

Mechanisms for Establishing and Changing Terms and Conditions of Employment in Sweden

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1. Introduction

The subject of this paper is the mechanisms for establishing and changing terms and conditions of employment in Sweden. It relates both to fundamental aspects of the Swedish labour law and industrial relations model, and to the current 'transformation' of working life, including trends towards an increasing individualisation and decentralisation and a new emphasis on fundamental social rights and non-discrimination. The outline of the paper is as follows. Section 2 presents the 'Swedish Model' of industrial relations. Section 3 deals with the basic mechanisms for establishing and changing terms and conditions of employment in Sweden. Section 4 gives an account of recent reforms of Swedish labour law, and discusses the resultant challenges to the 'Swedish Model' of industrial relations. Lastly, in section 5, I make some final remarks.

2. The 'Swedish Model' of industrial relations

The 'Swedish Model' of industrial relations is characterised by a high degree of self-regulation, state non-intervention and autonomy of the social partners. The two central labour-market organisations, the Swedish Confederation of Trade Unions (LO) and the Confederation of Swedish Enterprise (Svenskt Näringsliv), formerly the Swedish Employers Federation (SAF), were founded in the end of the 19th century, and the cornerstone of today's collective labour law emerged through the interactions of the social partners. The relationship between the social partners was characterised by co-operation, concert and social partnership. At a couple of crucial moments during the 20th century the social partners concluded master agreements, for example, the 'December Compromise' in 1906, which established the employees' freedom of association, and the employer prerogatives (section 3), and the Saltsjöbaden agreement in 1938. The 'Swedish Model' of industrial relations, thus represents a successful balance of power between work and capital. Furthermore, the 'Swedish Model' portrays distinct elements of corporatism, with the social partners co-operating with the state and sharing social responsibility. The Swedish labour market is strictly organised. 80-85 percent of all employees are members of a trade union, and the organisation rate on the employer side is, in principle, equally high. During the 1980s and 90s the unionisation rate in Sweden has, in contrast to the situation in many other European countries, remained relatively stable and high. The Swedish trade union movement is centralised and composed of nation-wide industrial unions. It is not ideologically, religiously or politically divided.¹

Collective bargaining and collective agreements have played a vital role in the self-regulation of the Swedish labour market, and traditionally constituted the most important legal source in the area of labour law. Collective bargaining has been very centralised in Sweden, and the collective bargaining coverage almost complete. Another distinguishing feature of the 'Swedish Model' of industrial relations is well-established and strong mechanisms for information, consultation and co-determination. In Sweden the workers' influence is channelled solely through trade unions, a so-called *single-channel model*, with trade unions participating both in collective bargaining and industrial action, and in local consultation and co-determination activities concerning management decisions affecting individual employees or the business in general.²

The 'Swedish Model' of industrial relations has in a comparative context been described as

¹ Cf. Bruun *et al.* 1992, Kjellberg 1998, Kjellberg 2003, Numhauser-Henning 2001a and Nielsen 1996.

² Cf. Kjellberg 1998, Fahlbeck 2002 and Biagi 2001.

*a social-collectivist model, a consensual industrial relations system and an institutionalist model.*³ The development since the beginning of the 1970s has brought about important changes in the above-mentioned respects, changes that fundamentally challenge the ‘Swedish Model’ of industrial relations in its traditional sense. I will return to and discuss these changes in their relevant contexts in sections 3 and 4 below.

3. Basic mechanisms for establishing and changing terms and conditions of employment

Since 1995 Sweden has been a member of the European Union, and EC law has therefore the highest rank of all legal sources in the area of labour law. Important areas of EC labour law, having prompted changes in Swedish labour law legislation during the last ten years (section 4), are, for example, equal treatment and non-discrimination, employment protection with regard to collective dismissals and transfers of undertakings and some provisions regarding information and consultation.

In today’s intensive debate about the future of labour law, fundamental social rights combined with non-discrimination legislation and a reformed social-security system are often apostrophised as a feasible way ahead.⁴ The constitutional aspects of Swedish labour law are in many ways undeveloped (in contrast to, for example, German labour law); consequently, the current debate concerning fundamental social rights in working life comes across as largely new. It is true that the Swedish Constitution includes a ‘catalogue’ of fundamental rights and freedoms (cf. chapter 2 of the 1974 Instrument of Government); but it has never really taken effect. In part this is due to the fact that the Constitution, in principle, does not grant any legally enforceable rights to anyone. The provisions of the Constitution are not applicable to employment relationships in the private sector of the labour market, and their significance in legal relationships between individuals is marginal. However, the incorporation of the European Convention on Human Rights into Swedish law in 1995 has increased the attention paid to fundamental rights. Consequently, important cases concerning the negative freedom of association and workers’ privacy respectively have been brought before the Labour Court in recent years.⁵

