Same Same but Different
An inquiry into Swedish and EU law on employee elected board members rights and obligations

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The Swedish Labour Market

- Swedish Labour force: 5 238 000 people
- Trade union density: 70 %
- Employer organisation density: 80 %
- Collective agreement coverage: 90 %
- Limited companies have a monistic board structure
Swedish Employee Involvement

• The Co-determination act
  – Information and consultation
  – Usually exercised by the trade union with collective agreement

• The trade union ombudsman act
  – Appointed by the trade union
  – The person who exercises information and consultation
Employee Board Level Representation in Sweden

- Employee board level representation act
- In limited companies (aktiebolag)
- With 25 employees or more and collective agreement
- 25-999 employees right to appoint 2 members and 2 substitutes
- 999 or more right to appoint 3 members and substitutes

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Employee Board Level Representation in Sweden

- The members appointed by Shareholders shall always be in majority

- A principle of equivalence concerning legislation
EU-legislation on board level representation

- SE-involvement directive (2001/86)
  - 5 active SE in Sweden
  - 1 SE with people employed

  - In 2015
    - 8 mergers where foreign companies took over
    - 6 Mergers where a Swedish company took over
  - Primarily used by Corporate groups
The Rights and Obligations of Employee board representatives

- Governed by the standard rules in the SE-involvement directive if no agreement is concluded

- “shall be a full member with the same rights and obligations as the members representing the shareholders, including the right to vote”

- Three different questions: confidentiality, conflict of interest and remuneration

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Confidentiality from a Swedish Perspective

- Herrschende meinung: It is the same regardless of who has appointed the board member
  - A confidentiality obligation included in concept of loyalty

- A labour law perspective: Employee board level representatives have a more options to disclose information

- Sanctions for a breach of confidentiality
  - Dismissed from the board
  - Dismissed from employment
  - Damages
Conflict of Interest from a Swedish Perspective

- The Companies Act (chapter 8 Section 23 a)
  - Not allowed to participate in matters where he or she has material individual interest

- Employee board level representing act
  - Extended to SE:s and cross border mergers
  - Not allowed to participate in matters that concern him or her as a representative of a collective
    - Collective bargaining
    - Collective action
    - Substantive conflict of interest

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Board Member Remuneration from a Swedish Perspective

- Not regulated by law in Sweden
- Assignment as employee board level representative covered by trade union ombudsman act
- If remuneration is differentiated what should be considered as the same
Conclusions

- Same rights and obligations conceals many complex questions where there are no certain answers

- Obvious that there will be large national differences