Comparative study of legislation and legal practices in the Nordic countries concerning labour inspection

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Preface

This comparative study can be traced back to the program of Iceland's Presidency of the Nordic Council of Ministers in 2009. The program called for work on a harmonization of legislation concerning occupational health and safety in the Nordic countries.

To this end, it was decided to conduct a comparative study of legislation concerning health and safety in the Nordic countries. This report is the result of this study which was performed by a Nordic project group of experts from all five Nordic countries. It was financed by the Nordic Council of Ministers and the Icelandic Administration of Occupational Safety and Health.

The report shows that monitoring of occupational health and safety legislation is a core task for all the Labour Inspection Authorities in the Nordic countries and that the occupational health and safety legislation is quite similar in all the Nordic countries not least due to their membership of ILO and EU/EEA. However, the report also shows that the enforcement of the legislation and the roles of the Labour Inspection Authorities vary among the Nordic countries.

I believe this study provides the requested basis for the further discussion of a possible need for harmonization of occupational health and safety legislation in the Nordic countries. I am sure that this study will at least contribute to a better and wider understanding among Labour Inspection Authorities, employers and employees in the Nordic countries and beyond of the working environment legislation and enforcement mechanisms on the Nordic labour market. I also trust that the findings of this study would be of interest to international firms intending to get involved in or invest in the Nordic market and could serve as inspiration for policymakers such as social partners, ministries and legislators, for example during the revision of legislation concerning occupational health and safety and working conditions in their respective countries.

Halldór Ásgrímsson
Secretary general

Nordic Council of Ministers

Foreword by the Project leader

The title of the study is: *Comparative study of legislation and legal practices in the Nordic countries concerning labour inspection*. One part of the study compares legal practices in the Nordic countries concerning labour inspection. It outlines provisions in legislation in the Nordic countries regarding how labour inspections are conducted, however, the process of making this study revealed that a comparative study of labour inspection in practice would be difficult to accomplish, the reason being that practical working methods for labour inspections are constantly being changed and revised. The project group decide therefore to delegate that part of the study to the Nordic countries themselves, allowing them to give an up-to-date description on labour inspection in practice in Annexes which are attached to this study. Those Annexes are published as prepared by individual countries.

Björn Þór Rögnvaldsson,
Project leader

Abstract

The major finding of this study is that the legislation and legal practices concerning labour inspection does not differ substantially among the Nordic countries. This is mainly due to the membership of all the countries of ILO and either the EU or the EEA which oblige the countries to transpose EU directives concerning health and safety at work and labour law into their national legal systems and also to the fact that the Nordic countries share similar values and legal traditions. However there are some important differences among the countries as listed below:

- Regarding the administration of labour inspection the biggest difference among the countries is that in *Finland* there is no single Labour Inspection Authority like in the other Nordic countries. In *Finland* the competence concerning labour inspection is split between the OHS authorities and the ministry. In addition, *Finland* is the only country where there are special provisions on the independence of the Labour Inspection Authority. Furthermore, in Iceland the Labour Inspection Authority takes the most holistic approach to occupational safety and health in the Nordic countries, as it incorporates for example education, research as well as labour inspection. Lastly, the Swedish and Danish Working Environment Authorities are the only individual Labour Inspection Authorities which have been given powers to issue Executive Orders
- As was mentioned above the content of the provisions of the legislation concerning labour inspection does not differ that much, especially when it comes to health and safety legislation. The reason is that all the countries are members of ILO and either members of the EU or the EEA. However, in some cases the similarities end when it comes to the legislation concerning working condition, which is “domestic” in nature, e.g. regarding the psycho-social working environment, supervision with the terms and conditions of employment of posted workers, and the use of ID-cards in certain sections of the labour market
- The follow up systems of the legislation concerning labour inspection vary much among the Nordic countries, and it is possibly the main difference among the Nordic countries when it comes to labour inspection. In every Nordic country the Labour Inspection Authorities have tools to deal with breaches of health and safety legislation or legislation concerning the working environment. The difference among the countries is in how effective, or rather how strict they are. The tools can be divided in relation to the gravity of

the offence. If the breach of the legislation, which is enforced by labour inspection, is not serious the matter is in general enforced by the labour inspection authorities by issuing orders or notices for improvement to the employer, and if they are not followed it can lead to sanctions which vary much among the countries. The sanctions can be administrative in nature, for example fines or the shutting down of workplaces, or criminal sanctions in the form of fines and even imprisonment. If there is a serious breach of legislation concerning labour inspection it can lead to criminal liability for the offender in all the countries. However the penal clauses vary much among the Nordic countries from fines up to imprisonment for two years. Furthermore, there are differences among the countries as to whether the criminal liability is applied only to natural persons or also imposed on legal persons (enterprises) as well

List of Abbreviations

AOHS	Icelandic Administration of Occupational Safety and Health
AML	Danish Working Environment Act (No. 1072 of 7 September 2010)
AML	Swedish Working Environment Act (No. 1160 of 1977)
EEA	European Economic Area
EU	European Union
ILO	International Labour Organisation
SWEA	Swedish Working Environment Authority
UN	United Nations Organisation
WEA	Danish Working Environment Authority

1. Introduction

1.1 Defining legislation concerning labour inspection

The Nordic countries have close mutual ties owing to their common cultural and linguistic backgrounds. Today, Scandinavia forms a common area of language and culture, and many social functions are based on common traditions. This extends to the development of traditional Scandinavian law, which has also been influenced by International Labour Organisation (ILO) standards and more recently by European Union (EU) legislation.

All the Nordic countries are members of the ILO, which was founded in 1919 under the terms of the Treaty of Versailles at the end of World War I and later became the first specialised agency associated with the newly formed United Nations Organisation (UN) after the World War II (1946). The ILO is a global body responsible for drawing up and overseeing international labour standards. The ILO Conventions establish and adopt those standards. The Nordic countries have ratified most of the conventions of the ILO concerning working conditions, occupational health and safety, and the working environment. The ratification of these conventions creates binding obligations to implement their provisions under international law. All the Nordic countries are also members of either the EU or the European Economic Area (EEA), and they are thus obliged to transpose and implement EU directives and regulations concerning occupational health and safety and working conditions. Because all the member states of the EU are also members of the ILO, the latter organisation's conventions have attained a *constitutional* standing within the EU. Therefore, when the EU adopts legislation concerning occupational health and safety and labour law in general, that legislation is very much influenced by ILO conventions and labour standards. The working relationship between the ILO and the EU is formally also very close, and discussions have turned towards the EU becoming a formal party to the ILO conventions.¹

One particular ILO convention, which all the Nordic countries have ratified, is especially relevant in understanding labour inspection legislation. Its importance lies in the fact that it is the oldest ILO convention on labour inspection and still the most specific and relevant in that area. The Labour Inspection Convention of 1947 (C81) calls on member states to maintain a labour inspection system in industrial workplaces. It lays

¹ EC Landau and Y Beigbeder, *From ILO Standards to EU Law: The Case of Equality between Men and Women at Work* (Martinus Nijhoff Publishers, The Netherlands 2008) 61.

down government obligations with regard to inspections, and sets out the rights, duties and powers of inspectors. This instrument is complemented by two Recommendations (R81 and R82) and by the Protocol of 1995, which extends its scope of application to the non-commercial services sector (such as public services and state-run enterprises). The Labour Inspection (Agriculture) Convention, 1969 (C129) contains provisions very similar to Convention C81 for the agricultural sector. According to Convention C81, the government must establish independent qualified bodies of inspectors in sufficient numbers. The inspectorate must be fully equipped to provide good services. Inspectors have a duty to enforce legal requirements and provide technical information and advice to employers and workers regarding effective means of complying with the legal provisions.²

Article 3(1)(a) and Article 3(2) of ILO Convention C81 are important in relation to this study, especially *when finding out what is meant by labour inspection and what is provided for in legislation concerning labour inspection*. The Article states:

- The functions of the system of labour inspection shall be:
 - to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors
- Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers

Article 3 of Convention C81 defines labour inspection legislation rather openly. It includes legislation concerning working conditions in general, legislation concerning occupational safety and health and the working environment and even provisions relating to wages. In this study, however, government enforcement of terms and conditions of employment as set down by social partners in collective agreements will be excluded from the scope of this research. In the Nordic countries, enforcement with terms and conditions of employment is for the most part delegated to the trade unions or the social partners. Yet, with more globalisation and with the entry of the Nordic countries into either the EU or the EEA, more foreign workers have entered the labour markets in the Nordic

² JM Stellman (ed), *Encyclopaedia of Occupational Health and Safety* (4th edn. Volume I, International Labour Office 1998) 23.49.

countries. Government supervision, or labour inspection, regarding the terms of employment of workers has therefore “returned” in some of the countries, in specific sectors of the labour market. This type of supervision has been put in place, almost without exception, in order to prevent social dumping and to maintain the harmony of the social system within the respective country.³

ILO conventions on safety and health often prescribe that national legislation must include penalties for non-compliance. For example, Article 9(2) of ILO Convention C155 prescribes that enforcement systems must provide for adequate penalties for violations of the laws which transpose and implement the Convention. These penalties may be administrative, civil or criminal in nature.⁴ Similar obligations rest on the Member States of the EU/EEA when transposing and implementing the Framework Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, cf. Article 18, and the individual directives which have been adopted pursuant to Article 16 of the Framework Directive.

Lastly, it should be noticed that the area of concern in this study is labour inspection on land; the study will not address legislation concerning labour inspection at sea or in the air unless they are in some way attached or related to those on land.

The conclusion is that when referring to “legislation concerning labour inspection”, such legislation will concern: working conditions in general, including legal provisions relating to the organisation of work and work activities; training, skills and employability; health, safety and well-being; working time and work-life balance; wages; and lastly the enforcement systems of this legislation. However, labour inspection can also entail enforcement through other duties which may be entrusted to labour inspection if they are compatible with the conditions in Article 3(2) of ILO Convention C81. “Legislation concerning labour inspection” can therefore refer to all aspects of the working conditions of employees, including occupational safety and health, the working environment and even the pay aspects of terms and conditions of employment. This study will seek to answer the questions:

- What provisions concerning labour inspection are enforced by government bodies in the Nordic countries?
- How is labour inspection conducted in those countries?
- In what way do the provisions concerning labour inspection and labour inspection in practice differ between Nordic countries?

³ For example: < <http://www.regjeringen.no/en/dep/aid/topics/The-working-environment-and-safety/social-dumping.html?id=9381> > visited on the 27th of October 2010.

⁴ Stellman (No 2) 23.49.

1.2 How this study will be conducted and the use of concepts

In accordance with Convention C81, the concept “Labour Inspection Authorities” will be used when referring generally to government bodies in the Nordic countries that secure enforcement through legislation concerning labour inspection. However, each individual Nordic country has a different name for the government body that enforces that legislation. In *Sweden*, it is the Work Environment Authority while in *Norway* it is called the Labour Inspection Authority. In *Denmark*, it is Working Environment Authority while in *Iceland* it is the Administration of Occupational Safety and Health. In *Finland*, the Occupational Safety and Health Authorities at the Regional State Administrative Agencies, which falls under the Department for Occupational Safety and Health at the Ministry of Social Affairs and Health, enforce legislation concerning labour inspection. Furthermore, rules issued by the executive branch in accordance with legislation in the Nordic countries have different names. In *Sweden* they are called ordinances while in *Iceland* and *Norway* they are regulations. For consistency purposes, this study will refer to those rules as Executive Orders.

This comparative study will include a report on each individual Nordic country. Three areas concerning labour inspection will be investigated in each report. Firstly, an examination will be made of how the enforcement of legislation concerning labour inspection is administered in order to gain an insight into how labour inspection is governed in each country. Secondly, the scope of legislation concerning labour inspection will be examined to establish whether the Labour Inspection Authorities in the Nordic countries are expected to enforce only legislation concerning occupational health and safety, working conditions in general, or whether the Authorities have been additionally entrusted other duties, for example to enforce the pay aspect of terms and conditions of employment. The second part of each report will also examine to whom the legislation applies and the content of the provisions of the legislation. Finally, the follow-up systems of the labour inspection legislation will be examined. This includes provisions of the legislation concerning enforcement and punishment.

After describing the system of labour inspection within each Nordic country, a special concluding chapter will highlight the differences between the legislation and legal practices in Nordic countries concerning labour inspection, and establish what kind of legislation is being enforced in those countries by the Labour Inspection Authorities. Furthermore, the study will include Annexes that will describe mandatory education in the Nordic countries concerning health and safety of workers, statistical information about labour inspection and labour inspection in practice.

2. Report on Iceland

2.1 Administration

The Act on Working Environment, Health and Safety in the Workplace No. 46/1980, with subsequent amendments (hereafter the Working Environment Act) contains provisions concerning the working environment in Iceland. The purpose of the Act is to ensure a safe and healthy working environment in accordance with social and technical developments in society and to ensure that it is possible to resolve safety and health problems within workplaces in accordance with current legislation, recommendations from employer and employee associations and guidelines and instructions from the Administration of Occupational Safety and Health (cf. Article 1).

The Minister of Welfare supervises matters falling under the Working Environment Act according to Article 73 of that legislation.

The Administration of Occupational Safety and Health (AOSH) acts under the authority of the Minister of Welfare. The institution is in charge of administering and monitoring the field covered by the Working Environment Act. The Minister of Welfare appoints the Director of the Administration of Occupational Safety and Health for a term of five years at a time. The Director is legally and administratively responsible for the institution and engages its employees.

Article 75 of the Working Environment Act describe the tasks that the AOSH is expected to carry out. These tasks include:

- to monitor the application of the Working Environment Act
- to advise institutions, enterprises, companies and workers
- to give those workers who are involved in occupational safety and health within enterprises, cf. Articles 4–6, guidance in their work
- to acquire and maintain knowledge of technical and social developments in order to promote greater safety and health in the working environment
- to address safety issues in programmes on processing and manufacturing methods, workplaces and technical equipment
- to provide education and information on risks in the workplace and also on new technology and skills that may contribute towards improving working conditions, health and safety in the workplace
- to promote preventive measures and health protection in the workplace
- to conduct research in the field of occupational health and safety

- to ensure the maintenance of a register of diseases of all types, mental as well as physical, that may reasonably be assumed to arise from causes in the working environment, and of their frequency and extent
- to ensure the maintenance of a register of the frequency of industrial accidents, broken down by occupation
- to carry out monitoring and market surveillance regarding machinery, equipment and devices covered by this Act
- to carry out other tasks in accordance with the aims and scope of this Act pursuant to further decisions made by the Minister.

The AOSH shall have in its service a physician who has specialist knowledge relating to this field. According to Article 68 of the Working Environment Act, his role is to serve as a link between the AOSH and the health authorities, to serve as Head of the Division of Occupational Medicine and to take responsibility for registering occupational diseases, work-related accidents and poisoning. He also works on other issues which concern the health of employees in accordance with further decisions of the Director of the AOSH.

Appeals against decisions of the AOSH may be lodged with the Ministry of Welfare within three months of notification of the decision to the party involved. An appeal shall be regarded as having been lodged in time if the containing letter is received by the Ministry, or has been delivered to the postal service, before the deadline expires (cf. Article 98). The Ministry of Welfare shall endeavour to deliver its ruling within two months of receiving an appeal (cf. Article 98(2)). Procedures in other regards shall be in accordance with the Administrative Procedures Act (cf. Article 98(3)).

The Minister of Welfare appoints *the Board of the Administration of Occupational Safety and Health* for terms of four years at a time. The Board consists of nine members and nine alternates. The Board meets monthly. The Minister appoints the chairman without nomination. Two Board members are nominated by the Icelandic Confederation of Labour, one by the Association of Academics, one by the Confederation of State and Municipal Employees, one by the Ministry of Finance, one by the Association of Local Authorities in Iceland and two by the Confederation of Icelandic Employers. Alternates are appointed in the same manner (cf. Article 76). The Board shall be responsible to the Minister of Welfare for the formation of professional policy at the AOSH, and shall act in an advisory capacity to the Minister and the Director of the AOSH on matters relating to improved working conditions and safety and health in the workplace. The Board shall make proposals to the Minister concerning improvements in the field of occupational health and safety, including whether there is a need to amend legislation or to issue Executive Orders or other rules. The Minister and the Director shall request dictum from the Board when preparing issues of legislation, Executive Orders and other rules on matters covered by the Act.

2.2 The Working Environment Act

2.2.1 The scope of the Working Environment Act

According to Article 2 of the Working Environment Act, the Act covers all activities where one or more persons are employed, whether they are owners of the enterprise or employees. Shipping operations and other projects that are specifically entrusted to the Icelandic Maritime Administration in accordance with Act No. 6/1996 and the Work by Divers Act No. 31/1996 are exempt. Other exemptions include international agreements to which *Iceland* is a signatory, or will become a signatory, and which come under the field of operations of the *Icelandic* Maritime Administration, including those covering containers, the transport of hazardous substances, marine pollution, etc. Work on aircraft is also exempt from the scope of the Act, cf. the Air Traffic Act No. 60/1998, also, international agreements to which Iceland is a signatory, or will become a signatory, and which come under the field of operations of the Civil Aviation Administration. However, according to Article 3 of the Act, work on aircraft on the ground, with the exception of the work of the crews, falls under the Act. The Act also covers loading and unloading of ships including fishing vessels, as well as repairs on board ships and related activities. The Act does not cover the equipment on ships that is used for this purpose. Neither does this Act cover registered crew members unless they work under supervision from ashore. According to Article 3(2), the Minister may, in consultation with the Director of the AOSH, advocate through Executive Orders that instruments, machinery and structures or construction projects not covered by this Act shall be subject to inspection as prescribed by this Act, provided that they are not covered by other legislation.

The Working Environment Act covers the private and public sectors and also non-governmental organisations, individuals and other parties. In the case of individuals, it is of no importance whether they work alone or have other people in their service, according to Article 90(2) of the Working Environment Act.

2.2.2 Content of legislation concerning labour inspection

Duties of the employer

Chapter IV of the Working Environment Act contains provisions concerning the general obligations of employers. According to Article 12, an employer is any individual who operates any kind of business. According to Article 12(2), if the activities covered by this Act are operated jointly by two or more people, only one of them shall be considered the employer according to this Act, while the other/others are employees, provided that they work for the company. The AOSH must be notified as to who is considered to be the employer. According to Article 12(3), the

executive director of a company is considered to be the employer by the Working Environment Act. According to Article 12(4), in the case of a public enterprise, the person in charge of the operation is considered to be the employer, and the AOSH shall be notified of the person's name.

The employer shall provide a good working environment and ensure absolute safety and health in the workplace. In particular, this applies to chapters concerning work processes, workplaces, machinery, equipment, etc. involving dangerous substances and goods, and risk assessment, health protection and medical check-ups, cf. Article 13 of the Act. The employer shall inform employees of all physical dangers and health hazards which may be associated with their work. The employer shall, also ensure that employees receive education and training for their jobs to minimise the dangers associated therewith.

The employer shall inform the safety representatives of decisions made by the AOSH, and the safety representatives shall have access to the inspection reports and other documents concerning the working environment and health and safety in the workplace, cf. Article 18 of the Act. The employer shall guarantee that co-operation on safety, working environment and health, according to Chapter II of the Act, is as effective as possible, and the employer must also participate in this co-operation.

Where the same workplace is shared by more than one employer, the employers and others who work there shall co-operatively endeavour to guarantee a good working environment as well as healthy and safe working conditions in the workplace.

When the AOSH so demands or when conditions otherwise dictate, the employer shall conduct a survey or an inspection, as appropriate, carried out by specialists to ensure that working conditions fulfil the provisions of the Act concerning the working environment, health and safety. The employer shall fulfil his or her reporting duties to the AOSH in accordance with Chapter XII, and keep records according to rules issued by the AOSH. The Director of the AOSH may, for the purpose of collecting data and reporting, request information from employers concerning employee numbers, their genders and ages, machinery, parts of machines, containers, vessels, tools, instruments and other technical equipment, explosive and combustible substances, poisonous and dangerous substances and lastly other information which may be important as concerns the working environment and health and safety in the workplace. Reports based on this information or the names of individuals and companies may not be listed.

Furthermore, Chapter IV contains provisions concerning obligations of foremen. According to Article 20 of the Working Environment Act, a foreman is an individual who, on behalf of the employer, is in charge of operations and provides supervision in the organisation or in a part thereof. According to Article 21, the foreman is the representative of the employer and ensures that all equipment is safe and the workplaces which he or she is in charge of are properly organised. According to Article 22, the foreman must

participate in the co-operation aimed at added safety and improved working environment and health in the workplace, cf. Chapter II of the Working Environment Act. According to Article 23, the foreman shall make an effort to make the working conditions within the field he or she supervises satisfactory as concerns working environment, health and safety. He or she shall ensure that proper measures are taken to increase safety and improve working environment and health. According to Article 23(2), in cases where the foreman becomes aware of something which could lead to an accident or disease, he or she shall ensure that such danger is averted. If the danger cannot be averted through available means, he or she shall notify the employer immediately. The foreman, furthermore, is responsible for the obligations outlined in Article 86 of the Working Environment Act.

Article 86 of the Working Environment Act contains provisions on the duties of the employer and safety representatives to suspend operations. According to this Article, if an employer or employees who have been entrusted with the supervision of work, security protection or security representation, cf. Articles 4, 5, 6, 13 and 23, discovers a sudden acute danger to health or the possibility of an imminent occupational accident in the workplace due to air pollution, poisoning, flammable or dangerous substances, a landslide, the collapse of stacked goods, structural collapse, a fall, an explosion, or any other serious danger, it is the duty of that person or persons to ensure that operations are halted immediately and that employees leave the area of danger. According to Article 86(2), the employer shall also be obliged to ensure that if the safety of workers or other people is exposed to an immediate threat, they are able to take appropriate measures to avoid the consequences of that threat when it is not possible to contact their superior or a worker who has been entrusted with safety monitoring or the safety functions of a shop steward. According to Article 86(3), measures such as those mentioned above may not render the named parties responsible for any damage incurred by the enterprise as a result of a stoppage or the abandonment of the workplace by workers where an immediate threat was believed to exist, and they may not be made to suffer in any way for their decision. According to Article 86(4), the AOSH shall be notified as soon as possible and shall send their representative immediately to the workplace to evaluate the conditions and the circumstances, determine whether or not operations may be resumed if they have been halted and assess the improvements necessary to ensure that the operations and the workplace are free of danger.

Risk assessment

The Working Environment Act contains provisions regarding the employer's duty to carry out a special risk assessment. Chapter XI includes provisions concerning risk assessment. According to Article 65, the employer shall be responsible for drawing up a written programme of safety and health in the workplace. The programme shall include a risk assessment, cf. Article 65a, and a health protection schedule, cf. Article 66. Workers' representatives shall be consulted, cf. Chapter II. According to Article

65(2), the AOSH shall monitor and ensure that written programmes of safety and health in the workplace are drawn up. The employer shall make the programme available to its managers, employees and the AOSH. According to Article 65(3), programs of safety and health in the workplace shall be reviewed when changes in the working environment alter the premises on which they are based. According to Article 65(4), after receiving dictum from the Board of the AOSH, the Minister of Welfare shall issue further Executive Orders concerning the implementation of this provision, including how monitoring is to be structured.

According to Articles 65a and 66, the employer shall be responsible for undertaking special risk assessment and having a health protection schedule based on the risk assessment. Article 65a states that the employer shall be responsible for arranging a special risk assessment which will evaluate the risks involved in the work with regard to the health and safety of the workers and risks in the working environment. The risk assessment shall pay particular attention to jobs in which it is foreseeable that the health and safety of the workers involved is subject to greater risk than is the case with other workers. Article 65a(2) states that when a risk assessment in a workplace indicates that the health and safety of workers is at risk, the employer shall take the necessary preventive measures in order to prevent the risk, or, where that is not possible, to reduce it as far as possible. Article 65a (3) states that after receiving a dictum from the Board of the AOSH, the Minister of Welfare shall issue further Executive Orders regarding risk assessments, including those covering special risks, and prepare and formally present related documents.

According to Article 66, the employer shall be responsible for arranging the preparation of a health protection schedule based on the risk assessment, cf. Article 65a, including a schedule of preventive measures, which shall include measures to be taken to reduce work-related illnesses and accidents. The aim of health protection measures shall be to increase the likelihood that workers will be protected against all forms of health risks and damage to health that may result from their work or working conditions, to increase the likelihood that work will be organised in such a way that workers will be assigned tasks to which they are suited, to promote their mental and physical adaptation to the working environment, to reduce absenteeism from work due to illness and accidents by raising safety levels and maintaining workers' health in the workplace and to promote workers' mental and physical well-being. According to Article 65a (2) the schedule of preventive measures shall contain a description of how the dangers and associated risks identified by the risk assessment are to be countered, for instance by structuring the work, education, training, choice of equipment, chemical substances or mixtures of chemical substances, the use of safety and protective equipment, fixtures and furnishings in the workplace or other preventive measures. Priority shall be given to measures of a general nature before measures are taken to protect individual workers.

According to Article 66a, when a health and safety programme which includes a risk assessment and a health protection schedule is drawn up for a workplace, and the programme calls for skills that the employer or the workers do not possess, the employer shall seek the assistance of suitably qualified service providers that have received the approval of the AOSH in this capacity. The employer shall inform the service providers of factors that are known, or suspected, to have an effect on workers' safety and health. Even if the employer uses the services of such parties, he shall nevertheless be responsible for the preparation of the programme and compliance with it. According to Article 66a (2), the service provider shall receive the approval of the AOSH before operations may begin. The AOSH shall grant approval to service providers that meet the conditions of this provision and of Executive Orders issued according to paragraph 6. If a service provider subsequently fails to meet the conditions set, the AOSH may withdraw its approval entirely or in part so that the service provider is restricted to a certain type of activity. According to Article 66a (3), a service provider that provides a comprehensive service in the field of occupational safety and health shall have access to specialists approved by the AOSH as possessing satisfactory knowledge in the field of health, social science, a technical field or other comparable field so as to be capable of assessing and responding to dangers or any other type of discomfort caused by physical, chemical, biological, ecological or psychological factors. Otherwise, the AOSH may restrict its approval according to paragraph 2 to a certain type of activity. According to Article 66a (4), a service provider may enter into agreements with other parties covering individual elements in its service according to paragraph 3. Such parties shall meet the conditions set for approval by the AOSH. These agreements shall be submitted when approval by the AOSH according to paragraph 2 is sought. According to Article 66a (5), a service provider shall maintain confidentiality in its work and shall treat as confidential all information that comes to his notice in the course of his work and concerns the personal affairs and private lives of the workers. The same shall apply to information relating to the organisations for which the service provider works. According to Article 66a (5), after receiving dictum from of the Board of the AOSH, the Minister of Welfare shall issue regulations laying down further conditions to be met by service providers before they begin their activities and on the competence requirements to be met by those of the employer's workers who are involved in maintaining safety and health in the workplace.

Executive Order No. 920/2006 concerning the organisation and implementation of health and safety in workplaces contains provisions concerning safety and health schedule and provides for the obligation of employers to prepare a written schedule on health and safety in the workplace.

Duties of the client

The Working Environment Act contains no provisions on the duties of the client. However, rules on the duties of the client can be found in *Executive Order No. 547/1996 on the working environment, health and safety on construction sites and other temporary construction sites*. According to Article 3(1) of the Executive Order, the client shall appoint co-ordinators for safety and health matters, as defined in the Order, for any construction site where two or more contractors will be present on the site. According to Article 3(2), the client shall ensure that prior to setting up a construction site, a safety and health plan is drawn up if a) two or more employers or project supervisors work on the same construction site and there are more than 10 employees and b) the work involves special risks as specified in Annex II. According to Article 3(3), the client or the co-ordinator for safety and health matters, for example, the project supervisor or foreman, must send prior notice drawn up in accordance with Annex III to the AOSH if the work is scheduled to last longer than 30 working days and more than 20 workers are occupied simultaneously, or if the volume of work is scheduled to exceed 500 person days. The notice shall be clearly displayed on the construction site. According to Article 3(4), the client may delegate the obligations mentioned above to the project supervisor or the foreman. Such an agreement shall be made in writing before construction starts.

According to Article 4, the client shall, in connection with preparation and planning, establish conditions to preserve safety, health and the working environment. The client may delegate these obligations to the project supervisor or on the foreman.

Rules concerning the working environment and working procedures

According to Article 9 of the Working Environment Act, the employer shall pay expenses incurred through actions aimed at improving the working environment, health and safety, and reimburse those who suffer loss of income due to these activities. According to Article 9(2), the safety representatives and the employees' representatives on safety committees shall be guaranteed the protection defined in Article 11 of the Act on Trade Unions and Industrial Disputes No. 80/1938.⁵ According to Article 10, in cases where the health and safety of the employees so demands, the AOSH shall ensure that the organisation in question is offered specialised services for activities aimed at improved the working environment, health and safety.

⁵ Article 11 of Act on Trade Unions and Industrial Disputes provides that employers and their representatives are not permitted to terminate the employment of shop stewards on account of their service as such, or to let them in any way suffer for the fact that a trade union has charged them with carrying out shop steward duties for the union.

Chapter V of the Working Environment Act contains provisions concerning carrying out work. According to Article 37, work shall be managed and carried out in such a manner as to ensure complete safety, a good working environment and good health. According to Article 37(2), certified standards, valid legislation, Executive Orders and instructions from the AOSH concerning the working environment, health and safety shall be complied with. According to Article 39, where conditions concerning the health and safety of the workers so demand, the AOSH shall insist that the organisation in question makes plans regarding production, work and processing methods. According to Article 39(2), such plans and potential changes to them shall be presented to the safety committee before they are implemented.

Executive Orders that contain provisions regarding the working environment, working methods and rules about working places are listed below:

- Executive Order concerning the organisation and implementation of health and safety in workplaces (No. 920/2006)
- Executive Order concerning the prevention of stress due to exposure to mechanical vibration in workplaces (No. 922/2006)
- Executive Order concerning the prevention of stress due to exposure to noise in workplaces (No. 921/2006)
- Executive Order concerning the use of equipment (No. 367/2006)
- Executive Order concerning working in refrigerated areas in food production (No. 384/2005)
- Executive Order concerning measures against bullying at work (No. 1000/2004)
- Executive Order concerning noise pollution of the environment resulting from the use of mechanical equipment designed for outdoor use (No. 279/2003)
- Executive Order concerning measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (No. 931/2000)
- Executive Order concerning measures to encourage improvements in the safety and health at work of workers with fixed-duration or temporary employment agreements (No. 433/1997)
- Executive Order concerning safety measures relating to the extraction of minerals by means of drilling (No. 553/1996)
- Executive Order concerning the working environment, health and safety on construction sites and during other temporary construction work (No. 547/1996)
- Executive Order concerning occupational safety and health signs in workplaces (No. 707/1995)
- Executive Order concerning workplace premises (No. 581/1995)
- Executive Order concerning safety when working in enclosed spaces (No. 429/1995)

- Executive Order concerning safety and health when handling loads (No. 499/1994)
- Executive Order concerning work with display screen equipment (No. 498/1994)
- Executive Order concerning the use of personal protective equipment (No. 497/1994)
- Executive Order concerning suspending scaffold (No. 332/1989)
- Executive Order concerning riveting guns (No. 476/1985)
- Executive Order concerning staple guns (No. 475/1985)

The safety and health activities of the enterprise

Chapter II of the Working Environment Act contains provisions concerning safety and health activities within enterprises. How occupational safety and health is implemented within enterprises is dependent on their size. According to Article 4, when an enterprise employs one to nine people, the employer and/or his or her foreman shall work towards creating a good working environment, and good health and safety in the workplace in close co-operation with the organisation's employees and their trade union representative. However, according to Article 4(2), the Director of the AOSH may decide, if need be, that the arrangements outlined in Article 5 are also valid for groups listed in Article 4 in special cases. According to Article 5, when an enterprise employs 10 people or more, the employer shall appoint one person as a safety officer on his or her behalf, and the employees shall appoint another from their group as a safety representative. Together, they shall ensure that the working environment and health and safety in the workplace are in accordance with legislation. According to Article 6, when an enterprise employs 50 people or more, a safety committee shall be appointed. The employees select two representatives from their group and the employer also appoints two representatives. This committee shall organise activities concerning the working environment, health and safety within the enterprise, informs the employees on these matters, inspects the workplace and ensures that measures taken to improve the working environment, health and safety are fully implemented. According to Article 6(2), when employees of the AOSH inspect the enterprise, they shall contact the employer or his or her representative, the safety representative of the employees, their trade union representative or the safety committee as appropriate. The parties specified shall be given the best possible assistance in presenting their problems to the AOSH.

According to Article 7, after receiving a dictum from the Board of the AOSH, the Minister of Social Affairs shall issue further Executive Orders concerning the organisation and execution of measures aiming at increasing safety and improving working conditions and health within enterprises, such as the establishment and scope of working groups and safety committees and the daily administration of activities concerning increasing safety and improving the working environment and health within enterprises. According to Article 8, the employer is obliged to

appoint a representative to the safety committee with full powers if the employer is not a member of the committee. According to Article 8(1), the employer shall encourage the co-operation of those elected to deal with working conditions, health and safety in the workplace and those who are in charge of health services and the protection of workers' health. Furthermore, he or she shall guarantee that those elected to deal with working conditions, health and safety in the workplace or those who are members of the safety committee are allocated appropriate time to attend to their duties as supervisors of the working environment, health and safety. According to Article 8(3), the employer shall ensure that those who are elected to oversee the working environment, health and safety in his or her enterprise have the opportunity to acquire the necessary knowledge and education concerning the working environment, health and safety in the workplace. According to Article 8(4), the employer shall share all plans concerning working environment, health and safety in the workplace with the specified parties.

Executive Order No. 920/2006 concerning the organisation and implementation of health and safety in workplaces contains more detailed provisions on safety and health activities of enterprises.

Rules about workplaces

Chapter VI of the Working Environment Act contains provisions concerning the workplace. According to Article 41, a workplace signifies the environment, indoors or outdoors, in which an employee spends most of his or her time in connection with his or her employment. According to Article 42, a workplace shall be equipped in a way that fully provides for safety, health and a good environment. According to Article 42(2), certified standards, acts and Executive Orders and instructions issued by the AOSH concerning the working environment, health and safety shall be complied with. According to Article 43, after receiving a dictum from the Board of the AOSH, the Minister of Social Affairs shall issue Executive Orders concerning the arrangements for permanent and temporary workplaces, both indoors and outdoors, covering issues such as premises, workspace, floor, walls, ceiling, employees' working environment and other items, such as sitting and dining areas, coffee rooms, dressing rooms, storage units, emergency exits from the workplace, traffic routes within the workspaces, paths, staircases and exit points. According to Article 44, where special conditions concerning the safety and health of the employees so demand, the Minister of Welfare shall, after receiving a dictum from the Board of the AOSH, issue special Executive Orders to the effect that plans and designs for any new structures or changes in a particular operation, extensions of buildings and the installation of machinery, instruments or other equipment shall be submitted to the AOSH for dictum or approval, prior to the changes or installation. *Executive Order No. 581/1995 concerning workplace premises* has been issued according to Article 43 and 44 of the Working Environment Act.

Market surveillance

The Administration of Occupational Safety and Health carries out market surveillance regarding machinery, equipment and devices covered by the Working Environment Act (cf. Article 75).

According to Article 48, it is prohibited to place on the market or begin using any type of machinery, equipment or other device that does not meet the Executive Orders regarding safety and formal requirements, such as markings, instructions, certification, declarations concerning conformity or test reports issued in accordance with legislation or pursuant special Executive Orders, or recognised standards that apply in the common market of the states of the European Economic Area. According to Article 48(2), after receiving a dictum from the Board of the AOSH, the Minister of Welfare shall issue Executive Orders specifying the requirements which specific types of machinery, equipment or other devices must meet in order to be considered safe, and the methods that the manufacturer may use to demonstrate that a product type conforms with the Executive Orders issued. According to Article 48a, the AOSH may prohibit the marketing and use of those types of machinery, equipment or other devices that do not meet the specified requirements, other pursuant special rules or recognised standards that apply in the common market of the states of the European Economic Area. Before a decision on such a prohibition is taken, the employer, the manufacturer of the equipment or his representative, as appropriate, shall be granted a suitable deadline by which to make good its deficiencies. According to Article 48a (2), if the AOSH considers a particular type of machinery, equipment or other device to be particularly dangerous, it may demand the recall of all examples of that type. The manufacturer or his representative will bear the full cost of any such recall. According to Article 48a (3), if the AOSH has reason to suspect that a particular type of machinery, equipment or other device poses a danger to the safety and health of people or property, it may prohibit its marketing and use for up to four weeks or impose special conditions for its marketing and use, even though the type meets the formal conditions provided for and the relevant special Executive Orders. Staff of the AOSH shall begin an investigation into the safety of the item in question without unreasonable delay. If particular circumstances pertaining to the investigation render it necessary, the prohibition may be extended by up to four weeks. The manufacturer or his representative shall bear any costs related to providing samples of the items that are being investigated. On completion of the investigation, the samples will be returned or safely destroyed, as appropriate. According to Article 48a(4), when the AOSH has prohibited a particular type of equipment in accordance with paragraphs 1–3 above, it may oblige the manufacturer and distributors to destroy all examples of that type in a safe manner or oblige them, as appropriate, to make modifications to that type of machinery, equipment or other device so that it meets the Executive Orders that have been set

then deliver new machinery, equipment or other devices of the same type or refund the price paid for them. According to Article 48a(5), if an employer, manufacturer or distributor demonstrably hampers the investigation and examination of the relevant items by the AOSH, or does not have available satisfactory documents concerning its safety, the AOSH may prohibit its marketing and use. According to Article 48a(6), when an item does not conform to issued Executive Orders, the manufacturer or his representative shall bear the costs resulting from any examination, investigation or testing.

The AOSH not only ensures that machinery and other equipment meet the appropriate safety requirements, it also ensures that they meet certain formal requirements, for example, that appropriate labels and instructions for use and the affixing and use of the CE marks are correct. The AOSH monitors the safety of machinery and equipment as part of its general labour inspections. Furthermore, market surveillance is conducted as a result of installations, border controls and complaints.

Executive Orders on market surveillance which the AOSH monitors

- Executive Order concerning machinery and technical equipment (No. 1005/2009)
- Executive Order concerning transportable pressure equipment (No. 762/2001)
- Executive Order concerning pressure equipment (No. 571/2000)
- Executive Order concerning registration, supervision and control of lifts and lift equipment for the transport of people and goods (No. 54/1995)
- Executive Order concerning cableway installations designed to carry persons (No. 668/2002)
- Executive Order concerning personal protective equipment (No. 501/1994)
- Executive Order concerning pressure vessels (No. 377/1996)
- Executive Order concerning aerosol dispensers (No. 98/1996)
- Executive Order concerning appliances burning gaseous fuels (No. 108/1996)
- Executive Order concerning simple pressure vessels (No. 99/1996)
- Executive Order concerning explosives for civil uses (No. 684/1999)

Inspections concerning dangerous and hazardous substances

Chapter VIII of the Working Environment Act contains provisions concerning dangerous substances and goods. According to Article 50, in workplaces where hazardous chemical substances or chemical products, chemical waste or hazardous waste, including explosive chemical substances, inflammable chemical substances and explosives, are used or could be used, the employer shall ensure that the manufacturing, working and processing methods employed are such that the workers are protected against accidents, pollution and diseases. According to Article

50(2), when a risk assessment in accordance with Article 65a indicates the existence of a threat to the health and safety of workers due to a hazardous chemical substance, chemical product, chemical waste or hazardous waste, the employer shall ensure that safety data sheets and written instructions, as appropriate, are accessible in the workplace and shall draw the attention of the workers to their contents. The instructions shall state the procedures to be followed in the event of accidents involving hazardous chemical substances or chemical products. According to Article 50(3), the employer shall take the necessary preventive measures to prevent pollution in the workplace, or, if this is not possible, then reduce it as far as possible. He shall at all times seek, taking into account the nature of the activity, to use chemical substances or chemical products that are considered risk-free or low-risk to the health of workers in the circumstances in which they are used. According to Article 50(4), pollution in the workplace may not exceed the valid occupational exposure limit value for the relevant chemical substance. When pollution is caused by more than one chemical substance or chemical product, the combined effect shall be taken into account. According to Article 50(5), chemicals or chemical products that pose, or could pose, a threat to the health and safety of workers shall be kept in secure containers in workplaces. Dangerous chemical and hazardous waste shall be stored safely in the workplace.

According to Article 51, the AOSH shall issue licences for dangerous chemical substances or chemical products classified as being dangerous to individuals and enterprises that make use of them in the course of their work. Each year, the AOSH shall provide the Environment Agency with information on licensees and the dangerous chemical substances covered by the licences. According to Article 51(2), the AOSH shall ensure that the marking, use, storage and transportation of chemical substances and chemical products in workplaces meet the requirements of valid legislation, Executive Orders and recognised standards. The AOHS may prohibit the manufacture, transportation and use of hazardous chemical substances and chemical products in workplaces when it has been demonstrated that they put people's health at risk. The same shall apply to chemical substances when, in the institution's opinion, insufficient information is available regarding their contents, composition, handling, use or storage. According to Article 51(3), after receiving a dictum from the Board of the AOSH and the Ministry for the Environment, the Minister of Welfare shall issue further Executive Orders on the conditions that must be met for a licence for dangerous chemical substances, the occupational exposure limit value, handling, packaging, filling, marking, storage, transport of chemical substances and chemical products in workplaces and their use that may put the workers' health at risk or result in a deterioration of the workplace environment.

According to Article 51a, in workplaces where hazardous chemical substances or chemical products are used, or could be used, in such

quantities that, in the event of an accident, a substantial hazard may arise for people and the environment, the employer shall take safety measures to prevent such accidents. Furthermore, the employer shall take measures to make it possible to respond to such accidents in such a way as to reduce their consequences without delay. According to Article 51a(2), the AOSH shall monitor to ensure that the appropriate conditions are met and that the necessary safety measures in connection with the risk of accidents, cf. Article 51a(1), have been taken. According to Article 51a(3), after receiving nominations from the Fire Prevention Agency, *Iceland* Civil Defence, the Environment Agency and the AOSH, the Minister of Welfare shall appoint a special four-man consultative committee on preventive measures against major industrial accidents. According to Article 51a(3), the role of the committee shall be to ensure consultation and collaboration between the relevant bodies in order to ensure the safety of workers, the public and the environment in the event of a major industrial accident. The committee is appointed for four years, and the Director of the AOSH is chairman of the committee.

Executive Orders that contain provisions aiming at eliminating risks or hazardous of dangerous and unhealthy occupations

- Executive Order concerning prohibition of the use of asbestos in workplaces (No. 430/2007)
- Executive Order concerning pollution limits and measures to reduce pollution in workplaces (No. 390/2009)
- Executive Order concerning gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery (No. 465/2009)
- Executive Order concerning the protection of workers from risks related to exposure to biological agents at work (No. 764/2001)
- Executive Order concerning protection of workers from risks related to chemical agents in workplaces (No. 553/2004)
- Executive Order concerning the control of major-accident hazards involving dangerous substances (No. 160/2007)
- Executive Order concerning explosive gases in the ambient air in workplaces (No. 349/2004)
- Executive Order concerning the protection of workers from risks related to exposure to carcinogens and mutagens at work (No. 98/2002).
- Executive Order concerning filling stations for gas cylinders (No. 140/1998)
- Executive Order concerning the handling of liquid nitrogen (No. 578/1995)
- Executive Order concerning seamless gas containers made of pure aluminium and aluminium alloy (No. 383/1996)

- Executive Order concerning welded gas containers made of pure steel (No. 382/1996)
- Executive Order concerning seamless gas containers made of steel (No. 380/1996)
- Executive Order concerning limitation of smoking (No. 326/2007)
- Executive Order concerning the prevention of air pollution from welding (No. 491/1987)

Inspection of occupational machinery and technical equipment

The AOSH inspects machinery and technical equipment, including heavy duty transportable machinery, agricultural machinery and lifts, lifts for people, vehicle lifts and ski lifts. Articles 75(k) and 49 of the Working Environment Act prescribe that the AOSH is expected to carry out monitoring regarding machinery, equipment and devices covered by that Act. According to Article 3(2), the Minister may, in consultation with the Director of the AOSH, advocate through Executive Orders that instruments, machinery and structures or construction projects not covered by the Act shall be subject to the inspection prescribed by the Act, provided that they are not dependent on other legislation. The parts of the machines and equipment that are examined vary, but generally their safety for use at work is scrutinised. Items that are inspected include breaks, working lights, safety equipment, baskets for carrying people, cables, etc.

Provisions concerning machinery, technical equipment, etc. can be found in the Chapter VII of the Working Environment Act. Article 45 contains definitions of machinery, moving machinery, heavy machinery, heavy moving machinery and agricultural machinery. Accordingly, machinery in the Act refers to machinery or parts of machinery which change one form of energy into another. Heavy machinery refers to equipment powered by an engine and can be employed for certain predetermined jobs. Heavy moving machinery refers to equipment which is at the same time moving machinery and heavy machinery. Agricultural machinery refers to any kind of previously named machinery used for farming purposes. According to Article 46, machinery, parts of machinery, vessels, containers, boilers, instruments, constructions or parts of constructions and other equipment shall be so designed that full provision is made for health, safety and working environment considerations. According to Article 46(2), certified standards, acts and Executive Orders shall be complied with, as well as instructions issued by the AOSH concerning working environment, health and safety. According to Article 49, any type of machinery, instruments and equipment listed in Article 46, except motor vehicles and engines which are covered by different legislation, shall be registered and inspected in accordance with more detailed instructions outlined in Executive Orders issued by the Minister of Welfare, after receiving a dictum from the Board of the AOSH and in consultation with its Director. According to Article 49(3), after receiving a dictum from the Board of the AOSH, the Minister of Welfare shall issue Executive Orders concerning teaching, training and examinations to veri-

fy if the person managing and operating such machinery has sufficient skills and knowledge to do so, provided that such permits are not specified in other legislation.

The AOSH keeps a national register of occupational heavy machinery and technical equipment. The AOSH registers machinery, lift equipment for the transport of people and goods, ski lifts and vehicle lifts.

The AOSH issues certificates to operate mobile construction machinery and construction equipment. Before receiving certification from the AOSH, operators of mobile construction machinery and construction equipment must receive adequate training. *Executive Order No. 198/1983 on the qualifications to control industrial machines* contains rules on the training and the certificates.

Examples of Executive Orders concerning inspection of machinery and technical equipment:

- Executive Order concerning machinery and technical equipment (No. 1005/2009)
- Executive Order concerning mechanical equipment in amusement parks (No. 453/1991)
- Executive Order concerning registration and inspection of mobile construction machinery and construction equipment (No. 388/1989)
- Executive Order concerning lawnmowers and single-shaft machinery for horticulture (No. 90/1989)
- Executive Order concerning tractors and protective equipment and their power output (No. 153/1986)
- Executive Order concerning registration, supervision and control of lifts and lift equipment for the transport of people and goods (No. 54/1995)
- Executive Order on the qualifications to control industrial machinery (No. 198/1983)

Working time

Chapter IX of the Working Environment Act contains provisions on rest time, holidays and maximum working hours. These provisions limit daily working time and overtime. The AOSH inspects employees' working hours.

Article 52 contains provisions concerning definitions of working time, rest time, night working time, a night worker, shift work and shift worker. Working time is defined as the time during which a worker is engaged in work, at the disposal of the employer and doing his job or discharging his obligations. Rest time is defined as time that is not counted as working time. Night working time is defined as a period not shorter than seven hours which shall extend across the period from midnight to five o'clock in the morning. Further definitions of the period shall be a matter of agreement between the organisations of the social partners. A night worker is defined as a worker who normally does at least three hours of his daily work during night working time and/or a worker who is ex-

pected to do a certain part of his annual work contribution during night working time according to an agreement between the organisations of the social partners. Shift work is defined as work that is divided according to a predetermined arrangement by which a worker works on various shifts over a specific period that is measured in days or weeks. Finally, a shift worker is defined as a worker who does shift work.

Article 52a contains provisions concerning the application of Chapter IX concerning rest time, holidays and maximum working hours. These provisions do not apply to those who work in the road transport sector and are covered by the Executive Orders of the Ministry of Justice on drivers' driving hours and rest time, etc., in domestic transportation and transportation within the European Economic Area. Moreover, Chapter IX does not apply to senior managers or other persons who decide their own working hours, nor does it apply in special circumstances relating to the functions of the State, such as necessary security activities and urgent investigations in the field of law enforcement, work connected with civil defence and monitoring activities in connection with avalanche prevention measures.

According to Article 53(1), working time shall be arranged so that during every 24 hours from the beginning of the working day, workers shall receive at least 11 hours of continuous rest. According to Article 53(2), by agreement between the organisations of the social partners, the period of continuous rest may be shortened to as little as eight hours if the nature of the work or particular working methods necessitate such a deviation. According to Article 53(3), deviations from the provisions of paragraph 1 may be made if a disruption of normal activities occurs due to external causes, such as the weather or other natural forces, accidents, power failure, malfunctions of machinery, equipment or other devices or other comparable unforeseeable events, to the extent necessary to prevent substantial loss or damage until regular activities have been resumed. According to Article 53(4), if daily rest time is shortened according to paragraph 2 or 3, the worker shall receive corresponding rest time later.

According to Article 53a, the worker is entitled to a break if his daily working time is longer than six hours. The application of this provision concerning the length of the break shall be decided by agreement between organisations of the social partners.

According to Article 54(1), in each seven-day period a worker shall receive at least one weekly holiday in direct conjunction with his daily rest time according to Article 53. According to Article 54(2), in the event of special necessity due to the nature of the job involved, the weekly holiday may be postponed by agreement between social partners so that the worker receives the corresponding rest time later, and in any case within 14 days. Where special circumstances render such a deviation necessary, it may, however, be decided by agreement in the workplace to postpone the weekly rest time so that instead of a weekly holiday, two consecutive rest days shall occur during every two weeks. Furthermore,

according to Article 54(3), the weekly holiday may be postponed when external causes, such as the weather or other natural forces, accidents, power failure, malfunction in machinery, equipment or other device or other comparable unforeseeable events disrupt, or have disrupted, operations and it is necessary to maintain services or production, providing that the worker receives the corresponding rest time later and as soon as this can be arranged.

According to Article 55(1), workers' maximum working hours per week, including overtime, may not exceed an average of 48 hours during each four-month period. According to Article 55(2), by agreement between organisations the social partners, workers' maximum working hours may be calculated based on a reference period of up to six months. According to Article 55(3), for objective or technical reasons or in view of the special nature of the jobs in question, organisations the social partners may determine by agreement that the calculation of workers' maximum working time shall be based on a reference period of up to 12 months, providing that the general principles of the legislation regarding the protection of workers' safety and health are observed. According to Article 55(4), only working time, cf. item 1 of Article 52, shall be counted in the calculation of averages according to paragraphs 1–3. Annual paid minimum leave according to law and absences due to illness shall not be included in the calculation of averages.

According to Article 56, night workers' working time shall normally not be longer than eight hours during each 24-hour period. According to Article 56(2), by agreement between organisations the social partners, night workers' working time may be lengthened so that it becomes up to 48 hours per week on a regular basis. In such cases, work shall be arranged in such a way that working time is as regular as possible. According to Article 56(3), reference periods and frames of reference for calculating the average working time of night workers shall be in accordance with Article 55. According to Article 56(4), night workers who are involved in particularly dangerous jobs, or jobs that involve great physical or mental strain, may not work for longer than eight hours during each 24-hour period. According to Article 56(5), after receiving a dictum from the Board of the AOSH, the Minister of Welfare shall issue Executive Orders stating what jobs are considered particularly dangerous or involve great physical or mental strain, cf. paragraph 4. According to Article 57, night workers who have health problems that can demonstrably be traced to their working time shall be transferred to daytime jobs that suit them where possible.

According to Article 58, employers shall be obliged to provide the AOSH with the information necessary for monitoring the application of the legislation regarding working time, including information on the number of night workers and their working times.

Work carried out by children and young people

Chapter X of the Working Environment Act contains provisions on work done by children and teenagers. According to Article 59, the provisions apply to work done by individuals under the age of 18 years. They do not apply to occasional work or short-term work involving home help in private homes or work in family enterprises that is not considered damaging or dangerous to young people. According to Article 59(2) and for the purposes of the Working Environment Act, young person means an individual under the age of 18 years and child means an individual who is under the age of 15 years, or who is in compulsory education. Teenager means an individual who is aged at least 15 years, but has not yet attained the age of 18 years, and is no longer in compulsory education. Article 60 prescribes that children may not be engaged in employment. Exemptions from the general rule are made in Article 60(2). According to Article 60(2)(a), children may be engaged to participate in cultural or artistic events and sporting or advertising activities. A party who engages children who have not attained the age of 13 years shall obtain a license from the AOSH before the engagement takes place. According to Article 60(2)(b), children aged 14 years and older may be engaged in work that constitutes part of theoretical or practical studies, while according to Article 60(2)(c), children who have attained the age of 14 years may be engaged in light employment. Children who have attained the age of 13 years may be engaged for a limited number of hours per week in light employment such as light gardening or service jobs and other comparable jobs. Article 61 prescribes that teenagers may be engaged in employment subject to certain restrictions.

Article 62 prescribes that young persons may not be engaged in work that is carried out under the following conditions: work that is likely to be beyond their physical or mental capacity, work that is likely to cause permanent damage to health, work that involves the risk of hazardous radiation, work involving a risk of accidents which it can be assumed that children and teenagers could have difficulty in identifying or avoiding due to their lack of awareness or lack of experience or training, work that involves hazards to their health due to excessive cold, heat, noise or vibration and work where there is a risk of violence or other specific risk, except where the young people work with adults. Article 62(2) prescribes that exceptions may be made from this provision where necessary in connection with the vocational training of teenagers.

According to Article 63, the active working time of children covered by Article 60(2)(b and c) shall be restricted as follows: eight hours a day and 40 hours a week if the work constitutes part of theoretical or practical studies, two hours on a school day and 12 hours a week in the case of work which is done on school days but outside organised school teaching hours. At no time, however, may working time each day exceed seven hours. The daily working time of a child who has attained the age of 15 years may, however, be eight hours, or seven hours a day and 35

hours a week in the case of work done at a time when school is not in operation. The daily working time of a child who has attained the age of 15 years may, however, be eight hours each day and 40 hours a week. Furthermore, seven hours a day and 35 hours a week in the case of light work done by children who are no longer in compulsory education. According to Article 63(2), teenagers' active working time shall be limited to eight hours a day and 40 hours a week. According to Article 63(3), exceptions from the provisions of Article 63(2) shall be permitted in special cases, or when legitimate circumstances so demand. According to Article 63(4), if the active working time each day is longer than four hours, the child or teenager shall have the right to at least 30 minutes' break each day, which shall run continuously if possible.