Against this background, legal developments within the EU, where fundamental social rights are in clear focus, naturally play a vital role. Respect for fundamental rights and freedoms became part of EC law early on. The concept of fundamental rights that has been applied by the European Court of Justice has derived its content from constitutional traditions common to the Member States and from international conventions and instruments on human rights, especially from the European Convention on Human Rights. The proclamation of the EU Charter of Fundamental Rights in 2000 setting out rights (though not legally binding) such as the freedom of association, the right to collective bargaining, the right to work, the right to personal integrity, the right to fair working conditions, the right to continuous education and vocational training etc., has further highlighted the importance of fundamental social rights.⁶

The 1970s witnessed a ‘boom’ in legislative activity, and ever since labour law legislation is very frequent in the Swedish context. This poses a challenge to the traditional ‘Swedish Model’ of industrial relations with an emphasis on self-regulation, state non-intervention and autonomy of the social partners. In principle, the function of labour law legislation in Sweden is to set mandatory minimum standards for terms and conditions of employment. However, one of the most distinctive (and in a comparative perspective perhaps also surprising) features of Swedish labour law legislation is its largely ‘semi-compelling’ character. Principally, labour law legislation, for example, the employment protection regulation, assigns individual employees

³ Cf. van Peijpe 1998, Bamber and Lansbury 1998 and van den Berg, Furåker and Johansson 1997.

⁴ Cf. for example, from the Swedish perspective, the series in the journal *Arbetsmarknad & Arbetsliv*, with contributions by Bruun 1995, Hydén 1996 and Numhauser-Henning 1997.

⁵ Cf. Öman 2003, Bruun 1999 and Herzfeld Olsson 2003. Cf. for example also Labour Court judgements AD 1998 No. 17 and AD 1998 No. 97.

⁶ Cf. Bruun 1999 and Herzfeld Olsson 2003.

strong, mandatory and legally enforceable rights. However, even important individual rights (e.g. seniority rules) can be deviated from (disadvantaging the employee) by means of a collective agreement entered into by the employer and the trade union. This ‘semi-compelling’ character can only be understood against the background of the ‘Swedish Model’ and its expressly collective character and great autonomy of the social partners.⁷

The two real centrepieces of Swedish labour law legislation are the 1976 Co-determination Act and the 1982 Employment Protection Act. The 1976 Co-determination Act regulates the central aspects of collective labour law, *inter alia* freedom of association, the collective agreement, right to information, consultation and co-determination and industrial action.⁸ All trade unions (with at least one member at the workplace) enjoy a statutory right of general negotiation with the employer. Trade unions that have concluded a collective agreement with the employer (or the federation of employers) on wages and general conditions of employment enjoy more far-reaching rights of ‘primary’ negotiation and co-determination, for example, when it comes to management decisions concerning important alterations in the working conditions of employees or in the employer’s activities and business. Such *established trade unions* organise the majority of Swedish employees, and giving these trade unions legal privileges constitutes a distinctive feature of Swedish labour law.⁹

The 1982 Employment Protection Act covers central aspects concerning the entering into, the content and the termination of employment contracts. In comparison, the Swedish employment protection stands out as being relatively strong. During the 20th century, we have seen a shift from the unilateral right of the employer to dismiss employees (cf. the employment at will doctrine) via the limited, collectively bargained employment protection to the strong and general statutory employment protection that is in force today in the 1982 Employment Protection Act. The prominent feature of Swedish employment protection is the fact that the employer must have *just cause* (or *objective grounds*) for dismissal. Coupled with this just cause requirement are rules obliging the employer, *inter alia*, to negotiate with trade unions, to give notice, to provide the employee with alternative work, to apply the statutory seniority rules, and, if the necessary conditions are met, to re-employ dismissed employees. In addition, the Act contains detailed rules concerning fixed-term work and its permissibility (section 4). In the absence of a general Labour Law Code important areas of individual labour law are regulated either by general civil law (such as the 1915 Contracts Act) or by principles derived from the case law of the Labour Court.^{10 11} Legislative changes immediately and automatically affect individual employment relationships.

Collective agreements constitute, together with legislation, the most important legal source of Swedish labour law. The greater part of an employee’s terms and conditions of employment (especially wages) is regulated by collective agreements. A collective agreement is statutorily defined as ‘an agreement in writing between an organisation of employers or an employer and an organisation of employees about conditions of employment or otherwise about the relationship between employers and employees’, cf. section 23 of the 1976 Co-determination Act. Within its area of application a collective agreement is legally binding not only for the contracting parties to the agreement, but also for their members, cf. section 26 of the Co-determination Act. A collective agreement has both a mandatory and ‘normative’ effect, for which reason its rules automatically become part of the contract of employment of an individual employee being legally bound by the collective agreement, cf. section 27 of the 1976 Co-determination Act. Unless otherwise provided for by the collective agreement, employers and employees being bound by the agreement, may not deviate from it by way of an individual

⁷ Cf. Numhauser-Henning 2001a and Bruun 1992 (section 4).

