too, via the Agency for Government Employees, has concluded collaboration agreements with its counterparts in The OFR, etc.

Nowadays, collaboration agreements cover the bulk of the Swedish labour market.

Collective agreement areas without collaboration agreements

Although collaboration agreements are in place in several major areas, they are not present in all areas. Among the major bargaining areas that lack such accords are the retail trade, the construction industry and the transport industry.

As regards state mediation activities in Sweden, the following applies:

The National Mediation Office was established on 1 July 2000 and is the agency responsible for central government activities in the mediation field. Its tasks are regulated in the MBL, which has been supplemented by an ordinance containing instructions for the work of the National Mediation Office.

Tasks of the National Mediation Office

Under the MBL, the National Mediation Office has two overall tasks. One is to mediate in labour disputes. The other is to promote an efficient wage formation process. Both tasks require the National Mediation Office to keep abreast of coming or current negotiations on pay and employment conditions, either through talks with the parties concerned or by other means. The Office is also required to provide guidance and information to the social partners on negotiations and collective agreements.

The task of mediating in labour disputes applies to the negotiations on collective agreements, i e conflicts of interest. Mediation takes place at two levels. The most important part is mediating in negotiations on pay and employment conditions at sectoral or industrial level. In addition, mediation takes place at regional level. Six regional mediators are attached to the National Mediation Office and are appointed for 12 months at a time. Their activities are supervised by the National Mediation Office. Regional mediators deal with local labour disputes. These primarily concern disputes where a trade union demands the introduction of a collective agreement at a workplace and the employer is opposed to such a course.

Mediation in the bargaining process

Voluntary mediation

If the parties negotiating collective agreements *accept* such a course, the National Mediation Office may appoint negotiation managers or mediators to take part in the bargaining process. In practice, this involves one or both of the parties requesting assistance and formally asking the National Mediation Office to proceed with such an appointment. Should one of the parties oppose such a course, the National Mediation Office is prevented from appointing a negotiation manager or a mediator.

Compulsory mediation

Should the National Mediation Office decide that a risk of industrial action exists, or if such action has already been initiated, the National Mediation Office may appoint a mediator *without the agreement* of the parties concerned.

Parties that have concluded collaboration agreements, i e agreements on bargaining procedure that contain timetables for negotiations, time frames and rules for the appointment of mediators, rules on mediators' powers of authority and rules on the termination of agreements, are *exempt* from the rules

concerning compulsory mediation. This is conditional upon the parties having reported the agreement to the National Mediation Office and the National Mediation Office having registered it. In such cases, the National Mediation Office may not decree compulsory mediation. The reason for this is that collaboration agreements should not have to be bound by dual systems.

Mediators appointed by the National Mediation Office

The task of a mediator is to seek agreement between the parties. To this end, the mediator is required to summon the parties to the negotiating table or to take appropriate action of another kind. Parties summoned to negotiations by a mediator are duty bound to attend. Should any party fail to appear or fail to take part in some other way, the mediator may ask the National Mediation Office to require the party concerned to fulfil its obligations on penalty of a fine.

Mediators must also seek to persuade the party concerned to postpone or cancel a planned industrial action. Should the party refuse to comply with the mediator's request to postpone an action for which notice has been given, the mediator may ask the National Mediation Office to order the party concerned to postpone it. Should the National Mediation Office decide that such a course would be in the interests of a satisfactory settlement of the dispute, it may order a postponement. An action may only be postponed for 14 days at the most, and such a course may only be taken once per term of mediation. The National Mediation Office does not have the power to call off industrial action already under way. Such powers would contravene Sweden's obligations as stipulated in international conventions.

4. Arbitration

Collective agreements in Sweden sometimes contain clauses prescribing arbitration in the case of certain kinds of legal disputes regarding the implementation and interpretation of the agreement concerned. A few collective agreements also specify that local disputes arising out of differing opinions on the distribution of a centrally determined wage pool are to be settled by an arbitrator. The rulings of arbitrators are not subject to appeal.

The Co-Determination Act specifies that a mediator appointed by the National Mediation Office may propose that the partners allow a dispute to be settled by arbitration. The partners are now, however, required to accept such a proposal. The National Mediation Office may participate in the appointment of arbitrators.

If industrial action has been initiated, the National Mediation Office may urge the partners to settle their differences through arbitration.

A mediator may not accept an arbitration assignment in a labour dispute except where given permission to do so by the National Mediation Office in special cases.

The collaboration agreements on bargaining procedure described above specify that an independent chairperson may – with the partners' consent – prescribe that certain kinds of disputes be settled by arbitration. Thus the procedure is based on voluntary participation. If the partners say no, the independent chairperson has no powers to force through a settlement by arbitration.