According to Article 63a (1), children to whom Article 60(2)(b and c) apply and teenagers may not be made to work during the period between 20:00 and 06:00. According to Article 63a(2), certain exceptions may be made from the provisions in special lines of work, providing that an adult person supervises the teenagers if such supervision is necessary for their protection. However, teenagers may not be made to work during the period from 24:00 to 04:00. According to Article 63a(3), certain exceptions may be made from the provisions when there are legitimate reasons for doing so, and providing that the teenagers receive suitable additional rest time. These exemptions shall apply in the case of work in health institutions or comparable institutions, and jobs in the spheres of cultural events, the arts, sports or advertising. According to Article 63a(4), prior to beginning night work and at regular intervals thereafter, teenagers shall have the right to a health check and a check on their working capacity at no cost to themselves, except when they only work in exceptional cases during the times at which work is prohibited. The employers involved shall be responsible for having such checks carried out.

According to Article 63b, children to whom Article 60(2)(b and c) apply shall receive at least 14 hours' continuous rest in every 24-hour period. Teenagers shall receive at least 12 hours' continuous rest in every 24-hour period. According to Article 63b (2), those children and teenagers shall receive a rest period of at least two days in each seven-day period which shall be continuous if possible. This minimum rest period shall normally include a Sunday. According to Article 63b (3), certain exceptions may be made from the provisions in the case of work which is spread over the day in separate short periods. According to Article 63b(4), exceptions may be made from the provisions when legitimate circumstances prevail, and on condition that the teenagers receive suitable additional rest time. This exemption shall apply in the case of work in health institutions or comparable institutions, jobs in agriculture, tourism or hotel and catering operations and work that are spread over the day. According to Article 63c, in the event of *force majeure* over which the employer has no control, exemptions may be made regarding working hours, night work and teenagers' rest times providing that what

is involved is temporary work which cannot be deferred, that no adults can be found to do the work and that the teenagers receive corresponding extra rest time during the next three weeks. According to Article 63d, children in compulsory education to whom Article 60(2)(b and c) apply shall have the right to leave from work each year at some time during the school holidays. According to Article 63e, the employer shall take the necessary measures to ensure the safety and health of young people by evaluating the risk which work may pose to them. This evaluation shall be made before the young people begin work and each time substantial changes are made to their working conditions. If the evaluation reveals that a threat may be posed to the young people's safety, physical or mental health or development, the employer shall ensure that appropriate inspections and checks of the young people's health are carried out regularly at no cost to them. According to Article 63f, after receiving a dictum from the board of the AOSH, the Minister shall issue further Executive Orders on the granting of licences according to Article 60(2)(a), authorising the engagement of children aged 14 years and older for work constituting part of theoretical or practical studies Article 60(2)(b), what jobs are to be considered as light work, and the circumstances under which they are to be done according to Article 60(2)(c) and the conditions and restrictions in the case of exceptions according to Article 63(3), exceptions according to Article 63a(2 and 3) and Article 63b(2-4) and the application of Articles 62, 63c and 63e.

Executive Order concerning work by children and young people No. 426/1999 contains furthermore provisions concerning work by children and young people, for example, general provisions regarding the work of young people under the age of 18, working hours, the organisation of safety measures, vocational training, working with dangerous equipment and substances and physical strain. It also contains a list of unauthorised work for children.

Psycho-social working environment

The Working Environment Act does not contain direct provision on the psycho-social working environment. However According to Article 38e of the Working Environment Act, the Ministry of Welfare can issue an Executive Order on measures against bullying at work.

Executive Order no. 1000/2004 on measures against bullying at work contains rules on the psycho-social working environment. According to Article 2, the aim of the Order is to promote preventive measures and implement actions to counter harassment in the workplace. According to Article 4, the employer shall organise the work in a manner that will reduce the likelihood of circumstances arising in the work environment which might lead to harassment or other undue behaviour. Furthermore, the employer shall make it clear to employees that harassment and other undue behaviour is prohibited within the workplace. The employer is obliged to prevent such behaviour in the workplace and to take measures aimed at preventing any undue behaviour that he becomes

aware of. Inspectors from the AOSH may enter workplaces where someone has complained. They will not judge whether bullying has occurred. However, they will oblige the employer to carry out a risk assessment and seek the assistance of service providers if that is necessary.

2.3 Follow-up system of the law

2.3.1 Provisions on labour inspection

According to Article 6(2), when employees of the AOSH inspect the enterprise, they shall contact the employer or his or her representative, the employees' safety representative, the trade union representative, cf. Article 4(1), and the safety committees where appropriate. These parties shall be assisted as far as possible in bringing their problems to the AOSH.

According to Article 82, the AOSH shall monitor to ensure that employers covered by the legislation endeavour to create a good working environment, good health protection and acceptable safety levels for their workers. Staff of the AOSH shall visit enterprises to carry out inspection functions, and shall be granted access to the enterprises' workplaces for this purpose. They shall also carry out monitoring and market surveillance in the course of their inspection visits. Staff of the AOSH shall present credentials concerning their work. According to Article 82(2), visiting AOSH inspection staff shall contact the employer or his representative and the parties involved in safety at work within the enterprises, cf. Articles 4–6, and they shall provide all necessary information concerning the inspection. Furthermore, AOSH staff may request the same information from other workers who are in employment, or who have been in employment at any time during the previous three months. According to Article 82(3), staff of the AOSH shall be given access to documents or other material that is supposed to be available within enterprises according to the Act. According to Article 82(4), AOSH staff may seek police assistance in their inspections when necessary, and shall maintain records of their inspection visits including their comments, prohibitions imposed by the AOSH and other instructions and notifications regarding working conditions. The employer shall receive a copy of the part of these records that relates to his or her activities. According to Article 82(5), after receiving a dictum from the Board of the AOSH, the Minister of Welfare shall issue further Executive Orders on the conduct of inspections. Furthermore, the Minister decides whether certain inspection functions of the AOSH shall be entrusted to another public institution or to accredited inspection institutes.

According to Article 83, AOSH staff may not collect information about the operations other than that which is or may be necessary for the purpose of the inspection. They are also prohibited from providing others with information on the operations, the employees or other individuals,

if they have collected the information during their inspection and there is a reason to assume that this information should be kept confidential. According to Article 83(2), AOSH staff is not permitted to reveal to the employer or his or her deputy whether or not the inspection is being carried out because of a submitted complaint.

2.3.2 Sanctions

Enforcement

Per diem fines: According to Article 87, in the event of violation of the provisions of the Working Environment Act, or of Executive Orders issued under it, or non-compliance with a decision of the AOSH based on it, the institution may decide that the person or persons to whom the decision applies shall pay *per diem* fines until the decision is complied with. The decision regarding *per diem* fines shall be announced to the person or persons to whom it applies in writing in a verifiable manner. According to Article 87(2), *per diem* fines of up to ISK 100,000 per 24-hour period may be imposed. When the amount of *per diem* fines is determined, the factors taken into account shall include the degree of urgency of the corrective measures to be taken and the size and extent of the business operations involved. According to Article 87(3), *per diem* fines shall accrue to the State Treasury. According to Article 87(4), the party may appeal to the Ministry of Welfare against a decision by the AOSH to impose *per diem* fines within fourteen days of the announcement of the decision. The Ministry shall deliver its ruling as soon as possible and normally within a month of receipt of the appeal. According to Article 87(5) decisions of the AOSH regarding *per diem* fines may be executed by enforcement measures. Lodging an appeal to the Ministry of Welfare shall result in the deferral of enforcement measures.

The Working Environment Act does not provide for the minimum amount of the *per diem* fines. The AOSH assesses the amount of the *per diem* fines in each case.⁶

Shut down of operations: According to Article 84, if the AOSH has claimed with due notice that improvements should be carried out on defective conditions and which can be classified as infringement of the legislation or the Executive Orders and announcements which have been accordingly issued, and those improvements have not been carried out when that time limit has expired, the AOSH may have the operations stopped, and close the enterprise or the part thereof at which the claim is directed. According to Article 85, if the AOSH considers that there is considerable danger to the life or health of employees or others, the AOSH can demand that immediate action be taken to improve the lack of safety, or they can stop the relevant part of the operation. According to

⁶ Comments on the Working Environment Act.

Article 85(2), an appeal against such a decision according to Articles 84 and 85 does not postpone the suspension of operations or a closure.

Punishment

Article 99 of the Working Environment Act contains provision regarding penalties whereby non-compliance with the Act and Executive Orders that are issued accordingly are punishable by fines, unless heavier punishment is applicable through other legislation. Fines shall be paid to the State Treasury. Court cases based on this Act and Executive Orders that are issued accordingly shall be subject to the Code of Criminal Procedure.

3. Report on Denmark

3.1 Administration

The Danish Working Environment Act (Arbejdsmiljøloven) consolidated Act No. 1072 of 7 September 2010 (hereafter the AML) covers rules about the working environment in *Denmark*. The aim of the AML is to create a safe and healthy working environment, which at all times is in accordance with technical and social developments in society. Furthermore, the AML is intended to create the basis for enterprises themselves to solve problems related to safety and health issues with guidance from the social partners and guidance and inspections from the Labour Inspection Authority. The main areas of the legislation are performance of the work, the design of the workplace, technical equipment, substances and materials, rest periods and young persons under the age of 18. The AML is supplemented by Executive Orders which further describe how the purpose of the AML can be achieved.

According to Article 69 of the AML, the Minister for Employment is the administrative authority in matters concerning the working environment in *Denmark*. The Ministry of Employment is the state authority in the labour market field in *Denmark* and has overall responsibility for *Denmark's* participation in EU co-operation in this field.

According to Article 70 of the AML, the Danish Labour Inspection Authority (hereafter WEA) is an agency under the auspices of the Ministry of Employment. The WEA is responsible for supervising the application of working environment legislation and is responsible for ensuring a safe, sound and a good working environment in all workplaces in *Denmark* through inspection and information. The WEA comprises a central unit and three regional inspection centres. The director General of the Danish WEA lays down the division of responsibility between the inspection centres. The inspection of enterprises is integrated into these regional Inspection Centres, each with approximately 100 employees. The WEA has authority to penalise enterprises, which do not comply with the working environment rules.

According to Article 80a of the AML the National Research Centre for the Working Environment (Det Nationale forskningscenter for Arbejdsmiljø) is a research centre under the Ministry of Employment. The National Research Centre for the Working Environment (NRCWE) is obligated to contribute to a safe, healthy and developing working environment in accordance with technical and social development. It carries out analyses and performs research in working environment matters, which are of importance to the safety and health of the employees. The

Centre also assists enterprises in solving and preventing safety and health problems. Furthermore, NRCWE monitors international working environment research and environmental development nationally as well as internationally. It serves as a knowledge base for the administrative and legislative work of the Ministry of Employment.

Article 66 of the AML states that a Working Environment Council is to be created (*Arbejdsmiljørådet*). The rules concerning the Working Environment Council have been laid down in the AML and are further described in *Executive Order No. 1477 of 20 December 2004*. The purpose of this Council is to make it possible for the organisations of the labour market to influence the efforts to create a safe and healthy working environment in the enterprises. The tasks of the Council are to discuss such questions which, in the opinion of the Council, have an effect upon the working environment, and to give its opinion on such questions to the Ministry of Labour. The Council shall furthermore express its opinions on proposed alterations to the legislation, and on new administrative rules relating to the safety of work and the working environment. It is itself entitled to make such proposals. The Working Environment Council is composed of a chairman and eleven representatives of the organisations of the wage earners, nine representatives of the employers' associations, one medical officer and a teacher from the Polytechnic High School in *Denmark*. The members of the Council are appointed by the Ministry of Labour having been proposed by the organisations. According to Article 66 of the AML, the Working Environment Council shall participate in the organisation and performance of all working environment work through providing consultancy for the Minister for Environment and issuing recommendations to the Minister for Employment. *Executive Order No. 1477 of 20 December 2004*, respecting the rules applicable to the Working Environment Council, states in Article 1 that the Council is the forum in which the labour market partners discuss and cooperate regarding working environment issues and participate in the correction and implementation of joint working environment activities through recommendations of the Ministry of Employment. According to Article 2(2) the Working Environment Council prepares an annual report to the Minister of Employment about developments in the health and safety environment, including whether improvements are considered desirable. The members of the Working Environment Council are appointed by the Minister from among the employers' organisations, the Trade Unions and the Local Authorities' Association. The appointments are for four-year terms and the Council meets monthly.

Chapter 3 of the AML contains rules concerning what are called *sector working environment councils* (*Branchearbejdsmiljøråd*). According to Article 14 of the AML, following an opinion from the Working Environment Council, the Ministry of Labour has the right to approve the creation of such councils, which are established to take part in the solution of safety and health problems within one or more sectors. The sector work-

ing environment councils are composed of representatives of the employees and employers of the trade in questions. According to Article 14a(1), the task of an individual sector working environment council is to assist individual enterprises within the sector to solve working environment issues including to prepare information and sector guidelines, to identify the special working environment problems in the sector and contribute to the preparation of sector documentation, and to develop and implement information and training activities. According to Article 14a(2), the individual sector working environment council may give opinions or proposals to the Working Environment Council on amended and new rules, participate in and carry out special work and campaigns and form and participate in local working environment forums. The Minister for Employment has laid down *Executive Order No. 1476 of 20 December 2004* which covers rules about the organisation, composition and responsibilities of the sector working environment councils.

The Working Environment Information Centre (Videncentre for arbejdsmiljø) serves as a national centre of working environment knowledge. It obtains and communicates knowledge about the working environment from companies, projects and research-based knowledge.

Complaints against decisions made in compliance with the AML by the WEA may be brought before the Working Environment Appeals Board (Arbejdsmiljøklagenævnet), which was set up in 1999 and is an independent administrative authority. *Executive Order No. 767 of 30 June 2009* contains provisions about the Working Environment Appeals Board. According to Article 1, the Board hears complaints about decisions made by the WEA pursuant to the AML and the Act on Smoke-free Environments. Article 1(2) provides that the decisions of the Board may not be brought before another administrative authority. According to the Executive Order, a complaint shall be sent to the WEA which will decide as soon as possible whether the decision is to be upheld. If the WEA partially maintains its decision, it forwards the complaint to the Working Environment Appeals Board, which consists of a chairman and thirteen appointed members. Ten of the members are appointed by the social partners.

3.2 The Danish Working Environment Act

3.2.1 General about the scope of the AML

The AML contains general provisions for the working environment on land. It is a framework act which lays down general objectives and requirements in relation to the working environment. According to Article 2(1), the general rule of the AML is that it applies to all work performed on behalf of an employer.

Limitation and exceptions from the AML

According to Article 2(2) of the AML, a number of activities are exempted from the scope of the AML:

- work in the private household of the employer. For example work done by au pairs or domestic servants;
- work performed by persons who belong to the family of the employer or who are members of the employer's household;
- work which is performed by military personnel and which may be classified as actual military service;
- aviation and shipping. According to Article 3, the provisions of the AML apply to aviation only as regards work on the ground. According to Article 3(2), the provisions of the AML apply to the shipping and fishing industries only as regards loading and unloading ships, including fishing vessels and shipyard work carried out on board ships and similar work.

According to Article 4, the Minister for Employment may lay down that the provisions of the Act shall apply only to a limited extent to work carried out in the employee's own home. This has been done in *Executive Order concerning exemption from application of the Working Environment Act in respect of work performed in the employee's home No. 247 of 2 April 2003*.

Expansion of the scope of the AML

According to Article 2(3), a number of provisions of the AML apply also to work not carried out for an employer and to work mentioned in Article 2(2):

- Section 20 on several employers, etc. at one workplace, Section 20a on the employer's contribution to ensuring the effectiveness of the client's planning, demarcation and co-ordination, Sections 30 to 36 on suppliers, etc. and Section 37 on builders, etc.;
- Sections 38 and 39 as far as work mentioned in Section 39(1)(a) and (b) is concerned and Sections 41 and 41a;
- Sections 45 to 47 on technical equipment, etc., when technical equipment, e.g. machines, machine parts, containers, prefabricated constructions, appliances, tools and other technical equipment are designed and used, e.g. Article 45 to 47;
- Part 8 on substances and materials, *when substances and materials with properties which can be hazardous to or affect safety or health are produced and used in working processes*, e.g. Part 8 of the AML;

- Section 58 on road transport, whereby the Executive Orders laid down in pursuance of Articles 53 and 57 of the AML may apply to *any person who is a driver or a member of the crew of a vehicle*.

The listed provisions concern significant work that contains a certain element of danger. When they apply in general, they shall also apply to independent, private company owners who do not have employees in their enterprise, and for an employer's own participation in work.

Machinery must meet the machinery protection requirements, regardless of who uses the machinery. The rules on substances and materials must be followed even if they are used in private households.

According to Article 90, the AML shall not extend to the Faroe Islands or Greenland.

3.2.2 Content of the legislation concerning labour inspection

Duties of the employer

There is no definition of the term employer in the AML. However, there is an explanation of the term employer in the WEA Guidelines F.2.4 of March 2006. An employer of an enterprise is a person managing the enterprise or participating in its management, e.g. the managing director or the manager of an independent institution.

Within the AML, the following criteria are usually taken into account when the specific assessment who the employer is: An employer is normally considered to be the one who commands the employees and has authority to give instructions to the employees and also control of their work procedures. The employer is also considered to be the one who provides the workplace, machines, tools, materials or other necessary equipment for performance of work and bears the risks for the work outcome and pays the salary to the employees. Usually, employees with shares in the enterprise are not regarded as employers, unless they have managerial functions. In the AML, there is a definition of the term supervisor. According to Article 25, supervisor means a person whose work consists solely or primarily of managing or supervising, on behalf of the employer, the work in an enterprise or any part thereof of the employer.

Chapter 9 of the AML prescribes a number of duties of the employer. According to the Article 23, the provisions of the AML on the duties of the employer also apply to the manager of management of the enterprise. Part 4 of the AML contains various general obligations imposed on employers. According to the AML, the duty of the employer is to ensure safe and healthy working conditions. The employer shall ensure the preparation of a written workplace assessment of the safety and health conditions in the workplace. The employer must organise health and safety activities and contribute to their implementation. The employer shall inform the employees of any risks of accidents and diseases which may exist in connection with their work and ensure that the employees receive the necessary

training and instruction to perform their work in such a way as to avoid any possibility of risk. It is furthermore the duty of the employer to inform the safety representatives and shop stewards (workplace union members' representatives) of the employees the decisions made by the WEA and of any improvement notices given by the WEA.

The AML contains rules on *supervisors*, cf. Articles 24–26 of the AML. Accordingly, supervisor means a person whose work consists solely or primarily of managing or supervising, on behalf of the employer, the work in an enterprise or any part thereof. The supervisor shall participate in any co-operation concerning safety and health. Furthermore, he shall contribute towards ensuring that the working conditions are safe and healthy within the field of activity of which he is in charge. In this connection he shall check the effectiveness of the measures taken to promote safety and health. When the supervisor obtains knowledge of defects or faults which may involve a risk of accidents or diseases, he shall take steps to avert such danger. Where the danger cannot be averted by his intervention on the spot, he shall inform the employer thereof without delay.

Risk assessment

According to the AML, all aspects related to work must be planned, organised and implemented so as to ensure safe and healthy working conditions. This implies that health and safety conditions in the workplace must be assessed. Due to the requirements of the *European Framework Directive 89/391/EEC*, the employer must prepare a risk assessment. The object of preparing a risk assessment is to ensure that the health and safety activities of enterprises comprise all significant health and safety problems and that enterprises make a systematic and ongoing effort to solve those problems. According to the AML, all enterprises with employees have to prepare a written risk assessment taking into consideration the type of work, working methods, work processes, and the size of the organisation.⁷ This has been a duty since the end of 2000. Self-employed persons without any employees are not obliged to prepare a risk assessment. A risk assessment shall include an opinion on the health and safety problems of the enterprise and how they are to be resolved. The necessary solutions shall be specified in the risk assessment. It is the employer's duty, in co-operation with employees, to ensure that a risk assessment is undertaken. Article 15a covers risk assessment and states that the employer shall ensure the preparation of a written risk assessment of the safety and health conditions in the workplace, taking due regard to the nature of the work, the work methods and work processes which are applied, as well as the size and structure of the enterprise. The risk assessment shall remain at the enterprise and must be available to the management and employees as well as to the

⁷ Schwarz and Enkegaard, *Scandinavian Employment Law* (2th edn., Thomson Reuters, 2009) 261.

WEA, which supervises the risk assessment. A risk assessment shall be revised when there are changes in work, work methods, work processes, etc., and these changes are significant for safety and health at work. The risk assessment shall be revised at least every three years. According to Article 15a(2), a risk assessment shall include an opinion on any working environment problems in the workplace and how they are to be solved, in compliance with the principles of prevention stated in the AML. The assessment shall include four elements. First is the identification and mapping of the working environment conditions within the enterprise. Second is a description and assessment of any working environment problems at the enterprise. Third are the priorities and an action plan to solve the working environment problems at the enterprise, and fourth are the guidelines for following up the action plan. Article 15a(3) provides that the employer shall involve the Internal Safety Organisation or the employees in planning, organising, implementing and following up the risk assessment. In *Executive Order No. 559 of 17 June 2004 concerning the performance of work*, there are a few provisions about risk assessment. According to Article 6a(1), the employer shall ensure that a written risk assessment of the health and safety conditions of the workplace is drawn up. The risk assessment may be drawn up in electronic form. Article 6a(2) states that to ensure that all health and safety conditions are included in the risk assessment, the employer shall see that the Internal Safety Organisation of the enterprise is involved in and participates in the entire process concerning planning, organisation, implementation and follow-up as well as updating of the risk assessment. The Internal Safety Organisation shall attest the risk assessment to document its involvement. In enterprises where no Internal Safety Organisation is to be set up, the employees shall be similarly involved in drawing up the risk assessment. According to Article 6b(1), a risk assessment shall be drawn up regardless of the nature of the work, the technical means, substances and materials, working methods and processes used in the enterprise, the design and fitting out of the workplace and the size and structure of the enterprise. According to Article 6b(3), the employer may choose the method according to which the risk assessment is to be drawn up. However, the chosen method shall ensure that the assessment includes certain elements. According to Article 6b(4), a risk assessment shall be updated in the event of any changes in the work, the working methods and processes, etc. that affect the working environment of the enterprise, at least every three years. It shall be filed in the enterprise and shall be available to managers, supervisors, other employees and the WEA. According to Article 6b(6), a risk assessment shall not be submitted to or approved by the WEA unless specific rules on this matter have been laid down in the AML. Article 6c(1) states that if the employer does not have the necessary expertise to draw up the risk assessment, the employer shall obtain assistance from an occupational health service or other experts. However, regardless of whether

the employer obtains expert assistance, it shall remain the employer's responsibility to ensure that a risk assessment is drawn up. There are special rules for risk assessment in several areas, for example for construction sites, which are laid down in *Executive Order on the conditions on construction sites and similar places of work No. 589 22 June 2001*. Article 8(2) states that if building and civil engineering work involves special risks, the employer shall prepare a written assessment of the performance of the work with a view to fully ensuring safety and health in connection with such work. If only part of the work is of this nature, the assessment and specification of the measures to be taken shall only cover that part of the work. Article 8(3) states that if the work is to be carried out by several employers, each employer shall ensure that the assessment of safety and health according to Article 8(2) is co-ordinated by the employers taking into account the planning, demarcation and co-ordination carried out at the construction site, see *Executive Order on the special duties of the client*. As mentioned above, if an enterprise does not itself have the required knowledge to perform a risk assessment, the employer must seek assistance from an occupational health service or other experts, for example to choose a mapping method and proposed solutions, or to get the process started. The WEA may issue an improvement notice if the employer has not prepared a written risk assessment.

Duties of the client

The AML imposes various obligations on the client. According to Article 37(1), for building and construction activities where several employers are active at the same workplace, the client shall plan, demarcate and co-ordinate the safety measures to be taken to promote the safety and health of the workers. The AML imposes four obligations on the client. The client is obliged to demarcate the safety measures in the common areas, prepare a health and safety plan for the conditions on and operation of construction sites, co-ordinate the health and safety work on the construction site and notify the WEA of the construction site.

Executive Order No. 1416 of 27 December 2008 covers the client's duties. According to Article 2, a client is the natural or legal person on whose behalf building and civil engineering work is carried. According to the Executive Order, the client shall co-ordinate safety work with regard to all the employers represented on the construction site. Article 4 of the Executive Order provides that the client shall appoint one or more co-ordinators for safety and health matters as defined in the executive order on any building or construction site on which more than one employer is present.

Rules concerning working environment and working procedures

Chapter 5 of the AML contains provisions about the performance of work. According to Article 38(1), the work shall be planned, organised and performed in such a way as to ensure safety and health. According to Article 39a(1) the Minister for Employment may lay down further

rules on the requirements which shall be complied with in order that the work may be said to have been planned, organised and performed in such a way as to ensure safety and health, including rules on measures relating to safety and health in connection with work, working processes and methods, e.g. to avoid collapses, falls, subsidence, vibration, radiation, noise, risks of explosion or fire, risks to health from gases, fumes, vapours, dust and smoke, heat, etc. A number of Executive Orders have been drawn up in connection with this part of the AML. They contain various provisions concerning the rules about working environment and working procedures. Here are examples of the main Executive Orders that have been laid down according to Chapter 5:

Examples of Executive Orders that contain provisions regarding working environment and working procedures

- Executive Order concerning performance of work (No. 559 of 17 June 2004)
- Executive Order concerning use of personal protective equipment (No. 746 of 28 August 1992)
- Executive Order concerning work with display screen equipment (No. 1108 of 15 December 1992)
- Executive Order concerning noise in connection with the work (No. 63 of 6 February 2003)
- Executive Order concerning the protection of workers from the risks related to vibrations at work (No. 682 of 30 June 2005)
- Executive Order concerning manual handling (No. 1164 of 16 December 1992)
- Executive Order concerning safety signs and other signs at work (No. 518 of 5 May 1993)
- Executive Order concerning the conditions at alternating places of work (No. 290 of 5 May 1993)
- Executive Order concerning the conditions on construction sites and similar places of work (No. 589 of 22 June 2001)
- Executive Order concerning the use and installation of lifts, etc. (No. 629 of 27 June 2008)

The safety and health activities of the enterprise

There are new rules in force in *Denmark* on safety and health activities of the enterprise which consist mainly of the government's *follow-up/response* to a number of recommendations from a tripartite collaboration between the WEA and the social partners. The new rules in Chapter 2 of the AML entered into force on 1 October 2010. Subsequently, two new Executive Orders were implemented concerning safety and health activities (*Executive Order No. 1181 of 17 October 2010*) and occupational safety and health training (*Executive Order No. 840 of 29 June 2010*).

The focal point of the tripartite co-operation and subsequent proposal of the Act has been a wish to strengthen the safety and health activities of the enterprise. It is expected, that the new rules will provide a

basis for a more preventive and dynamic working environment effort within the enterprises, where supervisors, managers and employees will, to a greater extent, be able to find their own ways to deal with co-operation in the working environment.

The basis for the new rules is that they shall be modern and reflect the modern labour market. Terminology has therefore been modernizing for co-operation activities: safety and health group (Sikkerhedsorganisation) (SIO) becomes working environment group (Arbejds miljøreorganisation) (AMO) – safety and health representative (sikkerhedsrepræsentant) becomes working environment representative (arbejds miljørepræsentant). Further emphasis has been placed on highlighting the collaborative process and increasing management priority as central elements in the future working environment organisation.

The new rules make the working environment a strategic and priority element within the enterprises. It is therefore necessary that the members of the working environment group are able to perform the tasks at hand. The employer has a new duty to provide ongoing competency development that will contribute to make it attractive participate in the working environment group.

It will remain a fundamental principle that the employers, supervisors and employees in all enterprises co-operate on the working environment. However, the formal requirements for this co-operation are less detailed than previously. It shows, among other things, that each year the employer shall plan the safety and health of the enterprise for the coming year in co-operation with the employees. The objective is that an annual debate will provide a simple process that promotes and strengthens the working environment efforts of the enterprise.

The most important changes are:

- New rules on enterprises' opportunities to organise a working environment group, in consideration of management structure, the enterprises requirements, and the tasks performed by working environment groups (Chapter 3 of *Executive Order No. 1181 of 17 October 2010*)
- New rules on new, shorter basic occupational safety and health training combined with ongoing additional training so that health and safety representatives and managers develop relevant working environment competence during the whole period in which they are members of the working environment group (Chapter 7 in *Executive Order No. 1181 of 17 October 2010*)
- New rules on more flexible planning of the working environment at all enterprises to implement annual safety and health discussions in which employers and safety representatives together plan the working environment for the coming year (§4 and Article §9 in *Executive Order No. 1181 of 17 October 2010*). The duties of the employer, the safety and health representatives' tasks and function

and provisions on protection, etc. have not changed with the new rules

There is a continued obligation to set up working environment group in enterprises with 10 or more employees. For work that is wholly or partly performed at temporary or alternating places of work outside the permanent place of work of the enterprise, including building and construction work, health and safety activities shall be organised when an employer has five or more employees and the work goes on for a period of a minimum of 14 days.

After the entry into force of the new rules, the health and safety activities in *Denmark* will be as follows: In enterprises with 1–9 employees, safety and health activities shall take place with continuous, direct contact and dialogue between the employer, employees and supervisors (Article 6 of the AML). In enterprises with 10–34 employees, safety and health activities are organised by a working environment group consisting of one or more supervisors and one or more elected working environment representatives along with the employer or his representative as chairman. The working environment group shall specify both daily and overall tasks relating to safety and health (Article 6a of the AML). In enterprises with more than 35 employees, safety and health activities shall be organised through a working environment group (Article 6b of the AML).

Rules about workplaces

Chapter 6 of the AML contains rules on the design and fitting out of the workplace. Article 42 states that the workplace shall be in a safe and healthy condition. Various Executive Orders contain provisions about workplaces. According to Article 43, the Minister for Employment may lay down rules with regard to the design and fitting out of permanent, temporary, varying and outdoor places of work, including rules on work rooms covering ceiling height, air space, floors, walls, ceilings, lighting, temperature, ventilation and noise, welfare facilities, etc., and also rest areas, canteens, cloakrooms, locker rooms, lavatories, washing and bathing facilities, sleeping facilities, seating, means of exit, e.g. passages, gangways, staircases, and exits. According to Article 43(2), the rules laid down in Article 43(2) may provide that they shall also apply to persons letting or leasing buildings, premises, areas, etc.

Examples of Executive Orders that contain provisions regarding working places

- Executive Order concerning the conditions at permanent places of work (No. 96 of 13 February 2001)
- Executive Order concerning the Lay-out of trailers and similar entities (No. 775 of 17 September 1992)

Market surveillance

Among the tasks assigned to the WEA is monitoring and market surveillance regarding machinery and devices covered by the AML. The WEA carries out inspections to ensure that manufacturers and suppliers comply with the requirements that apply to the products that are marketed. The WEA is responsible for checking that products meet the requirements of the directives and that the affixing and use of the CE market is correct. The WEA is responsible for market surveillance, for example, of machinery, personal protective equipment, simple pressure vessels, pressure vessels and piping systems under pressure, pressure equipment, transportable pressure equipment, lifts and products for use in potentially explosive atmospheres. Furthermore, the WEA is also responsible for market surveillance of protection structures on tractors, products containing asbestos, ladders, hand tools, scaffolding and containers.

According to Article 30(1), any person who supplies, makes available or displays machines, machine parts, containers, prefabricated constructions, appliances, tools, and other technical equipment shall ensure that such items are provided with the necessary safety devices when supplied, made available or displayed and that they are safe and without risks to safety or health when properly used. Adequate and simple instructions for use, maintenance, transportation, and installation shall be made available on delivery. At the request of the Danish Working Environment Authority, or whenever the situation so requires, the importer or manufacturer shall arrange for the carrying out of examinations, tests or surveys, if required with the assistance of experts, to ascertain whether the technical equipment is safe and without risks to health, Article 30(3).

According to Article 77(3), the Director General of the Danish Working Environment Authority may direct that any person who has supplied or marketed technical equipment or personal protective equipment or a substance or material which turns out to present a risk to safety and health, despite being utilised in accordance with its relevant instructions, shall take the necessary measures to remedy the matter. In this connection, the Director General may direct: (a) that supply or marketing be discontinued, or (b) that the relevant technical equipment, personal protective equipment, substance or material be withdrawn from the market. According to Article 77(4), at the request of the European Commission, the Danish Working Environment Authority may direct that marketing of technical equipment be prohibited or restricted, or that the technical equipment be made subject to special conditions if (a) the technical equipment by virtue of its technical characteristics presents the same risk as technical equipment where marketing is prohibited or restricted or where the technical equipment is made subject to special conditions, or (b) the technical equipment has technical characteristics presenting a risk due to shortcomings in a unified standard. According to Article 77(5), the Danish Working Environment Authority may (a) prohibit marketing of technical equipment or personal protec-

tive equipment marked in contravention of the rules on CE, (b) direct that technical equipment or personal protective equipment marked in contravention of the rules on CE marking be withdrawn from the market, or (c) direct that marketing of technical equipment or personal protective equipment marked in contravention of the rules on CE marking be restricted. Articles 77(4) and 77(5) implement the provisions of *Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery*.

Executive Orders on market surveillance which the WEA monitors:

- Executive Order concerning personal protective equipment (No. 1273 of 18 December 1996)
- Executive Order concerning simple pressure vessels (No. 565 of 24 June 1994)
- Executive Order concerning pressure vessels and piping systems under pressure (No. 100 of 31 January 2007)
- Executive Order concerning pressure equipment (No. 743 of 23 September 1999)
- Executive Order concerning design, modification and repair of pressure equipment (No. 99 of 31 January 2007)
- Executive Order concerning transportable pressure equipment (No. 289 of 24 April 2001)
- Executive Order concerning lifts (No. 629 of 27 June 2008)
- Executive Order concerning design of lifts (No. 678 of 27 June 2008)
- Executive Order concerning equipment and protective systems intended for use in potentially explosive atmosphere – ATEX (No. 696 of 18 August 1995)
- Executive Order concerning aerosol (No. 1003 of 26 October 2009)
- Executive Order concerning cableway installations designed to carry persons (No. 177 of 14 March 2002)
- Executive Order concerning design of technical equipment (No. 612 of 25 June 2008)
- Executive Order concerning the design of work equipment (No. 561 of 24 June 1994)
- Executive Order concerning protection structure on tractors (No. 519 of 30 July 1987)
- Executive Order concerning asbestos (No. 1502 of 21 December 2004)

Inspections concerning dangerous and hazardous substances

The WEA monitors the treatment of dangerous substances, materials and products containing such substances and materials in the workplace. The inspection of the WEA is primarily directed towards the health and safety of the employers in the workplace and not towards the effects of the substances and materials on the environment. Article 48(1) states that substances and materials with properties which can be haz-

ardous to, or in any other way adversely affect, safety or health, may only be produced and used in working processes and methods which effectively protect the employees against accidents and diseases. The Minister for Employment may lay down further rules concerning the manufacture, import, storage, transportation and use of substances and materials with characteristics which may constitute a hazard to or in any other way adversely impair safety and health, including rules concerning packing, repackaging and labelling. The Minister for Employment may also lay down rules prohibiting the manufacture, import, and use of particularly dangerous substances and materials. Here is an overview of Executive Orders dealing with dangerous and hazardous substances and hazardous working environments. *Executive Order on work with substances and materials (chemical agents) No. 292 26 April 2001* applies to any work with substances and materials, including their manufacture, use and handling. It also applies to other work that, owing to its nature or the conditions under which it takes place, may involve a risk to safety and health. According to Article 5(1), work with substances and materials shall be planned and organised at all stages in such a way as to ensure safety and health. Article 11 provides that the employer shall ensure that dangerous substances and materials in the workplace are eliminated, replaced or reduced to a minimum. Article 12 states that measures pursuant to Article 11 shall be taken, particularly by replacing a dangerous substance or material with a substance or material or working process that is non-hazardous, less hazardous or causes less nuisance. The Executive Order transposes certain provisions of the Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work. According to the *Executive Order on the Register of Substances and Materials No. 466 of 14 September 1981*, the WEA shall be responsible for the setting up and daily operation of the register for substances, materials and products, according to Article 1(2). The object of the register is to collect information and evaluations concerning substances, materials and products, including their supply and use. The data contained in the register shall form the basis for evaluation and prevention of harmful effects of substances, materials and products.

Executive Orders that contain provisions aimed at eliminating risks or hazards of dangerous or unhealthy occupations

- Executive Order concerning work with code-numbered products (No. 302 of 13 May)
- Executive Order concerning the control of the working environment with regard to major accident hazards (No. 20 of 12 January 2006)
- Executive Order concerning gene technology and the working environment (No. 910 of 11 September 2008)

- Executive Order concerning measures to protect workers from the risks related to exposure to carcinogenic substances and materials at work (No. 908 of 27 September 2005)
- Executive Order concerning the protection of workers from risks related to exposure to biological agents at work (No. 864 of 10 November 1993)
- Executive Order concerning work with installations and demolition of insulating materials containing synthetic mineral fibre (No. 344 of 9 June 1988)
- Executive Order concerning work in connection with explosives atmospheres (No. 478 of 1 June 2003)
- Executive Order concerning medical examinations of ionizing radiation (No. 206 of 23 March)
- Executive Order concerning the design, modification and repair of pressure equipment (No. 99 of 31 January 2007)
- Executive Order concerning work with substances and materials (chemical agents) (No. 292 of 26 April 2001)
- Executive Order concerning determination of code numbers (No. 301 of 13 May 1993)
- Executive Order concerning the safety provisions for natural gas installations pursuant to the Working Environment Act (No. 414 of 8 July 1988)
- Executive Order concerning the register of substances and materials (No. 466 of 14 September 1981)
- Executive Order concerning genetic engineering and the working environment (No. 642 of 28 June 2001)
- Executive Order concerning special duties of manufacturers, suppliers and importers, etc. of substances and materials pursuant to the Danish Working Environment Act (No. 559 of 4 July 2002)
- Executive Order concerning work with the wood species *Machaerium scleroxylum* Tul (Pao Ferro/Santos Palisander) (No. 76 of 30 January 1997)
- Executive Order concerning protection against asbestos (No. 1502 of 21 December 2004)
- Executive Order concerning work with the extraction of mineral materials (No. 923 of 11 November 1994)

Article 79a(1) states that as part of its inspection activities, the WEA shall supervise compliance with the legislation on smoke-free environments. The WEA may possibly, subject to specific conditions, direct that matters which are in contravention of the legislation on smoke-free environments be remedied immediately or within a specific time limit. The *Act on smoke-free environments No. 512 of 6 June 2007* (Rygeloven) contains provisions about prohibiting smoking. According to Article 2, the Act applies to workplaces, including offshore installations, institutions and schools for children and adolescents, other educational institutions,

indoor rooms to which the public has access, means of public transport, taxis and hospitality establishments. Article 2(1) includes Danish ships, aircraft registered in *Denmark* and aircraft registered in other countries that operate under a Danish operating permit, regardless of whether the ship or aircraft is located outside Danish territory. The smoke-free environment Act does not apply, however, to ships registered in the Faroe Islands or Greenland or to aircraft from airline companies registered in the Faroe Islands or Greenland. According to Article 4, smoking is prohibited indoors in rooms etc. that are governed by the Smoke-free Environment Act unless the other provisions of that act state otherwise. Chapter 6 contains provisions about supervision of the act. According to Article 23, each employer, owner, restaurant manager, supervisor and leaseholder shall ensure that smoking takes place only in accordance with the provisions of the Smoke-free Environment Act. Article 24 provides that the enforcement of compliance with the act shall be supervised by the WEA, and according to Article 79a, by the Danish Maritime Authority and the Minister for Transport and Energy.

Regulation (EC) No 1907/2006/EC concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) is a new European Community Regulation on chemicals and their safe use which came into force on 1 June 2007. According to *Executive Order No. 815 of 26 August 2009*, the Environmental Protection Agency supervises the implementation of the REACH Regulation. However, the WEA monitors that the safety data sheet (*sikkerhedsdatabladet*) and other information in the supply chain (*leverandørkæden*) comply with the rules in REACH. Furthermore, the WEA also monitors, that the downstream users (users industries) comply with their obligations to inform other supply chains about changes in the safety data sheets. The WEA monitors that the supply data sheets are available and correct.

Working time

In *Denmark*, there is no direct legislation concerning the length of working hours. Rules on working hours have been left to the unions and employer's associations, or if the parties are not covered by a collective agreement, working hours have been laid down in individual employment contracts.⁸

The Act on the transposition of parts of the working time directive No. 896 of 24 August 2004 (the Working Time Act) contains rules that transpose certain provisions of the Working Time Directive 2003/88/EC of 4 November 2003 and Directive 2000/34/EC of 22 June 2000. This legislation applies to employees who are not covered by any collective agreements, although according to Article 1(3), it does not apply to mobile workers and drivers who are covered by Regulation (EEC) No. 3820/85 on the harmonization of certain social legislation relating to

⁸ Schwarz and Enkegaard (No 7) 82.

road transport. The Working Time Act lays down minimum provisions on maximum weekly working times, breaks and night work. According to Article 4, maximum weekly working time is 48 hours. According to Article 5, the normal working hours for night workers may not exceed eight hours per period of 24 hours calculated over a period of 4 months. The AML and Executive Order No. 324 of 23 May 2002 on rest periods and rest days contain rules concerning rest hours and rest periods. The AML lays down certain rules regarding a daily rest period, a weekly rest day and working hours for young workers; and the Executive Order No. 324 of 23 May 2002 on rest periods and rest days also contain rules concerning rest hours and rest periods. The provisions in Chapter 9 of the AML deal with *rest periods and rest days*. The AML provides that the working hours must be organised so as to allow a rest period of at least 11 consecutive hours in every period of 24 hours (article 50(1)). The 11 hours must be placed consecutively, so that there must be 11 hours between the time the employee leaves the work and the beginning of the next shift or the working day.⁹ The rest period may be reduced to eight hours between changes of shift in enterprises with several shifts when it is not possible to hold the daily or weekly rest period between the end of the work of one shift and the start of another shift, or agricultural work up to 30 days in any calendar year. The rules in paragraph 1 and 2 do not apply to loading and unloading mainly carried out by casual workers and necessary incidental activities.

Employees are entitled to take *24 hours off work every seven days*. According to Article 51(1), employees shall have a weekly 24-hour period off in each period of seven days which shall be immediately connected to a daily rest period. The weekly 24-hour period off shall, as far as possible, fall on a Sunday, and, as far as possible, be at the same time for all employees of the enterprise. This rule does not apply to agriculture or horticulture (article 51(2)). According to Article 51(3), for workers caring for people, animals, or plants, and for work which is necessary to preserve objects of value, the weekly 24-hour period off may be deferred and replaced by a corresponding period off later when this is necessary for reasons of protection or to ensure continuous provision of services or sustained production. According to Article 52, where the normal operation of an enterprise is being, or has been, disturbed by acts of nature, accidents, breakdowns of machinery or similar unforeseeable events, the provisions of Sections 50 and 51 may be set aside to the necessary extent. The fact that the provisions have been set aside shall be recorded in an inspection book or similar documentation.

Executive Order No. 324 of 23 May 2002 applies to persons who work for an employer and are over 18 years of age. According to Article 2(1), the Executive Order does not apply to work covered by the European

⁹ Schwarz and Enkegaard (No 7) 261.

Agreement concerning the work of crews of vehicles engaged in international road transport or *Regulation 561/2006/EC on the harmonization of certain social legislation relating to road transport*. According to Article 3, the working time includes a daily rest period of at least 11 consecutive hours over a 24-hour period. According to Article 4, moreover, for each seven-day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours plus the 11 hours.

Work carried out by children and young people

The WEA monitors work carried out by children and young people. The rules in Chapter 10 cover work performed by young persons under the age of 18. According to Article 59, the rules in Section 10 apply to work performed by young people for an employer and work which is mentioned in Article 2(2), concerning work in the employer's private household and work carried out exclusively by such members of the employer's family as belong to his household. According to Article 60(1), the employment of young people under the age of 18, planning, organisation and performance of work shall take account of the age, development, and health of the young person, as well as the work's effect on schooling or other education. According to the AML *the general rule is that no person under the age of 15 may work at all*. However, Article 60 states that the Ministry of Labour may lay down further rules on the employment of young people under the age of 15 years of age. Furthermore the Ministry may also establish a higher age limit for people who are employed in specific types of work which can be dangerous to the safety or health of young workers. According to Article 61(1), the hours of work for young people under the age of 18 may not exceed the normal working hours for adults employed in the same sector, and working hours may not exceed eight hours per 24-hour period and 40 hours per week. According to Article 61(2), daily working hours for young people under the age of 15 years, or young people subject to compulsory education, may not exceed two hours on school days, and seven hours on days other than school days. However, young people who have reached 15 years but who are subject to compulsory education may work eight hours on days which are not school days. The total working hours per week may not exceed 12 hours in weeks with school days or 35 hours in weeks other than school weeks. Children who are under 15 years but who are no longer subject to compulsory education may not work for more than seven hours per day and 35 hours per week.

Executive Order No. 239 of 6 April 2005 on work performed by young people lays down rules for the employment of young people under the age of 18. The Executive Order contains provisions implementing the *Directive on the protection of young persons at work No. 94/33/EC of 22 June 1994*. It applies to work by young persons under the 18 years of age, and to work performed in the employer's private household and in the family enterprise, that is work carried out exclusively by such members of the employer's family as belong to his household. It does not

apply to occasional or short-term work done in the employer's private household and work in family enterprises when this work is not harmful or dangerous to the young people.

Psycho-social work environment

In *Denmark*, there has been a significant focus in recent years on the mental working environment for which the employer is also responsible. The psycho-social work environment or the mental working environment can be defined as the entire working environment that is not defined as the physical working environment.¹⁰

In 2001, the Danish Government announced plans to extend the powers of the WEA, permitting it to intervene in cases of serious psychological problems in the workplace. The WEA has attempted to draw a clear distinction between those factors that it cannot legitimately influence (such as the nature of the work, job security and organisational changes) and those where it would be justified in making an intervention (it lists five risk factors: quantitative demands, emotional demands, work-related violence and trauma, bullying and sexual harassment, and night and shift work). In October 2001, the Danish Employers' Confederation (Dansk Arbejdsgiverforening, DA), LO and the WEA concluded a new agreement concerning the Executive Order on the performance of work, which covers bullying and harassment. The parties agreed that it shall be possible for employees and employers to conclude a local agreement which provides that bullying and harassment are internal company affairs. If such an agreement exists, it will not be possible to call in the WEA in such cases. Such local agreements thus supersede the original agreement concerning the competence of the WEA. *Executive Order No. 559 of 17 June 2004 concerning the performance of work* now includes a provision about the psycho-social environment. Article 9a provides that in connection with the performance of work, the work may not involve a risk of physical or mental impairment to health as a result of bullying, including sexual harassment.

The WEA can give an *improvement notice* pursuant to Article 21 of the AML to investigate the problem if it finds that there is a specific suspicion that there may be problems in the psycho-social working environment in an enterprise. Article 21 states that at the request of the WEA, and whenever the situation calls for it, the employer shall arrange for examinations, tests or surveys to be conducted, if required with the assistance of experts, to ascertain whether the working conditions are safe and healthy. Psycho-social factors are taken into account during screening inspections. If necessary, they are followed up by an "adapted inspection", when the general inspector is accompanied by a psycho-social specialist from the task force. Clear and comprehensive guidelines

¹⁰ Schwarz and Enkegaard (No 7) 261.

on psycho-social issues have been prepared (to assist both the inspector and the employer).

Executive Order No. 259 of 20 March 2007 on use of authorised health and safety consultants contains rules on the employer's use of an authorised health and safety consultant service to solve problems within the psychological working environment.

Inspection concerning foreign workers and posted workers

A posted worker is one who, for a limited period, carries out her or his work in the territory of EU or the European Economic Area (EEA) other than the State in which he or she normally works. The regulatory authority on posting is *Directive 96/71/EC of 16 December 1996 on posting of workers as part of an exchange of services*, which ensures that posted workers are subject to national minimum employment rights when posted to another member state. A posted worker will therefore have, as a minimum, employment rights such as minimum terms and conditions of employment, regardless of whether the worker is posted temporarily by their employer to work in another member state and regardless of the governing law of their contract of employment. The Directive has been transposed in *Denmark* by *Act No. 755 of 30 June 2004 concerning the posting of workers*. The WEA is the national liaison office in relation to posting of workers. Thus, it co-ordinates information activities in relation to foreign employers and employees concerning the rules on the posting of workers in *Denmark*.

Employees posted in *Denmark* are also protected by the AML which therefore has the duty to monitor whether companies comply with the AML in relation to the work of its posted employees/workers in *Denmark*. According to Article 21 of *Executive Order No. 559 of 17 June 2004 concerning the performance of work*, an enterprise employing persons whose services have been hired out to the enterprise or otherwise made available to the enterprise by an outside enterprise shall be under obligation to ensure that the work is planned, organised and performed so as to ensure safety and health and in accordance with the rules laid down by the working environment legislation.

3.3 Follow-up system of the law

3.3.1 Provisions on labour inspection

According to Article 72a, the WEA shall carry out screening of the health and safety conditions with employees in order to identify enterprises in need of inspection. The screening shall also form the basis of such inspections. According to Article 72(2), the Minister for Employment may lay down further rules providing that enterprises able to document a safe and healthy working environment shall be exempt from screening.

According to Article 72(b), the social partners may regulate certain occupational safety and health issues by collective agreement. The Government states that this applies to work-related psychosocial risk factors, monotonous repetitive work, use of personal protective equipment and welfare initiatives and that if an OSH issue is covered by the collective agreement, labour inspections will no longer oversee the implementation and any disputes shall be dealt with by the Labour Court.

According to Article 76(3), the staff of the Danish Working Environment Authority shall have access to public and private workplaces without a court order but on production of proper identification to the extent required to enable them to execute their duties, cf. however 76(4). The police shall provide the necessary assistance. Further rules for such assistance may be laid down by the Minister for Employment after consultation with the Minister for Justice. According to Article 76(4), Article 73(3) does not apply to inspection by the Danish Working Environment Authority of work of a non-commercial nature carried out by people in their private residence, holiday residence, land associated therewith, vehicles, leisure vessels, and other property or items belonging to the household. The Minister for Employment may, however, lay down that the Danish Working Environment Authority may continue to carry out inspections and supervision of lifts and other lifting equipment as well as equipment under pressure without a court order. According to Article 76(5), the staff of the Danish Working Environment Authority may, in performance of its work, demand the presentation of all available documentation, including taking photographs and similar and take samples for further analysis or examination without a court order. The employer, or the employer's representative, cf. Sections 23 and 24, shall be informed of such actions.

The WEA has established a "smiley" scheme with the purpose of the making the working environment standard in an enterprise known to the public. The smileys are published on the WEA website. There are four smileys in the working environment area and they are green, yellow and red. Executive Order No. 255 of 20 March 2007 on publication of the firms working environment (the Smiley-system) contains rules about the Smiley Scheme. The smiley is given to an enterprise following an inspection, and is based on the outcome of that inspection. An enterprise may be allocated one of four types of smiley. First, there is a green smiley that indicates that the enterprise has no issues with the WEA. Second, there is a yellow smiley that indicates the enterprise has received a notice with a time limit or an immediate improvement notice. Third, there is a red Smiley that indicates that the enterprise has received an improvement notice or a prohibition notice. Finally, an enterprise can receive a crown smiley, which indicates that the enterprise holds a recognised health and safety certificate. This means that the enterprise has made an extraordinary effort to ensure a high level of health and safety.

3.3.2 Sanctions

Enforcement

The WEA has authority to penalise enterprises or institutions which do not comply with the working environment rules. As regards clear violations of the substantive rules of the AML, the WEA has a range of enforcement options to ensure that the enterprises comply with the AML. The choice of action is made based on the nature and seriousness of the working environment problem. For example, the WEA has the power to issue administrative fines and in cases of extreme danger, the WEA may also order the work to be suspended.

Prohibition notices (Forbud). An enterprise may be issued a prohibition notice preventing it from continuing to work if there is an imminent and great danger to the safety and health of the employees and others. A prohibition notice means that all work must stop immediately and that it may not be resumed until it can be carried out safely.

Immediate improvement notice (Strakspåbud): The enterprise may be issued an immediate improvement notice if there is a serious working environment problem. An immediate improvement notice means that the error must be corrected immediately. Organisations that are issued an immediate improvement notice may be permitted to solve the problem temporarily until it is possible to solve the problem permanently.

Improvement notice with deadline (Påbud med frist): An improvement notice with deadline means that the enterprise may continue its production while being required to find a permanent solution to the problem before expiry of the deadline. The WEA lays down a deadline that is long enough to ensure that the enterprise has the necessary time to find a good and sustainable solution to the problem.

Report on the psycho-social working environment (Afgørelse of psykisk arbejdsmiljø): If the WEA observes a psycho-social working environment problem at an enterprise, it will be issued an improvement notice to draw up a report on the psycho-social working environment. This means that the enterprise is given the opportunity to draw up a timetable and action plan for solving the problem. On the basis of the timetable and action plan, the WEA will assess whether the enterprise is prepared and able to solve the problem. If the enterprise is not prepared and able to solve the problem, an improvement notice will be issued to use an authorised working environment advisor to help solve the problem.

Consultancy notice (Rådgivningspåbud): A consultancy notice is a notice for an enterprise to use an authorised Health and Safety Consultant to help solve one or more of its working environment problems. *Executive Order No. 259 on the use of authorised working environment consultants* covers rules about consultancy notices. A consultancy notice can be issued in three circumstances: in cases of complex and serious violations; in cases of many violations; and in cases of repeated violations. In addition, a consultancy notice may be issued to investigate the psychological working environment in order to ascertain if there is a violation

of the health and safety legislation. There are two types of consultancy notices that may be issued, a problem notice and a period notice. A problem notice is required when a specified health and safety issue is so serious and complex that the use of an authorised consultant is required to provide specialist assistance. *Executive Order No. 259 of 20 March 2007* covers rules about problem notices. According to Article 1, the Executive Order applies to an employer's use of an authorised health and safety consultants to solve specific safety problems within the following fields:

- Ergonomics by way of one-sided repeated work, the lifting of loads, total daily volume to be lifted, manual lifting and the transfer of persons
- Biology by way of biological agents and indoor climate
- Chemistry by way of indoor climate, air pollution, dangerous substances and materials as well as substitution
- Physical conditions by way of technical means, internal traffic, acoustics/noise, demolition of buildings or structures, digging and several violations for the prevention of risks of accidents
- The psychological working environment

It is the health and safety consultant's task to assist the enterprise in solving the health and safety problem(s) subject to the improvement notice. Furthermore, the consultant is to assist the enterprise with a view to strengthening preventive health and safety activities. The consultant's job therefore includes assisting the enterprise in solving specific health and safety problems in its workplace assessment.

Investigation notice: An enterprise may be issued an investigation notice to examine whether it has a working environment problem. This takes place if the WEA has a specific suspicion that there are problems with the enterprise's working environment but is unable to provide documentation.