⁸ Important supplementary rules in the area of collective labour law are found in the 1974 Act on Trade Union Representatives, the 1987 Act on Board Representation for Employees in Private Employment and the 1996 Act on European Works Councils.

⁹ Cf. Fahlbeck 2002, Edström 2002 and Bergqvist, Lunning and Toijer 1997.

¹⁰ Cf. Lunning and Toijer 2002 and Rönmar 2001a.

¹¹ Other important areas of labour law legislation are non-discrimination and equal treatment, working environment, working time, vacation and time off, cf. Numhauser-Henning 2000, pp. 364 ff.

employment contract. Such a contract can be declared null and void, and breaches against the collective agreement are sanctioned by the payment of financial and punitive damages, cf. sections 54-55 of the 1976 Co-determination Act. In most cases collective agreements set minimum standards only, allowing employers, trade unions and employees to agree on better terms and conditions of employment by way of a local collective agreement concluded at workplace level or an individual employment contract. Swedish labour law does not provide for an extension *de jure* of collective agreements. However, in practice, the coverage of collective bargaining is almost complete and a *de facto erga omnes* effect is achieved.¹² Important reasons for this are the high unionisation/organisation rates on both sides of the labour market and the far-reaching legally binding effects of the collective agreement. Furthermore, unorganised employers often conclude local collective agreements, undertaking to apply the terms and conditions of the leading national sectoral collective agreement (a so-called *hängavtal*). Even if no such local collective agreement is concluded the terms and conditions of the leading national sectoral collective agreement may be applicable as constituting established custom and practice. In addition, in practice employers bound by a collective agreement apply its terms and conditions also to unorganised employees.¹³ With the collective agreement follows a peace obligation, constituting an important point of departure for the regulation of industrial action. Due to the 'normative' and mandatory effect of the collective agreement any changes as to its terms and conditions immediately and automatically affect the contract of employment and the individual employment relationship.¹⁴

Collective bargaining in Sweden has traditionally been centralised. Collective agreements are entered into at different levels. Nation-wide collective agreements are concluded at sectoral level, and supplemented by local collective agreements concluded at workplace level. Some master agreements, mainly concerning co-operation and co-determination, are concluded at national top level. National sectoral collective agreements are often concluded for a definite term of two or three years. The yearly wage increases are set at national and sectoral level, and implemented at local workplace level, though clearly within the binding framework set at national level. Since the 1980s there has been a clear tendency towards decentralisation and individualisation, resulting in important changes as regards the collective bargaining structure and industrial relations (section 4).¹⁵

The scope for regulating terms and conditions of employment by way of individual employment contracts has traditionally, and as a result of the 'normative', mandatory and far-reaching effects of the collective agreement, been limited. The conclusion of an individual employment contract has mainly marked the start of the employment relationship, and has otherwise remained silent on the issue of material terms and conditions of employment. Individual employment contracts can be entered into freely, and without any formal requirements. Employment contracts concluded orally or through the actions of the parties are therefore as valid as written employment contracts.¹⁶ The recent trends towards individualisation, decentralisation and flexibilisation have, however, brought about changes in this respect (section 4).¹⁷

An employer and an employee are (provided that mandatory provisions in legislation and collective agreements so permit) free to renegotiate and vary the terms and conditions of the

¹² According to a survey from 2001 the collective bargaining coverage in Sweden is as high as 90-95 percent; cf. Kjellberg 2003, p. 350.

¹³ In relation to the trade union having concluded the collective agreement the employer, as a result of a general principle of collective labour law, is obliged to apply the terms and conditions of the collective agreement uniformly to all employees, regardless of trade union membership.

¹⁴ Cf. Bergqvist, Lunning and Toijer 1997, pp. 310 ff., Malmberg 1997, pp. 144 ff., Fahlbeck 2002 and Numhauser-Henning 2000.

¹⁵ Cf. Kjellberg 1998, Fahlbeck 2002 and Numhauser-Henning 2001a.

¹⁶ As a result of the so-called 'Cinderella Directive' (91/533/EEC) an employer is, however, obliged to notify the employee of the essential aspects of the contract or employment relationship, cf. section 6a of the 1982 Employment Protection Act.

