

**Studies on the implementation of Labour Law Directives
in the enlarged European Union**

**Directive 2003/72/EC supplementing the Statute
for a European Cooperative Society with regard
to the involvement of employees**

NATIONAL IMPLEMENTATION REPORT



Sweden

Content

EXECUTIVE SUMMARY	3
1. INTRODUCTION	4
2. IMPLEMENTATION	4
2.1 FORMAL ASPECTS.....	4
2.2 REGULATION CONTENTS	5
2.3 PRACTICAL IMPLEMENTATION	13
2.3.1 <i>Overview of the situation regarding the cooperatives</i>	13
2.3.2 <i>Measures to ensure compliance</i>	13
2.3.3 <i>Positions of employers' and trade union organisations</i>	13
3. EFFECTS OF IMPLEMENTATION	14
4. ASSESSMENT OF THE RESULTS OF IMPLEMENTATION	14
4.1 ASSESSMENT OF THE LEGAL TRANSPOSITION	14
5. CONCLUSIONS	15
6. RECOMMENDATIONS	15
BIBLIOGRAPHY	17
ANNEX I: NATIONAL GLOSSARY	18
ANNEX II: TABLE OF CORRESPONDENCE	19

Executive Summary¹

Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees has been implemented in Swedish legislation through, Act (2006:477) on the involvement of employees in European Cooperative Societies. The Act came into force on 18 August 2006.

The purpose of the directive is to ensure that the establishment of a European Cooperative Society does not lead to a reduction or disappearance of the practice of employee involvement. At an overall level the directive has been transposed in a correct and timely manner. In many aspects, Act 2006:477 is a direct translation of the directive and it has been implemented in almost an identical manner as directive 2001/86/EC. There are two parts of the directive that have not been implemented explicitly and that relates to the part on promoting a gender balance in the negotiating body (article 3 in the directive) and the representative body (annex part 1) and the part concerning the spirit of cooperation (article 11).

Since no European Cooperative Societies have been registered in Sweden so far it has not been possible to assess the practical implications of the directive in this report. However, judging by the comments made by social partners in their statements to the referral, the anticipated affects appear to be limited. Both employers' and employees' organisations' seem to agree (at an overall level) with how the directive has been implemented, i.e. to a great extent it has been done in accordance with existing national legislation.

¹ Report elaborated by Örjan Edström, Dr. and Professor in Law, in cooperation with Oxford Research A/S

NATIONAL IMPLEMENTATION REPORT – SWEDEN

1. Introduction

This report concerns the implementation of Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

Since no European Cooperative Societies have been formed in Sweden, this report primarily analyses the implementation of the directive in a legislative context and the social partners' comments to the legislative implementation approach. In addition to the statements given by social partners to the referral it has proven difficult to get more in depth information through interviews.

The legal form of the cooperative in Sweden can vary. In Sweden the most common form is economic association, since it is the form best suited for democratic codetermination. However, a cooperative can also be started as a limited company. Both company forms have their specific regulation (Economic association Act (1987:667) and the Companies Act (1975:1385), own translations). However both forms are legal persons, hence the members/owners are not liable with their personal assets.

The general system of employees' involvement in cooperatives is fulfilled by the Co-Determination in the Workplace Act (1976:580). Hence there is no specific regulation for cooperatives in regards to this matter. For exemptions, see section 2.2 regarding article 10. Since members of a cooperative often are both employers and employees it will have an impact on negotiations in practice. In these situations, the majority of the board is considered employer and thus the party that the union will negotiate with on behalf the employees.

In regards to the applicability of article 9, employees of the cooperative can be given the right to participate in general meetings and in section meetings, but not the right to vote. Voting requires membership of the cooperative (this was also the case on 21 August 2003).

2. Implementation

In this chapter the national regulation framework is reviewed. Special attention is given to how directive 2003/72/EC was transposed in terms of formal aspects, contents of the national regulation in comparison to the directive as well as its practical application.