Administrative fines: Article 82a(1) states that in specific cases of infringements of working environment rules which are not judged to be subject to higher penalties than fines, the Minister for Employment may lay down rules on how the Danish Working Environment Authority may, in the notification of a fine, declare that the case may be settled out of court. This applies if the party accused of the infringement admits its guilt and declares its willingness, within a given time limit, to pay the fine indicated in the notification of the fine. The liability to pay a fine shall be on condition that the violation can be ascribed to one or more persons associated with the enterprise or to the enterprise per se.

Executive Order on Fines No. 107 of 28 February of 2002 gives the WEA the capability to complete criminal proceedings with administrative fines without a judicial decision. It provides the conditions under which administrative fines may be imposed in case of violation of working environment legislation, covering lists of cases considered as serious

violations, procedural aspects, and payment of fines. A number of conditions must be met before the WEA may issue administrative fines. Firstly, there must be a clear and uncomplicated violation. Next, gross violations of clear and known rules on a subject where there is documented risk of injury or danger to health must have taken place. Finally, it should not be likely that the case will lead to a more severe punishment than a fine. If an administrative fine is accepted, the effect will be the same as having imposed a penalty. Administrative fines can be used in relation to companies etc. (legal persons) as well as individuals (personally owned companies). *Executive Order No. 107 of 28 February 2002* sets out typical matters that may be dealt with by means of an administrative fine, and includes the following:

- The use of unguarded dangerous machinery such as circular saws or power transmission shafts
- Working at height without taking appropriate precautions
- Work in an unsupported excavation
- Work with dangerous material and substances without taking appropriate precautions
- Offences under the provisions that apply to the employment of young people
- Gross breaches by individual supervisors or employees (such as the refusal to wear personal protective safety equipment)
- Non-compliance with an improvement notice

If the defendant does not accept the fine, the WEA will recommend that the public prosecution service brings charges, after which the case is dealt with in the same manner as any other criminal proceeding.

Police report In the event of gross violations of the working environment rules, the WEA can issue administrative fines or make direct Police reports. Administrative fines are only issued in the case of clear, uncomplicated violations. Both employer (the enterprise) and employee can be issued with fines or Police reports. Failure to comply with stop notices, immediate improvement notices, or improvement notices with deadline/reports or significant problems can result in fines being issued to the enterprise or being reported to the Police.

Guidelines The enterprise may obtain guidance if there are working environment conditions at the enterprise that need adjustment but where the WEA does not find that there is basis for making a decision. Guidance is mainly given by the inspector referring to the printed guidance material of the WEA, but may also be given verbally or in writing in connection with an inspection. Guidelines are not legally binding to the enterprise but merely information about the working environment regulations or recommendations as to how a specific environment problem can be improved.

Punishment

The provisions of the AML are enforced by criminal prosecution before the ordinary courts. Employers (directors, managers or any corporate officers) may be charged with any breach of the AML. This may lead to a fine and, in serious cases, to imprisonment.¹¹ The criminal liability for a breach of the AML is strict and may apply equally to legal and natural persons. It is the natural assumption of the AML that the *actual employer* should be charged if he breaches the AML. However, it is possible to bring criminal charges against the manager of the enterprise, as he or she is often responsible for the everyday allocation of the work.¹²

Article 82(1) states that unless a more severe penalty is prescribed by other legislation, a person shall be liable to a fine or imprisonment of up to one year where he contravenes various Articles of the AML. According to Article 82(2), the penalty may increase to imprisonment of up to two years if the contravention has caused an accident resulting in serious personal injury or death. Article 83(1) states that for contravention of various Articles of the AML, an employer may be liable to pay a fine even if he has not acted intentionally or negligently. The articles that are referred to in Article 83(1) are Articles 15 and 15a about the duty of the employer to prepare a workplace assessment, Article 16 concerning the duty of the employer to ensure that there is effective supervision that work is performed safely and without risks to health, Article 38(1) concerning work being planned, organised and performed in such a way as to ensure safety and health, Article 42(1) concerning the workplace being in a condition that it is safe and healthy, Article 45(1) concerning technical equipment etc. being designed and used in such a way that they are safe and without risks to health and finally Article 48(1) concerning substances and materials. The liability to pay a fine shall be on condition that the violation can be ascribed to one or more persons associated with the enterprise or to the enterprise per se. There shall be no alternative sentence in lieu of the fine. According to Article 83(3), if the employer has discharged his duties pursuant to Part 4 of the AML concerning general duties, the employer may not be held liable to pay a fine if employees contravene the legislative requirements concerning:

- use of personal protective equipment;
- use of extraction measures;
- use of safety equipment or safety measures;
- use of safe working methods;
- certificates for cranes and forklift trucks.

According to Article 84, rules made in pursuance of this AML may provide for penalties in the form of a fine or imprisonment of up to two

¹¹ Schwarz and Enkegaard (No 7) 261.

¹² Schwarz and Enkegaard (No 7) 262.

years in respect of contravention of provisions in the rules and contravention of improvement or prohibition notices in pursuance of the rules. Furthermore, it may be laid down that an employer who contravenes such provisions and notices as mentioned above may be liable to pay a fine even if he has not acted intentionally or negligently. The liability to pay a fine shall be on condition that the violation can be ascribed to one or more persons associated with the enterprise or to the enterprise per se. There shall be no alternative sentence in lieu of the fine. According to Article 85, liabilities to pay a fine under Sections 83 and 84(2) may not be imposed on managers. *According to Article 86 criminal liability may be imposed on limited liability companies, etc. (legal persons) pursuant to the rules set out in Part V of the Danish Criminal Code.* The provisions of Section 83(3) shall be correspondingly applicable. Finally, according to Article 87, where young persons under the age of 18 are employed in contravention of the provisions of this AML or any rules laid down in pursuance of this AML, the parents or guardian may be liable to pay a fine if the work has been carried out with their knowledge.

4. Report on Norway

4.1 Administration

The Act of 17 June 2005 No. 62 relating to working environment, working hours and employment protection, etc. (Working Environment Act) covers rules about the working environment in *Norway*. The purpose of the act is to ensure safe working conditions and equal treatment among workers, and to ensure that the working environment forms a basis for a health-promoting and meaningful work environment.

The Working Environment Act contains both public and private rules. The private law rules are not within the scope of the Norwegian Labour Inspection Authority's supervision, except the provision concerning the contract of employment. However, the Labour Inspection Authority gives information on the provisions that fall under the private law.¹³

The Norwegian Labour Inspection Authority (Arbeidstilsynet) is a governmental agency under the Ministry of Labour, focused on occupational safety and health. Article 18-1(1) provides that the Labour Inspection Authority shall supervise compliance with the provisions of and pursuant to the Act. The Norwegian Labour Inspection Authority also provides guidance on how the provisions of the Working Environment Act and Holidays Act shall be interpreted and is responsible for supervising the Working Environment Act, the Annual Holidays Act, the National Holidays Act as well as certain sections of the Smoking Act. The Labour Inspection Authority is responsible for onshore supervision and has approximately 500 employees and consists of a central office - the Directorate, seven regional offices and 16 local offices throughout the country. The Directorate in Trondheim regulates the agency's overall strategy, programmes and information. Individual decisions adopted by local Labour Inspection Authority offices may be appealed to the Directorate of Labour Inspection. Individual decisions adopted by the Directorate may be appealed to the Ministry of Labour, cf. 18-6(7) of the Working Environment Act.

The Dispute Resolution Board (Tvisteløsningsnemnda) is an independent board which is under the Ministry of Labour. The Norwegian Working Labour Inspection Authority is the secretariat for the Dispute Resolution Board and publishes its decisions. The Dispute Resolution Board handles disputes regarding working hours arrangements, leave of

¹³ B Pettersen and AS Johansen, *Lov og arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven) med kommentarer* (Oslo 2009) 273-274.

absence, including educational and pregnancy leave and preferential rights of part-time employees, according to Article 17-2 employees. Article 17-2(2) provides that a dispute may not be brought before the courts until it has been reviewed by the Board and a decision has been made by the Board. When the dispute is reviewed by a court of law, the conclusion arrived at by the Board shall stand while the matter is under review. If this would have unreasonable consequences, the court may, if so demanded by either of the parties, decide upon another temporary arrangement. The time limit for bringing the dispute before the courts is eight weeks from the date of the Board's decision. *Executive Order No. 1569 of 16 December 2005* contains rules about the Dispute Resolution Board. The Executive Order contains rules on the appointment of the Board's members, its composition, time limits for bringing matters before the Board and other procedural rules. The Dispute Resolution Board consists of three members and three alternates.

The National Institute of Occupational Health (STAMI) is a research institute organised under the Ministry of Labour. The Institute has a staff of more than one hundred who generate, apply and communicate knowledge about work and health. The role of the National Institute of Occupational Health is to map environmental and health needs, assesses risks and suggest preventive measures in the workplace. The institute has a clinic for occupational medicine where patients with possible occupation-related illnesses are examined. The institute also provides training for security and health personnel and other professionals.

4.2 The Working Environment Act

4.2.1 *The scope of the Working Environment Act*

The Working Environment Act applies to all land-based operations with employees. Article 1-2 of the Act contains rules about its scope. According to Article 1-2(1), the Act applies to undertakings that engage employees unless otherwise explicitly provided by the Act. According to Article 1-2(2), the exceptions from the Act are shipping, hunting and fishing, including processing of the catch on board ship, and military aviation, which is covered by the Aviation Act. The Ministry of Labour may issue Executive Orders concerning exceptions from the Act for civil aviation and state aviation other than military aviation and concerning special provisions for such aviation. *Executive Order No. 1567 of 16 December 2005* concerning rules for exemptions from the Working Environment Act for certain types of work and employee groups contains various exemptions from Article 1-2. According to Article 1 of the Executive Order, various rules in the Working Environment Act do not apply to employees who are covered by Act No. 3 of 4 March 1983 concerning government officials and civil servants. Article 2 provides that Chapter

10 of the Working Environment Act concerning the working time does not apply to foreign services under the Ministry of Foreign Affairs. The supervision of the Working Environment Act and the regulations issued pursuant to it is carried out by foreign services (utenriksstasjonene) and shall be implemented in the manner that is determined by a written agreement between the Directorate of Labour Inspection and the Ministry of Foreign Affairs. According to Article 3(3) of the Executive Order, the Working Environment Act does not apply to field exercises intended as training for the military in order to be effective in a crisis or war situation. According to Article 3(4), the Working Environment Act does not apply to army manoeuvres that are permanently employed.

Article 1-3 of the Working Environment Act contains rules on *off-shore petroleum activities*. According to Article 1-3(1), the Act applies to activities associated with exploration for and exploitation of natural resources in the seabed or its substrata, Norwegian inland waters, Norwegian sea territory and the Norwegian part of the continental shelf. Article 1-3(2) provides that the Working Environment Act applies to activities as referred to in 1-3(1) in the area outside the Norwegian part of the continental shelf if this ensues from a special agreement with a foreign state or from international law in general. According to Article 1-3(3) the Ministry may by Executive Orders wholly or partly exempt from the Act activities mentioned in the Articles 1-3(1) and (2). The Ministry of Labour may also provide in Executive Orders that the Working Environment Act wholly or partly shall apply to activities as referred to in the 1-3(1) in areas outside the Norwegian part of the continental shelf if exploration for or exploitation of natural resources in the seabed or its substrate are conducted from an installation registered in Norwegian shipping register or if manned underwater operations are carried out from an installation or vessel registered in a Norwegian shipping register. The Ministry may by Executive Orders also provide that the Act shall apply in connection with the movement of installations or vessels as mentioned. Although the Working Environment Act applies to offshore petroleum activities, it is the Petroleum Safety Authority that monitors the working environment in Norwegian offshore oil activity.

Article 1-4 of the Working Environment Act is about *enterprises with no employees*, etc. In Article 1-4(1) it is stated that the Ministry may provide in Executive Orders that the provisions of the Working Environment Act shall wholly or partly apply to undertakings with no employees. The *Executive Order concerning application of the Working Environment Act to agricultural enterprises employing no workers (FOR 1986-03-21 no. 745)* contains provisions on agricultural enterprises that do not employ workers. According to the Executive Order, the provisions of the Working Environment Act apply to agricultural enterprises that do not employ workers. The provisions also apply to family enterprises for raising domestic and furred animals and market gardeners. In Article 1-4(2) it is stated that the Ministry may provide in Executive Orders that

agricultural undertakings that do not employ assistance other than relief assistance shall be exempt from the Act. According to Article 1-4(4), the Ministry may provide in Executive Orders that the provisions of the Act shall wholly or partly apply to anyone legally responsible for building assignments or his representative. The *Executive Order concerning application of the Working Environment Act to building and construction enterprises (FOR 1986-01-10 no. 17)* contains provisions for enterprises within the building and construction activities with no employees. The Executive Order contains various rules regarding the working environment, e.g. use of personal protective equipment and facilities.

Article 1-5 of the Working Environment Act is about *work that is performed at the home of the employee or employer*. Article 1-5(1) states that the Ministry of Labour may issue Executive Orders concerning work performed at the home of the employee and the extent to which the Act shall apply to such work. Article 1-5(2) states that the Ministry of Labour may provide in Executive Orders that the provisions of the Act shall wholly or partly apply to an employee who performs domestic work, care or nursing at the home of the employer. The *Executive Order No. 715 of 5 July 2002 concerning work performed at the home* contains rules on the working conditions when the employee performs domestic work, care or nursing at the home of the employer. The Executive Order contains various rules on the employer's duties, working hours and salary. The Executive Order transposes various rules of the *Directive 93/104/EC* concerning certain aspects of the organisation of working time and *Directive 94/33/EC* on the protection of young people at work.

Article 1-6 contains rules concerning *persons who are not employees*. The Act provides that the following persons are regarded as employees in relation to the Act's provisions concerning health, environment and safety when performing work in enterprises subject to the Act: students at educational or research institutions, national servicemen, persons performing civilian national service, inmates in correctional institutions, patients in health institutions, rehabilitation institutions and the like, persons who for training or rehabilitation purposes are placed in undertakings without being employees or persons who without being employees participate in labour market schemes. The provisions of the Act concerning the employer apply to the persons mentioned in Article 1-6(1). The Ministry may by Executive Orders provide exceptions from this provision and also issue Executive Orders concerning the extent of the provisions.

4.2.2 Content of legislation concerning labour inspection

Duties of the employer

Article 1-8(2) of the Working Environment Act provides the definition of the term employer: anyone who has engaged an employee to perform work in his service. The provisions of the Working Environment Act

relating to the employer apply correspondingly to a person managing the undertaking in the employer's stead.

Chapters 2 and 3 of the Working Environment Act contain provisions on the duties of the employer. According to Article 2-1 the employer shall ensure that the provisions laid down in and pursuant to the Working Environment Act are complied with. Article 2-2 provides rules about duties of the employer towards persons other than his own employees. Article 2-2(1) states that when persons other than the employer's own employees, including contract workers or self-employed persons, perform tasks in connection with the employer's activities or installations, the employer shall ensure that his own activities and those of his own employees' are arranged and performed in such a manner that persons other than his own employees are also ensured a thoroughly sound working environment and co-operate with other employers in order to ensure a thoroughly sound working environment.

Article 3-1 of the Working Environment Act contains rules on the *requirements regarding systematic health, environment and safety work (Internal Control)* and on how the employer shall ensure that systematic health, environment and safety work is performed. According to Article 3-1(1), in order to safeguard the employees' health, environment and safety, the employer shall ensure that systematic health, environment and safety work is performed at all levels of the undertaking. This shall be carried out in co-operation with the employees and their elected representatives. Article 3-1(2) states that the employer shall e.g. establish goals for health, environment and safety, have an overall view of the undertaking's organisation, including how responsibility, tasks and authority for work on health, environment and safety is distributed. Furthermore, the employer shall make a survey of hazards and problems and, on this basis, assess risk factors in the undertaking, prepare plans and implement measures in order to reduce the risks. The Ministry has issued *Executive Order concerning systematic health, environment and safety activities in enterprises (FOR 1996-12-06 no. 1127)* which contains further provisions concerning implementation of the requirements of this article. Its object is to promote efforts to improve conditions in enterprises regarding to the working environment and safety, prevention of damage to health or disturbances to the environment from products or consumer services, protection of the external environment against pollution and improved treatment of waste. The Executive Order contains for instance provisions on definitions, obligation to maintain internal control, content of systematic health, environmental and safety activities, co-ordination between two or more enterprises that perform work on the same worksite.

According to Article 3-2 of the Working Environment Act, in order to maintain safety in the workplace, the employer shall ensure that employees are *informed of accident risks and health hazards* that may be connected with the work, and that they receive the necessary training,

practice and instruction. Furthermore, the employer shall ensure that employees charged with directing and supervising other employees have the necessary competence to ensure that the work is performed in a proper manner with regard to health and safety. When satisfactory precautions to protect life and health cannot be achieved by other means, the employer shall ensure that satisfactory personal protective equipment is made available to the employees, that the employees are trained in the use of such equipment and that the equipment is used. According to Article 3-3 the employer is obliged to provide *occupational health services* for the enterprise if so necessitated by risk factors in the undertaking¹⁴. According to Article 3-4, the employer shall assess measures to promote physical activity among the employees. According to Article 3-5, the employer shall undergo *training in health, environment and safety work*, and according to Article 3-6, the employer shall, in connection with systematic health, environment and safety work, develop routines for internal notification or implement other measures that facilitate internal notification concerning censurable conditions at the undertaking pursuant to Article 2-4, if the circumstances in the undertaking so indicate. Furthermore, the Act contains rules on adaptation for employees with reduced capacity for work.

Risk assessment

The provisions in the Working Environment Act require enterprises to have written objectives in relation to health, environment and safety activities. Due to the requirements of the European Framework Directive 89/391/EEC, the employer must prepare a risk assessment. According to the Working Environment Act, risk analysis and assessment must be carried out, and plans of action made and carried out according to assessments. Article 3-1(c) states that it is the duty of the employer to make a survey of hazards and problems and, on this basis, assess risk factors in the undertaking, prepare plans and implement measures in order to reduce the risks. There are no provisions of the contents of the risk assessment in the Working Environment Act. The *Executive Order No. 1127 of 6 December 1996 on systematic health, environmental and safety activities in enterprises (internal control regulations)* contains an Article on the duty to prepare a risk assessment. Article 5(6) of the Executive Order states that the internal control of the enterprise requires the enterprise to identify dangers and problems and against this background assess risks, draw up pertinent plans and measures to reduce such risks. It also states that this must be documented in writing. The risk assessment and the implementation of appropriate preventive measures shall be carried out in co-operation with safety representatives and possibly with occupational health services. According to the

¹⁴ The Executive Order No. 162 of 11 February 2009 contains provisions prescribing which enterprises are obliged to use approved occupational health services.

Working Environment Act, the employer is allowed to seek expert assistance to prepare a risk assessment, for instance from occupational health service (bedriftshelsetjeneste). It is the enterprise that pays for the assistance. Article 3-3 provides the rules for the occupational health services whereby the employer is obliged to provide occupational health services for the undertaking if so necessitated by risk factors in the undertakings. The assessment of whether such an obligation exists shall be made as part of the implementation of the systematic health, environment and safety measures.

Duties of the client

The *Executive Order on safety, health and working environment on construction sites (Construction Client Regulations) (FOR 2009-08-03 No. 1028)* contains rules on duties of the client. The Executive Order transposes Directive 92/57/EC. According to the Executive Order, the client is assigned tasks and responsibilities for ensuring that safety, health and working environment matters are taken into consideration right from the start of the project. These responsibilities are particularly extensive during the preparation stage, but the client is also required to follow up the work carried out during the execution stage. The Executive Order applies to any workplace where work is performed on temporary or mobile construction sites. According to the Executive Order, client means any natural or legal person for whom a construction project is carried out, i.e. the contracting entity for preparation and execution.

Chapter 2 of the Executive Order contains the duties of the client. He or she is obliged to take account of safety and health conditions during the work on the building and construction site. In connection with preparation and planning the project supervisor and, where appropriate, the client shall establish conditions to preserve safety, health and working environment. Particular regard shall be paid to architectural, technical and/or organisational choices for planning the various works and stages of work that are to be carried out simultaneously or in succession, the period to be allowed for carrying out the various works or stages of work and existing plans for safety, health, and working environment. During the execution of the works the client shall promote the safety and health by co-ordinating the work on the building and construction site. The client shall ensure that at least one week before the work starts send a prior notice to the Labour Inspection Authority if work will last more than 30 working days or the volume of the work is scheduled to exceed 500 person-days. The client shall further promote that the enterprises take account of the rules relating to systematic health, environment and safety in the workplace (Internal Regulations) and shall appoint a co-ordinator. The client may agree in writing that another legal or physical person on behalf of the client may carry out specific duties of the client.

Rules concerning the working environment and working procedures

Chapter 4 contains rules about general requirements regarding the working environment. The Article 4-1 states that the working environment in the enterprise shall be fully satisfactory when the factors in the working environment that may influence the employees' physical and mental health and welfare are judged separately and collectively. The standard of safety, health and working environment shall be continuously developed and improved in accordance with developments in society. When planning and arranging the work, emphasis shall be placed on preventing injuries and diseases. The organisation, arrangement and management of work, working hours, technology, pay systems, etc. shall be arranged in such a way that the employees are not exposed to adverse physical or mental strain and that due regard is paid to safety considerations. According to Article 4-1(3), an enterprise shall be arranged for employees of both sexes.¹⁵ Article 4-2 contains rules about *requirements regarding arrangement, participation and development of the work*. It states that the employees and their elected representatives shall be kept continuously informed of systems used in planning and performing the work. They shall be given the training necessary to enable them to familiarise themselves with these systems, and they shall take part in designing them. According to Article 4-2(2), the arrangements shall be made to enable the employee's professional and personal development through his or her work, the work shall be organised and arranged with regard for the individual employee's capacity for work, proficiency, age and other conditions, emphasis shall be placed on giving employees the opportunity for self-determination, influence and professional responsibility, employees shall as far as possible be given the opportunity for variation and for awareness of the relationships between individual assignments, adequate information and training shall be provided so that employees are able to perform the work when changes occur that affect his or her working situation. During reorganisation processes that involve changes of significance for the employees' working situation, the employer shall ensure the necessary information, participation and competence development to meet the requirements of the Working Environment Act regarding a fully satisfactory working environment. Article 8-1 provides an obligation regarding *information and consultation of the employer*. According to the Article, in enterprises that regularly employ at least 50 employees, the employer shall provide information concerning issues of importance for the employee's working conditions and discuss such issues with the employee's elected representatives. Information and consultation pursuant to Article 8-1 includes, for example, information concerning the current and expected development of the

¹⁵ However the Executive Order No. 1567 of 16 December 2005 contains exceptions from this rule that states that this rule does not apply to service locations/place of work in the military.

undertaking's activities and economic situation, information and consultation concerning the current and expected workforce situation in the undertaking, including any cutbacks and the measures considered by the employer in this connection, information and consultation concerning decisions that may result in considerable changes in the organisation of work or conditions of employment.

Article 14-16 contains provisions on *staff rules* whereby industrial, commercial and office undertakings employing more than 10 persons shall have staff rules for those employees who do not hold leading or supervisory positions. Such rules shall contain the necessary code of conduct, rules relating to working procedures, conditions for appointment, dismissal with notice and summary dismissal and rules relating to payment of salary. Staff rules must not contain provisions contrary to the Working Environment Act. The aim of the staff rules is to ensure that all employees are aware of their rights and obligation.¹⁶

A number of Executive Orders have been drawn up in connection with this part of the Working Environment Act. In these Executive Orders there are various provisions on the requirements regarding the working environment and working procedures.

Examples of Executive Orders that contain provisions regarding working environment and working procedures

- Executive Order concerning protection against noise in the workplace (FOR 2006-04-26 No. 456)
- Executive Order concerning protection against mechanical vibrations (FOR 2005-07-06 No. 804)
- Executive Order concerning use of technological appliances and work equipment (FOR 1998-06-26 No. 608)
- Executive Order concerning heavy and monotonous work (FOR 1995-01-20 No. 156)
- Executive Order concerning work with computer screens (FOR 1994-12-15 No. 1259)
- Executive Order concerning port work (FOR 1994-11-10 No. 1053)
- Executive Order concerning use of personal protective equipment (FOR 1993-05-24 No. 1425)
- Executive Order concerning coal mines in Svalbard (FOR 1993-01-18 No. 33)
- Executive Order concerning diving (FOR 1990-11-30 No. 944)
- Executive Order concerning scaffolding ladders and work on roofs etc. (FOR 1989-04-14 No. 335)
- Executive Order concerning bolt guns and attachments (FOR 1986-08-25 No. 1792)

¹⁶ Schwarz and Enkegaard (No 7) 86.

- Executive Order concerning excavation and bracing of ditches (FOR 1985-11-19 No. 2105)
- Executive Order concerning technical appliances (FOR 1982-09-10 No. 1377)
- Executive Order concerning avalanche hazards to accommodation and construction sites (FOR 1974-04-18 No. 3)

The safety and health activities of the enterprise

The Norwegian Working Environment Act contains provisions concerning safety representatives, regional safety representatives and safety committees. Chapter 6 contains rules on safety representatives, e.g. on the obligation to elect safety representatives, duties of safety representatives, the safety representative's right to halt dangerous work. According to Article 6-1(1), *safety representatives* shall be elected at all undertakings subject to the Working Environment Act. At undertakings with less than ten employees, the parties may agree in writing upon a different arrangement or agree that the undertaking shall not have a safety representative. Unless otherwise provided regarding the period of validity of the agreement, it shall be considered to apply for two years from the date of signature. The Directorate of Labour Inspection may, following a concrete assessment of the circumstances at the undertaking, decide that it shall nevertheless have a safety representative. At undertakings with more than 10 employees, two or more safety representatives may be elected. According to Article 6-1(2) the number of safety representatives shall be decided according to the size of the undertaking, the nature of the work and working conditions in general. If the undertaking consists of several separate departments or if employees work shifts, at least one safety representative shall generally be elected for each department or shift team. Each safety area shall be clearly delimited and shall not be larger than that the safety representative can have full control and attend to his duties in a proper manner. According to Article 6-1(3) undertakings with more than one safety representative shall have at least one senior safety representative, who shall be responsible for coordinating the activities of the safety representatives. The senior safety representative shall be elected from among the safety representatives or other persons who hold or have held positions of trust at the undertaking. Article 6-2(1) provides that the safety representative shall safeguard the interests of employees in matters relating to the working environment. The safety representative shall ensure that the undertaking is arranged and maintained, and that the work is performed in such a manner that the safety, health and welfare of the employees are safeguarded in accordance with the provisions of this Act. Article 6-3 provides that the safety representative can halt dangerous work. If a safety representative considers that life or health of employees is in immediate danger and such danger cannot be averted by other means, work may be halted until the Labour Inspection Authority has decided whether work may be continued. Work may only be halted to the extent the safety rep-

representative considers necessary in order to avert danger. The safety representative is not liable for any loss suffered by the undertaking as a result of work being halted.

Special local or regional safety representatives shall be appointed in building and construction enterprises. According to Article 6-4(1) in building and construction undertakings, in connection with loading and unloading of goods and otherwise when special circumstances so necessitate, the Ministry of Labour may provide in Executive Orders that special local safety representatives shall be appointed. An *Executive Order has been laid down concerning regional safety representatives for building and construction activities (FOR 1997-09-19 No. 1018)*. It applies to building and construction activities, including sole proprietorships that are establishments that have no employees, where workplaces are temporary or mobile. The Executive Order does not apply to the petroleum sector. According to Article 6 of the Executive Order, regional safety representatives for building activities are appointed by the Norwegian United Federation of Trade Unions. Regional safety representatives for construction activities are appointed by the Norwegian Union of General Workers. The regional safety representatives are employed by the trade union federations. They are appointed for four years at a time and function full-time. A notification of names of the appointed regional safety representatives is sent to the Directorate of Labour Inspection, the district offices of the Norwegian Labour Inspection Authority and the relevant trade union federations and employers' organisations. Article 7 provides that as a general rule, there shall be one regional safety representative for building activities and one for construction activities in each district of the Norwegian Labour Inspection Authority. Article 8 provides that regional safety representatives shall have a minimum of three years' experience of work in one of the occupational groups for which they shall function as regional safety representatives. They shall also have a minimum of three years' experience as elected employee representatives, of which at least two as safety representatives. Article 9 provides that the regional safety representative may take part in the Norwegian Labour Inspection Authority's inspection of the enterprise. *The Executive Order concerning regional safety representatives for loading and unloading work (FOR 1986-04-11 No. 870)* contains rules on safety representatives. According to Article 2 of the Executive Order, in ports that regularly employ at least 5 employees for unloading and loading work, shall one or more local safety representatives must be elected. According to Article 3, in harbours that regularly employ at least 15 for unloading and loading work, shall a local environment committee must be established if either party requires it.

Chapter 7 of the Working Environment Act contains rules on *working environment committees*. Article 7-1 states that undertakings which regularly employ *at least 50 employees* shall have a working environment committee on which the employer, the employees and the safety and

health personnel are represented. Working environment committees shall also be formed in undertakings with between 20 and 50 employees when so required by any of the parties at the undertaking. Where working conditions so indicate, the Labour Inspection Authority may decide that undertakings with less than 50 employees shall establish a working environment committee. According to 7-1(2) working environment committees may appoint sub-committees and according to Article 7-2(3) when a working environment committee is established, this shall be reported to the local Labour Inspection Authority office. Notices shall be posted in the workplace giving the names of the persons who are members of the committee at any given time. Article 7-2 imposes various duties on the working environment committee, for instance the working environment committee shall make efforts to establish a fully satisfactory working environment in the undertaking. The committee shall participate in planning safety and environmental work and shall follow up developments closely in questions relating to the safety, health and welfare of the employees. The committee shall study all reports relating to occupational diseases, occupational accidents and near accidents, seek to find the cause of the accident or disease and ensure that the employer takes steps to prevent recurrence. As a general rule the committee shall have access to Labour Inspection Authority and police inquiry documents. When the committee considers it necessary, it may decide that inquiries shall be conducted by specialists or by a commission of inquiry appointed by the committee. Without undue delay, the employer may submit such decisions to the Labour Inspection Authority for a decision. The committee shall study all reports relating to occupational health inspections and measurements. According to Article 7-2(5), if the working environment committee considers it necessary in order to protect the life or health of employees, it may decide that the employer shall implement concrete measures to improve the working environment within the framework of the provisions laid down in or pursuant to the Working Environment Act. In order to determine whether a health hazard exists, the committee may decide that the employer shall conduct measurements or examinations of the working environment. The committee shall impose a time limit for implementation of the decision. If the employer finds that he is unable to implement the committee's decision, the matter shall be submitted without undue delay to the Labour Inspection Authority for a decision. According to Article 7-2(6), each year the working environment committee shall submit a report on its activities to the administrative bodies of the undertaking and to employee organisations. Article 7-3 of the Working Environment Act provides within building and construction undertakings, in connection with loading and unloading of goods and otherwise when special circumstances so necessitate, the Ministry may provide in Executive Orders that there shall be a *special local working environment committee*. Such committees may be assigned responsibilities, duties and rights as referred to in Articles 7-1 and 7-3 in relation to all employers in the workplace.

Rules about working places

Article 4-4 of the Working Environment Act contains rules about the working place. Accordingly, physical working environment factors such as factors relating to buildings and equipment, indoor climate, lighting, noise, radiation and the like shall be fully satisfactory with regard to the employees' health, environment, safety and welfare. The workplace shall be equipped and arranged in such a way as to avoid adverse physical strain on the employees. Necessary aids shall be made available to the employees. Arrangements shall be made for variation in the work and to avoid heavy lifting and monotonous repetitive work. When machines and other work equipment are being installed and used, care shall be taken to ensure that employees are not subjected to undesirable strain as a result of vibration, uncomfortable working positions, and the like. Machines and other work equipment shall be designed and provided with safety devices so that employees are protected against injuries. There are various Executive Orders that contain provisions about working places.

Examples of Executive Orders that contain provisions regarding working places:

- Executive Order concerning workplaces and working premises (FOR 1995-02-16 No. 170)
- Executive Order concerning safety signs and signal giving in the workplace (FOR 1994-10-06 No. 972)
- Executive Order concerning operator protection on old tractors (FOR 1994-09-16 No. 876)

Market surveillance

Among the tasks assigned to the Norwegian Labour Inspection Authority is market surveillance regarding a range of occupational machinery and devices covered by the Norwegian Working Environment Act. The Norwegian Labour Inspection Authority is responsible for checking if the products meet the requirements of certain directives (old and new approach directives) and that the affixing and use of the CE market is correct. The Labour Inspection Authority oversees the market surveillance of the machines, protective equipment and chemicals. Market surveillance occurs partly through normal inspection activities by the Labour Inspection Authority and partly through supervision of importers, suppliers, distributors, sellers, etc. According to Article 18-6(6) of the Working Environment Act, the Labour Inspection Authority may issue orders to the effect that a person who supplies or markets a product which, even if used in accordance with requirements, may entail danger to life or health, shall take the necessary measures to avert such danger. It may, inter alia, be required that supply or marketing be discontinued or products be recalled.

Article 18-6(3) of the Act states that the Labour Inspection Authority may prohibit the manufacture, packaging, use or storage or hazardous

chemicals or biological substances in enterprises subject to the Working Environment Act. The Labour Inspection Authority may also require that the employer shall conduct special inspections or submit samples for inspection. Costs in this connection shall be borne by the employer. According to Article 18-6(4) the Labour Inspection Authority may require that manufacturers or importers of chemicals or biological substances shall conduct inspections or submit samples for inspection in order to determine how hazardous the chemical or substance is. The cost of such inspections shall be borne by the party under obligation to conduct the inspection or submit the sample. The Labour Inspection Authority may prohibit the sale of a chemical or biological substance if a manufacturer or importer fails to observe his duty to report or mark the substance or to provide additional information required pursuant to Article 5-4(1) c of the Working Environment Act.

Executive Order on market surveillance which the WEA monitors

- Executive Order concerning machines (FOR 2009-05-20 No. 544)
- Executive Order concerning design, formation and production of personal protective equipment (FOR 1994-08-19 No. 819)
- Executive Order concerning health and safety in explosive atmospheres (FOR 2003-06-30 No. 911)

Inspections concerning dangerous and hazardous substances

According to Article 4-5(1), when handling chemicals or biological substances, the working environment shall be so arranged that employees are protected against accidents, injuries to health and excessive discomfort. Chemicals and biological substances shall be manufactured, packed, used and stored in such a way that employees are not subjected to health hazards. According to Article 4-5(2), chemicals and biological substances that may involve health hazards shall not be used if they can be replaced by other substances or by another process that is less hazardous for the employees. The enterprise shall have the necessary routines and equipment to prevent or counteract injuries to health due to chemicals or biological substances.

Executive Orders that contain provisions aiming at eliminating risks or hazards caused by dangerous or unhealthy occupations

- Executive Order concerning the control of the working environment with regard to major accident hazards (FOR 2005-06-17 No. 672)
- Executive Order concerning water-soluble chromates in cement (FOR 2005-01-25 No. 47)
- Executive Order relating to asbestos (FOR 2005-04-26 No. 362)
- Executive Order concerning classification, labelling, packaging and declaration of hazardous chemicals (FOR 2002-07-16 No. 1139)
- Executive Order concerning protection against exposure to chemical substances in the workplace (FOR 2001-04-30 No. 443)

- Executive Order concerning welding, thermal seizure, thermal spraying, carbon arc fettling, soldering and mechanical abrasion (FOR 1998-02-26 No. 179)
- Executive Order concerning on health and safety in the context of mineral extracting industries through drilling in on-shore sectors (FOR 1998-09-17 No. 982)
- Executive Order concerning protection of workers against exposure to biological factors on the workplace (FOR 1997-12-19 No. 1322)
- Executive Order concerning reproductive hazards and the working environment (FOR 1995-08-25 No. 768)
- Executive Order concerning work involving the use of ionizing radiation (FOR 1985-06-14 No. 1157)
- Executive Order concerning work in tanks (FOR 1985-06-14 No. 1410)
- Executive Order concerning work on tanker ship protected with inert gas while loading tanks (FOR 1985-06-14 No. 1411)
- Executive Order concerning high-pressure water-jet cleaning (FOR 1992-02-13 No. 1263)

The Labour Inspection Authority has supervisory responsibilities in connection with certain Articles of the *Tobacco Act No. 14 of 9 March 1973*. Pursuant to Article 6 of the Tobacco Act, responsibility for inspection and control shall be divided between the municipal authorities and the Labour Inspection Authority. Article 6 states that in premises and means of transport to which the public have access, the air shall be smoke-free. The same applies in meeting rooms, work premises and institutions where two or more persons are gathered. This does not apply in living quarters in institutions, but the institution is obliged to make smoke-free rooms available to those who request it. If several premises within a certain area are used for the same purpose, smoking may be permitted in up to one-half of these premises. The owner or the person who has the premises or the means of transport at his disposal is under obligation to ensure that the rules imposed in or in pursuance of these provisions are complied with. The Act also states that the municipal council shall supervise compliance with the rules laid down in and in pursuance of this section. The municipal council's powers under this section may be delegated to a municipal body or a body common to two or more municipalities. In the case of work premises, supervision shall be carried out by the Labour Inspection Authority.

Working time

In *Norway* working hours are determined by the provisions of the Working Environment Act, by applicable collective agreements and by indi-

vidual employment contracts.¹⁷ Chapter 10 of the Working Environment Act deals with rules concerning working time. These rules apply to all enterprises that employ employees unless otherwise provided by the Working Environment Act. Some minor groups of employees are exempted from several of these rules, especially employees in leading positions and employees holding a particularly independent position.¹⁸

Article 10-1 provides *definitions* for the chapter whereby working hours means time when the employee is at the disposal of the employer and off-duty time means time when the employee is not at the disposal of the employer. Article 10-2 states that working hours shall be arranged in such a way that employees are not exposed to adverse physical or mental strain, and that they shall be able to observe safety considerations. Article 10-2 contains provisions concerning the *working hour arrangements*. According to Article 10-2(2), an employee who regularly works at night shall be entitled to exemption from the working-hour arrangement that applies to the employee group if such exemption is needed by the employee concerned for health, social or other weighty welfare reasons and can be arranged without major inconvenience to the undertaking. According to Article 10-2(3) an employee shall be entitled to flexible working hours if this may be arranged without major inconvenience to the undertaking. According to Article 10-2(4) an employee who for health, social or other important welfare reasons needs to have his normal working hours reduced shall have this right if the reduction of working hours can be arranged without major inconvenience to the undertaking. When the agreed period of reducing working hours has expired, the employee has the right to resume previous working hours. Other conditions being equal, an employee working reduced hours shall have a preferential right to increase his working hours in the event of a vacancy in the undertaking provided that the post wholly or essentially is assigned the same tasks. Article 10-3 contains *a rule about work schedule*. According to that article, if the employees work at different times of the day, a work schedule shall be prepared showing which weeks, days and times each employee is to work. The work schedule shall be prepared in co-operation with the employees' elected representatives. Unless otherwise provided by a collective pay agreement, the work schedule shall be discussed with the employees' elected representatives as early as possible and, at the latest, two weeks prior to its implementation. The work schedule shall be easily accessible to the employees.

Article 10-4 provides rules about working hours. As a main rule, *normal working hours must not exceed nine hours per 24 hours and 40 hours per seven days*, cf. Article 10-4(1). When the work is particularly passive, the Norwegian Labour Inspection Authority may consent to an extension of working hours, provided that working hours do not exceed 13 hours during a period of 24 hours. According to Article 10-4(3), in the case of

¹⁷ Schwarz and Enkegaard (No 7) 83.

¹⁸ Schwarz and Enkegaard (No 7) 83.

standby duty outside the workplace, at least one-fifth of such standby duty shall as a general rule be included in the ordinary working hours. The employer and the employees' elected representatives in undertakings bound by a collective pay agreement may by written agreement derogate from this rule. The Labour Inspection Authority may stipulate a different method of calculation if so requested by the employer or the employees' elected representatives if calculation of working hours according to the first paragraph appears clearly unreasonable. According to Article 10-4(4), normal working hours must not exceed nine hours per 24 hours and 38 hours per seven days for semi-continuous shift work and comparable rota work, work on two shifts which are regularly carried out on Sundays and public holidays and comparable rota work regularly carried out on Sundays and public holidays, work which necessitates that individual employees work at least every third Sunday and work principally performed at night. According to Article 10-4(5), normal working hours may not exceed nine hours per 24 hours and 36 hours per seven days in the case of continuous shift work and comparable rota work, work below ground in mines, tunnelling and blasting of rock chambers below ground. Article 10-5 provides that the employer and the employee may in writing agree that normal working hours may be arranged in such a way that, on average, during a period not exceeding 52 weeks, they are no longer than prescribed by Article 10-4 but that the total working hours do not exceed nine hours per 24 hours and 48 hours per seven days. Pursuant to Article 10-7 an account shall be kept of the hours worked by each employee. This account shall be accessible to the Labour Inspection Authority and the employees' elected representatives.

According to Article 10-8(1), an employee shall have *at least 11 hours continuous off-duty time per 24 hours* and the off-duty period shall be placed between two main work periods and according to Article 10-8(2) an employee shall have a continuous off-duty period of 35 hours per seven days. The 11 hours must be placed consecutively, so that there must be 11 hours between the time the employee leaves work until the beginning of the next shift or working day. Furthermore, the employee is entitled to a continuous period of 35 hours off-duty every 7 days.¹⁹

Article 10-11 provides rules concerning *night work*. According to Article 10-11(1), work between the hours of 9.00 p.m. and 6.00 a.m. is night work. In enterprises bound by a collective pay agreement, the employer and the employee's elected representatives may in writing decide another period of at least eight hours including the hours between 12.00 midnight and 6.00 a.m. and 12.00 midnight is not regarded as night work. Article 10-11(2) provides that night work is not permitted unless necessitated by the nature of the work, and Article 10-11(3) states that before imposing night work, the employer shall discuss the necessity of

¹⁹ Schwarz and Enkegaard (No 7) 84.

so doing with the employees' elected representatives. According to Article 10-11(4), at undertakings bound by a collective pay agreement, the employer and the employee's elected representatives may enter into a written agreement concerning night work when there is an exceptional and temporary need for it. According to Article 10-11(5), normal working hours for an employee who regularly works more than three hours at night shall on average not exceed eight hours per 24 hours. The average shall be calculated over four weeks. The minimum period for weekly off-duty time laid down in Article 10-8(2) shall not be included in the calculation of the average, and according to Article 10-11(6), working hours for an employee who works more than three hours at night shall not exceed eight hours per 24 hours if the work involves exceptional risk or considerable physical or mental strain. According to Article 10-11(7), an employee who mainly works at night shall be offered a medical examination before commencing employment and subsequently at regular intervals. Article 10-12 provides exceptions for Chapter 10.

According to Article 10-12(1), the provisions of Chapter 10 do not apply to employees in senior posts, and according to Article 10-12(2), Chapter 10 does not apply to employees in particularly independent posts. According to Article 10-12(3), the provisions of Chapter 10 may be departed from in the case of work that, owing to natural disasters, accidents or other unforeseen events must be carried out in order to avert danger or damage to life or property. In such case, the employees shall be ensured corresponding compensatory rest periods, or where this is not possible, other appropriate protection.

The Ministry of Labour may, by Executive Order, issue special rules if the work is of such a special nature that it would be difficult to adapt it to the provisions of Chapter 10. The *Executive Order concerning exemptions from the Working Environment Act for certain types of work and employees groups* (FOR 2005-12-16 No. 1567) provides rules that except certain types of work and employees groups from Chapter 10 of the Working Environment Act. Article 2 of the Executive Order states that Chapter 10 of the Working Environment Act does not apply to foreign services (utenriksstasjonene). Article 4 provides that Articles 10-4 and 10-5 of the Working Environment Act concerning normal working hours do not apply to municipal fire brigades. Article 6 of the Executive Order provides that Article 10-6 of the Working Environment Act concerning the rules on overtime work does not apply to police officials. According to Article 7, Chapter 10 does not apply to field work by the Norwegian Mapping Authority.

The *Executive Order on working time for employees in cross-border services in the railway sector* (FOR 2008-07-03 No. 783) contains rules on working time for employees in cross-border services in the railway sector. This Executive Order transposes the Directive 2005/47/EC on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of

the working conditions of mobile works engaged in interoperable cross-border services in the railway sector. The Executive Order applies to those working in cross-border services in the railway sector for more than one hour per day and it applies both to drivers and other personnel who work the cross-border services in the railway sector.

The Working Environment Act, with some exceptions, and several of the regulations issued by the Directorate of Labour Inspection, apply to the petroleum activities. The Working Environment Act's provisions relating to working hours do not apply to the offshore activities.

Work carried out by children and young people

Chapter 11 contains provisions for the protection of children and young people. It includes rules on the prohibition of child labour, working hours, prohibition of night work and breaks and time off. The type of work that may be performed by young people is dependent on their age. Article 11-1 states that *children under 15 years of age or attending compulsory education shall not perform work* subject to this Act except cultural work or the like, light work provided the child is 13 years of age or more and work that forms part of their schooling or practical vocational guidance approved by the school authorities provided the child is 14 years of age or more.

Certain types of work are considered as particularly hazardous, and are therefore prohibited for persons under 18 years of age. According to Article 11-1(3), persons under 18 years of age may not perform work that may be detrimental to their safety, health, development or schooling. This includes tasks involving work with toxic chemicals, dangerous machines and the like. The Ministry of Labour may by Executive Order provide what types of work shall be subject to this prohibition and concerning registration of employees under 18 years of age.

Working hours for children and young people must not hinder school attendance or prevent them from benefiting from their schooling. According to Article 11-2, working hours for persons under 18 years of age shall be so arranged that they do not interfere with their schooling or prevent them from benefiting from their lessons. In the case of children who are under 15 years of age or are attending compulsory education, working hours shall not exceed 2 hours a day on days when there is teaching and 12 hours a week in weeks when there is teaching, 7 hours a day on days when there is teaching and 35 hours in weeks when there is no teaching, 8 hours a day and 40 hours a week for the total of working hours and school hours where the work is part of an arrangement involving alternating theoretical and practical education. Article 11-2(3) states that in the case of *young persons between 15 and 18 years of age who are not attending compulsory education*, working hours shall not exceed 8 hours a day and 40 hours a week. Article 11-2(4) states that when children work for two or more employers, working hours shall be calculated as a total of the hours worked for all employers. The employer is obliged to obtain information concerning hours worked for other em-

employers. According to Article 11-3(1), children who are under 15 years of age or are attending compulsory education shall not work between 8.00 p.m. and 6.00 a.m. Article 11-3(2) states that young persons between 15 and 18 years of age who are not attending compulsory education shall have an off-duty period of at least 8 hours including the time between 11 p.m. and 6.00 a.m. Work between 9 p.m. and 11 p.m. is night work, and is not permitted unless necessitated by the nature of the work or unless there is an exceptional and temporary need for night work. Article 11-3(3) states that the second paragraph shall not apply to work due to natural disasters, accidents or other unforeseen events which must be carried out in order to avert danger or damage to life or property and where is strictly necessary to employ the young persons concerned in the work. Young persons who take part in such work shall have a subsequent compensatory rest period. Article 11-5 contains rules about breaks and time off. The Article states that persons under 18 years of age shall have a rest break of at least 30 minutes, if possible continuous, if daily working hours exceed four hours and 30 minutes. Article 11-5(2) states that within each period of 24 hours, there shall be a continuous off-duty period of at least 14 hours for children who are under 15 years of age or are attending compulsory education, 12 hours in the case of young persons between 15 and 18 years of age who are not attending compulsory education, persons under 18 years of age shall have a continuous off-duty period of at least 48 hours per seven days. The off-duty period shall as far as possible be on a Sunday or public holiday. Article 11-5(4) states that persons under 18 years of age who attend school shall have at least four weeks holiday a year, of which at least two weeks shall be taken during the summer holiday. The *Executive Order on work with children and youngsters (FOR 1998-04-30 No. 551)* contains various additional provisions on work with children and young persons. The Executive Order contains provisions implementing *Directive 94/33/EC of 22 June 1994 on the protection of young persons at work*. The Executive Order is aimed at employers and *applies to work performed by children and young persons under 18 years of age*. The Executive Order determines what kind of work children and young persons can perform. According to the Executive Order the employer must *prepare a risk assessment* of the risks before persons less than 18 years of age begin to work in the workplace. Furthermore it is a duty of the employer to make a *list of all employees who are under 18 years of age*. However if there are less than 20 employees the list may be omitted. The list shall contain information about the employer and shall be available for the Labour Inspection Authority and safety representatives. The list is important to ensure that the Labour Inspection Authority can oversee the effective control of employers who have hired persons less than 18 years of age.²⁰

²⁰ Comments on Executive Order of work with children and youngsters (FOR 1998-04-30 No. 551).

Psycho-social work environment

The Working Environment Act contains provisions concerning the psycho-social work environment. Article 4-3 contains rules about the requirements regarding the psychosocial working environment. Article states that work shall be arranged so as to preserve the employees' integrity and dignity. Article 4-3(2) states that efforts shall be made to arrange the work so as to enable contact and communication with other employees of the enterprise. According to Article 4-3(3), employees shall not be subjected to harassment or other improper conduct and lastly, according to Article 4-3(4), employees shall, as far as possible, be protected against violence, threats and undesirable strain as a result of contact with other persons, i.e. customers, clients and patients. Article 4-6 contains rules on adaptation for employees with reduced capacity for work. According to Article 4-6(1), if an employee suffers reduced capacity for work as a result of an accident, sickness, fatigue or the like, the employer shall, as far as possible, implement the necessary measures to enable the employee to retain or be given suitable work. Article 4-6(3) states that unless regarded as clearly unnecessary, the employer shall in consultation with the employee prepare a follow-up plan for return to work following an accident, sickness, fatigue or the like. Organisations are obliged to prepare and implement written routines for conflict resolution. The routine shall include, for example the procedure of the cases (saksgang), roles and responsibility, according to Article 5(2)(7) of the *Executive Order concerning systematic health, environmental and safety activities in enterprises (FOR 1996-12-06 No. 1127)*.

Inspection concerning foreign workers and posted workers

Rules concerning posted workers are found in Article 1-7 in the Working Environment Act. According to Article 1-7(1), a posted employee means an employee who, for a limited period, works in a country other than that with which the employment is normally associated. Article 1-7(2) states that posting of an employee shall be deemed to take place when a foreign undertaking in connection with the provision of services by agreement with a recipient of services in *Norway* posts an employee to *Norway* for its own account, as its own risk and under its own management, or if an employee is posted to a place of business of an undertaking in *Norway* that belongs to the same group or in the capacity of temporary employment undertaking, or another undertaking that makes employees available, posts employees to an undertaking in *Norway*. Article 1-7(3) states that posting of an employee is also deemed to take place when a Norwegian undertaking in connection with the provision of the EEA Agreement on free movement of services posts an employee to another country within the EEA. Rules concerning posted workers are also found in the *Executive Order concerning posted worker (FOR 2005-12-16 No. 1566)*. The Executive Order transposes *Directive 96/71/EC* concerning the posting of workers. Articles 1 and 5 of the Executive Order contain rules on the scope of the Executive Order. The Executive

Order applies both when a Norwegian company posts employees to another EU/EEA country and when foreign companies post workers to *Norway* to provide services here, provided that the worker is employed by the posting firm for the duration. According to Article 1 of the Executive Order, the Executive Order applies in cases where foreign undertakings post workers to *Norway* in connection with the provision of services provided that there is an employment relationship between the foreign undertaking and the posted worker during the period of posting. The Executive Order does not apply to Svalbard. Article 5 contains rules concerning posting from *Norway*. According to that Article, when a Norwegian undertaking posts a worker to another country within the EEA area, the employer shall ensure that the posted worker is covered by the host country's provisions concerning terms and conditions of employment provided in transposition of Council Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. This does not apply when the worker is covered by more favourable terms and conditions of employment laid down in an agreement or pursuant to the national law that otherwise regulates the employment relationship. The Labour Inspection Authority shall co-operate with corresponding liaison offices in the other EEA countries. According to Article 2 of the Executive Order, the regulations of the Working Environment Act concerning occupational safety and health apply to all employment in *Norway*, including posted workers. The regulations apply even if the worker is employed by a foreign company, is working in *Norway* on an assignment to provide services, and the stay is temporary. The following articles of the Working Environment Act apply to posted workers.

- Chapter 4 concerning requirements regarding the working environment
- Chapter 10 concerning working hours
- Chapter 11 concerning employment of children and young persons
- Chapter 13 concerning protection against discrimination
- Article 12-9 concerning children's or child minders' sickness
- Article 14-5 concerning requirements regarding a written contract of employment
- Article 14-6 concerning minimum requirements regarding the content of the written contract
- Article 14-12 concerning hiring of employees from undertakings whose object is to hire out labour
- Article 14-14 concerning consequences of unlawful hiring of employees
- Article 15-9 concerning protection against dismissal during pregnancy or following the birth or adoption of a child

Article 3 of the Executive Order provides rules on the role of the Norwegian Labour Inspection Authority. According to that article, the Norwe-

gian Labour Inspection Authority shall, in the capacity of liaison office, provide information on the terms and conditions of employment that applies to the posted worker. The Labour Inspection provides information on legislation and regulations regarding posted workers, both Norwegian workers posted abroad and foreign employees posted to *Norway*. The Labour Inspection Authority functions as a liaison office, working with other liaison offices in the EU/EEA countries on information and development of the regulations given to protect rights of posted workers. It is part of the Labour Inspection Authority's regular tasks to supervise their working conditions in *Norway*. The Labour Inspection Authority ascertains that wages and working conditions comply with the basis for granting the working permit, as well as compliance with the regulations relating to general application of wage agreements. In order to prevent social dumping, the Labour Inspection Authority supplies information to raise awareness about the relevant regulations and workers' rights.