IV. Assessment of extra-judicial means for the solution of labour conflicts

No official statistics are available in all respects. It is clear, however, that the great majority of disputes are settled as a result of the partners arriving at conciliation. As noted earlier, the Swedish bargaining system presupposes that the partners settle their differences amicably. Only a tiny number of all the legal disputes that occur are ultimately resolved by a court of law or through arbitration. The Labour Court passed judgement in 113 cases in 2001.

In the case of negotiations on national agreements concerning pay and employment conditions at sectoral or industrial level, the number of mediation assignments has totalled around 20 a year over the past few years. This figure refers to disputes where mediators have been appointed by the National Mediation Office or by the agency previously responsible for government mediation efforts. As noted above, the Swedish labour market is extensively covered by collective agreements where the partners themselves have decided the forms for bargaining and the rules concerning both the appointment of impartial chairs and their powers. In many respects, the role of the impartial chair is the same as that of a mediator appointed by the National Mediation Office. Impartial chairs or the equivalent were involved in more than 30 of the negotiations at sectoral or industrial level that took place in 2001.

The regional mediators appointed by the National Mediation Office deal with about 100 disputes a year. The great majority of these end in the partners reaching agreement.

V. Extra judicial means for the solution of labour conflicts across the community

1. Application of community legislation

Hitherto, the EC labour law directives have only been implemented in Sweden through legislation. Although the hope has been expressed in several quarters that such regulation might be introduced into collective agreements, no negotiations on this have actually taken place. Consequently, there have been no conflicts in this area.

2. The future promotion

Before discussing models for conflict resolution at Community level, the question should be asked whether such mechanisms fulfil a function. The fact

that a system works well at national level does not necessarily mean that similar systems would work at a horizontal level.

Historically, national rules on conciliation and mediation appear to have been based on the need to ensure industrial peace. In Sweden as in other countries, government mediation has focused on achieving the peaceful conclusion of collective agreements on pay and employment conditions. The mediation rules have to do with the partners' right to take industrial action over disputes concerning terms of new collective rules (conflicts of interest).

Traditionally, mediation aims to make it easier for the social partners to reach agreement and thus avert a labour market conflict that may be damaging to society. When discussing mediation at European level, it should be noted that no pay negotiations occur at that level, nor do they seem likely in the foreseeable future. Moreover, Community law does not include any rules on industrial action. Any industrial action taken in support of transnational agreements is to be judged in accordance with national laws. The aim of mediation, therefore, cannot be to achieve industrial peace. Rather, it would seek to ensure that parties not entitled to take industrial action reach agreement. A precondition for successful mediation is that the partners share the view that the dispute should be solved by an agreement. If such a common stance is lacking, there is no point in bringing in a mediator.

The above suggests that all mediation processes at European level must be based on voluntary participation. Given such a basis, there is no real point in further specifying the areas in which mediation might be introduced. If the partners agree on the need for a mediator in their negotiations, they can probably agree on which person or persons would be suitable for the task. One way of making it easier for the partners to choose a mediator might be to appoint a panel of competent 'European mediators' to assist them in their bargaining. It would then be up to the partners themselves to decide what tasks to assign to the mediators. Such assignments would of course concern conflicts of interest of a collective and transnational nature. Conflicts of right would be settled within the framework of national judicial procedure.

Given the voluntary nature of the process, there should be nothing to prevent the partners agreeing to settle their differences through arbitration, should mediation fail.

The negotiations that have hitherto taken place between the social partners at European level have been based on first the Social Protocol of the Maastricht Treaty and than on the Social Section of the Amsterdam Treaty. Such negotiations have led to framework agreements implemented by means of directives. The agreements per se have not had any legal ramifications in the Member States. The negotiations on better conditions of employment for part-time and fixed-term workers respectively came about on the initiative of the Commission to break the deadlock that had arisen as a result of the Council's lasting inability to agree on directives. In these negotiations, former Commissioners were brought in as impartial chairs. The negotiations concerning temporary agency workers have not led to any agreement, and in

this field the Commission has stated that a draft directive is in the offing. For this type of negotiation, the roles of the Commission and of the social partners are described in Article 3 of the Agreement on Social Policy. The negotiations are to be completed within a set period. In that they express a wish to enter into negotiations, the social partners can reasonably be expected to be seeking an agreement. Should these negotiations become deadlocked, the introduction of a mediator may be the solution. A panel of mediators to choose from may then be a valuable asset.

3. The Swedish social partners´ point of view

The social partners in Sweden are sceptical both about the need for conflict solution at Community level and about the benefits of such mechanisms. Should such a system nevertheless be introduced, the partners emphasise the need for it to be based on voluntary participation. They believe that mediation may conceivably fulfil a function when the negotiations come under the Agreement on Social Policy. The same applies if the partners at a horizontal or sectoral level agree to enter into negotiations on an issue without these coming under the Agreement on Social Policy. However, the Swedish partners reject out of hand the idea of mediation in areas where directives and national legislation specify what is to apply should they be unable to reach agreement. This rules out disputes at company level.