2.1 Formal aspects

Council Directive 2003/72/EC was implemented in Swedish legislation through, Act (2006:477) on the involvement of employees in European Cooperative Societies. The Act came into force on 18 August 2006.

To implement the Directive, proposal DS 2005:10 was referred for consideration to relevant social partners and bodies (all in all 32 organisations whereof 27 commented the referral) in April 2005 and additional amendments in December the same year. In addition, the proposal was also referred to the Council on Legislation (Lagrådet) to ensure that it did not conflict with existing legislation. Government proposition 2005/06:170 underlie the Parliaments (Riksdag) adoption of Act 2006:477.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

2.2 Regulation contents

This section provides a comparative overview of the articles in directive 2003/72/EC and corresponding sections in the national legislation. If nothing else is stated national legislation refers to Act 2006:477. To a large extent Act 2006:477 is a direct translation of the directive, though it is structured slightly differently and provides more detailed directions on the establishment of a negotiating body, allocation of seats etc.

On a general note Act 2006:477 and Act (2004:559) on the involvement of employees in European Companies are very similar using the same approach and wordings.

I. Object and definitions (arts. 1 and 2)

No explicit objectives are stated in Act 2006:477, instead the first sections focus on the content of the Act, which indirectly gives an indication of the objective.

Definitions

- **SCE:** Same definition as the directive
- **Participating legal entities:** The same content as the directive
- **Subsidiary:** The same definition as in the directive but slightly different wording.
- **Concerned subsidiary or establishment:** The same definition and wording as the directive.
- **Employees' representatives:** There is no explicit definition in Act 2006:477, however there is no doubt who the employees' representatives are since there are specific rules on how they are appointed.
- **Representative body:** The definition in national legislation is the same. The term 'employees council' is used meaning the body that represents the employees in a European Cooperative Society and its subsidiaries and establishments in relation to information and consultation and, where appropriate, exercise the right to participate in the European Cooperative Society.
- **Special negotiating body:** Not defined (called förhandlingsdelegation) however there is no doubt what a negotiating body is, since it is clearly described how such a body shall be appointed.
- **Involvement of employees:** There is no explicit definition in Act 2006:477. However, through the detailed sections in the act on involvement there is no doubt of its meaning.
- **Information:** There is no explicit definition in Act 2006:477, however section 48 in the Act states in which questions the employees' council has the rights to information.
- **Consultation:** There is no definition in Act 2006:477. Though, in section 10 in the Co-Determination in the Workplace Act (1976:580) the concept negotiation is used instead of consultation and it is referring to that there should be a dialogue and discussion.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

- **Participation:** The definition and wording is the same as in the directive.
- **Establishment: Not defined in the legislation on SCE, but according to Act (1992:160) on foreign establishments, an establishment is described as a foreign company's divisional office with independent administration in Sweden.**
- **Economic association:** There is no exact definition of an economic association, however the Economic association Act (1987:667) states that an association shall be regarded as an economic association if: 1) the purpose of an economic association is to promote the interest of its members, 2) the associations assets mainly consists of share in the association or other associations, 3) and that this association or the other associations are economic associations.

In addition to the above definitions, an EEA country is defined.

II. Provisions that apply to SCE based in the Member State

A. Field of implementation (art. 15)

To implement article 15, Act (1996:359) on European Works Councils has been amended to include that this Act is not applicable to the European Cooperative Society or its subsidiaries unless according to Act 2006:477 the negotiating body has decided not to open negotiations or the negotiations have been discontinued.

To implement article 15.2, the Board representation Act (1987:1245) has been amended to include that the Act shall apply to European Cooperative Societies in the following cases (follows the limits set by the first paragraph of article 8.2 in the directive):

- If the European Cooperative Society is established by natural persons only, or by a single legal entity and natural persons, which together (at the time the European Cooperative Society was registered) employ fewer than 50 employees or only have employees in only one EEA country (Section 1b).