The Working Environment Act contains provisions concerning temporary working agencies. Article 14-12 states hiring employees from undertakings whose object is to hire out labour shall be permitted to the extent that temporary appointment of employees may be agreed pursuant to Article 14-9(1). According to Article 14-12(2), in undertakings bound by a collective pay agreement, the employer and the elected representatives who collectively represent a majority of the employees in the category of workers to be hired may enter into a written agreement concerning the hiring of workers for limited periods notwithstanding the provisions laid down in the first paragraph. Article 14-12(3) provides that in connection with the hiring of employees pursuant to Article 14-12, the provisions of Article 14-9(5) shall apply correspondingly. In Article 14-9(5), the second and third sentences state that the provisions concerning termination of employment relationships apply to employees who have been temporarily employed for more than four consecutive years. Article 14-14 contains provisions concerning the consequences of unlawful hiring of employees. It states that in the event of a breach of the provisions of Article 14-12, the court shall, if so demanded by the hired employee, decide that the hired employee has a permanent employment relationship with the hirer. In special cases, the court may nevertheless, if so demanded by the hirer, decide that the hired employee does not have a permanent employment relationship if, after weighing the interests of the parties, it finds that this would be clearly unreasonable. Article 14-12 (2) states that in the event of a breach of the provisions of Article 14-12, the hired employee may claim compensation from the hirer. Compensation shall be fixed at the amount the court deems reasonable in view of the financial loss, circumstances relating to the employer and the employee and other facts of the case, according to Article 15-12(2). *Executive Order No. 541 of 4 June 2008* contains furthermore rules concerning the temporary work agencies, and the pur-

pose of the Executive Order is to improve monitoring and control of the sector. Article 2 of the Executive Order requires the temporary work agencies to register their activity in a public register. Temporary work agencies are required to be organised as a Norwegian limited liability company or public limited liability company, or provide a guarantee from a bank or insurance company of an amount equal to the minimum requirements for share capital in limited companies. Organisations from EEA/EU countries meet the requirements concerning company organisation if they are registered as limited companies or the equivalent in their home countries. Article 4 provides that foreign companies operating in *Norway* must also have a representative based in *Norway* or appoint such a representative to act on their behalf, and the representative should be authorised to receive claims and perform legal acts on behalf of the company. According to Article 5, all temporary work agencies that aspire to operate in *Norway* (both Norwegian and foreign temporary work agencies) must send notification to the Labour Inspection Authority with information about the company's name and address and documentation that show that the company is able to meet requirements regarding registration in public registers. According to Article 6, the Norwegian Labour Inspection Authority will establish and keep a record of temporary agency work operating in *Norway* whereby only temporary work agencies that submit notification demonstrating that they fulfil the various requirements set by the Norwegian authorities will be admitted into the Temporary Work Agency-register (TWA-register). In *Norway* it is illegal for employers to hire employees from agencies not listed in the TWA-register. The TWA-register is administered by the Norwegian Labour Inspection Authority.

Identification cards on construction sites

The *Executive Order regarding the use of identification cards on construction sites (FOR 2007-03-30 No. 366)* aims to improve health and safety conditions on construction sites. According to the regulations, all employees working on construction sites must be issued with a special identification (ID) card. In order to obtain this ID card, the employee must be registered in a public registers, as required by law. The ID cards will be issued by a company contracted by the government, and the system is to be fully funded by the users. Employers are to be held responsible for ensuring that employees carry this ID card, and a breach of this regulation may be deemed a criminal offence. According to Article 1, the purpose of the Executive Order is to safeguard security, health and a good working environment on construction sites. According to Article 2, the regulation applies to undertakings that perform work at construction sites. Article 3 provides that employers and one-man enterprises shall ensure that all persons performing work at construction sites hold ID cards issued by a card issuer designated by the Ministry of Labour. It is a condition for the issue of ID cards that specific information obligations in relation to public registers are met. The Ministry of Labour shall

decide which registration obligations must be met before ID cards may be issued. Before ordering ID cards, employers are obliged to ensure that the necessary identity checks are made of employees.

Inspection in the learning environment and various educational institutions in Norway

The Labour Inspection Authority supervises the learning environment of various educational institutions in *Norway*. According to the Act relating to Universities and University Colleges No. 15 of 1 April 2005, the Labour Inspection Authority supervises the learning environment, including the physical and mental working environment, and monitors that the universities and university colleges are fully satisfactory on the basis of an overall assessment of consideration regarding the health, safety and welfare of the students, according to Article 4-2(2). Furthermore, the Labour Inspection Authority supervises the learning environment of Norwegian Folk High School, Act No. 72 of 6 December 2002 and Tertiary Vocational School, Act No. 56 of 20 June 2003.

4.3 Follow-up system of the law

4.3.1 Provision on labour inspection

Chapter 18 of the Working Environment Act contains rules concerning inspections by the Labour Inspection Authority. It contains provisions concerning the protection of sources of information, fees and access of the Inspection Authority to the enterprise. Article 18-1 states that the Labour Inspection Authority shall supervise compliance with the provisions of and pursuant to the Working Environment Act. When supervision pursuant to the Working Environment Act requires special expertise, the Labour Inspection Authority may appoint specialists to conduct controls, inspections, etc. on its behalf. Article 18-2 states that when the Labour Inspection Authority is informed of circumstances that are in contravention of the Working Environment Act, the name of the informant shall be kept secret. The duty of secrecy shall also apply in relation to the person whose affairs are reported. Article 18-3 contains rules concerning fees whereby enterprises subject to the Working Environment Act, may be ordered to pay to the Treasury an annual inspection fee or fees to cover expenses relating to control, approval and certification or to required examinations or tests. According to Article 18-4, the Labour Inspection Authority shall have free access at all times to any premises subject to the Working Environment Act. Inspectors shall produce proof of their identity pursuant to Article 15 of the public Administration Act and, if possible, make contact with the employer and the safety representative. The safety representative may require that other representatives of the employees shall take part in the inspection. In undertakings

where no safety representative has been elected, the inspectors shall, if possible, make contact with another representative of the employees. Article 18-4(2) provides that the employer or his representative shall be entitled to be present during the inspection and may be so ordered. The inspectors may decide that this right shall not apply during interviews of employees or if the presence of the employer would entail a major inconvenience or endanger the purpose of the inspection. According to Article 18-4(3), unless serious considerations indicate otherwise, the Labour Inspection Authority shall provide the employer with a written report on the result of the inspection. A copy of this report shall be given to the safety representative and, if necessary, to the occupational health service. According to Article 18-5(1), all persons subject to inspections pursuant to the Working Environment Act shall, when so demanded by the Labour Inspection Authority and notwithstanding the duty of secrecy, provide information deemed necessary for performance of the inspection. The Labour Inspection Authority may decide the form in which the information shall be provided. According to Article 18-5(2), information as referred to in the first paragraph may also be demanded by other public inspection authorities notwithstanding the duty of secrecy that otherwise applies. The duty to provide information shall only apply to information that is necessary for the inspection authority's performance of its duties pursuant to statute.

According to Article 18-6(7), individual decisions adopted by local Labour Inspection Authority offices may be appealed to the Directorate of Labour Inspection. Individual decisions adopted by the Directorate may be appealed to the Ministry of Labour. According to Article 18-6(8), the employees' elected representatives shall be informed of orders issued and individual decisions adopted by the Labour Inspection Authority.

4.3.2 Sanctions

The Working Environment Act contains provisions that enable the Labour Inspection Authority to penalise enterprises or institutions which do not comply with the working environment rules.

Enforcement

When statutes and Executive Orders are violated, the Labour Inspection Authority may give the enterprise an *order* to correct the situation within a given time limit. This is done in writing, and the recipient has the opportunity to lodge an appeal. Article 18-6 of the Working Environment Act contains rules concerning orders and other individual decisions of the Labour Inspection Authority. According to Article 18-6(1) the Labour Inspection Authority shall issue *orders and make such individual decisions as are necessary for the implementation of the provisions of* and pursuant to Chapters 2–11. These chapters contain rules regarding duties of employers and employees (Chapter 2), rules concerning working environment measures (Chapter 3), requirements regarding the working environment

(Chapter 4), the obligation to record and notify, requirements for manufacturers, etc. (Chapter 5), rules concerning safety representatives (Chapter 6), working environment co-operation and working environment committees (Chapter 7), rules concerning information and consultation (Chapter 8) and control measures in the undertaking (Chapter 9). Chapter 10 contains rules concerning working hours and Chapter 11 contains rules on the employment of children and young persons.

Furthermore, Article 18-6 provides that the Labour Inspection Authority shall issue orders and make such individual decisions as are necessary for the implementation of the provisions pursuant to Articles 14-5 to 14-8, 14-9 (1)c, 15-2 and 15-5. However, this does not apply to Articles 2-4, 2-5, 10-2(2) to 10(4) and 10-6(10), which are various rules concerning working conditions, e.g. Article 14-5 contains rules concerning requirements regarding a written contract of employment and Article 14-8 concerns changes in the employment relationship. Article 15-12 contains rules concerning the consequences of unfair dismissal, etc. and Article 15-15 concerns written references from the employer. According to Article 18-6(2), orders shall be issued in writing, and time limits shall be set for their effectuation.

According to Article 18-6(7), individual decisions adopted by local Labour Inspection Authority offices may be appealed to the Directorate of Labour Inspection. Individual decisions adopted by the Directorate may be appealed to the Ministry of Labour. According to Article 18-6(8), the employees' elected representatives shall be informed of orders issued and individual decisions adopted by the Labour Inspection Authority.

In dealing with enterprises that do not comply with the requirements of the Working Environment Act, the Labour Inspection Authority may respond with:

Coercive fines According to Article 18-7, when so ordered pursuant to the Working Environment Act, a continuous coercive fine may be imposed for each day, week or month that passes after expiry of the time limit set for implementation of the order until the order is implemented. A coercive fine may also be imposed as a single payment fine. The Directorate of Labour Inspection may waive accrued coercive fines. If the order is not complied with, coercive fines may be imposed. The size of the fine is dependent upon several factors, but the main rule is that it shall be unprofitable to violate the Working Environment Act.

Shutdown of operations An enterprise may be shut down with immediate effect if the life and health of its employees are in imminent danger. Shutdowns may also be imposed when enterprises fail to comply with orders given. According to Article 18-8, if orders are not complied with within the time limit, the Labour Inspection Authority may wholly or partly halt the enterprise's activities until the order has been complied with.

Police The authority may report enterprises to the police for serious breaches of the Act. Serious violation can result in fines, or, in the worst case, imprisonment.

Punishment

Chapter 19 of the Working Environment Act contains penal provisions. Article 19-1 contains rules about the liability of proprietors of undertakings, employers and persons managing undertakings in the employer's stead. The Article states that *any proprietor of an undertaking, employer or person managing an undertaking* in the employer's stead who wilfully or negligently breaches the provisions or orders contained in or issued pursuant to the Working Environment Act shall be liable to a fine, imprisonment for up to three months or both. Complicity shall be subject to the same penalties, but employees shall nevertheless be liable to punishment pursuant to Article 19-2. Article 19-1(2) states that in the event of particularly aggravating circumstances the penalty may be up to two years' imprisonment. When determining whether such circumstances exist, particular importance shall be attached to whether the offence involved or could have involved a serious hazard to life or health, and whether it was committed or allowed to continue notwithstanding orders or requests from public authorities, decisions adopted by the working environment committee or requests from safety representatives or occupational health services. According to Article 19-1(3), in the event of contraventions that involved or could have involved a serious hazard to life or health, any proprietor of an undertaking²¹, employer, or person managing an undertaking in the employer's stead shall be liable to penalty pursuant to this Article, unless the person concerned has acted in a fully satisfactory manner according to his duties under the Working Environment Act. Article 19-1(4) provides that the provisions of this Article shall not apply to the provisions of Chapter 14 and 15 concerning protection against dismissal.

Article 19-2 contains rules on the *liability of employees*. According to Article 19-2(1), an employee who negligently infringes the provisions or orders contained in or issued pursuant to the Working Environment Act shall be liable to a fine. Contributory negligence shall be subject to the same penalty. According to Article 19-2(2), if the infringement is committed wilfully or through gross negligence, the penalty may be a fine, up to three months' imprisonment or both. According to Article 19-2(3), in the event of particularly aggravating circumstances imprisonment for up to one year may be imposed. When determining whether such circumstances exist, particular importance shall be attached to whether the offence was contrary to special directives relating to work or safety and whether the employee understood or should have understood that the offence could have seriously endangered the life and health of others. According to Article 19-2(4), the provisions of this Article do not apply in respect of the provisions of Chapter 10 relating to working hours and of Chapter 14 and 15 relating to protection against dismissal.

²¹ Proprietor of an undertaking means someone who has a product liability, as well as self-employed employer. Odd Friberg: *Arbeidsmiljøloven med kommentarer*, 461.

According to Article 19-3, *criminal liability for enterprises* is regulated in Articles 48a and 48b of the Penal Code No. 10 of 1902. According to Article 48a, when a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. This applies even if no individual person may be punished for the contravention. Enterprise here means a company, society or other association, one-man enterprise, foundation, estate or public activity. The penalty shall be a fine. The enterprise may also by a court judgment be deprived of the right to carry on business or may be prohibited from carrying it on in certain forms. Article 48b provides that in deciding whether a penalty shall be imposed on an enterprise pursuant to Article 48 a, and in assessing the penalty vis-à-vis the enterprise, particular consideration shall be paid to the preventive effect of the penalty, the seriousness of the offence, whether the enterprise could by guidelines, instruction, training, control or other measures have prevented the offence, whether the offence has been committed in order to promote the interests of the enterprise, whether the enterprise has had or could have obtained any advantage by the offence, the enterprise's economic capacity and lastly whether other sanctions have as a consequence of the offence been imposed on the enterprise or on any person who has acted on its behalf, including whether a penalty has been imposed on any individual person.

According to Article 19-4 of the Working Environment Act, any person who obstructs a public authority in the performance of inspections required pursuant to the Working Environment Act or who fails to furnish the mandatory assistance or supply information deemed necessary for performing supervision pursuant to the Working Environment Act shall be liable to a fine unless the offence is subject to the provisions of Article 19-1 or to a more severe penalty pursuant to the General Civil Penal Code. Article 19-6 states that contravention of the Working Environment Act is subject to public prosecution, and Article 19-7 states that any contravention of the Working Environment Act shall be regarded as a misdemeanour.

5. Report on Sweden

5.1 Administration

The Working Environment Act No. 1160 of 1977 (hereafter AML) is the legislation covering occupational health and safety in *Sweden*. The AML is a framework law, which means that the act sets the outer framework for the work environment. The purpose of the Act is to prevent ill-health and accidents at work and generally to achieve a good working environment. The Government has issued Work Environment Ordinance No. 1166 of 1977 which contains certain supplementary rules to the AML.

The Swedish Labour Inspection Authority (hereafter SWEA) is the administrative authority which deals with the working environment in *Sweden* and works under the supervision of the Ministry of Employment. The SWEA was formed in 2001, through the merger of the Swedish Labour Inspectorate and the National Board of Occupational Safety and Health. Chapter 7, Article 1 of the AML provides that the SWEA monitors compliance with the AML and provisions issued pursuant to the Act. The SWEA is furthermore responsible for ensuring compliance in certain respects with the Tobacco Act and the Environmental Code with regard to certain issues relating to genetic engineering and pesticides. The SWEA is also responsible for compliance with the Working Hours Act No. 673 of 1982, the Working Hours for Certain Road Transport Work Act, the Working Time, etc. of Mobile Workers in Civil Aviation Act and the Act on Driving Time and Rest Periods in International Rail Transport. The SWEA supplements and articulates stipulations of the AML and attends to the transposition of EU legislation into Swedish law. The SWEA has been given extensive powers by the Government to issue various Executive Orders concerning the working environment.

According to Chapter 9, Article 2, the SWEA's decisions in individual cases in accordance with the AML or in accordance with Executive Orders may be appealed at the general administrative court. SWEA is headed by a Director-General appointed by the Government on a six years term. The Director-General is assisted by a steering group. 2. The Working Environment Act.

5.2 The working Environment Act

5.2.1 *The scope of the Working Environment Act*

Chapter 2, Article 2 of the AML states that the Act is applicable to each business in which an employee performs work for the employers' use. Furthermore, the Act also applies in general to work on ships, even when Swedish ships are used for navigation outside of Sweden's sea territory. According to the Article, the AML applies to all work. It makes no difference whether the work in question is factory work, outdoor work, agricultural work, office work or any other kind of work. Nor does it make any difference whether the work is done under private or public auspices. The AML applies when a worker is employed by an employer. The AML applies also to persons working on their common account and to self-employed persons and family undertakings.

The AML also applies to work *on board ships*, according to Chapter 1, Article 2. Persons working on board ships also have to comply with the AML. The AML, however, still distinguishes between on-shore work and work on board ship. According to Article 3, with regard to ships and work on board ship, the provisions of the AML referring to the SWEA shall instead apply to the Swedish Transport Agency. Therefore supervision on board ships is exercised by the Swedish Transport Agency in collaboration with the SWEA.

According to Chapter 2, Article 2a, the provisions of Chapter 2, Articles 1(1), 2 and 3²² and Chapter 3, Article 4(2) apply to *foreign vessels* in Swedish territorial waters. Otherwise the provisions of the AML apply to foreign vessels only to the extent prescribed by the Government. This Article means that the basic rules for the work environment apply to foreign vessels in Swedish territorial waters. In addition, the Government has laid down, in Article 1 of the Work Environment Ordinance, that Chapter 2, Articles 4–6, 7(1) first sentence and Chapter 3, Articles 6 and 7 of the AML shall also apply to foreign vessels in Swedish territorial waters. Accordingly, foreign vessels in Swedish territorial waters and in Swedish ports must also have a satisfactory work environment as described in the second chapter of the AML. They must also comply with the rules of co-ordination laid down in the Act, e.g. with reference to the loading and unloading of cargo.

Chapter 2, Article 3 provides that for the purposes of Chapters 2–4 and 7–9, the following shall be recognised as employees: persons undergoing education, persons who, as inmates of an institution, perform work which they have been allotted and persons performing services

²² These provisions provide that the work environment shall be satisfactory with regard to the nature of the work and social and technological progress in the community. Also, that the work shall be planned and arranged in a safe way and that the work premises shall be arranged and equipped in such a way as to provide a suitable working environment.

under the Total Defence Duty Act (1994:1809) and other persons performing statutory service or participating in voluntary training for activities within the total defence establishment. Pupils and inmates referred to in this Article shall also be recognised as employees for the purposes of Chapter 5, Articles 1 and 3. Special provisions concerning persons undergoing education are also in Chapter 6, Articles 17 and 18. Chapter 2, Article 3(3) states that for the purposes of Article 3(1), concerning pupils and inmates, the provisions of the AML concerning employers shall apply to a person conducting the activity in the context of which the work is performed. Article 3(1) of Chapter 2 provides that all persons undergoing education are comparable with employees, which mean that the AML also applies to them. However the rules concerning safety representatives and safety committees, as well as certain rules on age limits, working hours and registers in connection with medical examination do not apply. Instead there are special provisions concerning pupils' safety representatives in Chapter 6, Articles 17–18. For the most part, pupils in schools of all kinds come under the AML from the very first grade. The AML applies to all practical and theoretical work done by the pupils. However, as regards certain leisure activities including elements of education, such as riding schools or music schools, the AML only applies to vocational education. The same rules apply to students at university or college and in other vocational education. On the other hand, the AML does not apply to child supervision or to courses predominantly of a recreational character. As regards mixtures of child supervision and teaching, the AML applies to the educational part, subject to the exceptions already mentioned, but not to the supervision. Persons required to work while they are inmates of institutions are recognised as employees in the same way as pupils. This applies to all forms of obligatory work. Studies can also come under this heading, but purely therapeutic activity or other voluntary activity does not. The same applies to conscripts and other persons incurring total defence duty or civil defence duty. However, there is a difference here, compared with pupils and inmates of institutions. The stipulations of Chapter 5, Articles 1 and 3 prohibiting certain dangerous jobs before the age of 18 apply to pupils and inmates of institutions but not to conscripts and the equivalent.

According to Article 4 of Chapter 1, the AML is applicable to participants in the labour market policy programme to the extent which is evident by the Section 7 Act (2000:625) the Labour Market Policy Programmes Act. Article 4(2) states that for participants in practice or other additional business which has been assigned by the social welfare board, this Act is applicable to the extent which is evident by Chapter 4 Section 6 of the Social Service Act (2001:453). Article 4(3) states that for those to whom the Department of Migration grants employment in accordance with the Section 4 Act (1994:137) on the reception of persons seeking asylum etc., this Act is applicable to the extent which is evident by the Section 5 of the Act on the Reception of Asylum Seekers and Others Act,

etc. Article 4(4) states that this Act, in certain cases in addition to what is evident in Section 2(1)(2), also applies abroad as evident in Sections 1a and 2 of the Act (1999:568) on Swedish Armed Forces Stationed Abroad.

Chapter 3, Article 5 contains provisions on self-employed persons. According to the Article, applicable parts of the AML and Executive Orders issued by SWEA shall apply to work performed by the employer himself.²³ The same shall apply when two or more persons engage jointly in commercial activity on their own account²⁴ and without any employees being hired, but not if the activities are conducted solely by members of one and the same family. Article 5(2) of Chapter 3 states that persons carrying on commercial activities without employees, singly or together with members of their families²⁵, are obliged to comply with this Act and with Executive Orders by authority of the same concerning technical devices and substances capable of causing ill-health or accidents, and also concerning worksites common to several enterprises ("common worksites").

5.2.2 Content of legislation concerning labour inspection

Duties of the employer

The AML contains no definition of the term employer. However in the comments with the legislation, it is said that an employer may be a juristic or natural person. Juristic persons include, for example, limited companies, trading partnerships, associations, foundations, municipalities and county councils. If the employer is a juristic person, all workers are deemed to be employees. This also applies to managers and supervisory staff, such as the managing director of a limited company or the chief executive officer in a municipality.

Reference made in the AML to an employer shall in the case of ships also apply to a ship owner, even if work on board ship is done by a person other than the person employed by the ship owner. For the purposes of the AML, a person who, in the ship owner's stead, exercises decisive influence on the running of the ship is regarded as a ship owner.

The main responsibility for the working environment rests with the employer. Chapter 3 contains various provisions on the general obligations on the employer. According to the AML, the employer and employ-

²³ The Working Environment Act also applies to work done by entrepreneurs personally. It is important that an employer, through his work, should not constitute a risk to the employees working in close proximity to him. He must also set a good example to the employees. The expression "applicable parts" shows that there is no need to comply with the Working Environment Act in every respect. Provisions not needing to be complied with include, for example, Article 1 of Chapter 2, stipulating that employees be allowed to take part in the design of work.

²⁴ Activity is usually deemed commercial if it is permanent, independent, of some regularity and undertaken for profit. Examples of commercial activity with no employees on their common account are trading partnerships and co-operative economic associations.

²⁵ One-man and family undertakings must comply with provisions about risks from machinery and other technical devices and about dangerous substances, e.g. chemical products (Article 5(2)).

ee shall *co-operate to establish a good working environment*. The employer shall take all the precautions necessary to prevent the employee from being exposed to health hazards or accident risks. One basic principle in this connection shall be for everything capable of leading to ill-health or accidents to be altered or replaced in such a way that the risk of ill-health or accidents is eliminated. The employer shall consider the special risk of ill-health and accidents which can be entailed by an employee working alone. The facilities, as well as machinery, implements, safety equipment and other technical devices, shall be kept in a good state of repair. The employer shall *systematically plan, direct and control activities* in a manner which leads to the working environment meeting the requirements for a good work environment. He shall investigate work injuries, continuously investigate the hazards of the activity and take the measures thus prompted. Measures which cannot be taken immediately shall be timetabled. To the extent which the activity requires, the employer shall document the working environment and measures to improve the same. Action plans shall be drawn up in this connection. Furthermore, the employer shall ensure that there is, in his activity, a suitably organised scheme of job adaptation and rehabilitation for the discharge of the duties incumbent on him under the AML and under Chapter 22 of the National Insurance Act (1962:381).

The employer shall, furthermore, be responsible for the availability of the *occupational health services* which the working conditions require. By occupational health services is meant an independent expert resource in the domains of the working environment and rehabilitation. Occupational health services shall in particular work for the prevention and elimination of health risks at workplaces, and shall have the competence to identify and describe connections between the working environment, organisation, productivity and health.

Chapter 3, Article 3 contains provisions on the *duty of instruction*. The Article states that the employer shall ensure that the employee acquires a sound knowledge of the conditions in which work is conducted and that he is informed of the hazards which the work may entail. The employer shall make sure that the employee has received the training necessary and that he knows what measures must be taken for the avoidance of risks in the work. The employer shall ensure that only employees who have received adequate instructions have access to areas where there is a palpable risk of ill-health or accidents. Article 3(2) states that the employer shall make allowance for the employee's special aptitudes for the work by modifying working conditions or taking other appropriate measures. In the planning and arrangement of work, due regard shall be paid to the fact that individual persons have differing aptitudes for the tasks involved.

The Executive Order concerning Systematic Work Environment Management (AFS 2001.01) contains furthermore provisions regarding the duties of the employer.

Risk assessment

Article 8 of the Executive Order concerning systematic work environment management (AFS 2001:01) contains a provision on risk assessment. According to the Article, the employer shall regularly investigate working conditions and assess the risks of any person being affected by ill-health or accidents at work. Article 8(2) provides that when changes to the activity are being planned, the employer shall assess whether the changes entail risks of ill-health or accidents which may need to be remedied. Article 8(3) provides that the risk assessment shall be documented in writing. The risk assessment shall indicate which risks are present and whether or not they are serious. According to Chapter 3, Article 2b of the AML, the employer shall be responsible for the availability of the occupational health services which the working conditions require. Furthermore, Article 12 of the Executive Order concerning systematic work environment management provides that when competence within the employer's own activity is insufficient for systematic work environment management or for work relating to job modification and rehabilitation, the employer shall engage occupational health services or corresponding expert assistance from outside. "Occupational health services" means an independent expert resource in the domains of the working environment and rehabilitation. Occupational health services shall in particular work for the prevention and elimination of health risks at workplaces, and shall have the competence to identify and describe connections between the working environment, organisation, productivity and health. The provisions on Systematic Work Environment Management transpose parts of the Directive 89/391/EEC.

Duties of the client

Chapter 3, Article 6 of the AML contains provision on the duties of the client. The person who orders execution of building or construction is used for the term client. According to Article 6(1), the person who orders execution of building or construction work shall, during each phase of the planning and projecting, ensure that work environment viewpoints are considered when applicable to the building phase as well as future usage, and appoint a building work environment co-ordinator for the planning and projecting of work and for the execution of work. This is one of the provisions that transposes Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites. The Executive Order on Building and Civil Engineering Work (AFS 1999:3) contains further rules on the duties of the client, e.g. to send prior notice to the SWEA and prepare a safety and health plan (work environment plan).

Rules concerning working environment and working procedures

Chapter 2 lays down the general requirements for the working conditions. According to Chapter 2, Article 1(1), the working environment shall be satisfactory with regard to the nature of the work and social and technical

progress in the community. In the case of work on board ship, the work environment shall also be satisfactory with regard to the requirements of maritime safety. Working conditions shall be adapted to people's differing physical and mental aptitudes, according to Article 1(2). This means that an all-round assessment is to be made of the working environment, also including the arrangement, organisation and content of work. The assessment must allow for the fact that people are different and can react differently to the working environments in which they are employed.²⁶ The employee shall be given the opportunity of participating in the design of his own working situation and in processes of change and development affecting his own work, according to Article 1(3). Technology, work organisation and job content shall be designed in such a way that the employee is not subjected to physical or mental strains which can lead to ill-health or accidents. Forms of remuneration and the distribution of working hours shall also be taken into account in this connection. Closely controlled or restricted work shall be avoided or limited, according to Article 1(4). Efforts shall be made to ensure that work provides opportunities of variety, social contact and co-operation, as well as coherence between different tasks, according to Article 1(5). Furthermore, efforts shall be made to ensure that working conditions provide opportunities for personal and vocational development, as well as for self-determination and professional responsibility, according to Article 1(6). Chapter 2, Article 2 states that work shall be planned and arranged in such a way that it can be carried out in healthy and safe surroundings.

According to Chapter 2, Article 7, personal protective equipment shall be used when adequate security from ill-health or accidents cannot be achieved by other means. This equipment shall be provided by the employer. Chapter 2, Article 7(2) states that in the case of work on board ship, the personal protective equipment shall be provided by the ship owner, unless some other party hiring the employee has assumed this responsibility. The employer shall provide the personal protective equipment. This also means that the employer shall pay for it. It is common, however, for collective agreements between the parties to provide that the employee is to pay part of the cost of the equipment, in return for the employer allowing it also to be used in leisure hours. An agreement of this kind is not contrary to the AML.²⁷

Chapter 2, Article 8 contains rules on personnel facilities and first aid in the event of accidents or illness. According to the Article, spaces and facilities for personal hygiene, meals and rest, as well as for first aid in connection with accidents and illness, are to be provided to the extent

²⁶ Comments on the AML.

²⁷ Comments on the AML.

appropriate to the nature of the work and the needs of the employees.²⁸ Article 8(2) states that personnel transport vehicles shall be suited to their purpose. Article 8(3) states that further provisions concerning spaces, devices, measures of assistance and care in the event of accident or illness, and food and water for shipboard employees on board ship are contained in the Maritime Act (2003:364).

Executive Orders that contain provisions regarding working environment, working procedures and rules about working places²⁹

- Executive Order concerning systematic work environment management (AFS 2001:01)
- Executive Order concerning work with display screen equipment (AFS 1998:05)
- Executive Order concerning use of work equipment (AFS 2006:04)
- Executive Order concerning use of personal protective equipment (AFS 2001:03)
- Executive Order concerning noise (AFS 2005:16)
- Executive Order concerning victimisation at work (AFS 1993:17)
- Executive Order concerning diving work (AFS 1993:57)
- Executive Order concerning dock work (AFS 2001:09)
- Executive Order concerning mast and pole work (AFS 2000:06)
- Executive Order concerning solitary work (AFS 1982:03)
- Executive Order concerning protection against injuries due to falls (AFS 1981:14)
- Executive Order concerning protection against injuries due to falling objects (AFS 1981:15)
- Executive Order concerning manual handling (AFS 2000:01)
- Executive Order concerning hairdressing work (AFS 1985:18)
- Executive Order concerning use of lifting devices and lifting accessories (AFS 2006:06)
- Executive Order concerning ergonomics for the prevention of musculoskeletal disorders (AFS 1998:01)
- Executive Order concerning ladders and trestles (AFS 2004:03)
- Executive Order concerning building and civil engineering work (AFS 1999:03)
- Executive Order concerning manufacture of certain vessels, piping and installations (AFS 2005:02)
- Executive Order concerning pressure equipment (AFS 1999:04)
- Executive Order concerning cartridge-operated fixing guns (bolt guns) (AFS 1984:02)

²⁸ This only applies if necessitated by the nature of the work and the needs of the employees. It is not to be applied, therefore, to groups which are not employees and to whom only relevant parts of the Act are applicable (cf. Chapter 3, Article 5).

²⁹ The list is not exhaustive.

- Executive Order concerning nail guns (AFS 1984:03)
- Executive Order concerning design of personal protective equipment (AFS 1996:7)
- Executive Order concerning chainsaw and bush saws (AFS 2000:02)
- Executive Order concerning rock- and mine work (AFS 2010:01)
- Executive Order concerning work in intensive heat (AFS 1997:2)
- Executive Order concerning violence and menaces in the Working Environment (ASF1993:02)
- Executive Order concerning work with laboratory animals (AFS 1990:11)
- Executive Order concerning use of pressure retaining devices (AFS 2002:01)
- Executive Orders concerning pregnant and breastfeeding workers (AFS 2007:05)

The safety and health activities of the enterprise

Chapter 6 of the AML contains provisions on the safety and health activities of the enterprise, e.g. provisions on the co-operation between employers and employees, safety representatives (safety delegates) and the safety committees. The safety representatives and the safety committees enable the employees to have effect on the working environment. The Working Environment Ordinance contains furthermore provisions on the safety representatives and the safety committee. The Executive Order on the Systematic Work Management Work (AFS 2001:01) contains furthermore provisions on the safety and health activities of the enterprise.

Chapter 6 of the AML begins with a focus on the co-operation between the employers and the employees with the respect to the working environment. Article 1 provides that the employer and the employees shall conduct suitably organised safety activities. According to Article 2(1), at every worksite where five or more persons are regularly employed, one or more of the employees shall be appointed as *safety representative*. Such safety representative shall also be appointed at other worksites if working conditions so require. Deputies should be appointed for safety representatives. According to Article 2(2), a safety representative shall be appointed by the *local trade union organisation* currently or customarily having a collective agreement with the employer. In the absence of such an organisation, a safety representative shall be appointed by the employees. When the employees elect their own safety representative, it can be done at a meeting or in some other way, e.g. using written ballot papers. A local trade union organisation which does not have and does not usually have a collective agreement may never choose a safety representative. There is nothing to prevent such an organisation arranging a meeting for the election, but the election itself must be conducted by the employees them-

selves, not by the organisation.³⁰ If more than one union organisation has a collective agreement at a worksite, the organisations themselves decide whether to have a common safety representative or to elect separate safety representatives. A safety representative must be a person who works for the same employer and at the same worksite as the employees he or she will be representing.³¹

For small worksites, there is a system of *regional safety representatives*. Chapter 6, Article 2(3) contains provision on regional safety representative. The Article provides that in the case of a worksite for which no safety committee has been appointed, the local branch of a trade union or an association of employees comparable with such a branch may appoint a safety representative from outside the circle of employees at the worksite. Most often, but not necessarily, it is union officials who are appointed. Regional safety representatives can exist alongside local safety representatives and have the same powers as them. Usually they cover many different worksites in a particular branch of activity, but their assignment can also be limited to one or a few worksites. The area which the regional safety representative covers is decided by the organisation who appoints him or her.³² Chapter 6, Article 2(4) provides that provisions on the procedure for appointing safety representatives on board ship are contained in the maritime Safety Act (2003:364). Chapter 6, Article 3 provides that should more than one safety representative be appointed at a particular worksite, one of the representatives shall be appointed senior safety representative with the task of co-ordinating the safety representatives' activities.

Chapter 6, Article 4 contains provisions regarding the *duties of the safety representatives*. According to the Article, safety representatives represent the employees on work environment matters and shall work for a satisfactory working environment. Article 4(2) provides that safety representatives shall participate in the planning of new premises, devices, work processes, working methods and work organisations or alterations to existing ones, and in planning the use of substance liable to cause ill-health or accidents. Furthermore, safety representatives shall take part in the preparation of action plans as referred to in Chapter 3, Article 2a addresses the duty to systematically plan, direct and control activities. Article 4(3) provides that the employer shall notify the safety representatives of any changes having a significant bearing on work environment conditions within his safety area. Article 4(4) provides that the employer and employees are jointly responsible for safety representatives being given the requisite training. Chapter 6, Article 6 provides that safety representative is entitled to inspect all documents and to obtain any other information necessary for his activity.

³⁰ Comments on the AML

³¹ Comments on the AML.

³² Comments on the AML.

Article 6a contains a provision that empowers the safety representatives to demand *intervention by the employer and the SWEA*. According to that Article, if a safety representative believes that measures need to be taken in order to achieve a satisfactory working environment, he or she shall approach the employer and request such measures. The safety representative can also request that a certain investigation/inspection be carried out to verify conditions within his or her safety area. The employer shall immediately give the safety representative, on demand, written confirmation of having received his or her request. If he fails to do so or if the request is not taken into consideration within a reasonable time, the SWEA shall, the safety representative so demanding, consider whether an injunction or prohibition is to be issued as provided in Chapter 7, Article 7. In other words this Article provides that a safety representative who is of the opinion that there is a deficiency in the working environment can request remedial action by the employer. The employer must then reply in the matter. If no satisfactory reply is received within a reasonable time, the safety representative can turn to the SWEA and request an injunction or prohibition. The SWEA must make a special written decision in response to such a request. The decision may mean the Authority issuing a prohibition or injunction or deciding not to intervene with a prohibition or injunction.³³ Furthermore, according to Article 6a, any representation by a safety representative on board ship shall instead be tendered to the Swedish Transport Agency, which shall consider whether or not an injunction or prohibition is to be issued under the Maritime Safety Act. Where there is a safety committee, a safety representative may directly require the committee to consider a question concerning the working environment.

Safety representatives, but not student safety representatives, have the power to suspend work which entails an immediate and serious danger to life or health, cf. Chapter 6, Article 7, which states that if a particular job involves immediate and serious danger to the life or health of an employee and if no immediate remedy can be obtained through representations to the employer, the safety representative may order the suspension of work on that job pending a decision by the SWEA. Article 7(2) states that if considerations of health and safety so demand and if no immediate remedy can be obtained through representations to the employer, the safety representative may order the suspension, pending a decision by the SWEA, of work done by an employee working alone. Article 7(3) states that if a prohibition issued by a supervisory authority, having acquired force of law or requiring immediate compliance by virtue of an enactment pursuant to Chapter 9, Article 5 is disregarded, a safety representative may immediately suspend the work to which the prohibition refers. Article 7(4) states that the safety representative can-

³³ Comments on the AML.

not be held liable for any damage resulting from a measure referred to in this Article, and Article 7(5) states that provisions on the right of a safety representative to suspend work on board ship and on the effects of such a measure are contained in the Maritime Safety Act (2003:364).

Articles 8 and 9 of Chapter 6 contain provisions on the *safety committee*. According to Article 8, there shall be a safety committee consisting of representatives of the employer and of the employees at every worksite where fifty or more persons are regularly employed. Safety committees shall also be appointed at worksites with smaller numbers of employees if the employees so require. Article 8(1) states that employees' representatives shall be appointed from among the employees by the local trade union organisation currently or customarily having a collective agreement with the employer.³⁴ In the absence of such an organisation, the representatives shall be appointed by the employees.

According to Article 9, the safety committee shall participate in the planning of work environment measures at the worksite and observe their implementation. It shall maintain close observation of the development of questions relating to protection against ill-health and accidents and is to promote satisfactory work environment conditions. A safety committee on board ship shall further verify that the vessel has the manning enjoined by decisions and rules. The safety committee shall consider questions concerning occupational health services, action plans and other planning of the working environment, the planning of new or altered facilities, devices, work processes and working methods and of work organisation, planning of the use of substances liable to cause ill-health or accidents, information and education concerning the working environment and job adaptation and rehabilitation activities at the worksite.³⁵ A safety committee should meet at least once every three months, and meetings of the safety committee should also be attended by representatives of the occupational health services (Article 8a of the Working Environment Ordinance). The safety committee is a consultative body only. The AML assumes that a person with a decision-making function who has taken part in a decision in the safety committee will then also put it into effect.³⁶ If representatives of employers and employees in a safety committee are unable to agree on a decision, the question shall be referred to the SWEA if a member of the committee so

³⁴ According to Article 8 of the Working Environment Ordinance, the number of members constituting a safety committee shall be determined according to the number of persons employed at the worksite, the nature of the work and working conditions there. If possible, one of the members shall occupy managerial or comparable status. The committee should also include a member of the executive committee of a local employees' association. It shall also include one or more safety delegates. The chairman and secretary of the safety committee are to be appointed by the employer, unless otherwise agreed.

³⁵ There is nothing to prevent local committees or other types of safety body being appointed in addition to the safety committee. This, however, does not excuse the employer from the duty of ensuring that questions raised within these bodies are also dealt with in the safety committee if the law says that they are to be discussed here. Comments on the law.

³⁶ Comments on the AML.

requests, which shall then deliberate on the matter insofar as it comes within the Authority's sphere of competence, according to Article 9 of the Working Environment Ordinance.

Articles 17 and 18 of Chapter 6 contain provision on *pupils' safety representatives and student safety representatives*. According to Article 17, persons undergoing training or education shall be given the opportunity of taking part in safety activities at the worksite through pupils and student safety representatives, if this is reasonable having regard to the nature of the training or education and its duration. Article 17(2) provides that student participation does not apply to pupils below grade 7 of compulsory school or the corresponding youth education. Article 18 states that student safety representatives are appointed by the students. The educational authority shall ensure that the student safety representatives receive the training and leave of absence needed for their duties. Student safety delegates are entitled to the information necessary for the discharge of their duties, except information concerning matters which are confidential under chapter 7, Article 13(1). The student safety representatives and not the pupils' safety representatives have the power to demand SWEA intervention with an injunction or prohibition according to Chapter 6, Article 6a of the AML.

Rules about working places

According to Chapter 2, Article 3 working premises shall be arranged and equipped in such a way as to provide a suitable working environment. According to Article 4(1), conditions of occupational hygiene, as regards air, noise, light vibrations and suchlike shall be satisfactory. Article 4(2) states that adequate safety precautions shall be taken to prevent injuries being caused by falls, collapses, fire, explosion, electric current or other comparable factors. According to Article 5, machinery, implements and other technical devices shall be designed, positioned and used in such a way as to afford adequate safeguards against ill-health and accidents.

Basic requirements of product design that are to be met by suppliers are set forth in Chapter 3, Article 8 of the AML, which states that any person manufacturing, importing, delivering or providing a machine, implement, protective equipment or other technical device, shall ensure that the device affords adequate security against ill-health and accidents when it is placed on the market, delivered to be used or displayed for sale.

Examples of Executive Orders that contain provisions regarding working places:

- Executive Order concerning design of workplaces (AFS 2009:02)
- Executive Order concerning work in confined spaces³⁷ (AFS 1993:03)

³⁷ The term confined space refers to a space which it is difficult to enter and leave and in which, owing to insufficient ventilation, a hazardous atmosphere is liable to form. Spaces which can be confined in this sense include for example, storage tanks, silos, wells, process vessels, sewerage, gas or liquid lines (pipelines).

Market Surveillance

The SWEA is responsible for market surveillance of machinery, personal protective equipment, simple pressure vessels, pressure equipment and products for use in potentially explosive atmospheres. Furthermore, the SWEA is also responsible for market surveillance of a number of products in the non-harmonised³⁸ field, such as ladders, system scaffolding, trestles, pole climbers, low-pressure gas cylinders and storage tanks. Requirements on how market surveillance shall be performed are found in the Executive Order on Market Surveillance of Product (2005:893). The Act offers general guidelines on how market surveillance shall be performed.

According to Chapter 2, Article 5 of the AML, machinery, implements and other technical devices shall be designed, positioned and used in such a way as to afford adequate safeguards against ill-health and accidents. According to Chapter 3, Article 8, any person manufacturing, importing, delivering or providing a machine, implement, protective equipment or other technical device shall ensure that the device affords adequate security against ill-health and accidents when it is placed on the market, delivered to be used or displayed for sale.

The SWEA may intervene against manufacturers, importers or distributors, requiring them to recall products or to supply warning information, according to Chapter 7, Article 11, whereby the person responsible for protection in accordance with Chapter 3, Articles 8–10 (manufacturers, importers or distributors) may be required to submit cautionary information or to recall a product. The contents in such an injunction shall be equivalent to what is stated in Articles 14–18 of the Product Safety Act (2004:451). What is stated there about manufacturers shall however instead refer to the person who has protection responsibility in accordance with Chapter 3, Articles 8–10.

The SWEA can intervene against an employer, a self-employed person or another party responsible for the operation of technical devices or against the party supplying personal protective equipment which entails a hazard when used. Cases involving devices which are being or have been placed on the market and whose defects are such that stipulations may also need to be addressed to a manufacturer, importer or distributor are normally handled by SWEA's head-office.

*Examples of Executive Orders on market surveillance which the SWEA monitors*³⁹

- Executive Order concerning machinery (AFS 2008:03)
- Executive Order concerning personal protective equipment⁴⁰ (AFS 2001:03)

³⁸ Products no common EU/EEA rules apply.

³⁹ The list is not exhaustive.

⁴⁰ Personal protective equipment includes, for example, hearing protectors, safety helmets, eye protectors, respiratory protective equipment, diving apparatus, safety shoes, fall protection systems, safety gloves,

- Executive Order concerning simple pressure vessel (AFS 1994:53)
- Executive Order concerning pressure vessels (AFS 1999:4)
- Executive Order concerning equipment and security systems intended for use in explosive environments
- Executive Order concerning ladders and trestles (AFS 2004:03)

Inspections concerning dangerous and hazardous substances

The SWEA is responsible for monitoring dangerous substances and chemicals risks in workplaces. According to Chapter 2, Article 6, substances liable to cause ill-health or accidents may only be used in conditions affording adequate security.

Special permission is required from the SWEA in the case of certain substances. Chapter 4, Article 2 provides that if necessary for the prevention of ill-health or accidents at work, the Government or, by authority of the Government, the SWEA, may prescribe that a permit, approval or some other certificate of compliance with current requirements is necessary before work processes, working methods or facilities may be used or before technical devices or substances capable of causing ill-health or accidents may be placed on the market, used or delivered to be used.

The AML requires that lists are drawn up of products used that are hazardous to health or are inflammable. Chapter 4, Article 3, provides that the SWEA may require employers to keep lists of machinery and technical equipment or certain chemical products used in the activity. Chapter 4, Article 4 provides that if special considerations of safety so demand the SWEA may prohibit the use of work processes, working methods or technical devices or substances capable of causing ill-health or accidents.

According to Chapter 7, Article 2, the SWEA offers supervision in accordance with Article 35 in the European Parliament's and the Regulation (EC) No 1907/2006 of 18 December 2006 regarding registration, evaluation, approval and limitation of chemicals (REACH). Article 35 of the REACH refers to the Articles 31 and 32 which for the first part regulate when it is required to have a safety data sheet and for the second part regulate which information must be submitted when a safety data sheet is not required. The SWEA inspectors' tasks are to inspect that safety data sheets are found available and that the employees have received information in accordance with Article 32 about substances that do not require a safety data sheet.⁴¹

protective clothing (e.g. for protection against stabs and cuts, chemicals, heat and cold) and protective clothing such as aprons, watertight clothing and high visibility harnesses. Equipment excluded from the scope of the Executive Order includes portable equipment for measuring gas concentration or oxygen deficiency.

⁴¹ Comments on the AML.

Executive Orders that contain provisions aiming at eliminating risks or hazardous of dangerous or unhealthy occupations:

- Executive Order concerning chemical hazards in the working environment (AFS 2000:4)
- Executive Order concerning laboratory work with chemicals (AFS 1997:10)
- Executive Order concerning contained use of genetically modified micro-organism (AFS 2000:05)
- Executive Order concerning work with motor fuels (AFS 1992:18)
- Executive Order concerning with pesticides (AFS 1998:06)
- Executive Order concerning anaesthetic gases (AFS 2001:07)
- Executive Order concerning synthetic inorganic fibres (AFS 2004:01)
- Executive Order concerning microbiological work environment risks infection, toxigenic effect, hypersensitivity (AFS 2005:01)
- Executive Order concerning asbestos (AFS 2006:01)
- Executive Order concerning occupational exposure limit values and measures against air contaminants (AFS 2005:17)
- Executive Order concerning use of high pressure water jet equipment (AFS 1994:54)
- Executive Order concerning welding and thermal cutting (AFS 1992:09)
- Executive Order concerning equipment for use in potentially explosive atmospheres (AFS 1995:5)
- Executive Order concerning first aid and crisis support (AFS 1999:7)
- Executive Order concerning oils (AFS 1986:13)
- Executive Order concerning quartz (AFS 1992:16)
- Executive Order concerning lead (AFS 1992:17)
- Executive Order concerning gases (AFS 1997:07)
- Executive Order concerning thermosetting plastics (AFS 2005:18)

Working time

The Working Hours Act No. 673 of 1982 contains provisions on the duration of working hours for employees and applies to all activities in which an employee performs work on behalf of an employer, according to Article 1. The Working Hours Act does not, however, apply to home workers, forms of remote working and managerial executives and others who in view of the nature of their responsibilities organise their own working time, according to Article 2. Furthermore, the Working Hours Act does not apply to work on board ship, domestic work and mobile employees who participate in road transport. Working Hours for domestic workers are laid down in *Act No. 943 from 1970* and working hours for seafarers are laid down in *Act No. 962 of 1998 concerning rest periods for seafarers*. Working Hours for mobile employees who participate in road transport are covered by *the Working Hours Act for certain road transport No. 395 of 2005*. The SWEA is responsible for compliance with the Working Hours Act. It is stated in Article 20 of the Working Hours Act that the

SWEA shall supervise compliance with the Act and Executive Orders issued pursuant thereto. The Working Hours Act can be replaced by a collective agreement concluded by a central employees' organisation.

According to Article 5 of the Working Hours Act, regular working hours *may not exceed 40 hours per week*. Article 5(1) provides that where the nature of work or working conditions generally so demand, working hours may amount to on average 40 hours per week for a period of not more than four weeks. According to Article 6, where the nature of the activity demands that an employee is at the employer's disposal in the workplace in order to carry out work if necessary, on-call hours may be worked at a rate of not more than 48 hours per employee over a four-week period or 50 hours over a calendar month. On-call hours shall not be deemed to include time spent by the employee carrying out work on the employer's behalf. According to Article 7, overtime comprises working hours in excess of regular working hours according to Article 5 and on-call hours according to Article 6. Where other regular working hours or on-call hours apply under a collective bargaining agreement, overtime shall instead, in the context of full-time work, be deemed to mean working hours in excess of regular working hours and on-call hours according to the agreement or consent. According to Article 8, where additional working hours are required, *overtime* hours may be worked at a rate of not more than 48 hours over a period of four weeks or 50 hours over a calendar month, subject to a maximum of 200 hours or on-call hours. Article 12 states that any employer who engages an employee for work that is not of a temporary nature shall give the employee not less than two weeks' notice of changes concerning the disposition of regular working hours and on-call hours. However, shorter notice may be given if warranted by the nature of the activity or unforeseeable events. Article 13 contains a rule regarding *daily rest periods* whereby all employees shall have at least eleven hours consecutive hours of free time for every period of twenty-four hours. Deviations may be made temporarily provided this is caused by some special circumstance that it was not possible to anticipate by the employer, subject to the precondition that the employee is given corresponding compensatory leave. Article 13(2) states that the hours between 00:00 and 05:00 shall be included in the daily rest period that all employees are entitled to. Deviations may be made if the work, having regard to its nature, the needs of the general public or other special circumstances, must be carried out between 00:00 and 05:00. Article 13a contains a rule regarding *night work* whereby working hours for night work may not exceed eight hours per twenty-four-hour period on average during a calculation period of at most four months. When making the average calculation, a deduction shall be made from the calculation period of twenty-four hours for each period of seven days commenced. Annual leave and absence on account of sickness during times when the employee would otherwise have worked should be equated with working hours performed. Article 14

contains a rule concerning *weekly rest* which entitles employees to not less than thirty-six consecutive hours of free time within every period of seven days. This weekly rest shall not include stand-by hours when an employee is permitted to stay away from the workplace but must remain at the employer's disposal in order to carry out work should the need arise. Article 14(2) states that weekly rest shall take place at weekends, to the extent possible. Article 19 provides that the SWEA can make exemptions from various provisions of the Working Hours Act.

It is stated in Article 20 of the *Working Hours Act* that the SWEA shall supervise compliance with the Act and Executive Orders issued pursuant thereto. The SWEA is entitled to request and obtain any information and documents necessary for the supervision purposes and is also entitled to gain access to workplaces, cf. Article 21. The police authorities shall assist if that is required for supervision.

Work carried out by children and young people

Chapter 5 of the AML contains provisions regarding work of children and young people. According to Chapter 5, Article 1, for the purposes of the AML, a minor is a person under the age of 18 years of age. According to Chapter 5, Article 2(1), a minor may not, as an employee or in any other capacity, be used for or carry out work before the calendar year in which he is 16 years of age and before he has completed his compulsory schooling. According to Article 2(1), notwithstanding the provision of 2(1), a minor who has attained the age of 13 may be engaged for, or carry out, light work that will not have a detrimental effect on the minor's health, development or schooling. According to Article 2(5), special provisions concerning the minimum age for work on board ship are contained in the *Seafarers Act (1972:282)* and the *Maritime Safety Act (2003:364)*. A minor may therefore not be employed before the calendar year in which he/she is 16 years of age, and must have completed his compulsory schooling. This applies both to a minor with employee status and to a minor working as an entrepreneur or in a family business. However, a minor aged 13 or over may do light work which is not harmful to his health, development or schooling, e.g. simple office work, light work in a business, such as picking up and labelling goods and light restaurant work.⁴² The SWEA can issue Executive Orders making further exceptions to the 13-year rule, but only for very light work which would otherwise involve major problems of implementation. The SWEA may also issue Executive Orders laying down conditions for, or totally prohibiting, the employment of minors on work which entails substantial risks, according to Chapter 5. According to Chapter 5, Article 3, a minor may not be used for or carry out work in a manner entailing a risk of accidents or of overexertion or any other harmful effect on the minor's

⁴² Comments on the AML.

health or development. According to Chapter 5, the Government or, if decided by the Government, the SWEA may issue Executive Orders concerning the length and arrangement of working hours for minors used for or carrying out work. *The Executive Order on Minors at work (1996:01)* contains further rules on working conditions for children and young persons. The Executive Order determines what kind of work children and young persons can perform. The Executive Order contains e.g. rules on prohibitions of certain types of work by persons less than 18 years of age and special provisions on hazardous work. The provisions on the work on young persons and the executive orders transpose the Directive 94/33/EC on the protection of young people at work.

Psycho-social working environment

The main rules regarding the psycho-social working environment in the AML are in Chap. 2 Article 1. The Article states that the working environment shall be satisfactory with regard to the nature of the work and social and technical progress in the community. In the case of work on board ship, the work environment shall also be satisfactory with regard to the requirements of maritime safety. Working conditions shall be adapted to people's differing physical and mental aptitudes. The employee shall be given the opportunity of participating in the design of his own working situation and in processes of change and development affecting his own work. Technology, work organisation and job content shall be designed in such a way that the employee is not subjected to physical or mental strains which can lead to ill-health or accidents. Forms of remuneration and the distribution of working hours shall also be taken into account in this connection. Closely controlled or restricted work shall be avoided or limited. Efforts shall be made to ensure that work provides opportunities of variety, social contact and co-operation, as well as coherence between different tasks. Furthermore, efforts shall be made to ensure that working conditions provide opportunities for personal and vocational development, as well as for self-determination and professional responsibility, cf. article 2(1) of the AML.

In 1993 the National Board of Occupational Safety and Health (now SWEA) issued two Executive Orders on workplace violence and bullying at work. The Executive Order concerning violence and menaces in the Working Environment (AFS 1993:2) applies to work where there may be a risk of violence or the threat of violence, cf. Article 1, for example work or conveying a certain patient or client or work with cash, money or valuable merchandise. The Executive Order places responsibilities on the employer to investigate the risk of violence or threat of violence which may exist in the work and take measures which are needed. The Executive Order concerning victimization at work (AFS 1993:17) applies to all activities in which employees can be subjected to victimization, cf. article 1. The Executive Order defines victimization as recurrent reprehensible or distinctly negative actions which are directed against individual employees in an offensive manner and can result in those em-

employees being placed outside the workplace community. The Executive Order provides that the employer shall plan and organize work so as to prevent victimization as far as possible and shall have special routines for employees who are subjected to victimization at work.

Other rules on the aspects of the psycho-social working environment can be found in the Executive Order on solitary work (AFS 1982:03), the Executive Order on adjustment and work rehabilitation (AFS 1994: 01) and the Executive Order on first aid and crisis support (AFS 1999:07). Furthermore, the general recommendations (AFS 1980:14) on psychological and social aspects of the working environment provide guidelines of the way in which work can be organized.

Inspection concerning foreign workers and posted workers

The Foreign Posting of Employees Act (SFS 1999:678) transposes Directive 96/71/EC concerning the posting of workers. The Foreign Posting of Employees Act defines the working and employment conditions under Swedish labour law that applies to posted workers. The Act defines and lists the working conditions under Swedish labour law that apply when an employer established in another country posts employees on a temporary basis to *Sweden*. The AML and the Working Hours Act also apply to posted workers.