¹⁷ Cf. Malmberg 1997 and Fahlbeck 1995.

individual employment contract. In accordance with general civil law principles the employer cannot against the will of the employee unilaterally vary the terms and conditions of the individual employment contract. If the employer and the employee cannot reach an agreement the employer has to dismiss the employee and offer him or her re-employment on changed terms and conditions of employment (e.g. lower wages or fringe benefits). Such a dismissal must be made in accordance with the statutory employment protection. The employer must be able to show just cause for dismissal, and rules obliging the employer to offer the employee alternative work, negotiate with the trade union and apply seniority rules etc. must be adhered to. According to Swedish labour law the Labour Court may not legally scrutinise the material content of the offered new terms and conditions of employment and their reasonableness. If the employer's reason for dismissal is redundancy, in the Swedish context referred to as *shortage of work*, the possibilities for variation of the individual employment contract in the above-mentioned way are considerable. The concept of redundancy is defined as all reasons not related to the employee personally, and encompasses reasons of an economic, organisational or other business-related character. By virtue of the employer prerogatives the employer has a right to determine which line of business to pursue (and how), and what number of employees to employ. The employer has been given a unilateral right to decide when and if there is a redundancy situation. The Labour Court has in numerous legal cases made clear that it is not prepared to question or try the employer's business and economic considerations. Therefore redundancy *per se* always amounts to a just case. Provided that the employer correctly applies the seniority rules and does not act in a discriminatory fashion, he or she will always be able to vary the individual employment contract by reason of redundancy by dismissing the employee and offering re-employment on changed terms and conditions of employment. (The rules on notice periods apply, however.)¹⁸

When it comes to the employee's obligation to work, variation of contract in the above-mentioned way is seldom required. The employer prerogatives and the right to direct and allocate work (see below) give the employer the right to, within the contractually agreed limits of the employee's obligation to work, decide what tasks the employee is to perform and when, where and how. The obligation to work is normally regulated by the applicable collective agreement. According to the general principle (the so-called '29-29-principle', cf. Labour Court judgement AD 1929 No. 29) an employee is obliged to perform all tasks that are covered by the applicable collective agreement. Since most collective agreements are of the industry-wide type, and cover all work tasks at the workplace concerned, the employee's obligation to work is extensive.¹⁹

The contents of an employee's terms and conditions of employment can also be determined by reference to established custom and practice in a specific branch of business or (even) a specific company.

The employer prerogatives can be said to form one of the bases of Swedish labour law. As early as 1906 (in the 'December Compromise'), employers were granted the rights to hire and fire at will and to direct and allocate work in return for respecting the employees' freedom of association.²⁰ Today the employer prerogatives constitute both a general principle of law and a tacit clause in all collective agreements. During the juridification process of the 20th century the employer prerogatives were gradually dismantled, both by way of collective agreements and through legislation. Thus the employer's right to fire at will has been abolished, and the right to hire at will has been subjected to several restrictions. By virtue of the employer prerogatives an employer, however, still enjoys the right to direct and allocate work. In principle, this right is free and unilateral and encompasses elements such as work organisation, production and working methods, work duties, working time, training and education and the granting (and

¹⁸ Cf. Malmberg 1997, pp. 322 ff. and Lunning and Toijer 2002, pp. 378 ff. See, for example, also Labour Court judgements AD 1993 No. 61 and AD 1993 No. 101.

¹⁹ Cf. Malmberg 1997, pp. 259 ff. and Rönmar 2001b.

²⁰ Similar agreements regarding respect for the employer prerogatives and the freedom of association were entered into in other Nordic countries in the early 20th century; cf. Nielsen 1996, p. 18.

withdrawal of) of fringe benefits. Besides giving individual employees orders and instructions regarding the performance of work (and thereby in practice, at least partially, determining the content of the employee's obligation to work), the employer can also issue works rules regulating general aspects of the workplace. Traditionally, employers' decisions in this area have been almost protected against legal scrutiny and employee demands for justice and fairness. Today, however, this picture is somewhat modified. The employer's right to direct and allocate work has been subject to limitations such as non-discrimination rules, rules regarding the trade union's right to negotiation and co-determination and general principles of law derived from the case law of the Labour Court (cf. the concept good labour-market practice and the 'sauna-bath principle', obliging employers to justify particularly far-reaching transfers or changes in work duties by stating objective grounds). However, it is important to note that as a main rule the employer still enjoys a free and unilateral right to direct and allocate work. The above-mentioned limitations are isolated and partial, and they do not alter this fundamental starting-point.²¹

4. Recent reforms of Swedish labour law and challenges to the 'Swedish Model' of industrial relations

The reforms of Swedish labour law in recent years can be described both in terms of deregulation and (re-)regulation. Since 1995 EC labour law has served as a general driving force for (re-)regulation. Many of the recent legislative reforms of Swedish labour law therefore stem from the obligation to implement EC law directives.²²