Furthermore, section 1b of the Board Representation Act (1987:1245) also states when it shall not be applicable. This follows the criteria set up in article 8.3 in the directive.

According article 15.3 (a), the directive shall not prejudice the existing rights to involvement of employees provided by national legislation. According to proposition 2005/06:170 the Co-determination in the workplace Act (1976:580) shall apply to the same extent as prior to the implementation of Act 2006:477. Hence the national legislation on co-determination is applicable parallel to the new legislation.

B. Procedure for negotiation of the rights of involvement of workers in the SCE

a. Responsibility of procedure (art. 3.1): According to the directive it is the responsibility of the management or administrative organs of the participating companies to take the necessary steps to start negotiations. Section 8 in Act 2006:477 follows the directive though it is not as specific.

b. Start of procedure (art. 3.1): According to the directive, necessary steps including providing information shall be taken to start the negotiating procedure. The content in Act 2006:477 is the same as in the directive. Section 8 defines this information as names of and information on the number of employees in the participating legal entities, names

NATIONAL IMPLEMENTATION REPORT – SWEDEN

of concerned subsidiaries and establishments as well as other subsidiaries and establishments in the EEA countries.

c. Constitution and composition of the NB (art. 3.2):

3.2 (a) (i): The content of section 10 in the national legislation is the same as 3.2 (a)(i) in the directive.

3.2 (a) (ii): Section 9 in the national legislation is the same as 3.2 (ii) and similar wording is used.

In addition to the above-mentioned sections, a time limit for the constitution of the negotiating body has been added as well as a provision regulating the situation (should it occur) if the number of employees in the participating companies and legal entities change). To be more specific:

- Section 9 in Act 2006:477 states that the negotiating body must be elected within 10 weeks from that the legal entity has taken the necessary steps to create a negotiating body.
- Section 12 in Act 2006:477 states that if the number of employees in the legal entities and the participating subsidiaries change during the period in which the negotiation delegation is active and the change is in such a scale that it affects the distribution of the number of seats between the employees in the various EEA countries, a reallocation of seats shall be undertaken.

d. The functions of the SNB (art. 3.3 and 6)

According to the first paragraph of article 3.3 in the directive, the special negotiating body and the competent organs of the participating legal entities shall determine by written agreement the arrangements for involvement of the employees within the European Cooperative Society. Section 2 in Act 2006:477 describes the overall approach for determining arrangements for the involvement of employees. Section 31 states that the agreement shall be in writing.

According to the second paragraph of article 3.3 in the directive, the competent organs of the participating legal entities shall inform the special negotiating body of the plan and the actual process of establishing the European Cooperative Society. Section 25 in the national legislation follows the directive using similar wordings.

Article 6 in the directive is implemented through section 4 in the national legislation, which states that sections 22-34 concerning the negotiating procedure shall apply where a European Cooperative Society is to have or has its registered office in Sweden.

e. The workings of the SNB (art. 3.4,5 and 7)

3.4: Sections 27-28 in Act 2006:447 follow the procedure described in article 3.4 and almost the same wordings have been used.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

3.5: Section 26 in Act 2006:477 follows article 3.5 in the directive though it is not as detailed.

3.7: The national legislation (Section 30) follows the first paragraph of article 3.7. The second paragraph has not been included in national legislation, i.e. no budgetary rules have been laid down. However section 30 in Act 2006:477 states that the legal entity shall cover expenses to the extent that is necessary for the negotiating body to carry out its tasks in an appropriate way.

f. Duration of negotiations (art. 5): According to section 22 in Act 2006:447, the negotiation may continue for no more than six months but if the parties jointly agree it may be extended up to one year. Hence the national legislation follows the directive.

g. Involvement agreement: content, juridical efficiency and, given the case, supplementary regulations in force regarding validity, extension, report and renegotiation (art. 4)

4.1 spirit of cooperation: According to the directive the negotiation shall take place in a spirit of cooperation and with a view to reaching an agreement. No equivalent formulation can be found in Act 2006:477.