Article 9 of the Foreign Posting of Employees Act provides that the SWEA shall be the liaison office and provide information about the work and employment conditions that may become applicable upon a foreign posting in *Sweden*. Article 9(2) provides that for information about collective bargaining agreements that may be applicable, the SWEA shall refer to the parties of the collective bargaining agreement involved. Article 9(3) states that the SWEA shall also collaborate with the corresponding liaison offices in other states within the EEA and in Switzerland.

According to Article 3 of the Foreign Posting of Employees Act posting of workers refers to three situations. Firstly, when an employer posts a worker to *Sweden* on his own account and under his direction, under a contract which the employer has concluded with the party in *Sweden* for whom the services are intended. Secondly, when an employer posts a worker to an establishment or to an undertaking in *Sweden* owned by the group, and lastly when the employer, being a temporary employment undertaking or placement agency, hires out a worker to a user undertaking established or operating in *Sweden*, provided there is an employment relationship between the temporary or employment undertaking or placement agency and the worker during the period of posting.

5.3 Follow-up system of the law

5.3.1 Provisions on labour inspection

Chapter 7 contains provisions on the supervision of the SWEA. Article 1 provides that the SWEA supervises the compliance with the AML and of the Executive Orders issued pursuant to the AML. Article 1(2) provides that with the exception of Article 13, this chapter does not apply to work on board ship. Provisions on supervision in connection with work on board ship and restrictions of the right of using ships are contained in the Maritime Safety Act (2003:364).

Chapter 7, Article 3 provides that the SWEA is entitled on request to receive the *information, documents and samples* and to order the investigations required for the enforcement of the AFML. The SWEA has also the right to obtain samples and conduct examinations which are needed for the supervision.

According to Chapter 7, Article 4, a person who in the course of his business uses a certain product or commissions another person to perform a certain duty, is required to *disclose the identity* of the person supplying the product or performing the duty, when required by the supervisory authority to do so. A person having supplied or provided a technical device or supplied a substance which can cause ill-health or accidents is obliged, at the request of a supervisory authority, to furnish available particulars of the persons to whom the product has been supplied or provided.

Chapter 7, Article 5 provides that the authorities have the *right to enter all worksites* as well as conduct investigations and take samples there without paying for this. The Article states that for the purposes of supervision under the AML, the supervisory authority shall be entitled to access to worksites and may carry out investigations or take samples there. No compensation shall be payable for samples taken. Article 5(2) provides that it is the duty of the police authorities to provide such assistance as may be required for the enforcement of the Act. Article 5(3) provides that provisions concerning payment of compensation to a supervisory authority for its reasonable expenses in connection with sampling and the testing of samples can be issued by the Government or, at the Government's discretion by the SWEA.

The Work Environment Ordinance has various provisions regarding the supervision of the SWEA. According to Article 15 of the Ordinance, the supervisory authority shall endeavour, by means of measures referred to in Chapter 7 of the AML, to establish a satisfactory working environment. Supervision shall be aimed at ensuring that employers plan and conduct their activities in such a way as to accommodate requirements concerning the working environment. In the course of supervision, a holistic assessment shall be aimed at. According to Article 15(2), the supervisory authority shall notify the Consumer Ombudsman

if it finds that there is a case for intervention under the Marketing Act (2008:486) against marketing measures addressed to employers. According to Article 15(3) of the Ordinance, in the case of work done in the home, inspection visits are only to be paid at the request of the employer or employee concerned or if there is some other special reason for them. The same shall apply concerning work done by a person carrying on business without employees or employing only a member or members of his family. According to Article 16 of the Ordinance, when officially visiting a worksite, the supervisory authority or the inspection body carrying out an inspection as prescribed by such an authority shall contact a safety representative who is accessible at the worksite.

Usually, advance notice of the inspection visit is given by phone or letter, but the law also entitles the inspector to arrive unannounced. One or more inspectors may be present at the inspection. The actual procedure of the inspection can vary, depending on the industry concerned, the size of the organisation and other circumstances. The safety representative or an employee representative normally takes part in the inspection. Immediately afterwards, the inspector gives a verbal account of his or her impressions of the work environment and any deficiencies that have been observed. If the inspector has found deficiencies, they will later be described in writing, in an inspection notice.

The decisions from the SWEA will set out the deadline for appeal and where an appeal should be sent to. Both employers and safety representative can appeal such decisions. According to Chapter 9, Article 2(1), leave to appeal is required in the event of appeal to the Administrative Court of Appeal. A party in a matter is always entitled to appeal. Chapter 9, Article 3 provides that a senior safety representative may also lodge an appeal under the AML. If there is no senior safety representative, it is the local and regional safety representative at the worksite who has the right of appeal. If there is no safety representative at all, a union organisation may appeal if it has previously made a comment in the matter. The Article states that to safeguard the interest of employees in matters coming under the AML, appeals as per Article 2 may be lodged by the senior safety representative or, in the absence of a senior safety representative, by some other safety representative. According to Chapter 9, Article 3(1) if there is no safety representative the appropriate association of employees may lodge an appeal insofar as the matter concerning its members' interests. If the claim concerns a matter other than work on board ship, the organisation must previously have returned a statement in the matter.

5.3.2 Sanctions

The AML contains provisions that enable the SWEA to penalise enterprises or institutions which do not comply with the working environment rules.

Enforcement

In dealing with enterprises that do not comply with the requirements of the AML, the SWEA may respond with inspection notices, injunctions and prohibitions.

Inspection notice: If the work environment inspectors observe any deficiencies in the work environment, these will be described in writing in an inspection notice. The general rule is that the inspection notice is drawn up within three weeks of the visit. In this notice the employer is called upon to give the SWEA an account, by a certain date, of way in which the work environment deficiencies described are to be dealt with, and of the way in which the stipulations have been complied with. The inspection notice is not a formal (binding) decision but is to be seen as a call to the employer to take the measures which the SWEA stipulates on the basis of work environment legislation. For this reason the inspection notice cannot be appealed.

Injunction or prohibition: If the employer does not comply with the inspection notice, the SWEA may issue an injunction or a prohibition.

Chapter 7, Article 7 contains provision regarding the injunction or prohibition. According to the Article the SWEA may issue to the person who has the safety responsibility in accordance with Chapter 3, Articles 2-12, Chapter 5, Article 3(1) or Chapter 7, Article 6, injunctions or prohibitions as needed to secure compliance with the AML or with Executive Orders and so that Article 35 of Directive 1907/2006/EC shall be followed. Article 7(2) provides that injunctions or prohibitions by the SWEA may be issued in conjunction with fines. Most injunctions and prohibitions carry a contingent fine which the employer can be made to pay if he fails to comply with the injunction or the prohibition. The decision of the contingent fine is made by an administrative court. Article 7(3) provides that if someone does not follow an injunction, the SWEA may order compliance at his expense. A party who fails to comply with an injunction or prohibition can be punished according to this Article. Prohibitions and injunctions can be addressed to others besides the employer. They can also be directed against the parties who are responsible for the working environment according to Chapter 3, for example suppliers, developers, co-ordinator for safety and health matters and persons in control of a worksite. However, a certain limitation applies to property owners. A client cannot, as such, be ordered to take remedial action concerning the working environment. On the other hand, he can be forbidden in the future to let or otherwise provide certain facilities or areas of and for the type of activity concerning pending rectification of certain specified deficiencies. According to Chapter 7, Article 8, if premises, land or a space underground provided for work or as personnel facilities are unsatisfactory in terms of safety and health, the SWEA may, pursuant to Chapter 7, Article 7, prohibit their further provision until specified improvements have been made to the premises, land or other space concerned. Article 8(2) provides that the SWEA may issue to the

person provided premises, land or a space underground provided for work or as personnel facilities, an injunction according to Article 7 for the investigation of safety conditions of the location concerned.

Shutdown of operations or sealing operation: If there is reason to suspect that an employer or some other party with safety obligations is going to disobey a prohibition of the use of an installation, e.g. a machine or a facility, the SWEA may decide to seal it. A sealing order of this kind is effected by the authority itself, by sealing the installation, machine or facility. Therefore in Chapter 7, Article 10 it is stated that to ensure compliance with a prohibition pursuant to Article 7 and 8, a supervisory authority may order a building, space or equipment to be sealed or otherwise shut off. An Executive Order for the execution of such an order shall be made by the authority.

Punishment

If an employer does not follow an *injunction or prohibition* from the SWEA, it can lead to a sentence in the form of a *fine or prison*. In addition, criminal law provisions may come into play, for example in case of a workplace accident. According to Chapter 8, Article 1, any person who intentionally or negligently fails to comply with an injunction or prohibition issued to him in pursuance of Chapter 7, Articles 7-10, may be fined or sentenced to imprisonment for not more than one year. This shall not apply, however, if the injunction or prohibition was issued in conjunction with a default fine. A penalty can be imposed both if the crime was committed deliberately and if it was committed through negligence. This Article provides that if an employer or some other party with a safety obligation fails to comply with an injunction or prohibition it can lead to a penalty in the form of a fine or imprisonment. A company, a public authority or any other juristic person, however, cannot be convicted in this way. Instead it is one or more representatives of the juristic person who are prosecuted, fined or sentenced to imprisonment.⁴³

Direct penal sanctions The AML defines direct penal sanctions for a number of cases in Chapter 8, Article 2. In these cases, no injunctions or prohibition by the SWEA is necessary in order for a penalty to be imposed. The Article provides that fines may be imposed both if the crime was committed deliberately and if it was committed through negligence in a number of cases. This applies, for example, to rules concerning the employment of minors, the testing and inspection of technical devices, conditions for the handling of dangerous substances, removal of safety devices and the duty of reporting serious accidents. Various persons in companies and other undertakings can incur penalties, e.g. the proprietor of a business, the board chairman of accompany, a member of the board of directors of a company, a

⁴³ Comments on the AML.

managing director, the proxy for a limited company supervisory staff, etc. The penalty according to this Article is fines.⁴⁴

Chap 8, Article 3 provides that stipulations concerning liability for infringements of Chapter 7, Article 13⁴⁵, are contained in Chapter 20, Article 3 of the Penal Code. The Chapter 20, Article 3 in the Penal Code provides that a person who discloses information which he is duty-bound by Law or other statutory instrument to keep secret, or if he unlawfully makes use of such secret, he shall, if the act is not otherwise specially subject to punishment, be sentenced for breach of professional confidentiality to a fine or imprisonment for at most one year. Article 3(2) provides that a person who through carelessness commits an act described in the first paragraph shall be sentenced to a fine. In petty cases, however, punishment shall not be imposed.

Forfeiture Chapter 8, Article 4 contains a provision on forfeiture of a machine or chemical product. The Article states that any device or substance which has been used in connection with offences mentioned in Chapter 8 and in violation of a prohibition under Chapter 4, Article 4 concerning technical devices or substances capable of causing ill-health or accidents, or Chapter 7, Article 7, or the value of such a device or substance, shall be declared forfeit save where such forfeiture would be patently undue.

Special sanction charge According to Chapter 8, Article 5, the Government or, if decided by the Government the SWEA may prescribe payment of a special charge for infringement of an Executive Order issued by authority in any respect as referred to in Chapter 4, Articles 1-3 or 8(1). The charge shall be paid even if the infringement was not intentional or negligent. Article 5(2) provides that the charge shall be at least SEK 1,000 and at most SEK 100,000. For example, where the use of technical devices or substances capable of causing ill-health or accidents are prohibited, the employer can be made to pay a special sanction charge if the inspection provisions are not complied with. Article 6 states that the charge shall be imposed on the natural or juristic person who conducted the activity in which the infringement occurred. Article 6(2) states that the charge may be reduced or waived if it would be unfair to impose the fee in accordance with the basis of computation specified. Article 6(3) states that the charge falls to the State.

Chapter 3, Article 10 of the Penal Code contains provisions on penalties in the form of fines or imprisonment for one or more individual persons in the enterprise. The Article applies when the AML has not been complied with and a person has died, been injured, fallen ill or been exposed to serious danger as a result. There must always be intent or negligence.

⁴⁴ Comments on the AML.

⁴⁵ In Chapter 7, Article 13 it is stated that a person who has been appointed to serve as a safety representative or on a safety committee, or who has taken part in job adaptation and rehabilitation activities pursuant to the Working Environment Act, may not improperly divulge or utilise facts which have come to his knowledge in the course of his duties concerning professional secrets, working procedures, business dealings, the personal circumstances of individuals or matters relating to national defence.

According to Chapter 8, Article 7, questions concerning the imposition of the charges shall be dealt by the administrative court at the instance of the SWEA. Article 7(2) states that leave to appeal are required for appeals to the Administrative Court of Appeal. Chapter 8, Article 8 states that a charge may only be imposed if an application has been served upon the person against whom the claim is made within five years from the date when the infringement occurred. Article 8(2) states that a decision whereby a charge is imposed shall be sent immediately to the administrative board. The charge shall be paid to the administrative board within two months of the decision entering into force. Information to this effect shall be included in the decision. Article 8(3) states that if the charge is not paid within the period indicated in subsection two, a charge for late payment shall be imposed in accordance with the Delay Charges Act (1997:484). The unpaid fee and fee for late payment *shall be referred for debt recovery*. The State Revenues Collection Act, etc. (1993:891) contains provisions concerning debt collection. In the event of debt recovery, enforcement may be resorted to under the Attachment Code. Chapter 8, Article 9 provides that questions concerning the imposition of fees may be dealt by the SWEA through a payment injunction. Article 9(2) provides that a payment injunction means that a person who appears to have committed an infringement is ordered to pay a fee, which injunction must be accepted immediately or within a specified period of time. Article 9(3) states that if an injunction is accepted, it has the same effect as a judicial determination to impose a fee, which has entered into final legal force. However, an acceptance after expiry of the time specified in the injunction shall be ineffective. Article 10 of Chapter 8 provides that a fee that has been imposed shall be repealed unless execution has been made within five years from the time at which the decision entered into final legal force.

6. Report on Finland

6.1 Administration

The Finnish legal framework of occupational health and safety is based on two fundamental laws, the Occupational Safety and Health Act No. 738/2002 and Act on Occupational Safety and Health Enforcement and Co-operation on Occupational Safety and Health in Workplaces No. 44/2006. The former regulates the general safety in work as related to, for example, employer's general obligations, co-operation between employers and employees, provisions on working conditions and design of workplaces and exposure to chemicals etc. The objectives of the Occupational Safety and Health Act are to improve the working environment and working conditions in order to ensure and maintain the working capacity of employees as well as to prevent occupational accidents and diseases and eliminate other hazards from work and the working environment to the physical and mental health. The Act on Occupational Safety and Health Enforcement and Co-operation on Occupational Safety and Health at Work (hereafter the Act of Enforcement) provides the procedure to be followed by occupational safety and health authorities in monitoring compliance with the Act. This Act is divided into three parts, first general provisions and authority enforcement, then co-operation on occupational safety and health and lastly appeal, notification, obligations, penal provisions, and miscellaneous provisions. Below is a description of the roles and functions of the Administration of occupational health and safety.

The Ministry of Social Affairs and Health is responsible for the enforcement and development of occupational safety and health. The Ministry of Social Affairs and Health is in charge of the preparation of legislation concerning occupational safety and health and co-ordinates research in the field and carries on international co-operation. *Department for Occupational Safety and Health at the Ministry of Social Affairs and Health* is responsible for the preparation and development of occupational safety and health legislation and national policy. Article 4 of the Executive Order on Ministry of Social Affairs and Health (90/2008) prescribes that the Department for Occupational Safety and Health is independent while conducting tasks assigned to the occupational safety and health authority. The Department is responsible for the preparation of occupational safety and health legislation and instructions on application of the legislation, establishing OSH strategies, dealing with OSH development plans and programmes on the national and EU level, improvement of working conditions in co-operation with interest groups

and development of labour inspection. The Department has also supervisory functions concerning market surveillance of machinery, personal protective equipment and chemicals. The Department directs the Regional State Administrative Agencies' Divisions of Occupational Safety and Health (hereafter OSH authorities at the Regional State Administrative Agencies or the OSH authorities). The Ministry's Occupational Safety and Health Department gives the Regional State Administrative Agencies' Divisions of Occupational Safety and Health instructions on the operations concerning occupational safety and health matters, develops the supervisory methods and ensures their resources.

The Regional State Administrative Agencies are a combination of several authorities in each region, e.g. authorities for occupational safety and health, police and fire safety. Article 5 of the Act of Regional State Administrative Agencies (896/2009) prescribes that: "the Division of Occupational Safety and Health at the Regional State Administrative Agency is independent while carrying out its enforcement duties. Activities in the Division of OSH must be arranged so as to secure the independence and impartiality of OSH enforcement. No such duties may be assigned to the Division of OSH which might endanger impartiality and due management of the enforcing authorities' duties". In each Regional State Administrative Agency there is a director for the whole Regional State Administrative Agency and under the director there are several directors of the different Regional State Administrative Agencies' Divisions. The director for the whole Regional State Administrative Agency has limited powers as comes to the Regional State Administrative Agencies' Divisions of Occupational Safety and Health (OSH authorities). Today there are six Regional State Administrative Agencies in *Finland*, although only five Divisions of OSH. *The OSH authorities at the Regional State Administrative Agencies* are responsible for supervision of the OSH regulations and labour law at workplaces, promoting activities at the enterprises level for improving safety at work, give guidance and advice on OSH matters and employment relationships and carry out market surveillance of machinery, personal protective equipment and chemicals in practice. The OSH authorities supervise the legislation concerning the occupational health and safety that has been issued by the Ministry of Social Affairs and Health. Other legislation, which is enforced by the OSH authorities at the Regional State Administrative Agencies, has been issued by the *Ministry of Employment and the Economy*. In their supervisory functions, and in particular when supervising the observance of generally applicable collective agreements, the OSH authorities must act in close co-operation with the employer and employee associations whose generally applicable collective agreements the employers are required to observe. The OSH authorities monitor compliance with approximately 120 regulations. Here are some of the Acts which the OSH authorities monitor compliance with:

- Occupational Safety and Health Act (No. 738/2002)
- Act on Occupational Safety and Health Enforcement and Co-operation on Occupational Safety and Health in Workplaces (No. 44/2006)
- Occupational Health Care Act (No. 1383/2001)
- Employment Contracts Act (No. 55/2001)
- Working Hours Act (No. 605/1996)
- Annual Holidays Act (No. 162/2005)
- Young Workers' Act (No. 998/1993)
- Act on the Employment of Household Workers (No. 951/1977)
- Act on Posted Workers (No. 1146/1999)
- Non-discrimination Act (No. 21/2004)
- Act on Protection of Privacy in Working Life (No. 759/2004)
- Act on Job Alternation Leave (No. 1305/2002)
- Aliens Act (No. 301/2004)
- Employment Accident Insurance Act (608/1948)
- Act on the Conformity of Certain Technical Devices to Relevant requirements (No. 1016/2004)
- Chemicals Act (No. 744/1989)
- Act on the Contractor's obligations and liability when work is contracted out (No. 1233/2006)
- Act on registration of those who in their occupation are exposed to substances and methods causing cancer disease (No. 717/2001)

Labour Council operating in connection with the Ministry of Employment and the Economy gives interpretations concerning occupational safety and health legislation on working hours, annual holidays, young employees and safety at work.

The Centre for Occupational Safety enhance co-operation at the work place, continuous improvement of working environments and also the well-being of personnel. The Centre acquires, produces and implements information and know-how for developing working environments. The activities of the Centre are based on the agreements and Executive Orders concluded by the Finnish Labour Market Organisations. The Centre is a co-operational organisation administered by these organisations. The purpose of the Centre is to provide occupational safety training for Occupational Health and Safety (OHS) personnel at work places and to meet their information requirements on OHS.

The Federation of Accident Insurance Institutions (FAII) functions as the co-ordinating organ of all the organisations which are engaged in statutory accident insurance. Every insurance company handling the statutory accident insurance in *Finland* has to be a member of the FAII. One of the main responsibilities of the FAII is the collection and maintenance of statistics on work accidents and occupational diseases.

Finnish Institute of Occupational Health (FIOH) is an expert organisation in the field of occupational safety and health research established in 1945. The organisation has the largest information centre on occupa-

tional health care, and the services are available to everybody. Its activities are aimed at employee health and a well-functioning workplace. Experts of the Finnish Institute of Occupational Health give instructions on the planning of a good, productive and high-quality working environment. The services include analysis services for workplaces, projects on action for maintaining and promoting work ability, risk assessment at workplaces as well as testing people applying for demanding professions, work-related psychological studies, provides expert services and trains occupational health and safety specialists, etc. The Finnish Institute of Occupational Health organises about 300 courses annually. Training includes continuation and further training that maintains and improves professional skills and is aimed at people working in the field of occupational safety and health. It is a public corporation supervised by the Ministry of Social Affairs and Health. The ministry's Department for Promotion of Welfare and Health co-ordinates the preparation of agreements on the Institute's performance targets. FIOH operates in six cities in *Finland*. The main office and the administration are in Helsinki. Approximately 600 permanent employees and approximately 200 project workers are employed by the institute.⁴⁶

The Finnish Work Environment Fund was established in 1979. The operation is supervised by the Ministry of Social Affairs and Health and labour market organisations are represented in its administration. The role of the Finnish Work Environment Fund is to finance research, development and information aimed at improving the working environment and promoting the safety and productivity of workplaces. Additionally, the fund finances the operation of the Centre for Occupational Safety. In accordance with Article 35 of the Employment Accidents Insurance Act, two per cent (1.7 % as of 2005) of the insurance premium of employers who have a legal obligation to insure is given to the Finnish Work Environment Fund as income. With these resources, the Fund is able to finance research and development projects related to working-life and the practical application of the results of these research activities.

6.2 The Occupational Safety and Health Act

6.2.1 The scope of the Occupational Safety and Health Act

Article 2 of the Occupational Safety and Health Act prescribes the general scope of application of the Occupational Safety and Health Act. According to Article 2(1), the Act applies to work carried out under the terms of an employment contract and to work carried out in an employment relationship in the public sector or in comparable service rela-

⁴⁶ <<http://www.ttl.fi/Internet/English/Organization/About+FIOH/>> visited on the 8th of September 2010.

tion subject to public law. Article 2(2) states that the Occupational Safety and Health Act does not apply to ordinary hobby activities or professional sports activities. Article 2(3) states that the Occupational Safety and Health Act imposes obligations on employers and employees as parties to the legal relationship referred to in 2(1) in the manner provided below. Article 2(4) states that anyone who accepts work must provide the workplace's occupational health care service provider and the concerned occupational safety and health representative with necessary information on the commencement of the work. Article 2(5) states that in addition to the provisions of the Occupational Safety and Health Act, the provisions of other applicable statutes regarding occupational safety and health in certain kinds of work activities shall be observed.

Article 3 contains provision concerning application of the Occupational Safety and Health Act to leased labour. According to Article 3(1), anyone who has labour employed by someone else (leased labour) under their direction is required during the work to observe the provisions of the Occupational Safety and Health Act regarding employers.

Article 4 provides that in addition to what is referred to in Article 2, the Occupational Safety and Health Act applies to work done by apprentices and students in connection with education, work done by persons involved in employment measures, work associated with rehabilitation and rehabilitative work experience, work done by a person serving a court sentence, work activities done by persons undergoing treatment or kept in a place for treatment or a comparable institution, work done by conscripts and women in voluntary military service with restrictions, are laid down in Article 6. Furthermore, the Occupational Safety and Health Act applies to work done by persons in non-military national service, work done by persons belonging to a contractual fire brigade while voluntarily participating in rescue services and other works as separately provided by Executive Order (statute).

Article 4(2) states that the organisers of the work or other activities referred to in 4(1) shall, in the work or activities under their direction, comply with the provisions of the Act regarding employers. Consequently, the provisions of the Act regarding employees shall be applied to persons performing the work or participating in the activities. If students or apprentices in connection with education carry out work or practical training associated with their studies, or get acquainted with working life in a workplace outside the educational institution, the provisions on leased labour laid down in Article 3 shall be applied to the obligations of the educational institution and the recipient of labour.

Article 5 contains provisions concerning application of the Occupational Safety and Health Act to work done in the employee's or other person's home. The Article states that the Occupational Safety and Health Act applies to work which an employee by agreement performs in his or her home or some other place he or she has chosen, in the employer's home or on the employer's assignment in some other person's

home or under related conditions. Regarding fulfilment of the obligations laid down in Articles 9, 10 and 12 and Chapters 3 and 5 of the Act, the employer's restricted ability to influence the work and working conditions are taken into account. Also in that case, the employer shall comply with the provisions of the Act governing the use of machinery, work equipment, personal protective equipment and other devices as well as substances harmful or hazardous to health in the workplace.

Article 6 contains provisions concerning the restriction on the scope of the Occupational Safety and Health Act which state that the Act does not apply to such military practice and training and directly related work, noted on the service programme or separately ordered in accordance with educational programmes, which persons in the service of the Defence Forces or the Frontier Guard, conscripts or women in voluntary military service carried out by order of, or in the service of, the Defence Forces or the Frontier Guard if the main purpose of the work or activities is to practise special skills needed in military operations. In addition, the Act does not apply to persons who by virtue of the Act on Voluntary National Defence (556/2007) participate in voluntary exercises organised by the Defence Forces or in such military training or exercises organised by the National Defence Training Association as referred to in subsection 1.

Article 7 provides that the Act also applies to employers exercising the main authority, other employers and self-employed workers operating in shared workplaces, main contractors, clients or other persons on shared construction sites directing or supervising a construction project, the elimination of mutual hazards in certain cases, employers using voluntary labour, designers, installers of machinery, equipment or other devices, persons carrying out initial or periodic inspections, persons dispatching or loading goods and port holders, ship owners, ship masters or other persons in charge of vessel.

According to Article 53 of the Occupational Safety and Health Act a self-employed worker at a shared workplace shall follow the provisions of the Act regarding the competence of employees, necessary permissions and minimum ages, machinery, work equipment, personal protective equipment and other devices as well as statutory initial and periodic inspections of them, and the handling, storage and marking of dangerous substances.

6.2.2 Content of the Occupational Safety and Health legislation and other legislation which the Regional State Administrative Agencies monitor

Duties of the employer

Chapter 2 of the Occupational Safety and Health Act contains provisions regarding the employers' general obligations. The employers are required to take care of the safety and health of their employees while at work by taking the necessary measures. For this purpose, employers shall consider the circumstances related to the work, working conditions

and other aspects of the working environment as well as the employees' personal capacities. Article 8(2) states that such unusual and unforeseeable circumstances which are beyond the employer's control, and such exceptional events the consequences of which could not have been avoided despite the exercise of all due care, are taken into consideration as factors restricting the scope of the duty to exercise care. Article 8(3) states that employers shall design and choose the measures necessary for improving the working conditions as well as decide the extent of the measures and put them into practice. Accordingly, the following principles shall be observed as far as possible: preventing the creation of hazards and risk factors and eliminating the hazards and risk factors or, if this is not possible, selecting a less hazardous or harmful alternative and adopting safety measures which have a general impact before individual measures and taking account of technological developments and other available means. According to Article 8(4), employers shall continuously monitor the working environment, the state of the working community and the safety of the work practices. Employers shall also monitor the impact of the measures put into practice on safety and health at work. According to Article 8(5), employers shall ensure that safety and health measures are taken into account in an appropriate manner in the operations of each part of their organisations. According to Article 9, the employer shall *have a policy for action needed in order to promote safety and health* and to maintain the employees' working capacity. The policy must incorporate the need to develop the working conditions and the impact of the working environmental factors (occupational safety and health policy). The objectives for promoting safety and health and maintaining working capacity deriving from the policy must be taken into account in the workplace development and planning, and they must be discussed together with the employees or their representatives.

According to Article 11, if the assessment of risks at work referred to in Article 10 shows that the work may cause a particular risk of injury or illness, such work shall be done only by an employee who is competent and personally suitable for it or by another employee under the direct supervision of such an employee. Access to the danger area by other persons shall be prevented by appropriate measures. According to Article 11(2), if work or working conditions might cause a particular risk to a pregnant employee or the unborn child and the hazard cannot be eliminated, the employer shall aim to transfer the employee to suitable work tasks for the time of pregnancy.

Article 14 contains a rule concerning the duty of the employer to provide *instruction and guidance for employees*. According to Article 14(1), employers shall give their employees necessary information on the hazards and risk factors of the workplace and ensure, taking the employees' occupational skills and work experience into consideration, that the employees receive an adequate orientation to the work, working conditions in the workplace, working and production methods, work equipment used

in the work and the correct method of using it, as well as to safe working practices, especially before the beginning of a new job or task or a change in the work tasks, and before the introduction of new work equipment and new working or production methods, the employees are given instruction and guidance in order to eliminate the hazards and risks of the work and to avoid any hazard or risk from the work jeopardizing safety and health, instruction and guidance in order to eliminate the hazards and risks of the work and to avoid any hazard or risk from the work jeopardizing safety and health and the instruction and guidance for adjustment, cleaning, maintenance and repair work as well as for disturbances and exceptional situations and instruction and guidance given to the employees is complemented, when necessary. According to Article 14(2), further provisions governing the instruction and guidance as well as written working instructions provided for employees and the occupations and tasks requiring special competence, and the ways to prove such competence, may be given by Government decree. An acceptable proof of competence is also a qualification, certificate or other document on education issued abroad in accordance with the provisions of the Act on the Implementation of the General System for the Recognition of Professional Qualifications of European Community Citizens or the provisions of international agreements binding on *Finland*.

According to Article 15, employers *shall acquire and provide for use by employees appropriate personal protective equipment* in compliance with requirements separately provided by statute if the risk of injury or illness cannot be avoided or adequately reduced by measures focused on the work or working conditions. According to Article 15(2), employers shall acquire and provide for use by employees auxiliary equipment or other devices whenever the nature of the work, the working conditions or appropriate work performance require it and when it is necessary in order to avoid the risk of injury or illness. According to Article 15(3), further provisions may be given by Government decree regarding the assessment of such risks in the working conditions that require the use of personal protective equipment, the definition of the use and the conditions for use of the equipment as well as the characteristics required of personal protective equipment and other requirements concerning the use of personal protective equipment at workplaces.

According to Article 16, the employer may place another person to represent him or her (*employer's substitute*) and take care of the duties imposed on employers in this Act. The duties of the employer's substitute shall be defined accurately enough taking into account the employer's line of business, the nature of the work or activities and the size of the workplace. The employer shall ensure that the substitute is sufficiently competent, he or she has received an adequate orientation to the duties and that he or she also otherwise has appropriate capabilities for attending to the duties referred to here.

Article 49 contains provisions on the *duty of those operating at a shared workplace to exercise care*. According to the Article, if one employer exercises the main authority at a workplace and if more employers than one or more self-employed workers than one, working in return for compensation, operate there simultaneously or successively in such a way that the work may affect other employees' safety or health (shared workplace), the employers and self-employed workers at such a workplace shall, taking the nature of the work and activities into consideration, each for their part and together in adequate mutual co-operation and by information ensure that their activities do not endanger the employees' safety and health. Article 50 contains provisions on information and co-operation in a shared workplace. According to Article 50(1), the employer exercising the main authority in a shared workplace shall, taking the nature of the work and activities into consideration, ensure that the external employers organising work in the workplace and their employees have received the necessary information and instructions on the hazards and risk factors concerning the work in the workplace as well as on the directions for action related to the safety of the workplace and the work. Such an employer shall also ensure that the external employers receive the necessary information on action in connection with fire control, first aid and evacuation and on persons appointed to these tasks according to Section 47. According to Article 50(2), both the external employers and the self-employed workers referred to in subsection 1 shall inform the employer exercising the main authority and other employers of the hazards and risk factors that may be caused by their work.

According to Article 51(1), the employer exercising the main authority in a shared workplace shall, taking the nature of the work and activities into consideration, ensure: the co-ordination of the activities of the employers and self-employed workers operating in the workplace; the arrangements for traffic and movement in the workplace; the general order and cleanliness of the workplace necessitated by safety and health; the other general planning of the workplace; and the general safety and health of the working conditions and the working environment.

Risk assessment

The EU Framework Directive 89/391/EEC on occupational safety and health requires risk assessment to be carried out in all companies. The Occupational Safety and Health Act provides that the employer shall identify and assess the risk involved in and caused by the work. Furthermore, the Occupational Safety and Health Act requires the use of methods to identify and assess the risks. Article 10 of the Occupational Safety and Health Act contains provision concerning risk assessment. According to the Article, the employer shall, taking the nature of the work and activities into account, systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions and, if the hazards and risk factors cannot be eliminated, as-

sess their consequences to the employees' safety and health. When doing so, the following matters must be taken into account among other things: the risk of injury and other illness, paying special attention to such hazards and risks of the work or in the workplace concerned as mentioned in Chapter 5; any accidents, occupational diseases and work-related illness and hazardous incidents in the workplace; the employees' age, gender, occupational skills and other personal capacities; factors related to workload and the potential risks to reproductive health. According to Article 10(2), if the employer does not have adequate expertise for the action referred to in 10(1), he or she shall use external experts. The employer shall make sure that the experts have adequate competence and other qualifications needed for carrying out the task properly. Provisions on the use of occupational health care experts and professionals and on workplace surveys are laid down in the Occupational Health Care Act (1383/2001). According to Article 10(3), the employer shall be in possession of the analysis and assessment referred to in 10(1). The analysis and assessment must be revised when the conditions essentially change, and it must also otherwise be kept up-to-date. According to Article 10(4), further provisions on the written or other verifiable form and content of the analysis and assessment, and specifying how the matter shall be handled in the workplace, taking account of the employer's line of business, the nature of the activities and hazards and risks associated with them, and the size of the workplace, may be given by Government decree.

Duties of the client

Article 52 of the Occupational Safety and Health Act provides provision concerning the duty of the client or contractor on a shared construction site. According to Article 52(1), the employer in the position of main contractor on a shared construction site or, if such does not exist, the client or other person directing or supervising the construction project, shall fulfil the obligations referred to in Section 51 and ensure that no danger arises from the work for those working on the site or other persons in the zone affected by the work. Article 51 provides that, the employer exercising the main authority in a shared workplace shall, taking the nature of the work and activities into consideration, ensure: the co-ordination of the activities of the employers and self-employed workers operating in the workplace; the arrangements for traffic and movement in the workplace; the general order and cleanliness of the workplace necessitated by safety and health; the other general planning of the workplace; and the general safety and health of the working conditions and the working environment. According to Article 52(2), further provisions on the obligations of the client, main contractor or other principal operator on a shared construction site and on the division of those obligations may be given by Government decree.

According to Article 52a (1), the client directing or supervising a shared construction site shall ensure that each person working on the site

wears visible pictorial identification while moving on the site. The identification shall indicate whether the person is a worker in an employment relationship or a self-employed person. The identification must bear the name of the employer. According to Article 52a (2), identification shall not, however, be required for persons temporarily carrying goods to the site or persons working on a site where a building or a part thereof is built or renovated for the use of a natural person acting as client.

Furthermore, the Act on the Contractor's obligations and liability when work is contracted out (No. 1233/2006) contains provisions on the duties of the client not only in the building sector. The Act applies to contractor/client who uses temporary agency workers or at whose premises or work site an employee is working, who is in the service of an employer having a subcontract with the contractor, and whose tasks relate to tasks normally performed in the course of the contractor's operations or to transportations relating to the contractor's normal operations. The Act applies to construction contractors in building, repair, servicing and maintenance relating to building using subcontractors and to all those contractors in the contractual chain contracting out part of the work at a shared workplace as referred to in the Act on Occupational Safety and Health. The occupational safety and health authorities supervise compliance with this Act. The Executive Order on Construction Work (No 205/2009) contains further rules on the duties of the client, e.g. to prepare a safety and health plan.

Rules concerning working environment and working procedures

Article 13 of the Occupational Safety and Health Act states that in designing and planning work, the physical and mental capacities of employees shall be taken into account in order to avoid or reduce hazards or risks from the workload factors to the safety and health of the employees.

Chapter 3 of the Occupational Safety and Health Act contains provisions concerning *co-operation between employers and employees*. According to Article 17, employers and employees shall co-operate in maintaining and improving safety in workplaces. According to Article 17(2), the employer shall in good time give the employees necessary information on any factors that affect safety and health in the workplace and other circumstances that have an effect on the working conditions as well as on any assessments and other analyses and plans concerning them. The employer shall also ensure that these matters are duly and in good time discussed between the employer and the employees or their representatives. According to Article 17(3), the employees for their part shall act in co-operation with the employer and the employees' representatives in order to achieve the objectives of this Act. The employees have the right to submit proposals on safety and health in the workplace and other matters mentioned in Article 17(2) to the employer and get a response to them.

Chapter 5 contains provisions on *work and working conditions*. According to Article 24, the structure of workstations and the work equipment used at work shall be chosen, designed and placed in an

ergonomically appropriate way taking the nature of the work and the employee's capacities into consideration. As far as possible, the structures shall be adjustable and allow for flexible arrangement and have such operating qualities that the work can be done without causing a harmful or hazardous load on the employee's health. In addition, it shall be ensured that the employee has enough space for working and an opportunity to change work postures and the work is eased by auxiliary equipment, when necessary; manual lifting and moving operations detrimental to health are made as safe as possible if they cannot be avoided or eased by auxiliary equipment; and the hazard caused by repetitive strain to the employee is avoided or, if this is not possible, it is minimised. According to Article 24(2), further provisions on safety requirements for the working conditions in workplaces as well as for machinery, other work equipment, auxiliary equipment and other devices used at work, and on safe performance in manual lifting operations, may be given by Government decree. Article 26 of the Occupational Safety and Health Act contains provision on work with display screen equipment. According to the Article it is stated that to reduce a harmful or hazardous load on an employee working with display screen equipment, the employer shall make the working as safe as possible. According to Article 26(2), further provisions on arrangements for work with display screen equipment as well as on requirements for workstations, technical equipment, auxiliary equipment and software used in work with display screen equipment may be given by Government decree. According to Article 41, only such machinery, work equipment and other devices may be used at work that comply with the applicable provisions and that are suitable and fit for the work and working conditions concerned. Their correct installation and necessary safety devices and markings shall also be ensured. The use of machinery, work equipment and other devices shall not in any other respect cause hazard or risk to the employees working with them or other people in the workplace. According to Article 41(2), machinery, work equipment or other devices shall be used, maintained, cleaned and serviced appropriately. Access to the danger zones of machinery or work equipment shall be restricted by means of their construction, placement, guards or safety devices or by other suitable means. Necessary preparations for servicing, adjustments, repairs, cleaning, disturbances and other exceptional situations shall be made to ensure that they do not cause any hazard or risk to the employees' safety or health. According to Article 41(3) further provisions on the acquisition, safe use and servicing of machinery, work equipment and other devices may be given by Government decree. According to Article 42, lifting and transferring employees by means of lifting devices (*lifting of persons*) shall be so arranged that no hazard or risk is caused to the safety or health of those involved in lifting or of other employees. According

to Article 42(2) further provisions on the lifting of persons may be given by Government decree.

According to Article 46(1), the employer shall see to the provision of first aid for the employees and other persons present in the workplace in a manner required by the nature of the work and the working conditions. In accordance with the work and working conditions, the employees shall be provided with instructions on the measures to be taken in order to receive first aid in the case of an accident or illness. According to Article 46(2), taking into consideration the extent and location of the workplace, the number of employees and the nature of the work and the other working conditions, an adequate supply of appropriate first aid equipment shall be available in appropriate and clearly marked places in the workplace or in its immediate vicinity. According to Article 46(3), there shall be premises in the workplace suitable for giving first aid whenever the number of employees, the nature of the work or the other working conditions so require. According to Article 46(4), further provisions on first aid premises in workplaces as well as on their dimensions and supplies may be given by Government decree. Article 47 contains provision on appointing first aid and rescue personnel. According to the Article whenever the number of employees, the nature of the work and the working conditions so require, the employer shall appoint one or more employees to carry out first aid and fire control measures and rescue operations unless the employer has, in such a plan as referred to in the Act on Rescue Services (561/1999), assigned the safety personnel to corresponding duties. The number of these personnel and their training as well as the equipment in their use shall be appropriate taking into account the nature of the work and the particular risks involved and the size of the workplace. When appointing personnel, the provisions of Article 17 shall be taken into consideration.

Article 54 contains provision concerning elimination of mutual hazards in workplaces. According to this Article, if the work of one or more employers and self-employed workers operating in a factory hall or business hall or in a similar undivided space, or their common activities in a situation other than the one referred to in Section 49, cause any hazard or risk to the employees' safety or health, the employers and self-employed workers shall in adequate mutual co-operation seek to inform each other of the hazards and risk factors they have discovered and of the measures for eliminating them as well as of the necessary co-ordination of the activities.

According to Article 55, if a person whose work is not otherwise subject to this Act, on the basis of an agreement between him or her and the employer other than an employment contract or a commission agreement, or without being in an employment relationship in the public sector or in other comparable service relationship with the employer, performs in a workplace the same or similar work as the employees of the workplace (voluntary work), the employer shall, where appropriate,

ensure that no hazard or risk is caused to the safety or health of this person while in the workplace. Correspondingly, the person shall follow the safety instructions regarding the work and the workplace, and use the personal protective equipment and auxiliary equipment provided for his or her use.

Executive Orders that contain provisions regarding working environment and working procedures⁴⁷

- Executive Order concerning the requirements for safety and health in the workplace. (577/2003)
- Executive Order of the Council of State regarding the principles, content and practitioners of good occupational health practice, and the training required for its personnel (1484/2001)
- Executive Order concerning the Safety of Construction Work (205/2009)
- Executive Order concerning the Protection of Employees against Risks from Noise (85/2006)
- Executive Order concerning the provision and use of safety signs and signals at workplaces (976/1994)
- Executive Order concerning the safe use and inspection of work equipment (403/2008)
- Executive Order concerning the selection and use of personal protective equipment at work (1407/1993)
- Executive Order concerning work with visual display units (1404/1993)
- Executive Order concerning manual handling at work (1409/1993)
- Executive Order concerning the protection of employees against risks from vibration (48/2005)

The safety and health activities of the enterprise (employers)

Chapter 5 of the Act of Enforcement provides for co-operation on occupational health and safety in workplaces. According to Article 22, the goal of the co-operation laid down in this chapter is to improve the interaction between the employer and the employees, and to make it possible for the employees to participate in and influence the handling of matters concerning safety and health in the workplace. Co-operation on occupational safety and health at workplaces is most often based on relevant agreements between labour market organisations. However, the Act of Enforcement lays down provisions on co-operation in case such an agreement does not exist. According to Article 23(1), the co-operation referred to in this Chapter may be agreed on in another way through a written agreement between national associations of employ-

⁴⁷ The list is not exhaustive.

ers and employees. According to Article 23(3), the employer and the occupational safety and health representative or a representative authorised by the personnel, or, where no such person has been selected, the personnel or a group of personnel can agree on arranging the co-operation in a suitable way regarding the circumstances in the workplace, provided that the employees are guaranteed the same level of opportunities to participate in the co-operation and handling of occupational safety and health matters as laid down in this Chapter. The agreement is valid until further notice, and it can be terminated at two months' notice. The agreement binds the employees which shall be considered to be represented by the employees' representative who entered the agreement. The employer shall inform the persons in the workplace of the agreement to be applied and of the content of the agreement. The information shall be given in writing and in an appropriate manner.

Article 24 contains provisions on matters that allow no exceptions to the provisions of the Act of Enforcement by agreement. According to the Article, agreements may not be made in order to restrict occupational safety and health representatives' right to have access to information or to stop dangerous work or to limit the protection of occupational safety and health representatives against unilateral termination. Furthermore the agreements may not be made in order to eliminate occupational safety and health representative's and vice representative's right to receive training, time allocation of occupational safety and health representatives and compensation for the loss of income to the occupational safety and health representative. The agreement referred to in Article 23(3) above cannot be used to restrict the establishment of occupational safety and health representative and vice representatives, occupational safety and health representative's and vice representative's right to receive training, time allocation of occupational safety and health representatives, compensation for the loss of income to the occupational safety and health representative, occupational safety and health committee members' time allocation and compensation and working premises for the occupational safety and health representatives.

Article 26 of the Act of Enforcement *provides issues to be handled in co-operation*. According to Article 26(1), in addition to what is otherwise provided, the issues to be handled in co-operation between the employer and employees include, among other things, matters immediately affecting the safety and health of any employee and any changes in those matters and principles and manner of investigating risks and hazards in the workplace, as well as such factors generally affecting the safety and health of employees that have come up in connection with the investigation or a workplace survey carried out by an occupational health care organisation, etc.

Occupational safety and health representatives represent employees in OSH co-operation. Article 29 of the Act of Enforcement requires that the employees at workplaces where at least ten employees work regu-

larly shall elect an occupational safety and health representative among themselves and two vice representatives to represent them in the co-operation referred to in chapter 5, and to keep contact with the occupational safety and health authorities.

The occupational safety and health representative and the vice representatives shall be selected through an election organised by the employees. The representatives shall be selected for a period of two calendar years, unless another agreement has been made on the period in accordance with the provisions of Section 23. A period longer than two years can be agreed on through an agreement referred to in Section 23(1). For well-grounded reasons, the work period of the representatives may also be agreed, by the occupational safety and health committee or through a corresponding co-operation procedure, to last for four calendar years (Article 30(1)). The occupational safety and health representative represents the employees of the workplace when dealing with matters referred to in Section 26 in co-operation with the employer, and in relation to occupational safety and health representatives. Additionally, it is the duty of the occupational safety and health representative to become familiar, on his or her own initiative, with the environment of the workplace, matters connected with the state of the work community and affecting the safety and health of employees, and with occupational safety and health legislation. The occupational safety and health representative shall also *participate in inspections and expert investigations* relating to occupational safety and health, if the expert or occupational safety and health authority considers the participation as necessary. The occupational safety and health representative shall also, for his or her own part, make the employees he or she represents *pay attention to matters that promote safety and health at work* (Article 31). The occupational safety and health representative is entitled to have *access to the documents and records* the employer is obliged to keep in accordance with occupational safety and health provisions. The representative also has a right to become familiar with such documents in the possession of the employer which concern safety and health at work and are connected with the state of the working environment and work community. Additionally, the occupational safety and health representative is entitled to receive from the employer any information necessary for his or her co-operational duties (Article 32(1)). The occupational safety and health representative is also entitled to have access to the employer's copy of the agreement between the employer and the occupational health care organisation on arranging occupational health care, or to the employer's description of the occupational health care organised by the employer himself, and to the occupational health care action plan. Separate provisions are issued regarding occupational safety and health representatives' statements on applications concerning compensation for occupational health care costs (Article 32(2)). The occupational safety and health representative is entitled to obtain copies of the documents mentioned in subsections 1 and 2 to the extent that his or her

co-operational duties require (Article 32(3)). The occupational safety and health representative and the vice representative has the right to obtain *appropriate training* for carrying out the duties as a representative (Article 33(1)) and to be released from other tasks in order to attend to those duties (Article 34). The employer shall compensate occupational safety and health representatives for any loss of income incurred due to taking care of representative's duties during working hours. The compensation is calculated according to the regular income the occupational safety and health representative would have earned during the time he or she was taking care of the occupational safety and health duties (Article 35(1)). Furthermore, the employer shall pay reasonable compensation for an occupational safety and health representative's necessary duties carried out outside working hours about which the representative has informed the employer (Article 35(2)). The occupational safety and health representative may *stop dangerous* work that is being performed. If work causes immediate and serious danger to an employee's life or health, the occupational safety and health representative is entitled to interrupt such work in so far as persons represented by them are concerned, subject to the restrictions laid down in this section (Article 36(1)). The occupational safety and health representative shall inform the employer of any interruption of work, in advance if possible in view of the type of danger and other circumstances, and in any case immediately when this is possible without any danger. After making sure that no danger as referred to in Article 36(1) exists, the employer may order the work to be continued (Article 36(2)). Any interruption of work shall not restrict workplace operation in a wider scale than is needed to protect safety and health at work. When work is interrupted, any hazards and risks caused by the interruption must be minimized (Article 36(3)). According to Article 37(1) if an occupational safety and health representative has interrupted work in accordance with this section, he or she is not liable to compensate any losses caused by the interruption (36(4)).

Article 38 contains provisions concerning the *occupational safety and health committee*. In workplaces where at least 20 employees work regularly, an occupational safety and health committee shall be established for a period of two years at a time. Both the employer and the employees of the workplace are represented in the committee. According to Article 38(2), the employer shall take the necessary steps to organise the co-operation referred to in this section. According to Article 39(1), when no other agreements are made on the number of members in the occupational safety and health committee, and on the representation of the parties, the number of committee members is four, eight or twelve, depending on the requirements set by the quality and extent of the workplace as well as other circumstances. A quarter of the members represent the employer, a half of the members represent the larger employee group (clerical or other employees), and a quarter represent the smaller employee group (Article 39(1)). The employer appoints to the occupa-

tional safety and health committee such a representative whose duties include preparation of matters to be dealt with in the committee. The committee is chaired by the employer or employer's representative, or a person the committee has selected from among themselves. The occupational safety and health manager participates in the meetings of the committee, even when he is not a member of the committee (Article 39(2)). The occupational safety and health representatives are members of the occupational safety and health committee. The other members of the committee representing the employees are elected, where appropriate, in accordance with the provisions in Article 30 concerning the election of occupational safety and health representatives (Article 39(3)). The employer shall, free of charge, assign a room on its premises for the occupational safety and health representative and the occupational safety and health committee for keeping and studying the documents relating to their duties, and a room for meetings that are necessary with regard to their duties (Article 41(1)). The occupational safety and health representative has a right to use any common office and communication equipment in the workplace as much as his or her duties require, and in a way agreed on under Section 23 (Article 41(2)).

Chapter 5a of the Act of Enforcement provides for *co-operation on occupational safety and health in shared workplaces* and for preventing mutual hazards. According to Article 43a, the employer exercising the main authority at a shared workplace referred to in Article 49 of the Occupational Safety and Health Act shall take necessary measures to ensure that the co-operational issues referred to in Article 26, which are subject to the provisions in Section 51 of the Occupational Safety and Health Act, are handled in accordance with Section 27. According to Article 43b(1), the organisation of co-operation referred to in this Chapter may be agreed on in another way in accordance with the provisions in Section 23, where appropriate. In that case, the provisions on restrictions to conclude an agreement in Article 24 shall be taken into account regarding the occupational safety and health representative's duties concerning co-operational issues at a shared workplace. According to Article 43b(2), the occupational safety and health representative employed by the employer that exercises the main authority has the right to act as an occupational safety and health representative in matters relating to co-operation on occupational safety and health, which are subject to Section 51 of the Occupational Safety and Health Act, and this right cannot be restricted by an agreement referred to in Article 23(3). According to Article 43(b), the fact that the shared workplace is a workplace referred to in Article 25 cannot be changed by any agreement referred to in Article 23. According to Article 43(d), if the employers have not nominated a joint occupational safety and health manager, the employer exercising the main authority at the shared workplace, or the employer in main contractor position, takes care of the duties of an occupational safety and health manager referred to in Article 28. Accord-

ing to Article 43e (1), the rights of an occupational safety and health representative in a shared workplace are subject to the provisions of Sections 31–35, where appropriate. For taking care of the duties referred to in this Chapter, the occupational safety and health representative has the right to follow and investigate how the matters referred to in Section 51 of the Occupational Safety and Health Act are carried out in the shared workplace. This right is focused on all employers, employees and self-employed workers operating in the workplace. Article 43e(2) states that the rights of a site-specific occupational safety and health representative are subject to the provisions on occupational safety and health representatives in Sections 29–37. According to Article 43f, an occupational safety and health representative employed by an external employer referred to in Section 50 of the Occupational Safety and Health Act shall have the right to access the shared workplace, for taking care of his or her duties, on the same conditions as the employees he or she represents, taking account of the general provisions on the right to access the workplace and on safety in the workplace.

The provisions on *occupational health care* are laid down in the *Occupational health Care Act No. 1383/2001*. The Act on Occupational Health Care lays down the rules that provide the duty of an employer to arrange occupational health care and on the content and role of the occupational health care. Employers are responsible for arranging occupational health care. It shall be organised and implemented to the extent required by the work, working arrangements, personnel and workplace conditions, and any changes in these. According to Article 1 of the Occupational Health Care Act, the purpose of the Act is to promote the following through co-operation between the employer, the employee and the occupational health care provider: the prevention of work-related illnesses and accidents; the healthiness and safety of the work and the working environment; the health, working capacity and functional capacity of employees at the different stages of their working careers; and the functioning of the workplace community.

According to Article 7, the employer may organise *occupational health care services* by acquiring the services he needs from a health centre referred to in the Primary Health Care Act (66/1972), that is occupational health care services that are provided by municipalities, arranging the occupational health care services he needs himself or together with other employers or acquiring the services he needs from another unit or person entitled to provide occupational health care services. The main tasks, for example, of occupational health services according to Article 12 of the Occupational Health Care Act are as follows: workplace visits, investigation, assessment and monitoring of work-related health risks and problems, making suggestions for improvement, provision of information, advice and guidance in matters concerning the healthiness and safety of the work of the employees, monitoring and

support of the work ability of disabled employees, co-operation with, for example the OSH authorities.

According to the Occupational Health Care Act, occupational health care means the activities of occupational health care professionals and experts that the employer has a duty to arrange by law and which are used to promote the prevention of work-related illnesses and accidents, the healthiness and safety of the work and the working environment, the functioning of the workplace community and the health, working capacity and functional capacity of employees. According to Article 2(1), the Occupational Health Care Act applies to work in which the employer has a duty to comply with the Occupational Safety Act. Article 2(1) of the Occupational Health Care Act provides that the organisation of occupational health care by entrepreneurs and other self-employed persons shall comply with the provisions of this Act as applicable. According to Article 5, in matters concerning the planning, implementation, development and monitoring of occupational health care, the employer shall make sufficient use of occupational health care professionals and any experts that these professionals deem essential, as required for organising occupational health care in accordance with good occupational health care practice. Article 5(2) provides that occupational health care professionals and experts shall be professionally independent of the employer, the employees and their representatives and they shall possess the qualifications referred to in Article 3 as well as knowledge and skills that have been maintained through sufficient continuing education. Article 5(3) provides that the employer of an occupational health care professional or expert has a duty to ensure that this persons attends continuing education to maintain his professional skills sufficiently often and no less than once every three years. The continuing education duty also concerns a health care professional engaged in occupational health care as an independent professional. For the purposes of the Act on Occupational Health Care, occupational health care professional means a health care professional as referred to in the Act on Health Care Professionals (No. 559/1994), who is qualified as an occupational health care specialist or other licensed physician or is qualified as a public health nurse and has the necessary training to perform occupational health care. Occupational health care expert means a person qualified as a physiotherapist or psychologist and possessing sufficient knowledge of occupational health care or who has occupational hygiene, ergonomics, technical or other similar education or training and sufficient knowledge of occupational health care or who is qualified as a specialist physician in an area other than occupational health care. According to Article 6 of the Act on Occupational Health Care, the employer and the occupational health care service provider shall draw up a written agreement on the organisation of occupational health care, which shall set out the general arrangements for occupational health care and the content and coverage of the services. The agreement shall be revised if

there is a material change in circumstances. Occupational health care service provider means the organisation or person that performs the occupational health care for the employer. According to Article 6(2), if the employer organises occupational health care services himself, he shall give a description of the points referred to in Article 6(1) in a suitable manner. The OSH authorities supervise the arrangement of occupational health care. The Executive Order on the principles of good occupational health care practice, the content of occupational health care and the qualifications of professionals and experts No. 1484/2001 contains furthermore provisions on the occupational health care services.