During the 1990s the 1982 Employment Protection Act has been the subject of several reforms, however, leaving the fundamental structures of the employment protection (including the just cause requirement for dismissal and the supplementing obligations of the employer to as far as possible avoid dismissal and at least mitigate its negative consequences for individual employees).²³ The regulation of fixed-term work has been of particular interest to the legislator. Employment contracts for an indefinite period are considered the rule, since they afford the strongest protection, e.g. employment protection. Fixed-term contracts must be specifically agreed upon, and in order for such contracts to be legal the precise rules of the 1982 Employment Protection Act must be adhered to.²⁴ The act contains a 'catalogue' of situations in which the use of fixed-term contracts is permissible, cf. sections 5-6. Fixed-term contracts may be used, for example regarding temporary substitute employment and probationary employment. The general trend ever since the middle of the 1970s has gone towards increased opportunities for employers to use fixed-term employment. Since 1996 a fixed-term contract ('agreed fixed-term employment', cf. section 5a) may be used with regard to one and the same employee for a period of twelve months during any three-year period – and without the employer having to give any motive.^{25 26} In 2002 the National Institute for Working Life in a report, commissioned by the government, proposed a new regulatory framework for fixed-term employment. According to the proposal the 'catalogue' of fixed-term contracts in the 1982 Employment Protection Act should be abolished and instead all fixed-term contracts, concluded for periods up until 18 months, be permitted. The employment protection of fixed-term workers should be strengthened, *inter alia* by extending the right to re-employment, and employers using fixed-

²¹ Cf. Schmidt *et al.* 1994, pp. 224 ff., Rönmar 2001b and Labour Court judgement AD 1978 No. 89.

²² Cf. Eklund 1998, Numhauser-Henning 1997 and Nyström 2000.

²³ (Re-)regulation has sometimes taken the form of an explicit 'restoration' of the legal situation prior to a deregulatory reform, as when the social democratic government in 1994 'restored' the employment protection regulation after a period of conservative government.

²⁴ These provisions are, however, 'semi-compelling', and collective agreements regulating fixed-term employment in specific ways, thereby deviating from the statutory rules, are frequent, cf. section 2 of the 1982 Employment Protection Act.

²⁵ However, this trend has not been entirely unequivocal. Since 2000 an employee that has been employed by one employer as a temporary substitute for a total of three years during the last five years is regarded as having a contract of indefinite duration, cf. section 5 subsection 2 of the 1982 Employment Protection Act.

²⁶ Cf. Lunning and Toijer 2002, pp. 134 ff., Numhauser-Henning 1997 and Eklund 1998.

term contracts for periods longer than 18 months be made to pay an economic fee (in the long run making long-term fixed-term employment unprofitable, thereby promoting the use of permanent employment in these situations). Whether or not this proposal will result in a new legislation remains to be seen.²⁷

The reforms concerning fixed-term employment were supplemented by a lifting of the ban on temporary agency work and private employment agencies in the beginning of the 1990s. There has also been intensive debate on working time flexibility, and some collective agreements in this direction have been signed.²⁸

The 'semi-compelling' character of the 1982 Employment Protection Act has also been strengthened. In 1996 the opportunities for the social partners, by way of collective agreements, to deviate from the Act, for example, regarding the regulation of fixed-term work and the seniority rules, was extended. Nowadays, such a deviating collective agreement can be entered into even at the local workplace level, cf. section 2 subsection 3. The seniority rules applied in cases of dismissal for reasons of redundancy, have been intensively debated during the 1990s, cf. section 22 of the 1982 Employment Protection Act. Priority is based upon length of service, and according to the principle 'last in-first out', the employees with the shortest length of service are to be dismissed. In 2000 the right for employers in small enterprises with fewer than ten employees to exempt two persons of particular significance for business activities from the priority given in accordance with the seniority rules was introduced.^{29 30}

The legislator's explicit motive for implementing the above-mentioned reforms in the 1990s was a desire both to make it easier for small enterprises and to increase total employment (*inter alia* by 'relaxing' the rules regarding fixed-term employment). However, important pressures towards reform were also changing labour market conditions, resulting from trends towards flexibilisation and individualisation and the Knowledge Society. The progressing flexibilisation of working life involves an increase in adaptability and allocative flexibility, and a shift from traditional to atypical employment. Globalisation of economy and commerce, new technology, increasing international competition and the emergence of the Knowledge Society constitute background reasons for this development. Labour market flexibility is often discussed in Atkinson's terms of the 'flexible firm' and numerical, functional and financial flexibility. Numerical flexibility relates both to the form and duration of the employment contract and to working-time arrangements, and serves the purpose of achieving greater flexibility in the number of workers employed. In focus are, for example, fixed-term and part-time work. Functional flexibility is a matter of versatility within permanent relationships, and it primarily affects the so-called core group of workers. The aim of functional flexibility is to vary the content of work in relation to the changing demands of production. Financial flexibility, finally, is concerned with making wages more adaptable to circumstances such as the profits of the business or the employee's knowledge and efficiency. The above-mentioned reforms of the 1982 Employment Protection Act and other aspects of individual labour law, on the whole aiming at the partial deregulation of the employment protection and the promotion of fixed-term, part-time and temporary agency work can be described as an increase in numerical flexibility and atypical employment.³¹