4.2 specification of agreement: Sections 31-33 in Act 2006:477 are almost direct translations of article 4.3 in the directive.

4.3 subject to standard rules: There is no equivalent section in Act 2006:477. However, since article 7.1 has been implemented by section 35, and articles 4.3 and 7.1 more or less cover the same subject, article 4.3 could be considered to be implemented.

4.4 same level of involvement: Section 34 follows article 4.4 and almost the same wordings are used.

4.5 participation in meetings: There is no equivalent section in Act 2006:477. However, in proposition 2005/06:170 it is clearly stated that Act 2006:477 shall not give employees of the European Cooperative Society who participate in meetings the right to in cases where employees' involvement is regulated by Swedish legislation. Please see below section VII in this report for a more detailed explanation.

III. Reference provisions (standard rules)

a. Field of implementation (cases in which they are applied) (art. 7)

As previously mentioned, section 35 in Act 2006:477 is almost a direct translation of article 7.1 in the directive. Sections 36-38 follow article 7.2. However, where the last paragraph of article 7.2 (c) includes the word *shall*, for example 'the special negotiating body shall decide /.../' it has been translated/implemented as 'may decide' (section 38). Section 38 further states that in the absence of such decision, the participating legal entities may decide what form of participation that shall be established in the European Cooperative Society.

b. Employees' representative bodies: competences, composition and standard rules (annex part 1 and 2)

Part 1 in annex: Sections 39-47 and 56 follow part 1 in the annex. To a great extent these sections are direct translations of the directive but with a few national specifics.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

Thus, according to the second paragraph in the annex's part 1 (b) of the directive, Member States' shall lay down rules to ensure that the number of members of the representative body is adapted to reflect changes within the European Cooperative Society. According to section 45 in Act 2006:477 the employees' council shall assess this once a year, unless otherwise agreed.

In addition, it is stated in the directive that the methods used shall seek to promote gender balance. Nothing is stated in Act 2006:477 about seeking a gender balance. In proposition 2005/06:170 it is stated that the trade unions ought to strive for gender balance when appointing representatives. However, the Government does not consider that the national legislation shall state that the seats should be distributed equally between men and women, especially since there is no equivalent national rule for employees' representatives on Swedish company boards.

With regards to the appointment of members from Sweden to the employees' council, they are appointed more or less the same way as members of the negotiating body, i.e. by the local employees' organisations bound by collective agreements (Section 42). If no collective agreement exists, local employees' organisation representing the largest number of organised employees shall appoint the members from Sweden. However this shall apply only where the local organisations cannot agree otherwise (Section 43).

Part 2 in annex: Sections 48-55 and 57 follow the directive and use almost the same wording with a few exceptions. However, section 57 in Act 2006:477 concerning costs is not as detailed as part 2 (h) in the directive, i.e. it does not give any examples of types of costs that shall be covered. On the other hand, no costs are excluded hence all costs necessary shall be covered.

Rules concerning the chairing of information and consultation meetings (part 2 (d)) have not been laid down in 2006:477.

c. Participation of employees (annex part 3)

Sections 58-66 in Act 2006:477 follow the directive and similar wording is used. There is no equivalent section to part 3 (c) since all employees and employers are covered by the Co-determination in the work place Act (1976:580)

In addition to the last paragraph in part 3 (b), concerning the rights and the obligations of members in the body elected or appointed by the representative body, a restriction has been added in section 65, second paragraph (Act 2006:477). It states that employees' representatives may not participate in discussions on matters concerning collective agreements or industrial action or other matters where the employees' council or a trade union has a substantial interest, which may conflict with that of the European Cooperative Society.