Rules about working places

Article 12 of the Occupational Safety and Health Act contains a provision concerning design of the working environment. According to the Article, when designing the structures of the working environment, working premises, working or production methods or the use of machinery, work equipment and other devices used at work as well as the use of health-hazardous substances, employers shall ensure that their impact on the safety and health of employees are taken into account and that they are suitable for the intended use. It also states that the provisions of Article 10(1) shall be observed, as appropriate, in analysing and assessing hazards and risks. According to Article 12(1), in connection with design, it shall be ensured that the conditions under design meet the requirements laid down in the Occupational Safety and Health Act. When necessary, handicapped employees and other employees whose working activities, as well as health and safety, otherwise call for, special measures shall be taken into consideration in the arrangements. According to Article 12(3), if the design work referred to in 12(1) is assigned to an external designer, the employer shall give the designer adequate information on the workplace under design.

Chapter 5, Article 32 provides that workplace structures, materials and fittings and equipment shall be safe and healthy for employees. They must be safe to handle, repair and clean. According to Article 32(2), the means of access, passages, means of egress and rescue access routes, work platforms and other areas where employees move due to their work shall be safe and they shall be kept in a safe condition. According to Article 33(1), there shall be enough satisfactory air to breathe at workplaces. The ventilation of workplaces must be appropriate and sufficiently effective. According to Article 33(2), the volume and area of workrooms shall be adequate. There must also be enough room for working and for motion required by the work. According to Article 33(3), further provisions on the volume and ventilation of workplaces may be given by Government decree. According to Article 34, suitable and adequately effective lighting as required by the work and the employees' capacities shall be provided at workplaces. As far as possible, enough natural light must come into the workplace. According to Article 34(2), further provisions on the general and special lighting of work-

places may be given by Government decree. According to Article 35(1), the arrangements for vehicular and pedestrian traffic in workplaces shall be safe. The employer shall, when necessary, draw up appropriate traffic rules for internal traffic in the workplace. According to Article 35(2), the lifting, transport, handling and storage of goods as well as the goods handling and loading areas shall be so designed and arranged that the lifting and handling equipment or goods transfer or falling goods do not cause hazards or risks to the employees' safety or health. According to Article 35(3), further provisions on workplace traffic and the safety of lifting and handling operations as well as on loading and unloading areas for goods may be given by Government decree. According to Article 36, the order and cleanliness required by safety and health shall be ensured in workplaces. Cleaning shall be carried out in such a way that no hazard or risk is caused to the employees' safety or health.

Article 45 contains provisions on alarm, safety and rescue equipment and instructions. According to Article 45(1), if the working conditions so require, workplaces shall be provided with the necessary alarm, fire safety, lifesaving and rescue systems and equipment. If there is a risk to life or health due to falling into water at a workplace, rescue equipment shall always be available in a suitable place in the workplace. According to Article 45(2), the employees shall be given necessary instructions on the use of such systems and equipment as referred to in subsection 1, as also in the case of fire, drowning or other risk. Instructions shall also be given regarding the measures to be taken in the case of fire, taking the conditions in the workplace into consideration. When necessary, the instructions shall be kept available in the workplace for inspection by the employees. When necessary, exercises shall be arranged. According to Article 45(3) further provisions on providing a workplace with such systems and equipment as referred to in subsection 1 and on the instructions mentioned in subsection 2 may be given by Government decree.

Article 48 contains provision about facilities provided for use by employees. According to Article 48(1), taking into consideration the nature and duration of the work and the number of the employees, adequate and appropriately fitted rooms for washing, dressing and keeping of clothes as well as dining rooms, break rooms and toilet rooms and other personnel rooms shall be available for use by the employees in the workplace or in its immediate vicinity. Decent drinking water in adequate amounts shall be available for the employees. According to Article 48(2), pregnant women and breast-feeding mothers shall, when necessary, have the opportunity to go to rest in a break room or other suitable place. According to Article 48(3), employees working on board ship shall be provided with appropriate rooms for accommodation on board. According to Article 48(4), further provisions on personnel facilities in workplaces and their fittings and on residential facilities on board may be given by Government decree.

Market surveillance

The OSH authorities at the Regional State Administrative Agencies' and the Occupational Safety and Health Department of the Ministry of Social Affairs and Health monitor control of products used at work. Market surveillance means monitoring that products on the market conform to the relevant requirements. The Occupational Safety and Health Department and the OSH authorities supervise the conformity of machines, chemicals and personal protective equipment (PPE) used at work, by means of market surveillance.

The OSH authorities monitor the safety of machinery, PPE and chemicals as a part of their general workplace inspections, at trade fairs and exhibitions and in dealer and shop premises. They have powers to take action in workplaces towards employers and manufacturers. If the OSH authorities issue a temporary prohibition notice against equipment they have to report that to the Occupational Safety and Health Department, which has the right to confirm temporary prohibitions issued by inspectors and to take further measures.

The Occupational Safety and Health Department makes the necessary decisions in market surveillance. The authorities use these decisions to prevent or restrict the availability of dangerous products in the market. Such decisions must usually be communicated to the European Commission and all other EU member states. Investigations needed as the basis for these decisions are usually carried out by occupational safety and health offices, which acquire the necessary information in connection with workplace inspections. A decision made by the Ministry may be appealed to the Supreme Administrative Court.⁴⁸

Executive Orders that contain provisions regarding market surveillance:

- Executive Order concerning the safety of machinery (400/2008)
- Executive Order concerning personal protective equipment (1406/1993)

Inspections concerning dangerous and hazardous substances

Chapter 5 of the Occupational Safety and Health Act contains various provisions on chemical, physical and biological agents and use of dangerous substances. Article 37 contains provision on airborne impurities. According to the Article, if airborne impurities, such as dust, smoke, gas or vapour, occur in a workplace to a degree which is injurious or disturbing to the employees, their spreading shall, as far as possible, be prevented by isolating the source of impurity or by placing it in a closed space or equipment. The airborne impurities shall be collected and removed to an adequate degree by means of appropriate ventilation.

⁴⁸ <http://www.stm.fi/c/document_library/get_file?folderId=39503&name=DLFE-7149.pdf> visited on the 17th of March 2010.

Article 38 contains provision regarding *chemical agents and dangerous substances used at work*. According to the Article, employees' exposure to chemical agents that cause hazards or risks to safety or health shall be reduced to such a level that no hazard or risk from these agents is caused to the employees' safety or health or reproductive health. Particularly, protective measures necessary for preventing poisoning, oxygen deficiency or other similar serious risks shall be ensured. According to Article 38(2), special caution shall be exercised when handling, storing or transferring explosive, flammable or corrosive substances or other substances involving similar hazards. The employees shall be given such information on dangerous substances that is necessary considering the working. According to Article 38(3), further provisions on chemical agents and their identification as well as on the nature, duration and assessment of exposure to them, limit values, prevention measures and the handling, transfer and storage of dangerous substances may be given by Government decree. Further provisions on the concentrations of chemical agents known to be hazardous and the limit values for exposure as well as on the technical details and procedures for protection against such agents may be given by a decree of the Ministry of Social Affairs and Health, cf. Article 38(4).

Article 39 contains provision regarding *physical agents and electrical safety*. According to the Article 39(1), employees' exposure to thermal conditions, noise, pressure, vibration, radiation or other physical agents that cause hazards or risks to safety or health shall be reduced to such a level that no hazard or risk from these agents is caused to the employees' safety or health or reproductive health. Risks from electrical equipment, the use of electricity and static electricity shall be as low as possible, cf. Article 39(2). Further provisions on physical agents and their identification as well as on the nature, duration and assessment of exposure, limit values and prevention measures may be given by Government decree cf. Article 39(3).

Article 40 contains provision concerning biological agents. According to Article 40(1), employees' exposure to biological agents that cause hazards or risks to safety or health shall be reduced to such a level that no hazard or risk from these agents is caused to the employees' safety or health or reproductive health. According to Article 40(2), further provisions on biological agents and their identification as well as on the nature, duration and assessment of exposure, limit values and prevention measures may be given by Government decree. Further provisions on the properties of biological agents known to be hazardous as well as on the details and procedures for protection against biological agents may be given by a decree of the Ministry of Social Affairs and Health, cf. Article 40(3).

According to Article 44(1), if substances that may cause a major accident are handled or stored in the workplace, or a major accident hazard otherwise may be present at work, the employees shall be given necessary training and instructions for controlling the hazard and on the pro-

cedure to be followed in the case of an accident. When necessary, exercises shall be arranged. According to Article 44(2), furthermore, work shall be so arranged that the risk of fire, explosion, drowning or other accident is as low as possible. Further provisions on controlling major accident hazards may be given by Government decree, cf. Article 44(3). The Chemicals Act from 1989 prescribes in Article 8 that the Regional State Administrative Agencies supervise the use of chemicals at work.

*Examples of Executive Orders on dangerous substances which the occupational safety and health authorities monitor:*⁴⁹

- Executive Order concerning chemical agents at work (715/2001)
- Executive Order concerning work-related cancer risks (716/2000)
- Executive Order concerning work with asbestos (1380/1994)
- Executive Order concerning protection of employees against risks from exposure to biological agents at work (1155/1993)
- Executive Order concerning lead work (1154/1993)
- Executive Order concerning applying the Act on Safety at work to the handling and spreading of a plant protection product in forest work (538/1989)
- Executive Order concerning containers containing dangerous substances and labelling of those containers (421/1989)
- Executive Order of the Council of State regarding occupational health monitoring of workers exposed to special health risks (1485/2001)
- Executive Order concerning the control of major accident hazards in the workplace (922/1999)

Employment Contract Act No. 55/2001

The Employment Contracts Act lays down provisions on the rights and obligations of employers and employees in employment relationships. The Act contains provisions on, for example, prohibition of discrimination, family leave, lay-offs, and termination and cancellation of employment contracts. The Employment Contracts Act also provides for the general applicability of collective agreements. According to Article 12 of the Employment Contracts Act, the OSH authorities shall supervise the observance of this Act. In their supervisory functions, and in particular when supervising the observance of generally applicable collective agreements, these authorities must act in close co-operation with the employer and employee associations whose generally applicable collective agreements the employees are required to observe under the Act. On request, the OSH authorities are entitled to be provided by the employer with copies of documents which they need for the supervision and a detailed report on agreements concluded orally.

⁴⁹ The list is not exhaustive.

Working time

The Working Hours Act No. 605/1996 lays down provisions concerning working time. Here below are provisions concerning the working hours and rest period described. Compliance with the Working Hours Act and local agreements on regular working hours made under the Act shall be supervised by the OSH authorities, according to Article 43 of the Act. According to Article 1 of the Act, the Act applies to all work performed under an employment contract as referred to in Section 1(1), of the Employment Contracts Act (55/2001) or within a state civil servant's or municipal officeholder's service relationship, unless otherwise provided. In addition, the Act on Young Employees (998/1993) applies to work performed by persons under the age of 18. What is prescribed in this Act concerning employees also applies to civil servants and officeholders, unless otherwise provided, cf. Article 1(2) of the Working Hours Act. Moreover, what this Act prescribes concerning collective agreements also applies to collective agreements for state civil servants and municipal officeholders. Article 2 contains derogations to the scope. According to the Article the Working Hours Act does not apply to (i) work which must be considered management of an undertaking, corporation or foundation or an independent part thereof by virtue of the relevant duties and of the employee's position otherwise, or independent work directly comparable to such management, (ii) employees who perform religious functions in the Evangelical-Lutheran Church, Orthodox Church or some other religious community, (iii) work performed by an employee at home or otherwise in conditions where it cannot be considered a duty of the employer to monitor arrangement of the time spent on said work, (iv) forest, forest improvement and timber-floating work or to related work, excluding mechanical forest and forest improvement work and short-distance timber transport performed off-road, (v) children's day-care in the home of the employee as referred to in the Children's Day-Care Act (36/1973), (vi) work performed by members of the employer's family, (vii) reindeer husbandry, (viii) fishing and processing of the catch immediately connected therewith, (ix) work where the working hours have been separately prescribed or which is covered by another act on working hours, under which it has been exempted from working hour restrictions, or lastly (x) work performed by civil servants that is covered by the Act on the working hours of Defence Force civil servants (218/1970) or by civil servants of the Frontier Guards, unless otherwise prescribed by decree. Chapter 2 provides the definitions of working hours. According to Chapter 2, Article 4, working hours mean the time spent on work and the time an employee is required to be present at a place of work at the employer's disposal are considered working hours. Daily periods of rest as referred to in Section 28 or based on agreement are not included in working hours if the employee is free to leave the place of work during these times. Travel time is not included in working hours if it does not constitute work performance. According

to Article 6, regular working hours shall not exceed eight hours a day or 40 hours a week. The regular weekly working hours can also be arranged in such a way that the average is 40 hours over a period of no more than 52 weeks.

Chapter 4 contains provisions on *exceeding regular working hours*. According to Article 17 additional work refers to work done on the employer's initiative which does not exceed the regular working hours prescribed in Articles 6 or 7, agreed under Sections 9, 10 or 12, or referred to in Section 14. Overtime refers to work carried out on the employer's initiative in addition to the regular working hours referred to in subsection 1. According to Article 19, the maximum amount of overtime during a four-month period is 138 hours, though 250 hours must not be exceeded in a calendar year. An employer can agree on additional overtime with employee representatives or personnel or a personnel group together as referred to in Section 10. The maximum amount of such additional overtime in a calendar year is 80 hours. The maximum amount of 138 hours referred to in subsection 1 above cannot, however, be exceeded. Employer and employee organisations which operate nationwide can make exceptions to the time period referred to in subsection 1 by collective agreement. Such collective-agreement-based periods cannot, however, exceed 12 months and the maximum amount of annual overtime must comply with the limits laid down in subsections 1 and 2 above.

Chapter 5 contains provisions concerning *night and shift work*. According to Article 26, work carried out between 23:00 and 06:00 is considered night work. An employer must notify the OSH authorities of regular night work, when the said authorities so request. Night work is allowed in period-based work, in work which has been divided into three or more shifts, in work which has been divided into two shifts, but only until 01:00, in the maintenance and cleaning of public roads, streets and airfields, in pharmacies, at newspapers and magazines, news and photographic agencies and in other media work, and in the delivery of newspapers, in service and repair work which is necessary to allow work to proceed regularly in undertakings, corporations or foundations, or in work which cannot be carried out simultaneously with the regular work of the workplace concerned or which is necessary in order to prevent or confine losses, at peat sites during the peat extraction season, at sawmill drying houses, in heating work at greenhouses and drying plants, with the employee's consent, in urgent sowing and harvesting, in work directly related to parturient farm animals or to the treatment of sick farm animals and in other such farm work which cannot be postponed due to its nature, with the employee's consent in bakeries; between 05:00 and 06:00 such consent is not, however, required, in work which is carried out almost completely at night due to its nature, with permission from and under conditions set by the OSH authorities at the Regional State Administrative Agencies, in work where the technical nature or other

specific reasons so require. In particularly dangerous or physically or mentally highly stressful work laid down by decree or agreed upon by collective agreement as referred to in Section 40 (1), working hours may not exceed eight hours per day if the work is carried out at night.

According to Article 27, in *shift work*, the shifts must change regularly and at intervals agreed upon in advance. Change is considered regular when a shift does not coincide for more than an hour with the immediately following shift or the shifts are no more than an hour apart. The OSH authorities at the Regional State Administrative Agencies can grant permission to diverge from the provisions of the first sentence of this paragraph. According to Article 27(2), in period-based work, an employee can be required by the work schedule to work no more than seven consecutive night shifts. Night shift refers to a work shift of which at least three hours take place between 23:00 and 06:00.

Chapter 6 contains provisions on *rest periods and Sunday work*. According to Article 28, if daily working time exceeds six hours and an employee's presence in the workplace is not necessitated by work continuity, the employee must be granted a regular rest period of at least one hour within the shift, during which she or he is free to leave the workplace. An employer and an employee can agree on a shorter rest period, but this may not be less than half an hour. The rest period cannot be placed immediately at the beginning or the end of a work day. If daily working time exceeds 10 hours, employees are entitled to a rest period of up to half an hour following eight hours of work. According to Article 28(2), if working time in shift or period-based work exceeds six hours, employees must be allowed a rest period of at least half an hour or an opportunity to eat while they are working. Article 29 prescribes daily rest period. According to the Article during the 24 hours following the beginning of a work shift, employees must be given an uninterrupted rest period of at least 11 hours in the case of work referred to in Sections 6, 9, 10, 12, and 13, and at least nine hours in the case of work referred to in Section 7, except for work referred to in Section 14 or carried out during stand-by, unless otherwise provided below. When the practical organisation of work so requires, an employer and an employee representative as referred to in Section 10 can agree on a temporarily shorter daily rest period with the relevant employee's consent. Daily rest periods can also be shortened when working hours are flexible and employees decide on the time their work begins and ends. The daily rest period must, however, be at least seven hours.

Article 31 contains provision concerning *weekly free time*. According to Article 31, working hours must be organised to allow employees at least 35 hours of uninterrupted free time each week, preferably around a Sunday. The weekly free time can be arranged so that it averages 35 hours within a 14-day period. Weekly free time must, however, be at least 24 hours. Article 31(2) prescribes that in uninterrupted shift work, free time can be organised to average 35 hours within a maximum of 12

weeks. Weekly free time must, however, be at least 24 hours. With the consent of the employee concerned, this procedure is also applicable when technical conditions or the organisation of work so require. Article 31(3) prescribes that derogations can be made from the provisions of this section if the regular working hours are less than 3 hours per day, in caring for farm animals and in urgent sowing and harvesting work. According to Article 33, employees can be required to work on a Sunday or church holiday only when the work concerned is regularly carried out on the said days due to its nature, or when agreed upon in the employment contract, or with the separate consent of the employees. According to Article 33(2), the wage payable for Sunday work performed as part of regular working hours is twice the regular wage. If the work concerned is additional work, overtime or emergency work, a remuneration determined as laid down in Sections 22 and 23 must also be paid. This remuneration is calculated on the employee's regular hourly wage.

The Working Hours Act is a general act applicable to both private and public sector employment. The OSH authorities also supervise compliance with other provisions concerning working hours contained in *the Young Workers' Act* (No. 998/1993) and *the Act on the Employment of Household Workers* (No. 951/1977). The Act on the Employment of Household Workers applies to workers who carry out household work at the employer's home on the basis of an employment contract, with exceptions. The Act contains provisions regarding, for example, on regular working hours, the effect of collective agreements on regular working hours, time included in working hours, overtime and weekly rest period.

Work carried out by children and young people

The Act on Young Workers No. 998/1993 contains provisions concerning working time and safety of young workers at work. The OSH authorities supervise the compliance with the Act on Young Workers.

According to Article 1, the Act applies to work done by a person under 18 years of age (young worker) in an employment relationship in the private or public sector. According to Article 1(2) the provisions of Chapter 3 of this Act concerning health and safety at work shall also be applied to other work done by a young worker to which the Occupational Safety and Health Act No. 738/2002 is applied.⁵⁰

According to Article 2, a person may be admitted to work if he has reached the age of 15 and is not liable to compulsory school attendance. According to Article 2(1) furthermore, a person may be admitted to work if he has reached the age of 14 years or will reach that age in the course of the calendar year and if the work in question consists of light work that is not hazardous to his health or development and does not hinder school attendance, as follows: (i) for at most half of the school holidays, and (ii)

⁵⁰ For example, work experience by school students of practical work done at school.

temporarily during schoolwork or otherwise, for individual work performances of a short duration. According to Article 2(3) for a special reason, a person younger than laid down in paragraph 2 may be permitted, pursuant to Section 15, to work temporarily as a performer or an assistant in artistic and cultural performances and other similar events.

According to Article 4, the regular working hours of a person who has reached the age of 15 years shall not exceed those of workers who have reached the age of 18 years and are engaged in the type of activity in which the young worker is employed. The total length of training time and working hours of an apprentice in apprenticeship training as defined in the Act on Apprenticeship Training (1605/1992) shall not exceed eight hours a day or 40 hours a week. According to Article 4(2), the daily working hours during the school year of a person of school age shall not exceed eight hours on days when there is no school and two hours on school days. The total length of the school day and working hours cannot, however, exceed eight hours or the weekly working hours 12 hours. According to Article 4(3), the working hours of a person under the age of 15 shall not exceed seven hours a day and 35 hours a week during the school holidays. According to Article 5(1), a person who has reached 15 years of age may, with his own consent, do overtime work for no more than 80 hours in the course of one calendar year, in addition to regular daily working hours or other regular working hours. According to Article 5(2), a person under the age of 15 shall not be made to do overtime or emergency work. A person who has reached 15 years of age may be required to do emergency work under the provisions of Section 21 of the Working Hours Act (605/1996) only if employees over the age of 18 are not available to do the emergency work in question. If the young worker's period of rest as set down in Section 8 has been curtailed by the need to do emergency work, the young worker shall be given a compensatory period of rest as soon as possible or within three weeks at the latest. According to Article 6, a young worker's working hours shall not exceed nine hours a day or 48 hours a week. According to Article 8, a person of 15 years or older shall be granted at least 12 consecutive hours of rest in every 24 hours. According to Article 8(2), a person under the age of 15 shall be granted at least 14 consecutive hours of rest in every 24 hours. According to Article 8(3), where the daily working hours of young workers are in excess of four hours thirty minutes, said employees shall be granted a rest period of at least thirty minutes in the course of their work, during which they shall be free to leave the workplace. If, under the collective agreement observed in the workplace, an exception has been made to the provision on the periods of rest laid down in the Working Hours Act, the stipulation concerning periods of rest can also be applied to young workers. According to Article 8(4), young workers shall be granted a weekly break of at least 38 consecutive hours.

The Act on Young Workers regulates, furthermore, provisions concerning contract employment and rules concerning the occupational safety and health of young workers, for example training and guidance,

medical examination. According to Article 9(1), the employer shall see to it that the work is not hazardous to the physical or mental development of a young worker, and that it does not require more exertion or responsibility than can be considered reasonable with respect to his age and strength. According to Article 9(2), in carrying out duties which might cause a special accident risk or a health hazard, or which might be hazardous to the young worker himself or to others in the manner referred to in Article 1, a young worker may be used only on conditions laid down by decree. According to Article 10, the employer shall ensure that a young worker who does not have the necessary skill or experience for a job is given training and guidance for the purpose, together with such personal instruction as is necessary in view of the working conditions, his age and other factors, so that he is not a danger to himself or other persons. According to Article 11, prior to entering into an employment relationship or within one month thereafter, a young worker shall be given a medical examination at the employer's expense. The examination shall determine the suitability of the young person for the work in question and ensure that the work is not detrimental to his health or development. According to Article 13, the employer shall keep a list of all young workers who are recruited until further notice or for at least two months, or who have been in his employ for two months.

Psycho-social working environment

The Occupational Safety and Health Act contains provisions on the psycho-social working environment. The Act contains rules on e.g. harassment, lone working and avoiding or reducing workloads. Article 25 of the Act states that if it is noticed that an employee while at work is exposed to workloads in a manner which endangers his or her health, the employer, after becoming aware of the matter, shall, by available means, take measures to analyse the workload factors and to avoid or reduce the risk. Article 27(1) contains provisions on threat of violence. The work and working conditions in jobs entailing an evident threat of violence shall be so arranged that the threat of violence and incidents of violence are prevented as far as possible. Accordingly, appropriate safety arrangements and equipment needed for preventing or restricting violence and an opportunity to summon help shall be provided in the workplace. According to Article 27(2), the employer shall draw up procedural instructions for such jobs and workplaces as referred to in subsection 1. In the instructions, controlling threatening situations must be considered in advance and practices for controlling or restricting the effects of violent incidents on the employees' safety must be presented. When necessary, the functioning of the safety arrangements and equipment must be checked.

According to Article 27(3), further provisions on arrangements related to the safety and health of employees in different branches and tasks where evident threats of violence exist may be given by Government decree. Article 28 contains provisions on harassment. The Article states

that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer, after becoming aware of the matter, shall, by available means, take measures for remedying this situation. Article 29 contains provisions on lone working. According to Article 29(1), if an employee works alone and as a result the work entails evident hazards or risks to the employee's safety or health, the employer shall ensure that the hazard or risk is avoided or minimized while the employee is working alone. The employer shall also, considering the nature of the work, provide an opportunity for necessary communication between the employee and the employer, the representative appointed by the employer or other employees. The employer shall also ensure that there is an opportunity to summon help. According to Article 29(2), further provisions on communication, communication equipment and other safety arrangements in branches and tasks where employees work alone may be given by Government decree. According to Article 31, if the work requires staying continuously in one place or is continuously stressful, an opportunity for pauses during working shall be provided, allowing short-time absence from the workstation.

According to Article 30, an employee performing night work, shall, when necessary, be provided with an opportunity to change tasks or move over to day work if this is possible in consideration of the circumstances and if changing tasks is necessary, in view of the employee's personal capacities, in order to eliminate risks arising from the conditions of the workplace or the nature of the work to the employee's health. According to Article 30(2), the employer shall, when necessary, provide the employee performing night work with an opportunity for having meals if the length of the working time requires it and if providing meals is appropriate in view of the circumstances. The employer may charge the employee a reasonable payment for the meal. Article 31 contains provision on work pauses. According to the Article, if the work requires staying continuously in one place or is continuously stressful, an opportunity for pauses during working shall be provided, allowing short-time absence from the workstation.

Posting of workers

The Act on Posted Workers No. 1146/1999 applies to workers posted to *Finland* and contains provisions on the minimum terms of employment of posted workers. The Posted Workers Act transposes Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. A posted worker means a worker who normally works in a state other than *Finland* and whom an employer in another state sends for work in *Finland* for a limited period of time when providing services that exceed the boundaries of state. When sending workers, the following situations will come up where (i) the worker is posted under the management of the sending enterprise, i.e. the worker's employer enterprise and for work on behalf of it on the basis of an agreement made between the em-

ployer and the receiver of services working in *Finland*, (ii) the worker is sent to work in a working place or establishment belonging to the same conglomerate, (iii) an enterprise practicing hiring or exchange of labour sends a worker to work for another enterprise. The Act on Posted Workers contains provisions on the payment of wages, working time, paid annual holidays, safety at work, and a number of social benefits. These provisions are applied whenever they are more beneficial to the worker than other provisions which are applied in the absence of the Act on Posted Workers. The Act is not applied to the crew working on board ships of enterprises practising merchant shipping.

According to Article 8 of the Act on Posted Workers, supervision of compliance with the Act is the responsibility of the OSH authorities, except for the provisions of the Equality Act referred to in the Act, in which case supervision of compliance is the responsibility of the Equality Ombudsman and the Equality Board. The Occupational Safety and Health Department of the Ministry of Social Affairs and Health is the contact authority (liaison office) of posted workers in *Finland* as required by Directive 96/71/EC.

Non-discrimination Act No. 21/2004

The OSH authorities supervise the compliance with the Non-discrimination Act concerning employment relationships and service relationships. According to Article 11 of the Act, compliance with the terms of the Act in employment relationships and service relationships governed by public law, and in traineeship and other comparable activities in the workplace, shall be supervised by the OSH authorities in accordance with the provisions of the Act on Enforcement. Discrimination based on ethnic origin other than in employment relationships and service relationships does not fall under the supervision of the OSH authorities. Article 11(2) provides that the prohibition on discrimination based on ethnic origin other than in employment relationships and service relationships governed by public law shall be supervised by the Ombudsman for Minorities and the Discrimination Board. Article 1 of the Non-discrimination Act provides that the purpose of this Act is to foster and safeguard equality and enhance the protection provided by law to those who have been discriminated against in cases of discrimination that fall under the scope of this Act. Article 2 states that this Act applies to both public and private activities in the following contexts: conditions for access to self-employment or means of livelihood, and support for business activities, recruitment conditions, employment and working conditions, personnel training and promotion, access to training, including advanced training and retraining, and vocational guidance and membership and involvement in an organisation of workers or employers or other organisations whose members carry out a particular profession, including the benefits provided by such organisations. Under the Non-discrimination Act, it is prohibited to discriminate on the grounds of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or for any other personal reason. Both direct and indirect discrimina-

tion are identified. Furthermore, harassment and instructions or orders to discriminate are prohibited.⁵¹

Protection of Privacy in Working Life No. 759/2004

The OSH authorities together with the Data Protection Ombudsman supervise the compliance with the Act on protection of privacy in working life (No. 759/2004), according to Article 22 of the Act. The Act specifies the kind of personal information an employer can collect concerning an employee. According to Article 1, the purpose of this Act is to promote the protection of privacy and other basic rights safeguarding the protection of privacy in working life. Article 2 lays down provisions on the processing of personal data about employees, the performance of tests and examinations on employees and the related requirements, technical surveillance in the workplace, and retrieving and opening employees' electronic mail messages. Article 2(1) provides that the provisions of the Act concerning employees also apply to civil servants and any persons in a civil service relationship or comparable service relationship subject to public law, and, as appropriate, to job applicants. The Act applies to employment relationship in the private and public sectors.

Job alternation leave and study leave

The OSH authorities monitor the Act on Job Alternation Leave (No. 1305/2002). According to Article 24, compliance with this Act is supervised jointly by the labour and OSH authorities. Job alternation leave is an arrangement whereby an employee, in accordance with a job alternation agreement made with the employer, is released for a fixed period from the duty to carry out work covered by the service relationship while the employer at the same time engages for a corresponding period a person registered at an Employment and Economic Development Office as an unemployed jobseeker. The purpose of job alternation leave is to make it easier for an employee to cope at work and at the same time offer an unemployed jobseeker the opportunity to gain work experience through fixed-term employment. It is also an opportunity for an employer to benefit from having someone with new skills and expertise on the staff. The employee may use the leave any way he or she wishes. The minimum period allowed for job alternation leave is 90 calendar days, and the maximum period is 359 calendar days. Whilst an employee is on job alternation leave their employment relationship is dormant. Under the law, the substitute employee should in the first place be a young person, an unemployed person who has recently gained a professional qualification, or a long-term unemployed person. An unemployed person need not be engaged for the same duties which the employee taking job alternation leave has temporarily ceased to be responsible for. The system of job alternation leave was enacted permanently in 2010.

⁵¹ <<http://www.tem.fi/index.phtml?l=en&s=2312>> visited on the 19th of March 2010.

The OSH authorities supervise the Act on Study Leave (No. 273/79). The purpose of this Act is, through a system of study leave, to improve the opportunities for training and study available to the working population. According to this Act, the expression “study leave” means any period for which an employer has released a worker from the performance of the duties pertaining to the latter’s employment, to enable him to pursue training or study.

The Employment Accident Insurance Act No. 608/1948

The Employment Accident Insurance Act (No 608/1948) provides for employee’s right to receive compensation for an occupational accident. Employers are required to take out insurance from an insurance company. According to Article 1 of the Act, a person who by contract and for remuneration undertakes work for another as an employee, under the employer’s direction and supervision, is entitled to compensation for an employment accident in accordance with the provisions of this Act. The concept of remuneration covers any benefit of financial value. The OSH authorities supervise partly compliance with the Employment Accident Insurance Act.

Act on the contractor’s obligations and liability when work is contracted out (1233/2006)

According to the Article 1 of the Act on the contractor’s obligations and liability when work is contracted out, the objectives of the Act are to promote equal competition between enterprises, to ensure observance of the terms of employment and to create the conditions in which enterprises and organisations governed by public law can ensure that enterprises concluding contracts with them on temporary agency work or subcontracted labour discharge their statutory obligations as contracting parties and employers. According to Article 2(1), the Act shall apply to a contractor: 1) who in *Finland* uses temporary agency workers; or 2) at whose premises or work site in *Finland* an employee is working who is in the service of an employer having a subcontract with the contractor and whose tasks relate to the tasks normally performed in the course of the contractor’s operations or to transportation relating to the contractor’s normal operations. Article 2(1) regulates that in building, and in repair, servicing and maintenance relating to building, the Act is applied: 1) to construction contractors using subcontractors; 2) to all those contractors in the contractual chain contracting out part of the work at a shared workplace as referred to in Article 49 of the Act on Occupational Safety and Health.

Article 9 regulates that the contractor shall be obliged to pay a negligence fee for an offence of the law. The amount of the negligence fee is prescribed as no less than EUR 1,500 and no more than EUR 15,000.

Article 12(1) regulates that the Occupational Safety and Health authorities supervise compliance with this Act as provided in the Act of Enforcement unless otherwise ensuing from this Act. According to Article 12(2), the OSH authorities have the right to request and receive from

the contractor the documents relating to the obligation, and to check and to take copies of them if necessary. Should the inspector notice that the conditions for prescribing a negligence fee exist, he or she must immediately bring the matter to the Regional State Administrative Agency for consideration. If the OSH authority has received notification of suspicion that the obligation to check has been breached, the Regional State Administrative Agency shall deal with the matter urgently.

6.3 Follow-up system of the Act on Occupational Safety and Health Enforcement and Co-operation on Occupational Safety and Health in workplaces No. 44/2006

6.3.1 Provisions on labour inspection in the Act on Occupational Safety and Health Enforcement and Co-operation on Occupational Safety and Health at workplaces No. 44/2006

Provisions concerning labour inspection can be found in *the Act of Enforcement*. According to Article 1, the Act provides for a procedure to be followed by OSH authorities in monitoring compliance with provisions on occupational safety and health and for co-operation on occupational safety and health between employers and employees at workplaces. The objective of the Act is to secure compliance with occupational safety and health provisions and to improve the work environment and working conditions by means of enforcement carried out by OSH authorities and co-operation between employers and employees.

Chapter 2 of the Enforcement Act contains provisions about the powers and duties of OSH authorities and inspectors. According to Article 3(1) OSH authorities inspect workplaces and other locations of supervision and take other actions required by legislation. The OSH authorities shall in their enforcement activities promote co-operation between employers and employees. According to Article 3(2) OSH authorities' enforcement activities are governed by the Administrative Procedure Act (434/2003), the Language Act (423/2003), the Sami Language Act (1086/2003) and the Act on the Openness of Government Activities (621/1999), unless otherwise provided below. Separate provisions are issued regarding the administration of occupational safety and health and any other duties of OSH authorities.

Article 4 of the Enforcement Act contains provision on *access to information and inspection rights*. According to Article 4(1), OSH authorities and inspectors have the right to carry out enforcement activities to such an extent as is necessary for enforcement purposes, including: (1) to have access to any place where work is performed or, for a good cause, is expected to be performed, to any other premises which employers, according to an act to

be enforced by OSH authorities, are obliged to provide for employees' use, and to any place where products to be placed on the market or supplied for use are manufactured, stored or displayed; (2) receive from employers for inspection documents which they, according to provisions to be enforced by OSH authorities, shall draw up or keep, and to receive any other analyses of matters which employers, according to provisions to be enforced by OSH authorities, shall keep or have in their possession in some other way than in writing; (3) discuss with a person working in a place referred to in paragraph 1, or with any other person otherwise occupied there, in private or in the presence of witnesses and from this person receive information necessary for their duties and documents required of the person by provisions to be enforced by OSH authorities; (4) receive from employers a description of any other analyses, besides those referred to in paragraph 2, made by the employer which are related to the work, the work environment and the work community and which affect the employees' safety and health, as well as a description of any other essential plans which affect the structures of the workplace, the work and production methods and the employees' safety and health; (5) receive from employers for inspection an agreement on the provision of occupational health care concluded between the employer and an occupational health care service provider or the employer's description of occupational health care services it has provided, as well as an occupational health care action plan, workplace analysis and any other description of occupational health care activities necessary for enforcement purposes; (6) take samples, after informing the employer of the matter, of raw materials or other materials used in the workplace, or of products manufactured or used in the workplace, for a separate analysis or investigation; a current price must be paid for a sample, unless its value is insignificant; (7) carry out hygiene measurements in the workplace and, by permission of the employer or for a cause justified by enforcement purposes, take photographs there; (8) receive from employers other information necessary for enforcement purposes and copies of the documents mentioned in this section. According to Article 4(2) of the Act of Enforcement, inspectors shall, on request, prove their powers for carrying out inspections by showing a certificate issued by the occupational safety and health authority.

Article 4a of the Act of Enforcement deals with the *right of access to information on taxation and pension insurance*. The Article provides that OSH authorities have, notwithstanding the provisions on secrecy and other restrictions on access to information, the right to obtain from the Tax Administration necessary information on clients fulfilling their obligation to pay taxes and on payment arrangements related to paying of taxes, in order to enforce the Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) and compliance with the minimum terms and conditions of employment. The OSH authorities also have the right of access to necessary information on reports submitted to the Tax Administration, in order to investigate the number of employees, wages and salaries paid out and business carried

on, and the right to obtain from the Finnish Centre for Pensions necessary information on employers and entrepreneurs fulfilling their liability to take out insurance, in order to enforce the Act on the Contractor's Obligations and Liability when Work is Contracted Out.

Information referred to in this Article may be searched for through a technical user connection. The OSH authorities have the right of access to information referred to in this section free of charge. If the processing of information brings additional expenses to the provider of information, the expenses must, however, be defrayed.

Article 4b deals with the spontaneous provision of information to the Tax Administration and the Finnish Centre for Pensions. The Article provides that occupational safety and health authorities may, notwithstanding the provisions on secrecy, on their own initiative provide the Tax Administration with information on suspected neglect of tax liability and the Finnish Centre for Pensions with information on suspected neglect of the liability to take out pension insurance.

Article 5 of the Act of Enforcement contains provisions on *workplace inspections*. According to Article 5(1), workplace inspections shall be carried out *as frequently and efficiently as is necessary* for effective enforcement. Article 5(2) states that especially effective inspection actions shall be targeted on workplaces where there are serious risks to life or health. Inspections must, when necessary, be carried out at all hours of the day when work is done. Article 5(3) states that an inspection, or any other enforcement action taken to investigate the matter, shall be carried out without delay if OSH authorities have been notified of a suspicion that a provision to be enforced by OSH authorities is being breached in the workplace or whenever the employer, the occupational safety and health representative or the occupational safety and health committee, or a corresponding co-operation body, so requires, if the circumstances mentioned in the request or notice give cause for it. Article 6 of the Act on occupational safety and health enforcement and co-operation on occupational safety and health at workplaces states that investigation of an occupational accident referred to in Article 46 that comes to the notice of occupational safety and health authorities shall be carried out urgently. In the investigation, the course of events and the causes of the accident, and the possibility of preventing similar accidents, shall be analysed.

The employer shall be *notified in advance* of an inspection and the inspection date, unless otherwise provided in Section 8. The employer shall inform the competent occupational safety and health representative of the inspection or, in the absence of such a representative, give notification in an appropriate manner in the workplace, according to Article 7 of the Act on occupational safety and health enforcement and co-operation on occupational safety and health at workplaces. The employer shall, where possible, ensure that the occupational safety and health representative is present during the inspection. If the occupational safety and health representative is not present during the inspection,

the employer must tell the inspector the reason for the absence, according to Article 7(2) of the same Act. Furthermore, the employer and the employer's representative, the occupational safety and health representative and other employees have the right to be present at an inspection and express their opinions and ask questions during the inspection, and obtain information on the inspection and the related further actions. The inspector shall, on request, discuss with these persons in private such matters to be inspected that concern them, either in the workplace or elsewhere, when necessary. The inspector may restrict the number of participants to the inspection or propose it to be increased if the nature or extent of the inspection so requires according to Article 7(3) of the Act of Enforcement. Article 8 of the Act provides that the inspection may be without a prior notice. It is stated in the Article that an inspection may be undertaken without the prior notice referred to in Section 7(1) whenever it is necessary for enforcement purposes. In this case the inspector, after coming to the workplace, shall, if possible, inform the employer and the occupational safety and health representative of the inspection, or in the absence of such a representative, give notification in an appropriate manner in the workplace. Article 8(2) provides that an inspection may be undertaken without the prior notice referred to in subsection 1 if the notice is likely to endanger achieving the objectives of the inspection. In this case the inspector shall inform the employer and the occupational safety and health inspector of the inspection, if possible, at the end of the inspection at the latest and at the same time give them an opportunity of expressing their views on the conditions inspected and the observations made during the inspection. If the inspector has not met the said persons during or at the end of the inspection, they must be notified of the inspection in an appropriate manner.

According to Article 9 of the Act of Enforcement, an inspection may be carried out in premises within the sphere of domiciliary peace if there is a reasonable cause to suspect that the work performed on the premises or the working conditions cause danger to an employee's life or obvious harm or hazards to an employee's health and enforcement actions otherwise cannot be satisfactorily carried out. According to Article 10(1), when OSH authorities have received a notice of a defect or shortcoming endangering safety and health at a workplace or any other suspected breach of provisions to be enforced by them, the informant's identity and the fact that the enforcement action is taken due to a complaint shall be concealed. The informant's identity may, however, be revealed if it is necessary for enforcement purposes and the informant has consented to it. According to Article 10(2), information referred to in subsection 1 may, without the informant's approval, be given to the prosecuting authority and the police authority in order to remedy the offence.

According to Article 11(1), it is stated that the inspector shall without delay *draw up a written inspection report concerning each inspection*. The inspection report must reveal the inspection process and the most es-

sential observations made by the inspector. In addition, it must contain written advice and improvement notices in accordance with Article 13, a description of the purpose of the written advice and improvement notice and the possible further actions. An improvement notice may also be issued as a separate document. According to Article 11(2), when necessary, the inspector may, in the inspection report or otherwise, give advice with recommendations in order to promote occupational safety and health. According to Article 11(3), the inspection report shall be submitted to the employer and the occupational safety and health representative. In the absence of an occupational safety and health representative, the employer shall notify the employees of the inspection report in an appropriate manner in the workplace.

According to Article 12(1), OSH authorities may have recourse to *outside experts* in order to investigate circumstances significant for enforcement purposes. An expert has rights, in accordance with Article 4, to the extent that is necessary for the investigation, insofar as is indicated by the letter of authority which the OSH authority has issued for the expert individually for each case. However, experts are entitled to carry out their duties on the premises referred to in Article 9 only in the company of the inspectors they are assisting. Article 12(2) states that the OSH authority shall notify the employer and the occupational safety and health representative of any essential observations made by an expert in a manner it considers appropriate. In the absence of an occupational safety and health representative, the employer shall notify the employees of the essential observations in an appropriate manner in the workplace. According to Article 12(3), the provisions on authorities in the Administrative Procedure Act, the Language Acts and the Act on the Openness of Government Activities also concern experts assisting occupational safety and health authorities.

Chapter 6 contains provisions on *appealing* against decisions of an Occupational Safety and Health authority. According to Article 44(1), a decision taken by an OSH authority at the Regional State Administrative Agency under the Enforcement Act may be appealed against to the Administrative Court, and a decision taken by the Ministry as an OSH authority under the Act may be appealed against to the Supreme Administrative Court, as provided in the Administrative Judicial Procedure Act (586/1996). The Administrative Court and Supreme Administrative Court shall consider the appeal urgently. According to Article 44(2) in addition to other provisions laid down in legislation on persons having the right to appeal, the occupational safety and health representative concerned may appeal against a decision that allows an exemption from the requirements laid down to protect employees. Also, the OSH authority that has taken the decision against which an appeal has been made, may appeal against the decision of the Administrative Court. Article

44(3) provides that temporary prohibition notices referred to in Articles 16(2) and 18(4) of the Enforcement Act may not be appealed against.⁵² An appeal against an Administrative Court decision concerning merely enforcement can be submitted to the Supreme Administrative Court only in connection with the principal claim. According to Article 45, the employer, the competent occupational safety and health representative, and any employee have the right to complain in writing that an occupational safety and health inspection has not been carried out in compliance with this Act. The complaint shall be made within two months after the occupational safety and health inspection or other enforcement measure. The enforcement measures that were carried out shall be investigated on the basis of the complaint, and a new inspection shall be carried out when necessary. The complainant must be informed of the measures taken in response to the complaint within a reasonable time.

6.3.2 Sanctions

Enforcement

Written advice and improvement notice: Article 13(1) of the Act of Enforcement states that if an employer does not fulfil obligations imposed on him by provisions to be enforced by OSH authorities, the inspector shall issue to the employer *written advice* to eliminate or remedy the non-complying conditions. Article 13(2) of the Act of Enforcement states that if the hazard or harm arising from non-complying conditions in regard to matters referred to in subsection 3 is greater than minimal, instead of written advice, the inspector shall issue an *improvement notice* obliging the employer to eliminate or remedy the non-complying conditions. Likewise, the inspector may issue an improvement notice if the employer does not follow written advice in accordance with subsection 1. According to Article 13(3), an improvement notice may be issued in matters concerning conditions related to the work environment and the state of the work community that affect the safety and health of employees, records of working hours or annual holidays or an obligation to keep other similar records; issuance of such a pay calculation or work certificate or submission of a written report on the essential terms of employment as referred to in the Employment Contracts Act or in some other act to be enforced by OSH authorities; provision of occupational health care, supervision of private employment services; or an obligation provided for in this Act. According to Article 13(4), the inspector shall specify in the written advice and improvement notice the provisions to be applied and the defects that have been observed as not in compliance with them. In an improvement

⁵² Under Article 16(2) the inspector may issue prohibition notice to prohibit e.g. the use of a machine, work equipment or other technical device if a defect or shortcoming in the workplace causes a risk to the life or health of an employee is immediate. Under Article 18(4) the inspector may issue prohibition if use of a product causes immediate danger to the health or safety of employees.

notice, the time limit must be specified within which the employer must meet the compliance conditions, if this is not immediately possible. The inspector shall oversee that the employer has followed the improvement notice referred to in Article 13(2) within the specified time limit. If the necessary measures have not been taken, the inspector shall without delay submit the matter to OSH authorities, according to Article 14(1). If the inspector notices that issuing written advice or an improvement notice will obviously not lead to remedying or eliminating the non-complying conditions or the matter brooks no delay, the inspector may *submit the matter to OSH authorities without issuing written advice or an improvement notice*, according to Article 14(2).

Prohibition notice and temporary prohibition notice: If a defect or shortcoming in the workplace causes a risk to the life or health of an employee, the competent OSH authority may prohibit the use of a machine, work equipment or other technical device, a product or a work method or the continuation of work until the non-complying conditions have been remedied or eliminated. The OSH authority may order a default fine as a sanction for the prohibition notice, as provided in the Default Fine Act.

Punishment

The Penal Code (39/1889) contains a chapter on employment offences. It prescribes penalties for a work safety offence, working hour offence, work discrimination, extortionate work discrimination, violation of the rights of an employee representative, violation of the rights to organise employment agency offence and unauthorised use of foreign labour. According to Chapter 47, Article 1, an employer, or a representative thereof, who intentionally or negligently violates work safety regulations, or causes a defect or fault that is contrary to work safety regulations or makes possible the continuation of a situation contrary to work safety regulations by neglecting to monitor compliance with them in work that he or she supervises, or by neglecting to provide for the financial, organisational or other prerequisites for work safety shall be sentenced for a *work safety offence* to a fine or to imprisonment for at most one year. According to Chapter 47, Article 1(2), the provisions in Chapter 21, Sections 8–11 and Section 13 apply to *the punishment for negligent homicide, negligent bodily injury and imperilment*. According to Article 1(3) however, an individual incident of a violation of work safety regulations which is insignificant in view of work safety and which is punishable under section 63 of the Occupational Safety and Health Act (738/2002), Section 23 of the Act on Occupational Health Care (1383/2001) or Section 13 of the Act on Compliance of Certain Technical Devices with Requirements (1016/2004) is not deemed a work safety offence. Chapter 47, Article 2 prescribes a *working hour offence*. According to the Article, an employer, or a representative thereof, who intentionally or through gross negligence, to the detriment of the employee fails to keep working hours or annual leave accounts, keeps them erroneously, alters, conceals or destroys them or renders them impossible to

read, or proceeds in a manner punishable under the working hours or annual leave legislation despite an exhortation, order or prohibition issued by the work safety authorities shall be sentenced for a working hours offence to a fine or to imprisonment for at most six months. Chapter 47, Article 3 prescribes provisions concerning *work discrimination*. According to the Article, an employer, or a representative thereof, who when advertising a vacancy or selecting an employee, or during employment without an important and justifiable reason puts an applicant for a job or an employee in an inferior position because of race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference, genotype, disability or state of health, or because of religion, political opinion, political or industrial activity or a comparable circumstance shall be sentenced for work discrimination to a fine or to imprisonment for at most six months. Chapter 47, Article 3a contains provisions concerning extortionate work discrimination. According to the Article, if in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years. Chapter 47, Article 4 contains provisions concerning *violation of the rights of an employee representative*. According to the Article, an employer, or a representative thereof, who without a justification based on law or a collective employment or civil service agreement dismisses, otherwise discharges or puts on compulsory unpaid leave an employee representative, a trustee referred to in Chapter 13, Section 3 of the Employment Contracts Act (55/2001), a work safety trustee or a personnel or employees' representative referred to in the Act on Personnel Representation in Company Administration (725/1990) or in Section 8 of the Act on Co-operation in Finnish or Community-wide Companies (335/2007) or a co-operation representative referred to in Section 3 of the Act on Co-operation between Employers and Personnel in Municipalities (449/2007), or puts him or her on part time, shall be sentenced, unless the act is punishable as work discrimination, for violation of the rights of an employee representative to a fine. Chapter 47, Article 5 contains provisions concerning violation of the right to organise. According to the Article, an employer, a representative thereof or an employee who prevents an employee from establishing a lawful industrial or political association or using his or her right to join or belong to it or to participate in its activities, or the employees or their industrial organisations from appointing or electing an employee representative, trustee, work safety trustee or personnel representative in group co-operation shall be sentenced for violation of the right to organise to a fine. Also a person who forces an employee to join or belong to an industrial or political association shall be sentenced for violation of the right to organise. An attempt is punishable.

Chapter 47, Article 6 contains provisions concerning *employment agency offence*. According to the Article, a person who charges a fee from individual customers for employment agency services aiming directly at employment, or charges a fee for seamen's employment agency services, shall be sentenced for an employment agency offence to a fine or to imprisonment for at most one year. Chapter 47, Article 6a contains provisions concerning unauthorised use of foreign labour. According to the Article, an employer or a representative thereof who hires or employs a foreigner not in possession of the residence work permit or otherwise a permit to work in *Finland* shall be sentenced for unauthorised use of foreign labour to a fine or to imprisonment for at most one year. According to Article 6a(2), a contractor or subcontractor or orderer of work or a representative thereof who neglects to ensure that the foreign employees in the contract or subcontract work that it has awarded a foreign company or the foreign employees placed at its disposal by a foreign company as contracted labour have residence work permits or other permits to work in *Finland*, shall be sentenced for unauthorised use of foreign labour.

Chapter 47, Article 7 contains provisions concerning *allocation of liability*. According to the Article, where this chapter provides for punishment of the conduct of an employer or a representative thereof, the person into whose sphere of responsibility the act or negligence belongs shall be sentenced. In allocating liability, due consideration shall be given to the position of said person, the nature and extent of his or her duties and competence and also otherwise his or her participation in the origin and continuation of the situation that is contrary to law.

Chapter 47, Article 9 contains provisions concerning *corporate criminal liability*. According to the Article, the provisions on corporate criminal liability apply to work safety offences. Furthermore, Article 63 of the Occupational Safety and Health Act contains provision on violation of occupational safety and health. According to Article 63(1), any employer or person referred to in Article 7⁵³ or their representative who intentionally or through carelessness fails or through carelessness fails to carry out an initial or periodic inspection; to do an analysis or work out a plan; to provide or install a safety device or personal protective equipment; to obtain permission for work or to notify of work; to give instructions needed for the use and service of machinery, equipment or other technical device and a substance hazardous to health, or other similar instructions; or to keep this Act available for inspection, as provided in this Act or in the Executive Orders issued under it, *shall be sen-*

⁵³ Persons referred to in Article 7 are employers exercising the main authority, other employers, and self-employed workers operating in shared workplaces, main contractors, clients or other persons on shared construction sites, employers using voluntary labour, designers, installers of machinery, equipment or other devices, persons carrying out initial or periodic inspections, persons dispatching or loading goods, the owners, other holders and lessors of buildings and lastly port holders, ship owners, shipmasters or other persons in charge of a vessel.

tenced to a fine for violation of occupational safety and health, unless a more severe punishment for the act is prescribed elsewhere in law. According to Article 63(2), a person shall be sentenced for violation of occupational safety and health if he or she, either without permission or without a good cause, or through carelessness, removes or ruins a device or an instruction or a warning intended to avoid the risk of accident or illness, or if a person referred to in Article 52a, intentionally or through carelessness, fails to fulfil legislation, laid down in that Article, to ensure, by concluding agreements or otherwise available means, that persons working on a shared construction site wear identification.

7. Results of the study

7.1 Introduction

Overall, many similarities can be found between the five countries. This is not surprising because all the Nordic countries are members of the ILO. In addition they are all either members of the European Union or the European Economic Area and the rules regarding health and safety are therefore in principle similar.

In this study, variations in the legislation of the Nordic countries concerning labour inspection were found in the area of administration, the scope of the legislation, duties of the employer, risk assessment, the health and safety activities of the enterprise, market surveillance, inspections of dangerous substances, working time, work carried out by children and young people, rules concerning the psycho-social working environment and inspections of posted workers and enforcement and penalties.

7.2 Administration

7.2.1 Structure

The most common (institutional) structure in the Nordic countries is that special government authorities are responsible for implementing and administering the occupational health and safety legislation and other rules concerning labour inspection. As a rule, policy-making responsibility resides with a particular ministry. In all the Nordic countries the Labour Inspection Authorities are responsible for supervising the application of legislation concerning occupational health and safety and if relevant, the condition of workers. One particular ministry has overall supervisory responsibility for those authorities. In *Denmark*, *Norway*, *Iceland* and *Sweden* the Labour Inspection Authorities comprise a central unit and a number of regional inspectorates. In *Finland* the main responsibility for the enforcement lies with the Regional State Administrative Agencies' Divisions of Occupational Safety and Health. They supervise besides compliance with health and safety legislation also other legislation concerning employment and non-discrimination. Another difference in *Finland* is that the Ministry's role is broader than policy-making and steering of the Labour Inspection Authorities. The Ministry has tasks that are usually conducted by the central unit or the regional inspectorates in the other Nordic countries such as preparation of OSH

development plans and programmes, development of labour inspection and carrying out international cooperation.