The Knowledge Society (sometimes also called the Information Society, Network Society, Post-Industrial Society or Post-Fordist Society) is another important factor reshaping the labour market and labour law in Sweden. In the Knowledge Society, the most important factor of production is knowledge, or perhaps more accurately the knowledge of individual employees. This strong emphasis on knowledge makes employees the vital productive resource; and as a

²⁷ Cf. Ds 2002:56.

²⁸ Cf. Eklund 1998.

²⁹ A corresponding exemption rules, though not limited to small enterprises, was in force for one year in the middle of the 1990s.

³⁰ Cf. Numhauser-Henning 1997 and Eklund 1998.

³¹ Cf. Atkinson 1984, Atkinson and Meager 1986, Numhauser-Henning 1993, Numhauser-Henning 1997 and Eklund 1998.

result, employers become dependent on having, and keeping, skilled employees. Hence, in the Knowledge Society the traditional power relationship between employer and employee changes (and shifts to the advantage of the employees). Employees in the Knowledge Society, Knowledge Workers, are supposed to be knowledgeable, skilful, professional, responsible and committed. In the wake of the Knowledge Society we therefore can see a delegation of power and a dismantling of hierarchies.³²

The currently most dynamic area of individual labour law, having been the object of massive reform since 1999, is the area of non-discrimination. In Sweden we have witnessed the creation of several new non-discrimination acts; and on the EC level (not least after Amsterdam), a number of new and important legal initiatives have been taken. The Swedish legal protection against discrimination in working life was greatly strengthened, and widened, by the creation of three new non-discrimination acts which came into force in May 1999. The 1999 Act against Ethnic Discrimination replaced an earlier 'toothless' Act, while the 1999 Act on the Prohibition of Discrimination in Working Life against Persons with Disabilities and the 1999 Act on Prohibition of Discrimination in Working Life Based on Sexual Orientation introduced entirely new non-discrimination rules. Laws prohibiting discrimination on the grounds of gender have existed since 1979. The most recent one, the 1991 Equal Opportunities Act, has been the subject of recent reform in order to strengthen its rules and achieve better accordance with EC law. The non-discrimination acts contain prohibitions against direct and indirect discrimination and prohibit discriminatory decisions and behaviour on the part of the employer regarding recruitment, training and promotion, terms and conditions of employment, direction and allocation of work, termination of employment etc. Furthermore, the 1991 Equal Opportunities Act and the 1999 Act against Ethnic Discrimination contain rules on so-called active measures. In addition, the 2003 Act on Prohibition of Discrimination has been adopted, a general civil law prohibiting discrimination on grounds of ethnic origin, religion or belief, sexual orientation and disability outside the scope of labour law, but in areas such as labour-market policy, housing, social assistance and social security.^{33 34}

An important background to this expansion of non-discrimination law is the above-mentioned process towards the flexibilisation of working life and the relaxing of standardised conditions of employment. The increased diversification that these developments entail creates a greater need for protection against discrimination. Furthermore, EC law and its clear emphasis on discrimination issues has also served as an important source of inspiration for recent developments in Swedish labour law. The principles of equal treatment and non-discrimination are recognised as vital general principles of EC law. The principle of non-discrimination on the basis of nationality is essential to the European Community and its single market, and the EC regulation in the area of gender discrimination is both comprehensive and able to build on tradition.³⁵ Through the Amsterdam Treaty, the gender-equality aspect was highlighted even more by the introduction of a *mainstreaming strategy* concerning equality between women and men (cf. Articles 2 and 3 EC). Furthermore, an important new basis for legal action in the area of non-discrimination was established by the creation of the new Article 13 of the EC Treaty after Amsterdam, expanding the Council's powers to take appropriate action in order to combat discrimination. Consequently, two new directives, one establishing a general framework for equal treatment in employment and occupation and the other implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, have been adopted.³⁶

³² Cf. Rönmar 2001a, Numhauser-Henning 1997 and Bruun 1995.

³³ Cf. also the adoption of the 2001 Act on Equal Treatment of Students in Higher Education, which prohibits discrimination on grounds of gender, ethnic origin, religion or belief, sexual orientation or disability.

³⁴ Cf. Numhauser-Henning 2001b.

³⁵ Cf. Articles 12 and 39 EC, Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community and Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.