IV. Common Provisions (with II and III)

a. Confidentiality of information (art. 10)

The national legislation follows the directive with regards to confidentiality, though in some aspects it is not as detailed. For example, it does not define what types of information that can be made confidential. According to section 71 in Act 2006:477, the legal person or the European Cooperative Society may impose an obligation of confidentiality. Furthermore,

NATIONAL IMPLEMENTATION REPORT – SWEDEN

information provided in confidence may be disclosed to other members of the negotiating delegation, employees' council and their experts.

In addition, article 10.3 should be addressed, which states that particular provisions for European Cooperative Societies, which pursue the aim of ideological guidance etc., may be laid down. Act 2006:477 exempts companies from the scope of the Act as regards the objectives and direction of its activities (all in accordance with the Co-determination in the workplace Act), whose activities are:

- Religious
- Scientific
- Artistic
- Otherwise non-profit oriented
- Co-operative objectives
- Trade-union and political objectives
- Opinion forming aims

b. Spirit of cooperation (art. 11)

There is no equivalent section in Act 2006:477.

c. Protection of employees' representatives (art. 12)

The employees' representatives who usually work in Sweden enjoy the same protection as provided by national legislation on trade union representatives, according to section 70 in Act 2006:477. Section 70 refers to provisions of the Trade Union Representatives Act (1974:358) (§3 first subparagraph, § 4 and §§6-8), which states that a trade union representative:

- Shall not be given poorer working and employment conditions due to his/her position
- Shall have right to take time off to perform his/her tasks as representative.
- In case of notice due to lack of work the representative shall be given priority to continued work.

d. Misuse of procedures (art. 13)

Section 72 in Act 2006:477 follows article 13 in the directive. It states that the rules governing European Cooperative Societies may not be misused with the aim of removing or denying employees their rights to involvement. This is furthermore exemplified and a time frame of one year is set regarding major changes that occur within the year of registering the European Cooperative Society.

V. Provisions applicable to work centres and subsidiary companies in the territory of the Member State (accessory provisions)

a. Field of implementation

NATIONAL IMPLEMENTATION REPORT – SWEDEN

In accordance with the directive, section 4 in Act 2006:477 states what provisions shall be applicable to European Cooperative Societies who are to have or have their registered office in Sweden and what provisions that shall apply irrespective of where the European Cooperative Societies are based.

b. Identification of national employees' representatives (art. 2.1.e)

Who the employee's representative is depends on whether or not the legal entity, concerned subsidiaries or establishments are bound by collective agreements or have employees who are members of a trade union. Where collective agreements are in place or if the workplace has employees who are members of trade unions, the employees' representative to the negotiating body and the employees' council are elected by the local employees' organisation (Sections 18-19 and 42-43). Where no local or central organisation exists the employees in the workplace select the members of the negotiating body (Section 19) but not the employees' council.

c. Appointment of employees' representatives in the SNB (special negotiating body) and representative body (art. 3.2.b and annex 1, b)

3.2 (b) The appointment of employees' representatives in the special negotiating body and the employees' council follows the requirements in article 3.2 (b) of the directive. Meanwhile, Act 2006:477 does not state that the appointment shall seek to promote gender balance, as prescribed by the directive.

Furthermore, according to sections 13 and 40 in Act 2006:477, the seats on the negotiating body and the employees' council shall be distributed in descending order based on the number of employees in the companies.

The actual appointment of employees' representatives to the special negotiating body and the representative body is more or less done in the same way. In short, the local employees' organisations that are bound by collective agreements to the legal entities, concerned subsidiaries and establishments, appoint representatives (Sections 18 and 42).

Where there are several local employees' organisations bound by collective agreements and these cannot agree otherwise, priority shall be given to that organisation that represents the largest number of employees. If more than one member shall be appointed the order set out in the Board Representation Act (1987:1245) shall be followed (Sections 18 and 42). Where none of the companies are bound by collective agreements, members are appointed by the employees' organisations representing the largest numbers of organised employees in the companies and establishments (if the local organisations cannot agree otherwise) (Sections 19 and 43).