Under the Working Environment Act in *Norway*, the responsibility of compliance with the provisions of the legislation rests with the Norwegian Labour Inspection Authority (Arbeidstilsynet), which is under the supervision of the Ministry of Labour. The Labour Inspection Authority consists of a central office, the Directorate, seven regional offices and 16 local offices throughout the country. In *Iceland*, the AOSH (Vinnueftirlit ríkisins) is under the authority of the Ministry of Welfare. The AOSH consists of a central office and eight regional offices. The Working Environment Act in *Iceland* prescribes that the AOSH shall, among other things, be involved in education, research as well as labour inspection, including inspection with occupational machinery. Furthermore, it stipulates that it shall have in its service a physician with specialist knowledge relating to the job, and his role is, among other things, to serve as a link between the Working Environment Authority and health authorities. No other legislation in the field of health and safety and concerning the condition of workers in the Nordic countries prescribes this holistic approach for its Labour Inspection Authority. In *Sweden*, the SWEA (Arbetsmiljöverket) is the administrative authority which supervises compliance with the Working Environment Act. The SWEA comprises a central office and ten districts. The Director General, who heads the Authority and is appointed by the Government, is assisted by a steering group. In *Denmark* the WEA comprises a central unit and three regional inspectorates and falls under the Ministry of Employment. The Director General lays down the division of responsibility between the inspectorates. The inspection of enterprises is integrated into three Regional Inspection Centres, each with approximately 100 employees.

In *Finland*, the structure of the administration is different to that in the other Nordic countries. There is no single Labour Inspection Authority as in the other Nordic countries. The Department for Occupational Safety and Health at the Ministry of Social Affairs and Health is responsible for the preparation and development of occupational safety and health legislation. The Department also deals with OSH development plans and programmes at national and EU levels, improvements of working conditions in co-operation with interest groups, market surveillance of machinery, personal protective equipment and chemicals and development of labour inspection. The Department for Occupational Safety and Health is independent while conducting tasks assigned to the OSH authorities, cf. Article 4 of the Executive Order on the Ministry of Social Affairs and Health (90/2008). *Finland* has Regional State Administrative Agencies, which are a combination of several authorities. Within the Regional State Administrative Agencies, the Divisions of Occupational Safety and Health (hereafter OSH authorities) are responsible for the supervision of the OSH regulations and other legislation where relevant. The Department for Occupational Safety and Health gives the OSH au-

thorities instructions on the operations concerning occupational safety and health matters, develops the supervisory methods and ensures their resources. Article 5 of the *Act on the Regional State Administrative Agencies* states that the OSH authorities at the Regional State Administrative Agency are independent while carrying out its enforcement duties. The activities of the OSH authorities must be arranged so as to secure the independence and impartiality of OSH enforcement. No such duties may be assigned to the OSH authorities which might endanger impartiality and due management of the enforcing authorities' duties. No other legislation in the Nordic countries provides for the independence of the occupational safety and health authority.⁵⁴

In *Finland*, the OSH authorities at the Regional State Administrative Agencies not only supervise compliance with health and safety legislation but also other legislation concerning employment and equality. They enforce a number of Acts that have been issued by the Ministry of Employment and the Economy. The OSH authorities supervise compliance with e.g. the Non-discrimination Act (No. 21/2004) concerning employment relationships and service relationships⁵⁵ and the Employment Contracts Act (No. 55/2001) which lays down the rights and obligations of employers and employees in employment relationships concerning, for instance, prohibition of discrimination, family leave, lay-offs and termination and the cancellation of employment contracts. In addition, the OSH authorities supervise the Contractor's Obligations and Liability when Work is Contracted Out Act (No. 1233/2006), the Act on protection of privacy in working life (No. 759/2004), the Act on job alternation leave (No. 1305/2002), the Working Hours Act (No. 605/1996), the Annual Holidays Act (No. 162/2005) and the Act on posted workers (No. 1146/1999).

The Swedish and Danish Working Environment Authorities have been given powers to issue Executive Orders or Regulations. In *Denmark*, the WEA may issue Executive Orders (*bekendtgørelser*) when the Minister for Employment has given authorisation in accordance with Article 73 of the Working Environment Act. That is often the case in more specific and technical Executive Orders.

7.2.2 Appeal of decisions taken by the Labour Inspection Authorities

Decisions taken by the Labour Inspection Authorities, where they are appealed and how the appeals are processed varies from country to

⁵⁴ Cf. ILO's Labour Inspection Convention No. 81 Article 3.

⁵⁵ The OSH authorities supervise discrimination in employment relationships and service relationships. Discrimination based on ethnic origin other than in employment relationships and service relationships does not fall under the supervision of the OSH authorities, rather that of the Ombudsman for Minorities and the Discrimination Board.

country. Decisions are appealed to the ministries (in *Iceland*), or to a special appeals board (in *Denmark*), or they may be appealed to a general administrative court (in *Sweden* and *Finland*). In *Norway*, decisions adopted by local offices of the Labour Inspection Authority may be appealed to the Directorate of Labour Inspection Authority. Individual decisions adopted by the Directorate may be appealed to the Ministry of Labour, but that is very rare. In *Iceland*, decisions by the AOSH may be appealed to the Ministry of Welfare within three months of the notification of the decision to the party involved. In *Sweden*, decisions of the SWEA in individual cases may be appealed to the general administrative court of appeal. Both employers and safety representatives can appeal decisions by the SWEA. In *Finland*, a decision taken by OSH authorities under the Enforcement Act (44/2006) may be appealed in the Administrative Court, and a decision taken by the ministry as an occupational safety and health authority may be appealed in the Supreme Administrative Court. The Administrative Court and the Supreme Administrative Court must consider the appeal urgently. Furthermore, the OSH authority that has taken the decision against which an appeal has been made, may appeal against the decision of the Administrative Court. In *Denmark*, complaints against decisions made by the WEA may be brought before the Working Environment Appeals Board (Arbejdsmiljøklagenævnet), which was set up in 1999 and is an independent administrative authority. The Board consists of a chairman and 13 appointed members, 10 of whom are appointed by the social partners. The Board hears complaints about decisions made by the WEA pursuant to the Working Environment Act and the Act on Smoke-free Environments.

7.3 The scope of Occupational Health and Safety legislation

7.3.1 General

The principle of the Working Environment Acts of the Nordic countries is that all workers and all workplaces are covered by health and safety legislation. In this chapter, we discuss the scope of the Working Environment Acts in *Denmark*, *Sweden*, *Norway* and *Iceland* and the Occupational Health and Safety Act in *Finland* along with the work activities and groups of people to which the Acts apply. The scope of each Act varies between the Nordic countries, but they are in general very similar.

The general rule of the Acts is that they apply to all work performed for an employer. In principle, the Acts cover activities on land, however in some countries the Acts apply also on board ships and to petroleum activities. All areas of working life are covered by the Acts, both in the private and public sectors.

In *Sweden*, the Working Environment Act covers each business in which an employee performs work for the employer's benefit. In 2003, the scope of the Act was widened so as to include work on board ships.⁵⁶ However, the Act still distinguishes between on-shore work and work on board ship. Students undergoing education, inmates of institutions and persons performing services under the Total Defence Duty Act (1994:1809) and other persons performing statutory service or participating in voluntary training for activities within the total defence establishment receive protection under the Act. The Act also applies to self-employed persons and family undertakings. One-man and family enterprises must comply with the provisions concerning risks from machinery and other technical devices and those concerning dangerous substances, e.g. chemical products.

In *Denmark*, the Working Environment Act covers all work in enterprises for an employer except work in the aviation, fishing and shipping industries. The provisions of the Danish Working Environment Act apply to aviation only as regards work on the ground and to shipping and fishing industries only as regards loading and unloading of ships. A number of activities are exempted from the scope of the Working Environment Act, such as work in family undertakings, military service and self-employment. Work performed in the employee's home is partially covered by the Act. Various provisions of the Working Environment Act apply to work that is not performed for an employer, e.g. when technical equipment, such as machines, machine parts, containers, appliances, tools and other technical equipment, is designed and used and *when substances and materials* with properties which can be hazardous to or affect safety or health *are produced and used in work processes*.

In *Finland*, the Occupational Safety and Health Act applies to work carried out under the terms of an employment contract. It does not apply to ordinary hobby activities or professional sports activities. The provisions of the Act also cover anyone who has labour employed by someone else (leased labour) under their direction. The Act also applies to work done by apprentices and students in connection with education, work done by persons involved in employment measures, work associated with rehabilitation and rehabilitative work experience, work done by a person serving a court sentence, work activities done by persons undergoing treatment or kept in a place for treatment or a comparable institution, work done by conscripts and women in voluntary military service. Furthermore, the Act applies to work done by persons in non-military national service and work done by persons belonging to a contractual fire brigade while voluntarily participating in rescue services. In

⁵⁶ However, it is the Swedish Transport Agency that exercises supervision on board ships in collaboration with the SWEA. The AML still distinguishes between on-shore work and work on board a ship, and supervision on board ships is exercised by the Swedish Transport Agency in collaboration with the Swedish Work Environment Authority.

Finland, the Occupational Safety and Health Act applies to work which an employee by agreement performs in his or her home or some other place he or she has chosen. It does not cover military practice and training and directly related work, which persons in the service of the Defence Forces or the Frontier Guard, conscripts or women in voluntary military service carry out if the main purpose of the work or activities is to practise special skills needed in military operations. The Act applies also to work abroad ships and to loading and unloading of ships.

In *Norway*, the Working Environment Act applies to undertakings that engage employees unless otherwise explicitly provided by the Act. It also applies to activities associated with offshore petroleum activities.⁵⁷ In *Norway*, students, national servicemen, persons performing civilian national service, inmates in correctional institutions, patients in health institutions and the like and persons who without being employees participate in labour market schemes are entitled to receive the same protection as employees. These groups are not regarded as employees under the Working Environment Act, however they are entitled to the same working conditions standards as employees. A number of activities are exempted from the Act, such as shipping, hunting and fishing, including processing of the catch on board ship, and military aviation. Certain types of work and employee groups are furthermore exempted or partially exempted from the Working Environment Act, such as government officials, civil servants and foreign services under the Ministry of Foreign Affairs.⁵⁸ The Norwegian Working Environment Act provides that the Ministry may provide in regulations that the Working Environment Act shall wholly or partly apply to *undertakings with no employees*. Executive Orders have been issued concerning the application of the Working Environment Act relating to building and construction enterprises and to agricultural enterprises, employing no workers. The provisions also apply to family enterprises for raising domestic and furred animals and market gardeners. Furthermore, Executive Orders may be issued concerning work performed at the home of the employee or to anyone who performs domestic work, care or nursing at the home of the employer when the Working Environment Act applies to such work. Also, other provisions of the Working Environment Act refer to persons who are given protection and are not regarded as employees, e.g. the chapter on protection against discrimination, (Article 13-2).

In *Iceland*, the Working Environment Act covers all activities where one or more persons are employed, whether they are owners of the enterprise or employees. Shipping operations and work on aircraft are

⁵⁷ The Norwegian Working Environment Act applies to offshore petroleum activities. However, it is the Petroleum Authority in Norway that is the regulatory authority for the Working Environment Act. It must be noted that pursuant to Article 1-3(4) of that Act, special rules on petroleum activities may be laid down. This is because offshore activities require in some cases rules appropriate for the activities.

⁵⁸ See Executive Order No. 1567 of 16 December 2005 concerning rules for exemptions from the Working Environment Act for certain types of work and employee groups.

exempted from the Act. Work on aircraft on the ground, with the exception of the work of the crew, falls under the Act, as do loading and unloading of ships including fishing vessels, carrying out repairs on board ships and other related activities. The scope of the Icelandic Working Environment Act may be extended. The Minister can, in consultation with the Director of the AOSH, advocate through Executive Orders that instruments, machinery and structures or construction projects not covered by this Act shall be subject to the inspections prescribed by this Act, provided that they are not dependent on other legislation.

The general rule of the Acts is that they apply to all work performed for an employer. In *Finland* however, the Act applies to all work under the terms of an employment contract. In principle, the Acts cover activities on land, however in *Sweden* and in *Finland* the Acts apply to ships, and in *Norway*, the Working Environment Act applies to petroleum activities. However, apart from in *Finland*, other regulatory authorities supervise compliance with the Acts in co-operation with the OSH authorities. The Petroleum Safety Authority monitors the working environment in the Norwegian offshore oil sector. The Swedish Transport Agency monitors work on board ships.

7.3.2 Self-employed workers

Definitions of self-employed workers vary between the Nordic countries. In *Denmark*, for instance, a person is considered to be self-employed if that person works at their own expense and at their own risk, issues invoices, does not receive payslips and is furthermore not assigned instructions by others.⁵⁹ In *Finland*, the definition of a self-employed worker is an employed person who is not an employer and who is working without an employment contract. Self-employed persons are covered partially by the Working Environment Acts in *Sweden* and *Denmark*. In *Norway*, self-employed persons are not covered by the AML except for regulations related to health and safety and discrimination. In *Finland*, the Occupational Safety and Health Act applies to work carried out under the terms of an employment contract, and self-employed workers are therefore not covered by the Act. However, as regards shared workplaces, the Act covers self-employed workers.

7.3.3 Home workers and work performed in the home of the employer or the employee

The position of home workers is not uniform in the Nordic countries. In some countries they are covered by the health and safety legislation, such as in *Sweden* and *Finland*. In *Finland*, the Occupational Safety and

⁵⁹ See Executive Order No. 1303 of 14 December 2000.

Health Act applies to work done in the employee's or in another person's home, while in *Sweden*, family-undertakings are covered by the Working Environment Act.

In *Denmark* and *Norway*, the Working Environment Acts do not explicitly apply to work performed in the home of the employee, however the Acts provide that rules may be laid down that provide for work performed at home. In *Denmark*, work in the private household of the employer and work performed by persons who belong to the family of the employer are exempted from the scope of the Working Environment Act. However, rules have been laid down that provide that provisions of the Act shall apply to a limited extent to work carried out in the employee's own home. Furthermore, in *Denmark*, rules on substances and materials must be followed even if they are used in private households, and machinery must meet the machinery protection requirements, regardless of who uses the machinery.

7.3.4 Students, inmates and prisoners

Various groups can receive protection under the safety and health legislation even though they are not employees. Students and pupils are covered by the Working Environment Acts in *Norway*, *Sweden* and *Finland* but not in *Denmark* and *Iceland*. The same applies to inmates and persons participating in labour market schemes or in employment measures. These groups are not regarded as employees under the Working Environment Act. However, they are entitled to the same working conditions standards as employees.

7.3.5 Public and private rules

In *Norway*, the Working Environment Act contains both public and private rules. The private law rules fall beyond the scope of the Norwegian Labour Inspection Authority's supervision, except the provision concerning the contract of employment. However, the Working Environment Authority gives information on the provisions that fall under the private law.

7.4 Duties of the employer

The main responsibility for the working environment rests with the employer. The employer has an obligation under safety and health legislation and various Executive Orders to provide for the health and safety of his employees. All the safety and health legislation in the countries concerned contains provisions on the obligations of the employer which vary according to the legislation, although they are in general very similar, e.g. ensure full safety and a good working environment in the workplace, evaluate all

the risks to the safety and health of workers, inform the employees of any risks of accident or health hazards, provide worker training, provide proper protective equipment and hazardous substance controls and ensure co-operation between the employer and the employees concerning safety and health to establish a good working environment.

In *Sweden* and *Norway*, the duties of the employer to comply with the requirements of the Working Environment Acts and ensure that the enterprise maintains a healthy and safe working environment are mainly explained and reinforced in the regulations concerning internal control in *Norway* (FOR 1996-12-06 No. 1127) and a systematic working environment in *Sweden* (AFS 2001:01).

7.5 Risk assessment

Due to the requirements of the European Framework Directive 89/391/EEC (notably Articles 6.3(a) and 9.1(a)) on the introduction of measures to encourage improvements in the safety and health of workers at work, the employer must prepare an assessment of the risks to safety and health at work or a risk assessment. The assessment of risk is one of the cornerstones of the EUs approach to prevent occupational accidents and ill health. All Nordic working environment legislation provides that the employer shall prepare a written risk assessment, except in *Finland*, where there the Occupational Safety and Health Act states that the assessment shall be in written or other verifiable form. However, written form is required in practice. In *Denmark*, all enterprises with employees have to prepare a written risk assessment. Self-employed persons with no employees are not obliged to prepare a risk assessment. It is the employer's duty in co-operation with employees to ensure that risk assessment is undertaken. In *Denmark*, the AML provides that the employer shall ensure the preparation of a written risk assessment of the safety and health conditions in the workplace, taking due regard of the nature of the work, the work methods and work processes which are applied, as well as the size and organisation of the enterprise. The risk assessment shall remain in the enterprise and be available to the management and employees of the enterprise, as well as to the WEA, which supervises the risk assessment. In *Finland*, the employer shall, taking the nature of the work and activities into account, systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions and, if the hazards and risk factors cannot be eliminated, assess their consequences to the employees' safety and health. In *Sweden*, the duty of the employer to prepare a risk assessment derives from the Executive Order concerning systematic work environment management. In *Norway*, the Working Environment Act prescribes that risk analysis and assessment must be carried out, and plans of action made and carried out according to assessments. The Executive Order on systematic

health, environmental and safety activities in enterprises (internal control regulations) contains furthermore the duty to prepare a risk assessment. In *Iceland*, the Working Environment Act prescribes that the employer shall be responsible for drawing up a written programme of safety and health in the workplace and the programme shall include a risk assessment and a health protection schedule.

In all the countries, if the employer does not have the necessary expertise to draw up the risk assessment, the employer shall obtain assistance from an occupational health service or other experts.

7.6 Rules concerning working environment and working procedures

7.6.1 General

The legislation provides various rules in connection with work, working processes and methods. The rules are very similar between the Nordic countries. All the Nordic countries have rules on working procedures and working methods. These rules are often found in various Executive Orders. The rules concerning the working environment and working methods are very similar. All the Working Environment Acts in the Nordic countries contain provisions that give the nature of the working environment. Legislation in the Nordic countries undergoes constant change to keep up with employee's social requirements, so the rules are constantly changing.

7.6.2 Occupational Health Services

In all the Nordic countries the employer shall or is allowed to seek expert assistance from Occupational Health Services if the working environment so requires. The role of the Occupational Health Services is primarily to prevent work-related problems and achieve a better working environment. Employers are responsible for the cost of the Occupational Health Services in all the Nordic countries, and if the employer does not have the necessary expertise to draw up the risk assessment, he or she shall obtain assistance from an occupational health service or other experts.

In *Norway*, employers in certain sectors are obliged to provide occupational health services, e.g. various manufacturers, mining, hair salons, laundry, medical centres and nursing centres. In *Norway* and *Sweden*, the provisions of Internal Control provide that the employer shall seek expert assistance from Occupational Health Services. In *Norway*, the Working Environment Act states that the assessment of whether an obligation to provide Occupational Health Services exists shall be made as part of the implementation of the systematic health, environment and safety measures. In *Sweden*, the provisions on Systematic Work Envi-

ronment Management/Internal Control of the Working Environment provide that when competence within the employer's own operation is insufficient for systematic work environment management or for work relating to job modification and rehabilitation, the employer shall engage occupational health services.

In *Finland*, the employer has a duty according to the Occupational Health Care Act (1383/2001) to arrange for Occupational Health Services. Employers may organise Occupational Health Services through private service providers or by themselves. In *Finland*, municipal health care centres are responsible for providing occupational health services to employers if the employer requests them. The main tasks of the occupational health services in *Finland* are assessing and monitoring of work-related health risks and problems, making suggestions for improvement and guidance in matters concerning the health and safety of the work of the employees, workplace visits, investigation and co-operation with e.g. OSH authorities. The employer and the Occupational Health Care Service provider shall draw up a written agreement on the organisation of occupational health care and the content and coverage of the services. The OSH authorities monitor the arrangement of occupational health care.

The Working Environment Authorities in *Norway*, *Denmark* and *Iceland* authorise the Occupational Health Services or the health and safety consultant.

7.7 The safety and health activities of the enterprise (safety representatives and safety committees)

Working environment legislation makes the employer ultimately responsible for the working environment. However, co-operation between the employer and the employees is also important and a key factor. The Nordic countries rely to a great degree on employees to participate in the regulation of safety and health in the workplace. All the Working Environment Acts in the Nordic countries are based on principles of participation of the employees. That participation is based on the likes of safety representatives and safety committees.

Safety representatives represent employees in matters concerning the working environment. Legislation in *Finland*, *Norway* and *Iceland* provides that all undertakings employing more than ten employees shall elect safety representatives. In *Sweden*, all workplaces with five or more workers are obliged to have a safety representative.

Safety representatives are elected from among the employees by the employees (as in *Denmark*, *Finland*, *Iceland*, *Norway*), or by a local trade union organisation (as in *Sweden*). If there is no union at a workplace, the safety representative is elected from among the employees. In *Denmark*, the safety representative is elected to be the part of a working

environment group (arbejdsmiljøorganisation). The role of the working environment group is e.g. to be responsible for and participate in the activities to protect the health and safety of the employees, prepare risk assessment and make sure that the working conditions are fully satisfactory and investigate accidents, health injuries and report them to the employer or his or her representative. In *Finland*, safety representatives (occupational safety and health representatives) are elected to represent employees in OSH co-operation. The Act of Enforcement (44/2006) provides that employees at workplaces where ten or more employees work regularly shall elect an occupational safety and health representative among themselves along with two alternates to represent them in OSH co-operation, cf. Chapter 5 of the Enforcement Act, and to keep contact with the OSH authorities.

The duties and the powers assigned to these safety representatives are very similar from country to country: promotion of the safety and health in the workplace. They participate in inspections and are entitled to have access to documents and records which concern safety and health at work. In the Nordic countries, the safety representatives have rights to obtain adequate training in order to carry out their duties. In addition, safety representatives in *Denmark*, *Norway*, *Finland* and *Sweden* have the right to demand that work is stopped on processes which they believe to pose serious risks to health and safety. In *Sweden*, for example, safety representatives may interrupt work if there is a certain immediate and serious danger to the life or health of the workers and if no immediate remedy can be obtained through representations to the employer. The decision of the safety representative is provisional until the SWEA has taken a decision. Under the Norwegian Working Environment Act, if the safety representative considers that the life or health of employees is in immediate danger and such danger cannot be averted by other means, work may be halted until the Norwegian Labour Inspection Authority has decided whether work may resume. Work may only be halted to the extent that the safety representative considers necessary in order to avert danger. Under the Act of Enforcement in *Finland*, the safety representative (occupational safety and health representative) is entitled to interrupt work if such work causes immediate and serious danger to an employee's life or health. The safety representative shall inform the employer of any interruption to work, in advance if possible. After making sure that no danger exists to the employer's life or health, the employer may order the work to be continued.

In addition to the election of safety representatives, there are also arrangements for establishment of *regional safety representatives* in *Sweden* and *Norway*. In *Sweden*, regional safety representatives can be elected for small worksites and there is no safety committee. The regional safety representatives are elected by the trade unions, and the area which the regional safety representative covers is decided by the organisation which appoints him or her. In *Norway*, special local or regional

safety representatives are appointed in building and construction enterprises. They are appointed for four years at a time and operate full-time.

In *Sweden*, people undergoing training or education shall be given the opportunity, through mandatory of the training or education, to partake in safety activities through student safety representatives (delegates). For Grades 7–9 in compulsory schools and 7–10 in special schools as well as for each national and special programme in upper secondary school, two representatives of the pupils shall be appointed to participate in the school's work environment efforts as pupil safety representatives (delegates).

All the health and safety legislation provides that a *safety committee* shall be set up. In *Finland* at enterprises where at least 20 employees work a safety committee shall be set up, whereas in *Norway*, *Iceland* and *Sweden* where at least 50 employees work a safety committee shall be set up. In *Denmark* in enterprises with 10-34 employees the safety and health activities organises in a working environment group (*arbejdsmiljøorganisation*) consisting of one or more supervisors and one or more elected working environment representative along with the employer or his representative as chairman. Safety committees are responsible for a series of tasks that promote the safety and health in the enterprise including inspecting enterprises, making recommendations to employer and providing employees with information and cooperate with the occupational health services. However, these safety committees vary by the Nordic countries. In *Norway* each year the safety committee shall submit a report on its activities to the administrative bodies of the enterprise and to employee organisations. In *Denmark* there are new rules that came into force in fall 2010 on safety and health activities of the enterprise. The new rules provide that enterprises within a simple frame may decide by themselves how their working environment groups (*arbejdsmiljøorganisation*) are organised and how many members it should have. The rules provide also more flexible planning of the working environment at all enterprises to implement an annual safety and health discussions, where employers and the safety representatives (*arbejdsmiljørepræsentant*) together plan the working environment in the coming year.

7.8 Market surveillance

Market surveillance encompasses the activities carried out by public authorities to ensure that products on the markets comply with the requirements set out in the relevant legislation. All the Labour Inspection Authorities in the Nordic countries are responsible for market surveillance of various products, equipment and devices within the EU Directives (New approach Directives). The role of the Labour Inspection Authorities is to check that products and equipment meet safety requirements and that sanctions are applied when necessary. Market surveillance occurs through

normal workplace inspection activities, at trade fairs, at exhibitions and on shop premises. If the requirements are not met, the authorities may direct that the product or equipment shall be recalled from the market, prohibited or be supplied with warning information. The authorities have the power to take action in workplaces against employers, manufacturers and suppliers. The Norwegian Labour Inspection Authority handles the market surveillance of chemicals. The Labour Inspection Authority may require that the employer shall conduct special inspections or submit samples for inspection. Furthermore, the authority may require that manufacturers or importers of chemicals or biological substances conduct inspections or submit samples for inspection in order to determine how hazardous the chemical or substance is. The cost of these inspections shall be borne by these parties.

It should be noted that the SWEA also has responsible for market surveillance of a number of products where no EEA/EU rules apply.

The main conclusion is that all Labour Inspection Authorities in the Nordic countries have been entrusted with powers relating to market surveillance. However, the scope of the market surveillance of the Labour Inspection Authorities varies.

	Denmark	Finland	Iceland	Norway	Sweden
Machinery	X	X	X	X	X
Personal protective equipment	X	X	X	X	X
Simple pressure vessels	X		X		X
pressure vessel	X		X		X
pipng systems under pressure	X				
pressure equipment	X		X		
transportable pressure equipment	X		X		
products for use in potentially explosive atmospheres	X				
products containing asbestos	X				
cableway installations designed to carry persons	X		X		
design of technical equipment	X		X		
design of work equipment	X				
products for use in potentially explosive atmospheres/environments (ATEX)	X			X	X
Chemicals		X		X	
appliances burning gaseous fuels			X		
explosive for civil use			X		
ladders	X				X
hand tools	X				
scaffolding	X				
containers	X				
aerosol	X		X		
lifts	X		X		
protection structure on tractors	X				

7.9 Inspections concerning dangerous substances and materials

7.9.1 General

Dangerous substances and chemicals can present hazards affecting the health and safety of the workplace. Health and safety legislation in the Nordic countries contains provisions concerning this matter. The Labour Inspection Authorities monitor the treatment of dangerous and hazardous substances and chemicals. The inspection is directed at the health and safety of the employees in the workplace and not to the effects of substances on the environment. The EU has issued various Directives that have been transposed in the Nordic countries and the rules are therefore very similar between the Nordic countries, for example the enforcement of the rules regarding the control of major accident hazards according to the Directive 96/82/EC.

7.9.2 Tobacco Acts

All the Labour Inspection Authorities are responsible for ensuring compliance with certain provisions of Tobacco Acts as regards with work premises. In *Norway*, the supervisory responsibilities referred to in certain Articles of the Tobacco Act No. 14 of 9 March 1973 are divided between the municipal authorities and the Norwegian Labour Inspection Authority. According to the Tobacco Act, supervision is carried out by the Norwegian Labour Inspection Authority in the case of work premises. The Danish WEA supervises compliance with the legislation on smoke-free environments (No. 512 of 6 June 2007) along with other authorities. In *Sweden*, the SWEA supervises compliance with the Tobacco Act (SFS 1993:581) as regards premises and other spaces over which the Authority exercises supervision. In *Iceland*, the AOSH supervises compliance with the Tobacco Act (No. 6 of 31 January 2002) as regards working premises. In *Finland*, the OSH authorities monitor the Tobacco Act (693/1976) in workplaces.

7.9.3 REACH

The Regulation (EC) 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) entered into force on 1 June 2007. Its purpose is to ensure the protection of human health and the environment. The Labour Inspection Authorities in *Denmark*, *Finland*, *Norway* and *Sweden* have some roles in the enforcement of the REACH Regulation. In *Finland*, the OSH authorities make inspection visits to the premises of industrial operators who manufacture, import, store and use chemicals or chemical-containing articles and enforce compliance with the rules of REACH on registration and notification,

communication of information, downstream users, substances under authorisation and restrictions. The OSH authorities at the Regional State Administrative Agencies also enforce compliance with the provisions on the classification and labelling of chemicals used and manufactured at work. The Norwegian Labour Inspection Authority is responsible for enforcement of the Executive Order (FOR-2008-02-04-119) which transposes Regulation (EC) 1907/2006 with respect to occupational health and safety. The role of the Danish WEA is to ascertain that safety data sheets (sikkerhedsdatablade) are available and correct. Furthermore, they are responsible for checking obligations concerning the flow of information in the supply chain (leverandørkæden), downstream users and some restrictions. The Swedish Working Environment Act provides that the SWEA shall monitor that the safety data sheets are available and correct. Furthermore the inspectors shall inform the employees about what substances do not require a safety data sheet.

The WEA is responsible for the daily operation of the register for substances, materials and products called the Product Registry. A Product Registry is located at the offices of the Danish WEA. The object of the Product Registry is the collection of information and evaluation concerning substances, materials and products, and it gives an overview of the chemicals in *Denmark*. The Product Registry is used by the Danish WEA and the Danish Environmental Protection agency in their risk prevention work. In *Denmark*, there are therefore two systems, the Product Registry and REACH registration. The systems contain different information and address different requirements for registration and notification.

7.10 Working time

Rules on working time are laid down in legislation, collective agreements or other agreements. Directive 93/104/EC and Directive 2003/88/EC concerning certain aspects of the organisation of working time set the minimum standard of working hours in the EU/EEA.

The arrangement of rules concerning working time can be distinguished between three groups. Bollé (2001) divides countries into three groups as regards regulations and legislation on working time: those associated with “individual flexibility” based on individual relations between employers and workers, “state driven flexibility” where a legislator or governing body plays a crucial role in setting regulations concerning working hours (*Finland, Norway, Sweden and Iceland*) and lastly “negotiated flexibility” where actual working time is set by bargaining between workers and enterprises (*Denmark*).⁶⁰

⁶⁰ P Bollé: „Perspectives: The future of work, employment and social protection”, 461.

The rules vary regarding working time and how the Directives are transposed into the legislation of the Nordic countries.

In *Denmark* there are no statutory rules on working hours, except for rules concerning minimum rest periods, maximum working hours, etc. Rules concerning working time are subject to collective agreements. The Act on the transposition of parts of the working time Directive No. 896 of 24 August 2004 (the Working Time Act) contains rules that transpose certain provisions of Directive 2003/88/EC and Directive 2000/34/EC amending Directive 93/104/EC concerning certain aspects of the organisation of working time. The law applies to employees who are not under any collective agreements and does not apply to mobile workers and drivers who are covered by Regulation (EEC) No. 3820/85 on the harmonization of certain social legislation relating to road transport. The Working Time Act in *Denmark* provides provisions for maximum weekly working time, breaks and night work and the WEA monitors the Act. Furthermore, the Danish Working Environment Act lays down rules concerning rest periods and rest days. The WEA monitors compliance with the rules regarding minimum rest periods.

In *Sweden*, working time is usually laid down in collective agreements. However, there is also legislation on the matter. The main act in *Sweden* is the Working Hours Act (Arbetsstidslagen, SFS 1982:673). SWEA is responsible for the compliance of the Working Hours Act along with the Working Hours for Certain Road Transport Work Act (SFS 2005:395), the Working Time, etc. of Mobile Workers in Civil Aviation Act (SFS 2005:426), and the Act on Driving Time and Rest Periods in International Rail Transport. The Working Hours Act (SFS 1982:673) sets out provisions on the duration and scheduling of working hours for the protection of employees. It can be replaced by collective agreements, but if no such agreement exists, the application of the Act is enforced by the SWEA. The Act applies to all activities in which an employee performs work on behalf of an employer. However, it does not apply to home workers, forms of remote working and managerial executives, work on board ship and mobile employees who participate in road transport. SWEA can make exemptions from various provisions of the Act.

The Norwegian Working Environment Act regulates working hours. It contains definitions of various concepts, provisions on working hour arrangements, work schedules, normal working hours and how to calculate normal working hours. Furthermore, the Act contains provisions on overtime, daily and weekly off-duty time, Sunday work and night work. Exceptions may be made from these provisions. The Act sets out that working hours must not exceed nine hours a day or 40 hours a week. Alternative working hours may be permitted. It calls for average calculation of working hours and requires a written agreement, and means that the employee can work more during some periods and less in others, but the average working hours remain within the limits of ordinary working hours.

In *Finland*, the Working Hours Act (604/1996) regulates the rules on working time. The OSH authorities in *Finland* monitor compliance with the Act and local agreements on regular working hours made under the Act. The Working Hours Act is a general act applicable to both private and public sector employment and applies to all work performed under an employment contract. The OSH authorities also supervise compliance with the Young Workers Act (No. 998/1993) and the Act on the Employment of Household Workers (No. 951/1977), which contains rules on working hours. Under the Working Hours Act, maximum regular working hours in *Finland* are 8 hours a day and 40 hours a week. It is possible to diverge from regular working hours in the manner laid down in the Act, either by a collective agreement or by an agreement between the employer and employee. In this case, however, regular working hours must be balanced over a period to give an average maximum of 8 hours a day and 40 hours a week.

In *Iceland*, the Working Environment Act contains provisions on rest time, holidays and maximum working hours. Furthermore, rules concerning working time can be found in collective agreements. The Working Environment Authority in *Iceland* monitors working hours of employees.

7.11 Work carried out by children and young people

All the Labour Inspection Authorities in the Nordic countries monitor rules regarding work carried out by children and young people. The rules on safe work and working time of children and young persons are found in the Working Environment Acts, Executive Orders (Regulations) or in special legislation.

All the Nordic countries have transposed Directive 94/33/EC on the protection of young persons, and the rules on the work of children and are therefore generally very similar. In all the Nordic countries, rules on young people apply to persons under 18 years of age. In *Finland*, a specific act, the Act on Young Workers (998/1993), has been passed. In the other Nordic countries, the Working Environment Acts or Executive Orders contain rules on work performed by young persons.

In *Denmark*, *Norway* and *Iceland*, the general rule is that a person under the age of 15 or persons attending compulsory education shall not perform work. Young persons may however be allowed to do light work. In *Sweden*, a young person may not be employed before the calendar year in which he or she is 16 years of age, and they must have completed their compulsory schooling. In *Finland*, a person may be allowed to work if he or she has reached the age of 15 and is not required to attend compulsory school. All the Nordic countries have issued exemptions, and young people may be allowed to do only light work. In *Denmark*, *Iceland*, *Sweden* and *Norway*, children aged 13–15 may do light work which is not harmful to their health, development or schooling. In *Finland*, a person may be al-

lowed to work if he or she has reached the age of 14 years or will reach that age in the course of the calendar year and if the work in question consists of light work. In all the Nordic countries, certain types of work are considered particularly dangerous and are therefore prohibited. In *Norway*, these types of work are prohibited for persons less than 18 years of age. Usually the legislation provides in more details what types of work shall be subject to this prohibition and to what age group it applies.

In all the Nordic countries, the rules apply to work for an employer, work performed in the employer's private household and in a family enterprise. The rules on young persons in the Nordic countries apply to work performed by young persons for an employer, work in the employer's private household and work carried out exclusively by such members of the employer's family as belong to his household. However, in *Finland* the Young Workers Act (998/1993) applies not only in an employment relationship in the private or public sector, but also to practical work experience by school students done at school.

7.12 Psycho-social working environment

The Working Environment Acts and other legislation of the Nordic countries contain rules concerning the psycho-social working environment. However, the rules vary between the Nordic countries.

In *Denmark*, the Working Environment Act does not contain provisions on the psycho-social working environment. However, a provision in the Executive Order on the performance of work provides that work may not involve a risk of physical or mental impairment to health as a result of bullying. During screening inspections of enterprises, psycho-social factors are taken into account and comprehensive guidelines on psycho-social issues have been prepared to assist both the inspector and the employer. In *Denmark*, an agreement was made by the Danish government in 2001 whereby the WEA may intervene in cases of serious psychological problems in the workplace. The WEA has attempted to draw a clear distinction between those factors that it cannot legitimately influence (such as the nature of the work, job security and organisational changes) and those where it would be justified in intervening. The WEA has listed five risk factors, such as quantitative demands, emotional demands, work-related violence and trauma, bullying and sexual harassment and night and shift work. In 2001, the WEA, the Danish Employers' Confederation (DA) and the Confederations of Trade Unions (LO) made an agreement concerning the Executive Order on the performance of work, which covers bullying and harassment. The agreement provides that it shall be possible for employees and employers to conclude a local agreement which provides that bullying and harassment are internal company affairs. If such an agreement exists, it will not be possible to call in WEA in such cases. This local agreement between the

employees and the employers thus supersedes the original agreement concerning the powers of the WEA made in 2001. The WEA may oblige the employer to seek assistance from Occupational Health Services to solve the problems concerning the psycho-social issues.

In *Norway*, the Working Environment Act contains a provision concerning the requirements regarding the psycho-social working environment. Work shall be arranged so as to preserve the employees' integrity and dignity, and efforts shall be made to arrange the work so as to enable contact and communication with other employees of the enterprise. Furthermore, employees shall not be subjected to harassment or other improper conduct and they shall be protected against violence, threats and undesirable strain as a result of contact with other persons, e.g. customers, clients and patients. In *Norway*, the Internal Control rules provide that the employer shall prepare written routines for conflict resolution, including procedures of cases, roles and responsibility.

In *Finland*, the Occupational Safety and Health Act contains various provisions on the psycho-social working environment. The Act contains provisions on harassment, lone working and avoiding or reducing workloads. It also provides that work and working conditions in jobs that entail an evident threat of violence shall be so arranged that the threat of violence and incidents of violence are prevented as far as possible. The provision on harassment states that if harassment or other inappropriate treatment of an employee occurs at work and causes hazards or risks to the employee's health, the employer shall use available means to implement measures for remedying this situation.

In *Sweden*, The Working Environment Act contains provisions on psycho-social working environment. The working environment shall be satisfactory with regard to the nature of the work and social and technical progress in the community. Technology, work organisation and job content shall be designed in such a way that the employee is not subjected to physical or mental strains which can lead to ill-health or accidents. In 1993 the National Board of Occupational Safety and Health (now SWEA) issued two Executive Orders on workplace violence and bullying at work. Other Executive Orders have been issued in *Sweden* concerning this matter, for example Executive Order concerning victimization at work and Executive Order on solitary work. Furthermore SWEA has issued general recommendations (AFS 1980:14) regarding the psychological and social aspects of the working environment. These recommendations provide that the employer must deal with the psychological and social aspects of the working environment.⁶¹

In *Iceland*, the Executive Order on measures against bullying at work aims to promote preventive measures and implement actions to counter

⁶¹ See further Chapter 2.2.4, p. 83.

harassment in the workplace. However there are no provisions in the Working Environment Act on psycho-social matters.

Sweden and *Iceland* are the only Nordic countries that have issued Executive Orders that contain provisions on psycho-social matters.

7.13 Inspection concerning foreign and posted workers

7.13.1 *Posting of workers*

The Directive 96/71/EC concerning the posting of workers ensures that posted workers are subject to national minimum employment rights when posted to another Member State of the EU/EEA. The Directive has been transposed in all the Nordic countries. The object of the Directive is to ensure that minimum rights are guaranteed for workers posted by their employer to work in another country and to avoid social dumping. The basic principle is that working conditions and pay in effect in the host state shall be applicable both to workers from that state and to those from other EU/EEA countries posted to work there. According to the Directive, a posted worker is one who, for a limited period, carries out his or her work in the territory of a Member State of the EU/EEA other than the state in which he or she normally works.

In all the Nordic countries, posted employees are protected by the relevant Working Environment Acts (or by the Occupational Safety and Health Act in *Finland*). The Labour Inspection Authorities have the duty to monitor whether enterprises comply with the Acts in relation to work carried out by posted or foreign workers. However, some Labour Inspection Authorities in the Nordic countries have a wider role to play when it comes to the supervision of posted and foreign workers.

The Norwegian Working Environment Act contains provisions on posting workers. The Act contains a definition of what a posted employee is and when the rules of posting of workers apply. The rules on posting workers apply both when a foreign undertaking posts an employee to *Norway* and when a Norwegian company posts employees to another Member State of the EU/EEA. The role of the Norwegian Labour Inspection Authority is to supervise the working environment and wages of posted workers. Furthermore, in order to prevent social dumping the Labour Inspection Authority supplies information to raise awareness about the relevant rules and workers' rights. In *Finland*, Directive 96/71/EC was transposed in the Act on Posted Workers (1146/1999), which contains provisions on working time, safety at work, payment of wages and a number of social benefits that the OSH authorities monitor. The OSH authorities also monitor working conditions and the payment of wages of posted workers. In *Sweden*, Directive 96/71/EC was transposed in the Foreign Posting of Employees Act (SFS 1999:678).

Directive 96/71/EC prescribes that the Member States of the EU/EEA shall designate one or more *liaison offices* or one or more competent national bodies. The role of the liaison offices are to co-ordinate and provide information about the activities, work and employment conditions in relation to foreign employers and employees where they fall under the rules on the posting of workers. The Labour Inspection Authorities in *Denmark*, *Norway* and *Sweden* function as liaison offices or contact offices as required by the EU Directive. The Occupational Safety and Health Department of the Ministry of Social Affairs and Health is the liaison office in *Finland*.

The main conclusion is that all the Labour Inspection Authorities monitor the working environment and the health and safety of posted workers. However, the Labour Inspection Authority in *Norway* and the OSH authorities in *Finland* also monitor the terms of employment of posted workers. Furthermore, the Labour Inspection Authorities in *Denmark*, *Norway* and *Sweden* and the Occupational Safety and Health Department of the Ministry of Social Affairs and Health in *Finland* act as liaison offices as required by the Directive.

7.13.2 Identification cards in the construction sector and others sectors

All enterprises in *Norway*, whether Norwegian or foreign, that perform work on building and construction sites are obliged to issue identification cards (hereafter ID cards) to their employees. ID cards must also be used by one-man enterprises. If employees are hired through an agency, it is the recruitment agency that must ensure that the hired employees have been issued with ID cards. The employer is responsible for ensuring that employees who perform work on building and construction sites receive ID cards. The Norwegian Labour Inspection Authority, along with Petroleum Safety Authority, is responsible for supervising the scheme. In *Finland*, the Occupational Safety and Health Act prescribes that each person working on the construction sites must wear visible pictorial identification while moving on the site. The identification shall indicate whether the person is a worker in an employment relationship or a self-employed person. It is the duty of the client to ensure that the person working on the construction site wears an ID card. However, identification is not required for persons temporarily carrying goods to the site and for persons working on a site where a building is built or renovated for the use of a natural person acting as the client. The OSH authorities supervise the use of ID cards in *Finland*.

In *Iceland*, Act No. 42 of 18 May 2010 provides that workers on construction sites and hotel employees shall wear ID cards. However, the AOSH in *Iceland* does not monitor the Act it is the Social partners that monitor the compliance with the Act.

7.14 Inspection of occupational machinery

One of the roles of the AOSH in *Iceland* is the inspection of machinery and technical equipment covered by the Working Environment Act, for example, heavy duty transportable machinery, agricultural machines and lifts, lifts for people, car lifts and ski lifts. *Iceland* is the only Nordic country that inspects occupational machinery. The AOSH keeps a national register of occupational heavy machinery and technical equipment. In addition the AOSH issues certificates to operate mobile construction machinery and construction equipment. Before receiving certification from the AOSH, the operator must receive adequate training in the operation of mobile construction machinery and construction equipment.

7.15 Enforcement

7.15.1 Issuing of orders or notices

The enforcement of health and safety legislation and legislation concerning working conditions where relevant is a matter for the Labour Inspection Authorities in the Nordic countries. Enforcement and inspection can also be in conjunction with other specialised monitoring agencies in certain sectors of activity.⁶² Workplace inspections are carried out to ensure compliance with health and safety legislation and, where relevant, with legislation concerning working conditions. The powers of enforcement are important, both to secure compliance with the legislation and to ensure that those who have duties according to the legislation may be held responsible for infringements of that legislation.

Where there are contraventions of the legislation, the inspector is empowered to use various forms of sanctions, e.g. forms of notices to the employer or other persons requiring compliance with the law within a certain time period or immediately. The forms of notices or orders issued by the inspector vary between the Nordic countries. These orders offer a quick and simple mechanism which can be used on the spot to deal with serious hazards as soon as they are detected. Moreover, such orders are particularly flexible in that they do not necessarily specify how an employer may come into compliance, thereby leaving the employer free to choose the least-costly method and avoid unnecessary expense.⁶³ As already seen, the provisions regarding enforcement vary greatly within the Nordic countries. If the employer does not comply with an order, the Labour Inspection Authorities have a range of enforcement options to ensure compliance with the legislation. The typical

⁶² E.g. Petrolumtilsynet in Norway.

⁶³ Gunningham and Johnstone (No 58) 376.

sanction imposed on enterprises as a consequence of an inspection is a fine. Furthermore in all the Nordic countries the inspectors can shut down workplaces and forfeiture of various machines.

In *Norway*, the inspectors can issue an *order* (*pålegg*) to enterprises when statutes and regulations are violated requiring them to correct the situation within a given time limit. The Labour Inspection Authority issues orders as are necessary for the implementation of provisions of the Working Environment Act concerning the duties of employers and employees, working environment measures, requirements regarding the working environment, obligation to record and notify, requirements to manufacturers, safety representatives, working environment committees and working time. Furthermore, the Labour Inspection Authority may issue orders concerning requirements regarding a written contract of employment, changes in the employment relationship and concerning the consequences of unfair dismissal. Orders must be issued in writing and time limits set for their effectuation. If the order is not complied with, the Labour Inspection Authority issues a coercive fine. The fine may be imposed for each day, week or month that passes after expiry of the time limit set in the order.

In *Denmark*, when the inspector finds out that there has been a violation of the health and safety legislation, a number of enforcement options will be available depending on the seriousness of the violation. For less serious offences, the inspector can issue an *improvement notice with a deadline* (*påbud med frist*). For serious offences the inspector can issue an *immediate improvement notice* (*strakspåbud*) or a *prohibition notice* (*forbud*). When there is a failure to comply with the orders or notices issued by inspectors, or in the event of gross violations of the Working Environment Act (*Arbejds miljøloven*) and Executive Orders issued on the bases of them, the WEA can impose fines or report the offender directly to the police. In 2002, the WEA were given powers to complete criminal proceedings and impose fines without a judicial decision. Such fines can be imposed on four conditions. When there are clear, uncomplicated violations and clear practice of the case law in the field. The party accused of the infringement admits his guilt and declares his willingness to pay the fine, and the infringements of the rules are not judged to be subject to higher penalties than fines. If those conditions are met, the matter may be settled with a fine. If they do not apply, the WEA will send a report to the police. If an enterprise is fined for the same offence more than once during a two-year period, the penalty may be increased by 50%.

In *Finland*, under the provisions of the Enforcement Act, the inspector may issue an employer who does not fulfil obligations imposed on him with *written advice* on how to eliminate or remedy the non-compliant conditions. Instead of a written advice, the inspector may issue an *improvement notice* where the hazard or harm arising from non-compliant conditions is greater than minimal. The time limit within which the em-

ployer must meet the compliance conditions must be specified. An improvement notice may be issued in matters mentioned in the Enforcement Act. The inspectors oversee that the employer complies with the improvement notice within the specified time limit. If the necessary measures have not been taken, the inspector shall without delay submit the matter to OSH authorities. The authority then considers the matter and pronounces a binding decision whereby the employer must remedy or eliminate the non-compliant conditions within a time limit. The authority may then impose a *default fine* as a sanction.

In *Sweden*, inspectors are empowered to use inspection notices, injunctions and prohibition as sanctions. First the inspector issues an improvement notice to the employer if he sees any deficiencies in the working environment. The improvement notice is not a formal (binding) decision but is regarded as a call to the employer to take measures. The improvement notice cannot be appealed. If the employer does not comply with the improvement notice, the SWEA issues a binding injunction or a prohibition. This is normally decided on within 3 weeks of the time limit given in the notice for returning a statement has passed. The decision is made by the Head of the District. The injunction or the prohibition can be addressed to the employer or to other parties who are responsible for the working environment, e.g. suppliers, developers, coordinator for safety and health matters and persons in control of a worksite. The injunction can be appealed to an administrative court. Most injunctions and prohibitions issued to companies or municipalities also incur a contingent fine which the employer can be made to pay if the injunction or prohibition is not complied with. However, the SWEA cannot impose a contingent fine on the state as an employer. The decision regarding the fine is made by an administrative court.

In *Iceland*, if the employer violates the Working Environment Act, the AOSH may issue an *order for improvement*. If the employer does not comply with the order, the AOSH may decide that the employer to whom the order is issued to shall pay *per diem* fines.

Enforcement practices and strategies vary across the Nordic countries, but the overall pattern is the same: as a consequence of an inspection visit, the inspector may issue an order to remedy any non-compliance with the law. If the employer or the person to whom the order is issued does not comply, various sanctions may be imposed. Sanctions may be directed towards the employer or others, e.g. suppliers and developers.

7.15.2 Failing to comply with an improvement or prohibition notice

In all the Nordic countries, the failure of an employer to follow a prohibition notice or injunction from the Labour Inspection Authorities can lead to administrative sanctions or criminal liability in the form of fines or

imprisonment. In *Sweden*, an employer who intentionally or negligently fails to comply with an injunction or prohibition from the SWEA may receive a sentence in the form of a fine or prison. A company, public authority or any other juristic person cannot be convicted in this way. Rather, one or more representatives of the juristic person are fined or sentenced to imprisonment. Furthermore, criminal law provisions may come into play in the case of a workplace accident. In *Denmark*, a person is liable to a fine or imprisonment of up to one year if he or she fails to comply with improvement notices under the Working Environment Act. In *Finland*, the OSH authorities may impose a default fine as a sanction for the prohibition notices, as provided in the Default Fine Act. In *Norway* if the orders of the inspectors are not complied with the Labour Inspection Authority may issue a coercive fine. The fine may be imposed for each day, week or month that passes after expiry of the time limit set in the order. In *Iceland* if the employer does not comply with the orders of the inspectors the AOSH may decide that the employer to whom the order is issued shall pay *per diem* fines

7.16 Criminal Liability

7.16.1 General

Criminal liability for serious breaches of any legislation is vital for effective implementation. This chapter will discuss punishments for violations of health and safety legislation and legislation concerning working conditions where relevant and make a comparison of legislation in the Nordic countries.

Penalties are provided for in case of non-compliance with the provisions of the above mentioned legislation which provides penal provisions for various offences. The offender can be sanctioned by a fine or, in some countries, by imprisonment for breaches of his duties, and he can also be fined or imprisoned for not complying with improvement notices or injunctions issued to him by the labour inspection authorities. Penalties for working environment offences in all the Nordic countries are provided for in Acts concerning health and safety and working conditions if relevant. In some countries, criminal sanctions for serious offences are also provided for in penal codes.

In *Denmark*, penalties are provided for in the Working Environment Act for in the case of failing to comply with working environment rules. Failing to ensure a safe and healthy work conditions, failing to prepare a written workplace assessment, failing to inform the employees of any risks of accidents and diseases which may exist in connection with their work, failing to ensure that the employees receive the necessary training and instruction to perform their work, failing to inform the safety representatives of decisions made by the WEA and of any improvement notic-

es and failing to ensure that co-operation concerning safety and health can take place at the worksite can lead to a fine or imprisonment of the employer of up to one year. The penalty may increase to imprisonment for up to two years if the contravention has caused an accident resulting in serious personal injury or death.

In *Sweden*, the Working Environment Act provides that persons can be liable to a fine or sentenced to imprisonment for not more than one year when they intentionally or negligently fail to comply with an injunction or prohibition issued by the SWEA. Furthermore, fines may be imposed on persons who intentionally or negligently breach various provisions of the Act. This applies, for example, to rules concerning the employment of minors, testing and inspecting technical devices, conditions for handling dangerous substances, the removal of safety devices, the duty to report serious accidents and furnishing inaccurate information to an inspector. In 1991, the *Swedish Criminal Code* was amended to include a new provision on work environment offences. According to Chapter 3 Article 10, where a crime referred to in Article 7-9 of the Penal Code has been committed by a person with intent or careless negligence of his duty under the Working Environment Act to prevent sickness or accidents, the punishment shall be for an environmental offence.⁶⁴ The SWEA may furthermore impose special sanction charges instead of penalties. Special sanction charges are imposed on the natural or other legal person who conducted the activity and are made applicable in certain limited areas where they are judged suitable. Three provisions currently provide that sanction charges may be applied. For instance, a special sanction charge may be applied where natural persons and legal persons carry out pressurisation without authorisation as provided in Article 20 of AFS 2006:8 about testing at over or under pressure or where natural or legal persons demolishing buildings etc. handle material with an asbestos content exceeding 1 per cent by weight as provided in Article 12 AFS 2006:1 about asbestos. The amount of the special sanction is defined in the Act, and it shall be at least SEK 1,000 and at most SEK 100,000. Questions concerning the imposition of charges are adjudicated by the county administrative court.

In *Norway*, any proprietor of an undertaking, employer or person managing an undertaking in the employer's stead who wilfully or negligently breaches the provisions or orders contained in, or issued pursuant to the Working Environment Act, shall be liable to a fine or imprisonment

⁶⁴ Article 7 provides that a person whose carelessness causes the death of another shall be sentenced for causing another's death to imprisonment for at most two years or, if the crime is petty, to a fine. If the crime is gross, imprisonment shall be imposed for at least six months and at most six years. Article 8 provides that a person who through carelessness causes another to suffer bodily injury or illness not of a petty nature, shall be sentenced for causing bodily injury or illness to a fine or imprisonment for at most six months. Article 9 states that a person who through gross carelessness exposes another to mortal danger or danger of severe bodily injury or serious illness shall be sentenced for creating danger to another to a fine or imprisonment for at most two years.

for up to three months or both. In the event of particularly aggravating circumstances, the penalty may be up to two years' imprisonment.

In *Iceland*, non-compliance with the Working Environment Act and Executive Orders that are issued accordingly is punishable with fines, unless heavier punishment is applicable throughout other legislation.

In *Finland*, the Occupational Safety and Health Act prescribes that any employer or other person or their representative who intentionally or through carelessness fails to carry out an initial or periodic inspection, fails to analyse or plan work, fails to provide or install a safety device or personal protective equipment, fails to obtain permission for work or to notify of work, fails to give instructions needed for the use and service of machinery, equipment, other technical devices, substances hazardous to health or other similar instructions or fails to keep the Act available for inspection can be sentenced to a fine for violation of occupational safety and health, unless a more severe punishment is prescribed elsewhere in legislation. Furthermore, the Criminal Code in *Finland* contains a chapter on employment offences which states that violations of certain rights are made subject to punishment, such as violations concerning health and safety, working hours, discrimination, the rights of employee representatives, the right to organise and fee-charging for job placement. Most of these offences can be committed by employers only. Depending on the offence, the penalty consists of a fine or imprisonment, which may be two years in the most severe cases.