³⁶ Cf. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Besides this, the principle of equal treatment in EC law has ‘spread’ to new protected groups, and today it also covers atypical workers (fixed-term and part-time workers). With the support of the European social partners, the social dialogue and the legislative procedure in Articles 138 and 139 EC, the Council has adopted two directives implementing the so-called framework agreements on part-time and fixed-term work.³⁷ Besides the general argument of social legitimacy, underpinning all non-discrimination legislation, the background to this legal development is also to be found in the flexibilisation of working life and the resultant increase in atypical employment. The ‘spread’ of the principle of equal treatment has a twofold aim: partly to increase the protection of atypical workers, partly to promote the flexibilisation of working life (cf. the concept of *flexicurity*). In future, these equal-treatment considerations may come to encompass self-employed workers as well.³⁸

At present, there is also a lively national and international debate about the increasing individualisation of working life and labour law. The debate is related both to the general highlighting of the individual employee and his or her conditions, and to the increased importance of regulation in the individual employment contract. The individualisation of working life runs parallel to a process of individualisation which is taking place at a more general cultural and societal level.³⁹ The emphasis on individual rights and individual labour law in EC law is often referred to as an important background for the ongoing individualisation process. EC law has brought about what, in principle, amounts to a ‘paradigmatic shift’ in Nordic labour law. Thus, EC law has shifted the emphasis from collective to individual labour law, changed the traditional doctrine of the sources of law, introduced new legal remedies for individuals and altered the role of the courts.⁴⁰

An increased regulation in the individual employment contract has an ‘explosive effect’ in relation to Swedish labour law and the ‘Swedish Model’ of industrial relations. We have seen that terms and conditions of employment traditionally have almost exclusively been regulated by collective agreements, and the individual employment contract has been of little or no importance. Today, however, the employees’ working conditions are to a larger extent than before regulated in individual employment contracts. As a result the collective agreement, the real centrepiece of Swedish labour law, is losing ground.⁴¹ This individualisation is also one expression of the ongoing flexibilisation of working life. We are thus witnessing a move from standardisation towards individualised and flexible working conditions.

Next to the employer prerogatives (conferring unilateral decision-making powers on the employer), the individual employment contract constitutes one of the most flexible regulating mechanisms. Regulation at this level involves extensive decentralisation of the bargaining structure; it makes it possible to adapt working conditions to the specific needs of the particular company and the individual employment relationship. At the same time, it is both costly and administratively cumbersome to agree on working conditions with every single employee, compared to the ‘mass-regulation’ resulting from collective bargaining and collective agreements. The notion that the entering into of an individual employment contract has been preceded by a genuine negotiation between the employer and the employee often turns out to be a chimera. When contracts are concluded at this individual level, the employer often has a very strong bargaining position, owing *inter alia* to his economic advantage and the traditional unequal nature of the employment relationship. The employer thus possesses great opportunities

³⁷ Cf. Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC and Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. These directives have been implemented into Swedish law through the adoption of the 2002 Act on Prohibition of Discrimination of Part-time and Fixed-time Workers. Several attempts to achieve a corresponding regulation of temporary agency work have also been made at EC level. Hitherto, however, they have all failed.

³⁸ Cf. Numhauser-Henning 2001b and Rönmar 2004.

³⁹ Cf. Beck 1994 and Simitis 1994.

⁴⁰ Cf. for example Malmberg 1997, Hydén 1996 and Nielsen 1996.

⁴¹ Cf. Fahlbeck 1995 and Malmberg 1997.

to formulate the conditions of employment more or less unilaterally.⁴²

Another important expression of the ongoing individualisation process is the decentralisation of industrial relations in general, and wage negotiations in particular, that has taken place in recent years, partly as a result of a deliberate strategy of the Confederation of Swedish Enterprise (and its predecessor the Swedish Employers Federation). Collective agreements are concluded at national sectoral level, not as before at the national level between the two top labour-market organisations the Swedish Confederation of Trade Unions (LO) and the Confederation of Swedish Enterprise (Svenskt Näringsliv), but also to a large extent at the local level. The prior three-tier system has thus been replaced by a two-tier system. As was mentioned above, the 'semi-compelling' character of the 1982 Employment Protection Act reflects this reality, and these days it is possible to deviate from some of its rules in local collective agreements, too. Furthermore, individual wage-setting is very frequently used.⁴³ There are also signs indicating a 'corrosion' both of the Swedish tradition of co-operation and social partnership and of corporatism, such as the Confederation of Swedish Enterprise's withdrawal from numerous tripartite government bodies and the social partners' recurrent reluctance and failure to reach agreement concerning labour law reforms during the 1990s.⁴⁴