Where no such organisation referred to in sections 18 and 19 exists, members to the special negotiating body are appointed by the employees of the participating companies (Section 20). It should be noted that there is no equivalent section when appointing employees' representatives to the employees' council.

d. Protection of employees' representatives (art. 10)

According to article 10.4 in the directive, Member States shall make provisions for administrative or judicial appeal procedures. The protection of employees' representatives is described in section IV(c) of this report. In addition, Act 2006:477 contains provisions on legal action and compensation. Legal proceedings relating to the application of 2006:477

NATIONAL IMPLEMENTATION REPORT – SWEDEN

shall be handled in accordance with Judicial Procedure in Labour Disputes Act (1974:371). Legal proceedings in connection with the Act shall be brought before the Labour Court (Section (74). Persons infringing the provisions of the Act shall be required to pay compensation in accordance with provisions in Co-Determination in the Workplace Act (1976:580)

VI Rules applicable to SCEs established exclusively by natural persons or by a single legal entity and natural persons (art. 8)

Section 1 in Act 2006:477 is almost a direct translation of articles 8.1 and 8.3 in the directive. The Act does not cover article 8.2, though this is discussed in proposition 2005/06:170 where it is stated that national rules shall apply in accordance with article 8.2 of the directive.

VII Participation in General Meeting or Section of Sectoral Meeting (art 9)

Act 2006:477 does not give employees of the European Cooperative Society who participate in meetings the right to vote in cases where employees' involvement is regulated by Swedish legislation. In short, proposition 2005/06:170 refer to the subjects laid down in article 59.4 of Regulation (EC) No 1435/2003, which states that the right to participate with the right to vote presupposes that such right exists in national legislation. Swedish legislation (Act (1987:667) on Economic Associations, section 7.1) gives the right to vote to members of an association. Hence with this motivation national legislation should not give employees the right to vote, according to the proposition unless they are members of the association.

Would a Swedish employee representative participating to a foreign (Danish for ex) SCE General assembly be protected?

Yes, the Swedish employee representative would be protected in Denmark, presupposed that he/she is participating in the meeting in one's capacity as employee representative for the Swedish part of the SCE. The Trade Union Representatives Act (1974:358) protects the representative.

Would there be possible to a foreign SCE to organise section meetings in Sweden?

On a general note, there are no such obstacles in the national legislation.

VIII. Legal procedures (or, given the case, extrajudicial)

Legal proceedings regarding the application of the Act shall be handled in accordance with the Labour Dispute Act (1974:371). Legal proceedings in connection with the Act shall be brought before the Labour Court as the first instance (Section 74). If no collective agreement exists, the district court proceedings in connection with the Act shall be brought before the District court.

The negotiating body and the representative body may acquire rights, assume obligations and bring actions before a court of law or other authority (Section 69).

Details of fines/sanctions

The level of fines are not described in the legislation on SCEs and there is as of yet no case law.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

IX. Other issues (for example, juridical efficiency in the Member State of the provisions of other Member States and sanction system for non-compliance)

Anyone who infringes the provisions in the Act shall be required to pay compensation in accordance with provisions of the Co-Determination in the Workplace Act (1976:580) (Section 73).

2.3 Practical implementation

2.3.1 Overview of the situation regarding the cooperatives

So far no European Cooperative Societies have been registered in Sweden.

There is a lack of official statistics on the total number of cooperatives in Sweden. However most cooperatives in Sweden are established as economic associations and in 1998, Sweden had around 16 000 economic associations. Nevertheless, many of these cooperatives are not employers. The employer organisation for cooperatives KFO, has around 2 300 members which together employ around 85 000 employees. 1 200 of its members are preschools, after school recreational centres and private schools, though the cooperatives with most employees are found in the retail trade sector (KFO, 2006). Considering the nature of business of many Swedish cooperatives, there are probably only a limited number that would consider registering a European Cooperative Society.

2.3.2 Measures to ensure compliance

Since Sweden has a long tradition of ensuring involvement of employees through collective agreements and trade union representation it is presupposed that the employees' organisations will safe guard the interests of their members. Hence, compliance of Act 2006:477 will primarily be handled/ensured by employees' representatives and the management of the legal entities involved (within the framework of law).

2.3.3 Positions of employers' and trade union organisations

On an overall level the social partners appear content with how the directive has been implemented in national legislation especially since it tries to make use of already existing rules and procedures on the involvement of employees. Perhaps this explains why the comments from social partners have been very few and general. One of the interviewed social partners believes that it is also related to that they have already made statements to the referral concerning employees' involvement in European companies. Since directive 2001/86/EC and 2003/72/EC more or less have been implemented in the same manner the comments concerning the implementation of directive 2003/72/EC would be very similar to those concerning directive 2001/86/EC.

With regards to how the directive has been implemented there are some (but few) converging comments. Many of the social partners agree with how the directive has been implemented while some have commented that the national legislation is technical and that it might be difficult for employers to interpret.

One of the main concerns among social partners relates to what influence employees representatives shall have on the possibility to establish a European Cooperative Society by not appointing members to the negotiating body. To overcome this problem a time limit of ten weeks to appoint members of the body has been implemented in Act 2006:477.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

According to some of the employees' organisations they would prefer that such time limit be set at EU level to ensure coherence across all Member States. One of the employees' organisations has also remarked that the time limit is too short especially if the establishment involves legal entities in several Member states and if they all have different appointment/election procedures.

3. Effects of implementation

As previously mentioned no European Cooperative Society has been established in Sweden so far. Hence it is too early to see any effects of the implementation in practice. According to the informant at the employees' organisation the interest to establish European Cooperative Societies has been none existent. One reason could be that the legislation is complicated and that there are too many rules to adhere to, according to the informant at the employees' organisation. Hence, it will take time before we see any such cooperatives being established in Sweden since most new cooperatives have a national focus in their activities, i.e. they are schools, care centres etc.

4. Assessment of the results of implementation

4.1 Assessment of the legal transposition

Since both directive 2001/86/EC and directive 2003/72/EC have been transposed in almost the same way the comments in this section will in most cases be the same as the comments in the report concerning directive 2001/86/EC.

A) Overall quality of transposition

The directive 2003/72/EC has been transposed in a timely manner and almost all aspects of the directive have been implemented in national legislation. To a great extent Act 2006:477 is a direct translation of the directive. This not only ensures a correct implementation of the directive, it can also as highlighted by some of the social partners create a rather technical national legislation, which for employers can be difficult to interpret. A few comments can be made to specific details in the national legislation that compared with already existing national legislation give both employers and employees extended rights.

- In a Swedish context it is positive to note that unorganised employees are given to right to appoint members to the negotiating body (if no collective agreement is in place or if no employees are trade union members) giving that this has not been the case traditionally.
- The right for participating legal entities or European Cooperative Societies to impose an obligation of confidentiality is an extension of the rights given in a national negotiation situation according to the Co-Determination in the Workplace Act (1976:580), where at least the private company has the right to negotiate in respect of a duty of confidentiality (Sections 21-22).

B) Aspects not included in national regulation

According to the directive, the methods used to appoint or elect members to the negotiating body and the representative body shall seek to promote a gender balance. This aspect has not been included in Act 2006:477 for reasons previously explained. It is interesting to note how

NATIONAL IMPLEMENTATION REPORT – SWEDEN

the Government in proposition 2005/06:170 interprets the directive in this matter. While the directive takes a general approach: “seek to promote gender balance”, proposition 2005/06:170 argues that it is not possible to legislate that there should be “an equal distribution of seats” between men and women. Hence, it appears as if the option of a more general approach as prescribed by the directive has not been considered.

Furthermore, article 11 of the directive concerning the spirit of cooperation has not been implemented in national legislation, at least no explicitly.