Following the emergence of the Knowledge Society new 'individualised' forms of the right to direct and allocate work may evolve, for example, duties for the employer to account for and negotiate his decisions in relation to individual employees (cf. the report of the National Institute for Working Life, which proposes the introduction of a legal obligation for employers' to inform and consult individual employees in matters regarding important decisions in the area of the direction and allocation of work). Such duties constitute yet another step towards decentralisation, and challenge the traditional role of Swedish trade unions representing employees at workplace level and participating in negotiation and co-determination.⁴⁵

Individualisation, in the form of decentralised industrial relations and increased regulation in individual employment contracts, weakens the collective labour-market structures, thereby challenging the 'Swedish Model' of industrial relations. The ongoing individualisation trend manifests itself in a variety of ways. Consequently, it embodies many, partly conflicting, implications for the future of labour law in Sweden. The increasing individualisation can be seen as an expression of a strengthened position for the individual employee and his or her rights (in relation to the state as well as the employer), in other words of *empowerment*. Simultaneously, though, individualised and decentralised industrial relations, together with the increasing importance of the individual employment contract, risk undermining the strength and influence of trade unions. A weakening of the collective structures makes it more difficult for employees to constitute a collective voice, something which will counteract a democratisation and may lead to the *disempowerment* of large groups of employees.⁴⁶

EC law also poses challenges to the 'Swedish Model' of industrial relations. It is true that EC provisions in the area of collective labour law, such as provisions regarding information and consultation in the directives concerning collective dismissals, transfers of undertakings, European works councils and the establishment of a general framework for informing and consulting employees, have been relatively easily implemented into the 1976 Co-determination Act and integrated with the Swedish tradition of information, consultation and co-determination. However, the focus in EC law on individual employees and individual rights contradicts the collective preference of the 'Swedish Model' of industrial relations and the central role being played by the collective agreement. The fact that implementation of EC directives cannot be made exclusively by means of collective agreements, is a source of irritation for both the

⁴² Cf. Rönmar 2001b.

⁴³ The rules regarding mediation in case of industrial action were reformed, and strengthened, in 2000, *inter alia* aiming at promoting wage negotiations and wage increases in balance with national economy, cf. sections 46-53 MBL.

⁴⁴ Cf. Kjellberg 1998, Numhauser-Henning 2001a and Nyström 2000.

⁴⁵ Cf. Ds 2002:56.

⁴⁶ Cf. Rönmar 2001b.

Swedish legislator and the social partners. The *de facto* almost complete collective bargaining coverage in Sweden does not in a sufficient way legally guarantee the enforcement of individual rights, and supplementary legislation is therefore required for the implementation of EC directives.^{47 48}

5. Final remarks

We have seen that legal developments in the area of non-discrimination, the emergence of the Knowledge Society, the strengthening of fundamental social rights and the increasing individualisation of working life are some important trends that are currently 'reshaping' Swedish labour law and industrial relations.⁴⁹ Swedish labour law has in recent years been the object both of deregulation and (re-)regulation. To a large extent the reforms of the 1982 Employment Protection Act can be described in terms of an increase in atypical employment and numerical flexibility. The trends towards individualisation and decentralisation have resulted in a strengthening of the individual employment contract (and a corresponding weakening of the collective agreement). The 'Swedish Model' of industrial relations in its traditional sense is clearly, and in different ways, 'put under pressure'. The interplay between the Swedish and the European/EC dimension of industrial relations, respectively (taking into account *inter alia* the European social partners and the social dialogue, the EU Employment Strategy and the European Monetary Union) in the years to come will prove crucial for future mechanisms for establishing and changing terms and conditions of employment in Sweden.

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⁴⁷ Cf. Nielsen 2002, pp. 49 ff., Nielsen 1996 and Numhauser-Henning 2001a.

⁴⁸ The last few years' lively debate concerning fundamental social rights has also resulted in increased attention being paid to the negative aspect of the freedom of association, traditionally 'ignored' and practically left unprotected by Swedish labour law. The Swedish labour-law actors at present anxiously await the judgement of the European Court of Human Rights (cf. case of AB Kurt Kellerman v. Sweden, application no. 41579/98, and Labour Court judgement AD 1998 No. 17) in a case concerning the negative freedom of association of an unorganised employer, where the impartiality, independence and objectivity, cf. Article 6 of the European Convention of Human Rights, of the tripartite Swedish Labour Court has been questioned. Cf. Herzfeld Olsson 2003.

⁴⁹ I have argued elsewhere that these labour-market trends to a large extent harmonise with a development towards *empowerment* of employees, a general requirement for objective grounds in the area of the direction and allocation of work and new and strengthened individual rights for employees, cf. Rönmar 2001b.

- Ds 2002:56 *Hållfast arbetsrätt – för ett föränderligt arbetsliv*.
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