C) Elements of conflict or “grey areas”

In the national report concerning directive 2001/86/EC one possible “grey area” concerning confidentiality was pointed at. It could be argued that the Swedish legislation indirectly gives the European Cooperative Society extended rights to determine what information that shall be made confident. Act 2006:477 (section 71) states that an obligation of confidentiality may be imposed if it is necessary with respect of the interests of the company. It is not obvious that the phrase “in the interest of the company” could be considered to be the equivalent of the directives phrase: “that would seriously harm the function of the European Cooperative Society or the participating legal entities”. Hence, it could be argued that Act 2006:477 gives companies more decision power regarding what information that should be made confidential.

5. Conclusions

At an overall level the directive has been transposed and implemented in a correct and timely manner. To a great extent, the implementation of directive 2003/72/EC followed the implementation of directive 2001/86/EC.

The purpose of the directive is to ensure that the establishment of a European Cooperative Society does not lead to a reduction or disappearance of the practice of employee involvement. Act 2006:477 has ensured this purpose in national legislation, and on a general note it adheres to already existing national procedures on employees involvement.

It is however not possible to assess what effects the legislation will have in practice since no European cooperatives have been established. So far the interests to establish such cooperatives is basically none existence due to that the old cooperatives do not see the advantages and new cooperatives being established primarily have a national focus in their activities.

6. Recommendations

One area that seems to have raised some issues among social partners is the possibility for employees’ representatives to influence (by not appointing any representatives) the creation of negotiating body, thus weakening the possibility to establish a European Cooperative Society. Since the creation of a negotiating body is central in the process of establish a European Cooperative Society it would be recommended to have some common rules for all Member States that ensure the creation of such a body.

NATIONAL IMPLEMENTATION REPORT – SWEDEN

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- Regulation (EC) No 1435/2003

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- Act (2006:477) on the involvement of employees in European Cooperative Societies.
- Board representation Act (1987:1245)
- Codetermination in the workplace Act (1976:580)
- Labour Dispute Act (1974:371)
- Act (1987:667) on Economic Associations

Official reports:

- Government proposition 2005/06:170
- Government proposal DS 2005:10

Other sources

- <http://www.kfo.se>, visited at 23/10/2006

Annex I: National glossery

Official report: Betänkade

Proposition: Proposition

Provision: Föreskrift

- Act (2004:559) on the involvement of Employees in European companies: Lag (2004:559) om arbetstagarinflytande i europabolag
- Act (2006:477) on the involvement of employees in European Cooperative Societies: Lag (2006:477) om arbetstagarinflytande i europakooperativ
- Board representation Act (1987:1245): Lag (1987:1245) om styrelsrepresentation för de privatanställda
- Codetermination in the workplace Act (1976:580): Medbestämmande lagen
- Judicial Procedure in Labour Disputes Act (1974:371): Lag (1974:371) om rättegången i arbetstvister

NATIONAL IMPLEMENTATION REPORT – SWEDEN

Annex II: Table of correspondence

Content	Articles in the Directive	Sections in National legislation SFS 2004:559
Objective	1	No equivalent section
Definitions	2	5
Creation of a special negotiating body	3.1	6
	3.2 a	8-9
	3.2 b	7, 11-15
	3.3	22
	3.4	24-25
	3.5	23
	3.6	21, 26
	3.7	27
Content of agreement	4.1-4.2	28-30
	4.3-4.4	31
Duration of negotiations	5	20
Legislation applicable to the negotiation procedure	6	4
Standard rules: 7 and annex	Annex part 1	36-44 and 53
	Annex part 2	45-52, 54
	Annex part 3	55-63
Reservation and confidentiality	8	3, 66
Operation of the representative body and procedure for the information and consolation of employees	9	No equivalent section
Protection of employees' representatives	10	65
Misuse of procedures	11	67
Compliance with this directive	12	68-70
Link between this Directive and other provisions	13	