Unlike in *Denmark* and other Nordic countries, the Swedish Working Environment Act does not impose liability or create an offence on the part of the employer for contravening his main duties, e.g. to take all necessary measures to prevent the employee being exposed to ill-health or accidents, cf. Chapter 3 Article 2. The employer's non-compliance the provisions will not have any immediate legal consequences.⁶⁵ In contrast with the Swedish legislation, e.g. in *Denmark*, the employer may be liable to a fine or imprisonment if he fails to ensure safe and healthy working conditions⁶⁶ and to make workplace safe and healthy.⁶⁷ The Swedish Working Environment Act rather penalises the employer for non-compliance with the well-defined and prescribed provisions.

7.16.2 The conditions for criminal liability

Swedish law established as a general rule that penalties may be imposed only on persons acting intentionally or negligently. The same applies to the Norwegian Act, i.e. a person who wilfully or negligently breaches the provisions of the Working Environment Act can be liable to fine or im-

⁶⁵ However, if the SWEA has issued an injunction or prohibition and the employer does not comply with his decision, there may still be consequences of various kinds.

⁶⁶ Denmark: AML §15.

⁶⁷ Denmark: AML §42(1).

prisonment. However, in the Danish Act, an employer may be liable to pay a fine even if he has not acted intentionally or negligently (strict liability, Danish: *objektivt ansvar*). The cases referred to include the duty of the employer to prepare a workplace assessment, the duty of the employer to ensure that there is effective supervision that work is performed safely and without risks to health and the duty of the employer to ensure that technical equipment is designed such that it is safe and without risk.

7.16.3 Criminal liability of natural persons

In all the Nordic countries, the main rule is that the *employer* is responsible for compliance with health and safety legislation and with legislation concerning working conditions where relevant. Those who can be held liable for infringements of legislation of this nature are employers, their representatives, private individuals and those who sell, install, repair and design machinery and instruments, e.g. suppliers and planners. Employers can be juristic person such as enterprises, organisations, public authorities or individuals. Private individuals can be employees, parents, managers and supervisors of the enterprise. In the Nordic countries, employers can be either natural or juristic persons where criminal liability is concerned, except in *Iceland*, where the employer is considered to be the executive director of the enterprise according to the Working Environment Act.

The Working Environment Act in *Norway* states that any proprietor of undertaking or employer who breaches the provisions of the Act may be liable to a fine or imprisonment. In *Denmark*, the employer can be found liable to pay a fine even if he has not acted intentionally or negligently. However, if the employer has discharged his duties, he may not be held liable to pay a fine if the employees contravene the legislative requirements concerning use of personal protective equipment, use of extraction measures, use of safety equipment or safety measures or use of safe working methods or certificates for cranes and forklift trucks. In *Sweden*, the employer can either be natural or juristic person. However, in *Sweden*, penal liability under Swedish law must always be imposed on a natural person and cannot be imposed on a legal person, e.g. a company. However, a legal person can incur other legal consequences due to infringements of provisions, such as a corporate fine, a sanction charge or forfeiture. In *Finland*, the Penal Code provides that the employer or a representative thereof who violates work safety regulations, or causes a defect or fault that is contrary to work safety regulations, shall be sentenced to a fine for a work safety offence. Unlike in the other Nordic countries, legal entities in *Iceland* cannot be punished for violations of occupational safety and health rules. Penalties can only be imposed on natural persons. It is the executive director of the enterprise who is held responsible for offences

under the safety and health legislation. Unlike in the other Nordic countries, legal entities cannot be prosecuted in *Iceland*.

Other individual persons may also be liable. *Managers, directors or supervisory staff* can be liable to penalties if they infringe provisions of the health and safety legislation and legislation concerning working conditions if relevant. For example, in *Sweden* various persons in companies and other undertakings can incur penalties in a form of fines when they violate provisions of the Swedish Working Environment Act, e.g. the proprietor of a business, the board chairman of a company, a member of the board of directors of a company, a managing director, the proxy for a limited company, supervisory staff, etc. In *Norway* the Working Environment Act provides that persons managing undertaking in the employer's stead may be liable to a fine or imprisonment. In *Denmark* managers and management of the enterprise, e.g. Directors or board members can be liable to punishment. Furthermore, if supervisors fail to participate in the cooperation concerning safety and health he/she can be found liable to a fine or imprisonment of up to one year. However, they have to act intentionally if they are to be liable to punishment. Those who act negligently are not liable to a fine. As said before it is the executive director or the manager who is responsible for enforcement of the Working Environment Act in *Iceland*.

Employees can be held liable to penalties if they infringe provisions. However, in practice this is rare. In *Norway*, the Working Environment Act contains a provision on the liability of employees. An employee who negligently infringes the provisions or orders contained in or issued pursuant to the Act shall be liable to a fine. If the infringement is committed wilfully or through gross negligence, the penalty may be a fine, up to three months' imprisonment or both. In *Denmark*, employees can also be liable to fines.

Other individual persons may also be liable. Here are a few examples:

- *Private individuals* can be held responsible under the safety and health legislation. In the Nordic countries, managers or directors can be found liable for infringement under the health and safety legislation. In *Denmark*, if a *supervisor* fails to participate in the cooperation concerning safety and health he or she can be found liable to a fine or imprisonment of up to one year.
- In *Denmark*, *parents* or *guardians* can be liable to pay a fine. The Danish Working Environment Act contains a provision that holds parents responsible. Where young persons under the age of 18 are employed in contravention of the provisions of the AML or any rules laid down in pursuance of the AML, the parents or guardian may be liable to pay a fine if the work has been carried out with their knowledge.
- In *Sweden*, *safety representatives* or *persons who have been appointed to serve on a safety committee* can be liable under the Penal Code.

Chapter 20, Article 3 of the Penal Code provides that a person who discloses information which he is duty-bound by law or other statutory instrument to keep secret, or if he unlawfully makes use of such secret, he or shall be sentenced for breach of professional confidentiality to a fine or imprisonment for at most one year. If he or she commits the act through carelessness he or she shall be sentenced to a fine. In petty cases, however, no punishment shall be imposed.

- The Norwegian Working Environment Act contains provisions on the *liability of a person who obstructs a public authority in the performance of inspections*. The provision states that any person who obstructs a public authority in the performance of inspections required pursuant to the Working Environment Act or who fails to furnish the mandatory assistance or supply information deemed necessary for performing the supervision pursuant to the Working Environment Act shall be liable to a fine.⁶⁸

7.16.4 Criminal liability of legal persons

Because enterprises or corporations are not natural persons, many of the traditional sanctions for criminal activity, such as imprisonment, are not applicable. Most of the rules regarding liability of legal persons therefore restrict penalties to monetary fines.⁶⁹ In *Denmark*, *Norway* and *Finland*, enterprises can be criminally liable if they do not comply with the working environment rules and rules concerning working environment if relevant. They are liable under the Penal Codes or the Criminal Codes of relevant country. In *Sweden* enterprises can be criminal liable by corporate fines (*företagsbot*). In contrast a penalty can only be addressed on natural persons in *Iceland*.

The Norwegian Working Environment Act prescribes that criminal liability for enterprises is regulated in Articles 48a and 48b of the Penal Code. In *Norway*, the Penal Code contains provisions that provide that enterprise may be liable to a penalty. The key provisions for sanctioning enterprises in *Norway* are Articles 48a and 48b of the Penal Code. According to Article 48a, when a penal provision is contravened by a person who has acted on behalf of an enterprise, the enterprise may be liable to a penalty. The enterprise may also be deprived of the right to carry on business by a court judgement, or it may be prohibited from carrying on business in certain forms.

In *Denmark*, legal persons may be liable to penalties. The Working Environment Act prescribes that criminal liability may be imposed on

⁶⁸ Penalties for obstructing inspectors in the performance of their duties are found in many countries, but in the Nordic Countries, only the Norwegian Working Environment Act contains such a section.

⁶⁹ Gunningham and Johnstone (No 58) 257.

limited liability companies, etc. (legal persons) pursuant to the rules set out in Part V of the Danish Criminal Code.

In *Finland*, criminal liability of an enterprises/legal person does not exist in the case of employment offences, however in certain situations a legal person can be subject to a corporate fine. According to the Finnish Criminal Law, provisions of corporate criminal liability apply to work safety offences. A corporation, foundation or other legal entity in whose operations an offence has been committed may, on the request of the public prosecutor, be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has committed an offence or allowed the commission of an offence or if the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation. The corporation may be liable to a corporate fine whether the person can be identified or not. There have been only a few cases in practice so far.

In *Sweden* a legal person can in certain situations be criminal liable by a corporate fine (*företagsbot*). These fines can be issued in addition to individual liability. The minimum amount that can be applied is SEK 5,000 and the highest SEK 10 million. It is the public prosecutor who initiates the so-called *företagsbot*.

Health and safety and working conditions, if relevant, are enforceable under both specific legislation and penal codes. Prosecution is usually considered as the last resort. Criminal enforcement has remained rare in the Nordic countries

7.17 Conclusion

There are many similarities between the Nordic countries as regards legislation concerning labour inspection. They are all members of the ILO and the EU/EEA, they have ratified most of the ILO Conventions concerning labour inspection and working conditions, and they have also transposed into their national legal systems those EU directives and regulations which concern working conditions. In general, health and safety legislation and legislation concerning the working environment is very similar in all the Nordic countries, including the employer's duties, health and safety activities, work carried out by children and young people, work with dangerous substances, etc. However, peculiarities of application of the legislation can be seen regarding provisions concerning sanctions, enforcement and punishment. The structure of administration of the Labour Inspection Authorities is in general similar, except in *Finland* and partly in *Iceland*.

In all the Nordic countries, the Labour Inspection Authorities' main role is to supervise compliance with provisions concerning occupational safety and health, including rules about working places, inspection con-

cerning dangerous and hazardous substances in the workplace, working time and work carried out by children and young people. However, other functions related in most cases to the working environment or working conditions are also entrusted to the Labour Inspection Authorities. For example, all the Nordic countries have assigned the Labour Inspection Authorities powers relating to supervision of product safety and market surveillance. Furthermore, the Labour Inspection Authorities in *Finland* and *Norway* monitor the terms and condition of employment of posted workers. They also monitor the use of ID cards issued to workers performing work on building and construction sites. A further function of the Labour Inspection Authority in *Iceland* is to monitor occupational machinery and technical equipment, for example, heavy duty transportable machinery, agricultural machines and lifts. The Labour Inspection Authorities, therefore, is not restricted to the supervision of health and safety legislation alone, but also to other legislation related in some way to the working environment or working conditions.

In *Finland*, the Labour Inspection Authority or the OSH Authorities monitor more legislation than other Labour Inspection Authorities. They supervise compliance not only with health and safety legislation, but also with other legislation concerning employment and equality. The most important Act is the Employment Contracts Act (No. 55/2001) which lays down the rights and obligations of employers and employees in employment relationships concerning e.g. prohibition of discrimination, family leave, lay-offs and termination and cancellation of employment contracts.

In *Norway*, the Labour Inspection Authority has *information responsibility* for various provisions of the Working Environment Act, which contains both public and private legal provisions. The provisions concerning private law fall out of the supervision of the Authority, but it has *information responsibility* concerning them. The Authority gives guidance on how they are to be interpreted. They are the provisions on entitlement to leave of absence, protection against discrimination and termination of employment relationships. The Norwegian Labour Inspection Authority also disseminates information concerning the contents and composition of contracts of employment.

The Labour Inspection Authorities in the Nordic countries also issue various work permits. For example, in *Iceland*, they issue certificates to operate mobile construction machinery and construction equipment. In *Norway*, a person wishing to erect a building or perform construction work must receive prior consent from the Labour Inspection Authority.

The final conclusion of this study is therefore that there are some individual differences between the Labour Inspection Authorities in the Nordic countries, for example concerning the administration, content and form of the legislation which they monitor. However, the systems of labour inspection with the health and safety legislation are, in principle, similar from one Nordic country to the next, although significant exceptions exist where sanctions, enforcement and punishment are concerned.

Summary

The objective of this study was to find out how legislation and legal practices concerning labour inspections differ in the Nordic countries. To accomplish this, individual reports on each Nordic country were made. Three areas concerning labour inspection were investigated in each report: An examination on how labour inspection is administered in order to gain an insight into how labour inspection is governed in each country. Secondly, the scope of legislation concerning labour inspection was examined to establish whether the Labour Inspection Authorities in the Nordic countries are expected to enforce only legislation concerning occupational safety and health, working conditions in general, or whether the Authorities have been additionally entrusted other duties, e.g. enforcement with the terms and conditions of employment of workers. Furthermore, it was also examined to whom the legislation applies and the content of the provisions of the legislation. Finally, the follow-up systems of the labour inspection legislation were examined. This includes provisions of the legislation concerning enforcement and punishment. Those three areas were chosen for comparison because they reveal best the differences among legislation and legal practices concerning labour inspection in the Nordic countries.

The major finding of this study was that the legislation and legal practices concerning labour inspection does not differ substantially among Nordic countries. This is mainly due to the membership of all the countries of either the EU or the EEA which oblige the countries to transpose EU directives concerning health and safety at work and labour law into their national legal systems and also to the fact that the Nordic countries share similar values and legal traditions. However there were some important differences among the countries as listed below.

- Regarding the administration of labour inspection the biggest difference among the countries is that in *Finland* there is no single Labour Inspection Authority like in the other Nordic countries. In *Finland* the competence concerning labour inspection is split between the OHS authorities and the ministry. In addition, *Finland* is the only country where there are special provisions on the independence of the Labour Inspection Authority. Furthermore, in Iceland the Labour Inspection Authority takes the most holistic approach to occupational safety and health in the Nordic countries, as it incorporates for example education, research as well as labour inspection. Lastly, the Swedish and Danish Working Environment

Authorities are the only individual Labour Inspection Authorities which have been given powers to issue Executive Orders

- As was mentioned above the content of the provisions of the legislation concerning labour inspection does not differ that much, especially when it comes to health and safety legislation. The reason is that all the countries are members of ILO and either members of the EU or the EEA. However, in some cases the similarities end when it comes to the legislation concerning working condition, which is “domestic” in nature, e.g. regarding the psycho-social working environment, supervision with the terms and conditions of employment of posted workers, and the use of ID-cards in certain sections of the labour marked
- The follow up systems of the legislation concerning labour inspection vary much among the Nordic countries, and it is possibly the main difference among the Nordic countries when it comes to labour inspection. In every Nordic country the Labour Inspection Authorities have tools to deal with breaches of health and safety legislation or legislation concerning the working environment. The difference among the countries is in how effective, or rather how strict they are. The tools can be divided in relation to the gravity of the offence. If the breach of the legislation, which is enforced by labour inspection, is not serious the matter is in general enforced by the labour inspection authorities by issuing orders or notices for improvement to the employer, and if they are not followed it can lead to sanctions which vary much among the countries. The sanctions can be administrative in nature, for example fines or the shutting down of workplaces, or criminal sanctions in the form of fines and even imprisonment. If there is a serious breach of legislation concerning labour inspection it can lead to criminal liability for the offender in all the countries. However the penal clauses vary much among the Nordic countries from fines up to imprisonment for two years. Furthermore, there are differences among the countries as to whether the criminal liability is applied only to natural persons or also imposed on legal persons (enterprises) as well

Resumé

Formålet med denne undersøgelse var at afdække, hvordan lovgivning og retspraksis vedrørende de nordiske landes arbejdstilsyn adskiller sig. Med dette for øje blev der udarbejdet en individuel rapport for hvert nordisk land. I hver rapport blev der undersøgt tre områder vedrørende arbejdstilsynene: En undersøgelse af, hvordan arbejdstilsynet administreres for at give et indblik i, hvordan arbejdstilsynet styres i hvert land. For det andet blev lovgivningens anvendelsesområde undersøgt for at få etableret, hvorvidt arbejdstilsynsmyndighederne i de nordiske lande kun kan forventes at håndhæve lovgivning, der vedrører sikkerhed og sundhed på arbejdspladsen samt generelle arbejdsforhold, eller om myndighederne er blevet betroet andre forpligtelser, fx at håndhæve de ansattes ansættelsesvilkår. Derudover undersøgte man, hvem lovgivningen er gældende for, og indholdet af lovgivningens bestemmelser. Endelig blev opfølgningssystemerne for den lovgivning, som arbejdstilsynene opererer ud fra, undersøgt, herunder lovgivningens bestemmelser vedrørende håndhævelse og straf. Man valgte at sammenligne disse tre områder, fordi de på bedste vis illustrerer forskellene mellem lovgivning og retspraksis for de nordiske landes arbejdstilsyn.

Den primære konklusion på denne undersøgelse er, at lovgivning og retspraksis vedrørende arbejdstilsyn ikke adskiller sig væsentligt de nordiske lande imellem. Årsagen til dette kan til dels spores tilbage til, at alle landene er medlemmer af ILO og enten EU eller EØS, som pålægger landene at gennemføre EU-direktiver vedrørende sundhed og sikkerhed på arbejdspladsen samt arbejdsret i deres nationale retssystemer, dels til det faktum at de nordiske lande har ensartede værdier og juridiske traditioner. Landene adskiller sig dog på en række vigtige punkter, hvilket kan ses herunder.

- Hvad angår administrationen af arbejdstilsynene forekommer den største forskel mellem landene i *Finland*, hvor der ikke er nogen separat arbejdstilsynsmyndighed, som der er i de øvrige lande. I *Finland* sorterer anliggender vedrørende arbejdstilsyn under hhv. ministeriet og myndighederne for sundhed og sikkerhed på arbejdspladsen. Derudover er *Finland* det eneste land, hvor der er særlige bestemmelser vedrørende arbejdstilsynsmyndighedens uafhængighed. Ydermere har arbejdstilsynsmyndigheden på Island den mest holistiske tilgang af de nordiske lande til sundhed og sikkerhed på arbejdspladsen, idet man ud over selve arbejdstilsynet også inkorporerer uddannelse og forskning. Endelig er de svenske og de danske arbejdstilsynsmyndigheder de eneste uafhængige

arbejdstilsynsmyndigheder, der har bemyndigelse til at udstede bekendtgørelser

- Som nævnt herover adskiller indholdet af bestemmelserne i lovgivningen for arbejdstilsynene sig ikke væsentligt, især ikke vedrørende sundhed og sikkerhed. Årsagen er, at alle landene er medlemmer af ILO og enten EU eller EØS. I nogle tilfælde hører lighederne dog op, når det drejer sig om lovgivning vedrørende "hjemlige" arbejdsforhold, for eksempel psykosociale arbejdsmiljøer, tilsyn med ansættelsesvilkårene for udstationerede arbejdstagere og anvendelse af id-kort i visse dele af arbejdsmarkedet
- Opfølgningssystemet for arbejdstilsynslovgivningen varierer meget mellem de nordiske lande, og det er muligvis den største arbejdstilsynsmæssige forskel mellem de nordiske lande. I hvert af de enkelte nordiske lande har arbejdstilsynsmyndighederne værktøjer til at håndtere overtrædelser af lovgivningen om sundhed og sikkerhed på arbejdspladsen eller arbejdsmiljølovgivningen. Forskellen mellem landene er, hvor effektive, eller snarere hvor strenge, de er. Værktøjerne afhænger af, hvor alvorlig overtrædelsen er. Hvis overtrædelsen af den lovgivning, som håndhæves af arbejdstilsynet, ikke er alvorlig, håndterer arbejdstilsynsmyndighederne generelt sagen ved at give arbejdsgiveren en henstilling eller et påbud om at forbedre forholdet. Hvis dette ikke efterleves, kan det føre til sanktioner, som varierer kraftigt fra land til land. Sanktionerne kan være af administrativ art, for eksempel bøder eller lukning af arbejdspladsen, eller strafferetslige i form af bøder eller tilmed fængselsstraf. Hvis der forekommer en alvorlig overtrædelse i forhold til arbejdstilsynet, kan det i alle landene medføre strafansvar for overtræderen. Strafferammen i de nordiske lande varierer dog meget – fra bøder og op til to års fængsel. Derudover adskiller landene sig i forhold til, hvorvidt strafansvaret kun gælder fysiske personer eller også udmåles til juridiske personer (virksomheder)

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Annexes on mandatory education

Iceland

- ADR-training (course)

If a driver has to transport goods classed as dangerous and they are over certain quantities/weights, then he/she must obtain a Vocational Training Certificate (an ADR) issued by the Administration of Occupational Safety and Health and receive adequate training.

The Administration of Occupational Safety and Health holds the ADR-course intended for the drivers according to Article 21 of Executive Order No. 984/2000 on transports of dangerous goods. It is both theoretical and practical and ends with a test. After taking a mandatory basic course, participants can choose between three continuing courses depending on which right/license one intends to acquire.

- Course for safety representatives and safety managers

The Article 24 of the Executive Order No. 90/2006, prescribes that the employer shall ensure that the safety representatives receive adequate education and training by attending courses concerning safety and health at workplaces.

- Training for operating machinery

Those who operate and handle machinery, for example, fork lift trucks and mini construction machinery and tower crane, must take a course held by the Administration of Occupational Safety and Health, according to the Executive Order No. 198/1983. The Administration of Occupational Safety and Health issues, furthermore, certificates and licenses of operating and handling machinery.

- Asbestos training

To be allowed to work with asbestos, the employees must have undergone training given by the Administration of Occupational Safety and Health or by other bodies which have been certified by the Administration of Occupational Safety and Health, according to Article 7 of Executive Order No. 430/2007 on prohibition on the use of asbestos in workplaces.

- Training in use of explosives

According to Article 29 of the Executive Order No. 684/1999 on explosives nobody can handle explosives unless he/she has license issued by police. To receive the license one must get a certificate on adequate knowledge on use of explosives and take a course held by the Administration of Occupational Safety and Health. The course is theoretical and ends with a written exam. Participants also need to pass a practical exam.

According to Article 31 of the Executive Order, explosive managers may delegate to another person, several projects concerning the preparation of explosion. These persons do not need, however, to take the course held by the Administration of occupational Safety and Health or receive license issued by the police.

Norway

- The employers obligation to undergo training

According to section 3-5 in the Working Environment Act the employer shall undergo training in health, environment and safety work. The Labour Inspection Authority has published a guidance in which the content of the training is described. Important elements are knowledge of the Working Environment Act and regulation pursuant to the Act, how to perform systematic health, environmental and safety activities, how to develop good relations and the importance of contributing to an inclusive working life.

- Training of safety representatives

The employer shall ensure that the safety representatives receive the training necessary to enable them to perform their duties in a proper manner. The duration of the training is laid down to 40 hours, though it might be agreed to less than 40 hours if the social partners in the enterprise find it safe and sound. Cf. FOR-1977-04-29-7 Safety Representatives and Working Environment Committees Art. 12.

- Documented safety training for the use of work equipment

As a prerequisite to use work equipment, the user shall undergo practical training and theoretic education which give knowledge of how the work equipment is build and operated, the capacity, the range of use, maintenance and control. The training must be documented in writing. When it comes to cranes, fork lift's and earth moving machines the safety training shall be performed by an enterprise that is certified to carry out the training activity. The certified training enterprise will document that the required skills is achieved by issuing a competence certificate. Cf. FOR 1998-06-26-608 Use of work equipment Art. 47–49.

- Scaffolding

Installation, dismantling or large changes of scaffolds can only be done under supervision of a qualified person. The employees that shall carry out the work must be theoretic and practical trained. To work alone the following conditions must be fulfilled: 6 month work experience, 36 hours theoretic education and 72 hours practical training. Cf. FOR-1998-06-26 Use of work equipment Art. 46 C.

- Asbestos

To be allowed to work with asbestos, the employer can only use employees that have undergone special training in handling asbestos or

products with asbestos. The training shall be carried out by a competent person. Cf. FOR-2005-04-26-362 Asbestos' regulation Art. 12.

- Diving

Only persons that undergo special training at a diving school can operate as a diver. The training leads to specific certificates dependent on which courses are selected. Today there are five different certificates, but the regulation is being revised and there is proposed a reduction of the number of certificates. Cf. FOR-1990-11-30-944 Diving regulation Art. 9.

- Chemical agents

The employer shall ensure that the employees are informed about the hazardous chemicals that can be found at the workplace, and they shall be trained in reducing risks and how to handle the chemicals in a safe manner. The training must include appropriate precautions and actions to be taken in order to safeguard themselves and other employees at the workplace. Cf. FOR -2001-04-30-443 Chemical regulation Art. 9.

- Biological agents

Appropriate measures shall be taken by the employer to ensure that the employees receive sufficient and appropriate training concerning potential risks to health, precautions to be taken to prevent exposure, hygiene requirements, wearing and use of PPE and, steps to be taken by employees in the case of incidents and to prevent incidents. Corresponding training shall be given to the employees' representatives. Cf. FOR-1997-12-19-1322 Biological agents' regulation Art. 16.

- Noise

The employer shall ensure that employees and their representatives receive training concerning risks of being exposed to noise at a level which exceed action values. Cf. FOR-2006-04-26-456 Noise regulation Art. 13.

- Portable pressure vessels worn by divers

An enterprise shall be recognized as controller of portable pressure vessels when the enterprise has a competent person to carry out the control. The person in question must have completed a course before he or her can be approved as a competent person. Cf. FOR-1983-11-15-1674 Control, marking and filling of portable pressure vessels for diving and respiratory protective equipment Art. 9.

- Work in control room

The employer shall ensure that employees' has sufficient and appropriate training to manage all situations that can break out, especially critical incidents. Cf. FOR-1995-04-20 Work in control room Art. 12.

- Safety signs and signals

The employees must be given suitable training that cover the meaning of the signs, especially signs incorporating words, and the general and specific behavior to be adopted. Cf. FOR-1994-10-06-972 Art. 9.

Sweden

There are demands of education in several of SWEAS's provisions as asbestos, thermosetting plastics and scaffolds but to arrange or answer for any education is not a part of the SWEA's duties. It is the employer who is responsible that all employees have received the training necessary.

- Training of safety delegates

According to Chapter 6 section 4 AML employer and employees are jointly responsible for safety delegates being given the requisite training.

An example of mandatory education

- Asbestos, AFS 2006:1 section 36

The person directing and the person carrying out work on the demolition of a building, part of a building, a technical device or part of such a device containing material which includes more than 1 per cent asbestos by weight shall have undergone special asbestos training which at least includes sections dealing with the properties of asbestos, its effects on health, its occurrence, safety precautions, emergency measures, management of personal protective equipment, working methods, control measures, waste measurement, decontamination measures, stipulations concerning medical surveillance, and demolition techniques with practical exercises.

Guidance on Section 36

Detailed training programmes in compliance with this stipulation have been drawn up by the labour market parties on a basis of joint consultation. Four days may be a suitable duration for training of personnel employed on demolition or repair work which involves the handling of asbestos or material containing asbestos.

Finland

- ADR-training (course)

If a driver has to transport goods classed as dangerous and these are over certain quantities/weights, then he/she must hold a Vocational Training Certificate (an ADR) for the transport of dangerous goods by road and rail. According to section 15 of the Executive Order No. 194/2002 and 195/2002 the training consists of task training and OSH training.

According to section 15 of Decree 194/2002, the training consists of 1) general awareness raising training 2) task-specific training, 3) safety training, 4) training in the transport of radioactive materials, 5) refresher training. Subsection 2 provides that employers and employees shall have full details of any such training passed that is referred to in this section. The information must be confirmed at the time new employment begins. According to subsection 3, separate provisions shall be issued concerning the safety adviser training and the training required for an ADR certificate.

- Course for safety representatives and safety managers

The Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006 as amended by Act 701/2006), section 28, provides that the OSH manager nominated for the cooperation shall be adequately qualified. The training of the OSH representative of the workers shall cover the provisions and instructions concerning OSH. The employer and the OSH representatives shall discuss the need for training and training arrangements within two months from the election. The training shall not entail any costs or loss of income for the OSH representatives.

- Training for operating machinery

The Government Decree on the Safe Use and Inspection of Work Equipment (403/2008), section 14, lays down special competence requirements. According to section 14(1), drivers of mobile cranes with a lifting capacity of more than 5 tons and drivers of tower cranes must have a relevant vocational diploma or an applicable part thereof. According to section 14(2), if the loading moment of a loader crane exceeds 25 tonne-meters and the loader crane is primarily intended for use other than loading a vehicle, its driver must have a relevant vocational diploma or an applicable part thereof. According to section 14(5), the Regional State Administrative Agency of Southern *Finland* decides nationally whether a foreign examination must be accepted to correspond to the competence referred to in subsections 1 and 2.

- Asbestos training

Executive Order No. 1380/1994 (amendment 318/2006) on work with asbestos, section 16, lays down the conditions of authorisation for demolition and renovation work on structures containing asbestos. This authorisation is issued by the Occupational Safety and Health Division of a regional state administrative agency. Section 16(2) provides that the Ministry of Social Affairs and Health can, when necessary, assign the Occupational Safety and Health Division of one particular regional state administrative agency to grant the authorisations nationally. According to Article 16(3), the OSH authority must issue an authorisation to the applicant if the following conditions are met: 1) the occupational safety and health authority has found the applicant competent, 2) the superiors and the employees have obtained, or the self-employed person has obtained, the training for work with asbestos referred to in section 17. Section 17 provides that the content of the training must include thorough practicing of demolition work. The Ministry of Social Affairs and Health shall issue separate provisions on the approval of the training.

- Training in use of explosives

The Charger Act (219/2000) provides that the Ministry of Social Affairs and Health or an authority ordered by it grants a charger's certificate of competence to a person who, taking into consideration his or her age, professional skills and other qualifications, is suitable and competent for charger's work. According to section 1 of the Government Decree on the certificate of competence for chargers (122/2002), a person who fulfils the conditions laid down in this Decree is given a charger's certificate of competence on application. Section 2 of the Decree provides that one who has obtained a charger's certificate of competence has the right to handle and use explosives at work. Section 13(1) provides that the occupational safety and health authority may for special reasons in an individual case grant exemptions from this Decree.

According to section 13(2), competence may also be proved by a certificate of an exam taken abroad or another similar certificate or other document of training insofar as this is provided for in the act on the implementation of the European Community's general system for the recognition of diplomas (1597/1992) or is required by some other international legal obligation binding on *Finland*.

Denmark

(Not available)

Annexes on statistical information

Iceland

	2008	2009	
Total number of enterprises/working places	17,135	16,751	This is the total number of workplaces, including self-employed persons.
Number of inspectors	30 ⁷⁰	29 ⁷¹	
Number of visits	3,227	3,338	
Number of improvement notices issued	6,235	5,372	
Number of Per diem fines imposed	0	2	
Administration Fines imposed	0 ⁷²	0 ⁷³	
Shutdown of operations ⁷⁴ :	69	88	
Total restrictive measures to achieve compliance	69	90	
Number of cases presented to the public prosecutor	0	0	
Cases which has been sent to public prosecutor leading to a conviction	1	0	

Denmark

	2008	2009	
Total number of enterprises/working places	300,327	304,985	This is the total number of workplaces, including self-employed persons and assisting spouses
Number of inspectors	450	Approx. 420	
Number of visits	59,530	69,516	
Number of improvement notices issued	28,327	26,925	This number is the total number of improvement notices and immediate improvement notices issued in 2009.
Administration Fines imposed	Not Available	Not Available	
Number of cessation of work activities	558	478	Total number of prohibition notices/stop notices issued in 2009.
Number of cases presented to the public prosecutor	Not Available	Not Available	
Cases which has been sent to public prosecutor leading to a conviction	Not Available	Not Available	

⁷⁰ This number includes both inspectors visiting enterprises and inspectors who inspect occupational machineries.

⁷¹ This number includes both inspectors visiting enterprises and inspectors who inspect occupational machineries.

⁷² In the Act No. 46/1980 there is no authorization to apply administration fines.

⁷³ In the Act No. 46/1980 there is no authorization to apply administration fines.

⁷⁴ Including forfeiture of machineries

Norway

Labour Inspection Authority – supervising and reactions

	2008	2009
Surveillance objects		
Total no. of enterprises ⁷⁵	333,346	330,342
Total no. of employees	2,670,207	2,661,022
Labour Inspection Authority		
Total no. of employees	557	567
No. of inspectors ⁷⁶	284	302
Activities		
No. of visits/supervision	13,835	15,330
No. of Internal Control Audits	52	33
No. of Inspections	12,688	14,322
No. of turn-outs caused by occupational accidents	685	520
No. of turn-outs caused by safety representatives halting of dangerous work	10	9
No. of consent for erection of new buildings etc.	237	308
Market surveillance	163	138
Reaction to breaches		
Total no. of reactions	24,388	27,103
Issued orders	17,664	21,275
Coercive fines - imposed	387	460
Halting of work	905	773
Reporting offences to the prosecuting authority (Police)	69	68

Sweden

	2008	2009	
Total number of enterprises/working places	About 300,000	About 300,000	This is the total number of workplaces, exclusive self-employed persons.
Number of inspectors	286	286	
Number of visits	33,246	30,024	
Number of inspection notices issued	13,883 with 52,226 stipulations	12,817 with 45,956 stipulations	
Prohibition and injunctions with contingent fine (vite)	827	834	
Administration Fines imposed (sanction charges)	68	77	
Shutdown of operations (prohibition)	990	919	
Total restrictive measures to achieve compliance (injunctions and prohibitions)	912	889	
Number of cases presented to the public prosecutor	212	259	
Cases which has been sent to public prosecutor leading to a conviction	Not Available	70	

⁷⁵ Includes both enterprises with and without employees

⁷⁶ The numbers include both persons with the title inspector as well as other personnel as engineer, physical therapist, adviser etc. who also carry out a number of inspections.

Finland

	2008	2009	
Total number of enterprises/working places	308,917	320,952	In the LI it-system there are approx. 250.000 work places as targets for labour inspections
Number of inspectors	353	357	
Number of visits	20,477	19,916	
Number of improvement notices issued	5,531	4,867	
Number of Per diem fines imposed			The LI cannot impose per diem fines
Administration Fines imposed	164	184	
Shutdown of operations ⁷⁷ :	39	40	Cessation of work activities
Total restrictive measures to achieve compliance	337	353	
Number of cases presented to the public prosecutor	331	366	
Cases which has been sent to public prosecutor leading to a conviction	Not Available	Not Available	

⁷⁷ Including forfeiture of machineries

Annexes on labour inspection in practice

Iceland

Labour Inspection in practice

The AOSH's activities and main tasks

The AOSH operates under the Act on Working Environment, Health and Safety in Workplaces No. 46/1980 and Executive Orders issued according to the Act. The AOSH acts under the Ministry of Welfare.

The Board of the AOSH is comprised of eight members of the organisations of social partners and a chairman who is appointed by the Minister. The role of the Board is to advise the Minister of Welfare and the Director of AOSH on matters relating to improved working conditions and health and safety in workplaces, e.g. about imposing laws and Executive Orders. The Board is also responsible to the Minister for the formation of professional policy at the AOSH.

The main tasks of the AOSH:

- To monitor the application of the laws and Executive Orders in the field of occupational health and safety. The inspection is divided into:
 - a) Inspection of enterprises
 - b) Machineries
 - c) Market surveillance
- To give those workers who are involved in occupational health and safety within enterprises advice
- To acquire and maintain knowledge of technical and social developments in order to promote health and safety in the working environment
- To promote preventive measures and health protection in workplaces
- To work on research in the field of occupational health and safety
- To ensure that a register is maintained of diseases of all types, mental as well as physical, that may reasonably be assumed to arise from causes in the working environment
- To ensure that a register is maintained of the frequency of industrial accidents

- To carry out monitoring and market surveillance regarding machinery, equipments and devices covered by the Working Environment Act

AOSH strategy

Strategy for the years 2009–2012 has been set and the main seven goals are (see full text on www.vinnueftirlit.is):

- *Preventing work related accidents.* That fatal accidents will reduce to less than 1.5/100,000 employees. Work-related accidents will reduce at least 10%
- *Preventing work related diseases.* Incidence of disability due to musculoskeletal disorders and mental disorders will be reduced 5 % from what it is in the years 2005–2008
- *Increased awareness of preventive actions at workplaces.* This goal will be measured in that the number of workplaces that are doing risk assessment will increase
- *Reinforcing research* on working life, with a special focus on work related well being and health in relation to the financial depression and the incidence of work related disability
- *Increased knowledge distribution.* 90% of safety representatives have completed at least 2 days courses on occupational safety at the end of the period. Availability of special courses and guidance material will increase at least 20–50% to the end of the period
- *Elaborate and uniform work practices.* Work-procedures for all main inspection processes in enterprises and work environmental guides for all major sectors and key risk factors shall be completed by the end of 2010. Rich emphasis is on follow up of AOSH's prescriptions
- *The legal framework.* That the legal framework of the AOSH will be similar to the legal framework of the Labour Inspection Authorities in the neighbouring countries

Inspections – strategy and methods

Labor Inspectorate's task is to oversee that workplaces comply with occupational safety and health law and regulations. The department of inspection at AOSH had by the end of the year 2009 around 16,000 enterprises with branches registered which are visited by the inspectors. The number of inspections is approximately 3,300 pr. year, thereof are 2,500 inspections where the workplaces as a whole are inspected. Inspection activities and focus every year aims to fulfill AOSH strategy and goals. AOSH applies different inspection methods depending on the size of the enterprises.

Adopted inspections (AI)

In *enterprises with 30 employees or more* the method of adopted inspection has been in use since 2007. Enterprises are classified in 3 classes regarding how well organized and administered their OSH is and how

well they follow the rules and regulations on safety and health at work established by the minister of social affairs. The classes are as follows:

- *Class 1* - states that the organisation and implementation of OHS is basically in line with laws and regulations and possibly they exceed the basics.
- *Class 2* - states that the organisation and implementation of OHS apply to basics in most areas.
- *Class 3* - states that the organisation and implementation of OHS do not meet required laws and regulations in many areas.

When an enterprise receive a class 1 or 2 they themselves make plans on improvements which AOSH has to agree on but those in class 3 will receive prescriptions from the inspector and time limits to complete improvements. They are visited more frequently i.e. yearly or every second year, compared to enterprises in class 1 and 2 which are visited less frequently.

Adopted inspection means that the workplace is always informed of an upcoming visit from the inspector. A meeting is arranged where *systematic work environment management* at the workplace is discussed with the management and safety representatives. It includes items as execution of workplace risk assessment, whether safety representatives are present and have attended courses and whether work-related accidents are investigated, appropriate training of the staff and so on. Emphasis is on active participation of all partners in the meeting. During the discussion a systematic evaluation is made by the inspector of the companies OHS-management. After the meeting the work environment is inspected. During the walkthrough the inspector communicates with the staff in order to get supplying information, i.e. about training programs, participation in risk assessment and so on. The visit ends with a final meeting where problems, risks and requirements for improvement are discussed and the enterprise is classified.

3.2 Regular inspections (RI)

In enterprises with less than 30 employees the inspection-frequency depends on which branch the enterprise belongs to. AOSH divides branches into 4 classes depending on the level of known risk-factors. Enterprises belonging to branches carrying higher risks are visited more frequently, i.e. every or every second year, compared to those carrying the lowest risk, which are visited less frequently, i.e. at 6 years interval or less.

The construction industry is classified as high risk branch and the construction sites are visited as frequently as needed, independent of size.

One of the AOSH most important tasks in the last and next coming years is to inform employers about their obligation to do risk assessment for the workplace in cooperation with the safety representatives. Therefore the workplaces are normally informed of an upcoming visit from the inspector and emphasis placed on meeting the management

and safety representatives or other staff representatives in small enterprises (≤ 9 employers).

Inspections in the construction industry are not notified in advance except visits to the enterprises headquarters.

For AI and RI applies:

Repeated complaints from staff, restraints on following the laws and regulations and serious accidents have an impact on the frequency of visits.

Limited inspections

Limited inspections are used for the purpose of inspection when the target subject is limited, e.g. workplace accidents, special projects and emphasizes in the inspection or complain from an enterprise or citizens. It varies whether the inspection is announced in advance or not.

Enforcement

Prescriptions after an inspection

Through the inspection of a company the inspector uses as a guiding tool *a work environmental guide* for the sector they are inspecting, see www.vinnueftirlit.is. Labor Inspectorate reactions are based on the inspector's survey and with respect to the applicable laws and regulations.

At the end of the visit the inspector informs about the content of the written report, which the enterprise will receive no later than 7 days after the visit. The report can include scheduled prescriptions and/or instructions/advice without follow up. The inspector also fills in a form which confirms following: that the inspection has taken place, which individuals have participated and that a written report will be sent within set time limit. Both parts sign the form and the enterprise receives its own copy. Hand-written prescriptions are only given during inspections in the construction industry or if working conditions at a certain workplace are evaluated to create immediate danger for the workers.

AOSH reactions according to circumstances and severity

AOSH can react in different ways according to circumstances and severity. AOSH can set time limits to when a problem shall be solved and order counseling from service providers, when appropriate, order per diem fine, ban work in dangerous workplaces (injunction) and make a police report if the company is not fulfilling its obligations under OSH Act.

- Time limit orders or plans of improvements

Enterprises that fall under the adopted inspections (30 employees or more) and are in class 1 and 2 make their own *time limit schedules* regarding the improvements of the problems which have been given *orders*. Enterprises that are in class 3 of adopted inspection and smaller

enterprises that are subject to regular inspection (1–29 employees) receive time limits to complete improvements on behalf of the AOSH.

In the procedure's rules there is a criteria for appropriate time limit based on graveness of problems. The inspector's decision is usually based on conversations with the enterprise about practical time limits to make improvements. If there are very extensive and costly improvements, the enterprises are given the opportunity to make a time limit plan which the AOSH has agree on.

- b) Follow-up of the order/prescriptions of improvements

In the report, it is clearly stated that the employer shall send a notification of improvement to the AOSH before the deadline. If the enterprise does not respond 7 days after the deadline, a reminder is sent where the enterprise is then given a further 14-day deadline to comply with the order. The reminder is sent to the permanent residence of the enterprise and is addressed to the executive director of the company (without being named).

Should there be no response within the time limit, an inspector shall send *another reminder* and an original text. A copy is sent to the same persons as before. There it shows that if improvements have not been made within 14 days, it can lead to restrictive measures and/or with police report. Both of the reminders are sent by post. A consultative procedure is made known of the possible decision of the restrictive measure.

If there is a *public body with more than two administration levels*, the first reminder is sent to the lower administrative level. If no improvements are made, the latter reminder is sent to the higher administrative level (municipal-, town- or mayor) with a copy also being sent to the lower administrative level and to the enterprise.

In general inspectors are not supposed to make special visits to follow up on prescriptions for improvements but use the reminders consequently. A clear exception is when work has been banned where the inspector visits the workplace to check if the improvements made are satisfactory and lifts the ban if that is the case.

- Request for extension of improvements

Requests to extend time limit for improvements shall be submitted in writing and be confirmed by the safety committee/safety representative. If the enterprise asks in advance for an extension of the time limit to finish the improvements, the inspector will assess whether the explanations of the enterprise are sufficient. If the inspector assesses that is the case, the time limit can be extended. The AOSH then sends the enterprise a written confirmation, stating that the enterprise shall present the outcome to the safety committee, the safety representatives and the safety guard.

If an enterprise requests for an extension of the time limit very shortly before the deadline and has not done anything to fulfil the prescrip-

tions for improvement, they need to have a very strong case for the enterprise to be given an additional time limit.

- Restrictive measures

If there have been no announcements of improvements after the latter reminder, the inspector announces the case for the superior of the district. The inspector and the superior of the district then have contact with the lawyer of the AOSH and inform him about the matter. The lawyer takes the case but has consultation with the district and Department of Development and Inspection regarding the restrictive measures. The lawyer sends the relevant enterprise a letter and the enterprise is given opportunity to argue the case against the decision before the final decision of the restrictive measure is taken.

In the event of restrictive measures, such as per diem fines, prohibition on use of equipment, work or closure of an enterprise, the lawyer of the AOSH has consultation with the district and Department of Development and Inspection about what restrictive measures shall be used. The main rule is that the districts handle the execution of the restrictive measures.

The lawyer takes care of execution of the per diem fines. Enterprises receive letters with threats of per diem fines if there are no improvements. The experience from that is that the enterprises react very quickly and make relevant improvements.

- Charges

With charges, it is meant by a report of the AOSH to the police that an offence has been committed at the workplace. That involves that serious and/or repetitive offence has taken place on the law and Executive Orders in the field of occupational health and safety. The role of the inspectors is to investigate the case but the role of the lawyer of the AOSH is to issue a charge. The inspector follows certain rules with such an investigation. So far, there have been very few reports to the police.

Denmark

Labour inspection in practice

The WEA monitors whether Acts and rules in the field of safety and health at work are observed, through inspection visits and guidance of the enterprises and their safety organisations, with a view to making the enterprises capable of solving their own tasks in relation to the working environment. The WEA uses different inspection methods. The WEA has developed six methods of inspection:

Screening

In May 2004 the Danish Parliament adopted an occupational safety and health reform entitled “A Safe and Healthy Working Environment for Employees and Enterprises”, which resulted in issuance of new Working Environment Act. A comprehensive reform of the labour inspection system came into force and as of 1 January 2005 and seven years onwards, the WEA will screen the occupational health and safety conditions of all Danish enterprises. A screening is a quick review of health and safety conditions in enterprises. The purpose/primary aim of screenings is to find enterprises with significant health and safety problems and to subject them to a thorough ‘adopted inspection’. If the health and safety conditions are in order, the WEA will usually not revisit the enterprise within the near future. If, on the other hand, some health and safety conditions warrant closer examination, the WEA will carry out an “adapted” inspection. The WEA screens all enterprises with employees and divides them into two groups. As a general rule, screening visits are unannounced and last two hours on average. The time spent depends on the health and safety level and size of the enterprise. As a result, some screenings of enterprises take longer while others take less time. The WEA aims to divide all enterprises into two categories by means of screening. When screening an enterprise, the inspector makes a judgment as to whether the health and safety conditions in the enterprise are adequate, and hence should be left alone, or whether the enterprise needs a closer inspection. If the inspector decides that the enterprise should receive a more thorough investigation with an “adapted” inspection, he reports this to the administrative staff, who then plan the adapted inspection.

Adapted inspection (Tilpasset tilsyn)

In adapted inspection the WEA targets its resources on the enterprises which have the most hazardous working environment conditions. Adapted inspections are thorough inspections carried out at enterprises where the screening indicates that there are or might be significant working environment problems. The objective is to check whether enterprises comply with the working environment regulations and to respond in the case of noteworthy working environment problems. Adapted inspections are based on the working environment problems identified during the

screening. This means that adapted inspections are tailored for the working environment problems that the individual enterprise has or might have. The main rule is that adapted inspections must be carried out shortly after the screening and that they must be announced at least 14 days in advance. The time limit may be shorter but will then have to be subject to an advance agreement with the enterprises. Adapted inspections last for three to four hours on average. The time spent depends on the working environment level, the number of employees, and size of the enterprise. After screening, if the enterprise is deemed to have significant health and safety problems, it is marked down for a more comprehensive adapted inspection within 8 weeks of the screening inspection. Of the adapted inspection finds that the workplace enterprise does not comply with the legislation, the WEA will issue an improvement notice with a given time limit for the enterprise to rectify the issue.

Follow-up inspection (Opfølgningstilsyn)

Follow-up inspections are carried out at enterprises where adapted inspections or previous follow-up visits indicated that there might be significant working environment problems. The objective is to ensure that enterprises maintain the improvements in the working environment for which the WEA has established requirements or provided guidance at previous visits. The WEA also controls areas where the enterprise has been issued an improvement notice. At the same time, the WEA may respond to any new and important working environment problems. Follow-up inspections are carried out two years after the last visit and are usually unannounced. However, the WEA may choose to announce their follow-up inspections, for instance to ensure that the relevant persons are present during the inspection.

Detailed inspection (Detailtilsyn)

Detailed inspection takes the form of inspection of problems or problem areas, including examination of work-related accidents, diseases and ailments. This is when a specific problem has to be investigated at a place of work. Inspections of this type generally occur after an accident or a reported case of occupational health, following a complaint, or to check progress with an enforcement notice.

Market surveillance

The AML covers a number of obligations on suppliers of products. The WEA therefore monitors that the manufacturers and suppliers comply with the requirements applicable to the products that are marketed. The subject of market surveillance may be that the WEA under another inspection encounters an illegal machine. The supplier of the product is subsequently contacted and is notified of an inspection visit at the supplier's enterprise or where the product is produced. The WEA also carries out the market surveillance in shops, trade shows and at other places where products are marketed.

The market surveillance is usually always notified to ensure that a representative of the supplier is present. After the inspection the supplier receives a letter (høringsbrev) from the WEA, which informs the possible shortcomings found in the supplier's product. The WEA will then give the supplier an improvement notice, while in critical cases the WEA may require that a product is completely withdrawn from the market with and also with a police report. Anledningen til et Markedsovervågningstilsyn kan være, at Arbejdstilsynet under et andet tilsyn er stødt på en ulovlig maskine el Leverandøren af produktet vil herefter blive kontaktet, og der anmeldes et tilsyn på leverandørens virksomhed eller på den virksomhed, hvor produktet er opstillet. Et Markedsovervågningstilsyn på leverandørens virksomhed er i reglen altid anmeldt for at sikre, at en repræsentant for leverandøren er til stede med den dokumentation, der skal bruges til tilsynet.

The Smiley Scheme

The WEA has established a "smiley" scheme with the purpose of the making the working environment standard at an enterprise known to the public. The Smileys are published on the website of the WEA. There are three Smileys in the working environment area and they are green, yellow and red. The Executive Order No. 255 of 20 March 2007 on publication of the firms working environment (the Smiley-system) contains rules about the Smiley Scheme. The smiley is given out to an enterprise following an inspection, and is based on the outcome of that inspection. It is hoped that by making the working environment visible to e.g. applicants and collaborators, the enterprises will be motivated to continuously focusing on working environment. An enterprise may be allocated one of four types of smiley. First there is a green smiley that indicates that the enterprise has no issues with the WEA. Secondly there is a yellow smiley that indicates the enterprise has received a notice with a time limit or an immediate improvement notice. Thirdly there is a red Smiley that indicates that the enterprise has received an improvement notice or a prohibition notice. Lastly an enterprise can receive a crown smiley and that indicates that the enterprise holds a recognized health and safety certificate. This means that the enterprise has made an extraordinary effort to ensure a high level of health and safety.

Norway

Labour inspection in practice

The Norwegian Labour Inspection Authority is organised with two levels of public administration. The superior level is the Directorate of Labour Inspection and the other level is the local Labour Inspection Authorities organised in seven regions. The Director General is the manager for both levels.

The Directorate of Labour Inspection has the responsibility for strategy, planning and communication. The Directorate is the appeal instance for decisions made by the local Labour Inspection Authority. Individual decisions adopted by the Directorate in first instance may be appealed to the Ministry.

The local Director General has the responsibility for surveillance and inspection of the enterprises in his or hers region. The office also gives guidance and information to the local working life.

The Labour Inspection Authority has decided to give priority to the following topics:

- S1 Prevent muscular and skeleton disorder
- S2 Prevent adverse mental strain
- S3 Strengthen arranging and follow-up
- S4 Prevent exposure of noise and chemical and biological agents
- S5 Prevent work accidents and reduce extent of damage
- S6 Prevent social dumping
- S7 Increase the knowledge of work environment with Young Workers

The Labour Inspection Authority shall supervise compliance with the provisions of and pursuant to the Working Environment Act. However, the capacity of the Labour Inspection does not give the possibility to supervise all enterprises during a year, which mean that the supervising activity must be done according to thoroughly planning. The method of supervising varies from normally unannounced inspection to centralised campaigns carried out by all regions towards an industry group. Centralised campaigns and actions are often planned in co-operation with representatives from the social partners.

In addition to the centralised campaigns, the local Labour Inspection Authority is planning for local inspections allowing for the local variety of industry. Supervision will mainly be aimed at enterprises with the highest risk for workers health and safety, and where the enterprise is not prepared to and not willing to correct nonconformity with the provisions of the Act or Executive Orders.

The Working Environment Act lays down provisions that deal with supervision and how it shall be performed by the Labour Inspection, cf.

Chapter 18 Regulatory supervision of the Act. The main means of supervision is inspection at the workplace. The inspection can either be unannounced or announced. Unannounced inspections are usually used to monitor working environment conditions in the workplace related to health and safety and to reveal social dumping. Announced inspections are usually used when the labour inspector has to be certain that the management and safety representatives are present as regards the possibility to get vital information or to have a meeting with local partners.

The regulations relating to Systematic Health, Environmental and Safety Activities in Enterprises (Internal Control Regulation) is supervised by several Authorities. Inspections are co-ordinated, often as a common inspection by two or more Authorities. The main purpose of the inspection is to have an audit of the internal control system. The Labour Inspection Authority will notify in advance of the audit by letter. The letter informs the enterprise of what the Labour Inspection Authority wants to look at and what documentation should be ready for the inspection. In addition to the audit there will be tests of the practical implementation of the Internal Control System, a verification that shows accordance between the system and the performance. If breaches of laws and regulation are brought to light during a system-based audit or verification, the enterprise must take action to rectify them. The enterprise also has to consider modifying the routines to prevent renewed breaches.

The Norwegian Labour Inspection Authority is responsible for market surveillance of occupational machineries, personal equipment and chemicals. The market surveillance implies checking if products meet the requirements according to the Directive or Executive Orders and that the affixing and use of CE marking is correct. Market surveillance is conducted by inspecting products that is placed in the market. Market surveillance occurs partly through the normal inspection activities and partly through goal-oriented inspection at producers, importers and/or suppliers.

The Working Environment Act contains provisions that enabled the Labour Inspection Authority to issue orders and make individual decisions as are necessary for the implementation of the provisions of and pursuant to the Act. When provisions of the Act or Executive Orders are violated the Labour Inspection Authority may issue orders. An order which is issued to correct the violation shall be in writing and the correction shall be done within a time limit. The enterprises have the opportunity to lodge an appeal if they do not accept the order or the time limit for correction.

The competence to issue orders is limited to what is considered public-law. In other cases when the provisions are considered civil-law, the Labour Inspection Authority will only give information and guidance of legal practice and procedural regulations. According to Article 18-6 (1) of the Working Environment Act the competence to issue orders applies to chapters which mainly regulates health and safety matters. This includes the following chapters and sections.

- Duties of employer and employees – chapter 2, except for sections 2-4 and 2-5
- Working environment measures – chapter 3
- Requirements regarding the working environment – chapter 4
- Obligation to record and notify requirements manufacturers etc – chapter 5
- Safety representatives – chapter 6
- Working environment cooperation – chapter 7
- Information and consultation – chapter 8
- Control measures in the enterprises – chapter 9
- Working hours – chapter 10, except for section 10-2 second to fourth paragraph and section 10-6 tenth paragraph
- Employment of children and young persons – chapter 11
- Requirements regarding a written contract of employment, Minimum requirements regarding the content of the written contract, Employees posted abroad, Changes in the employment relationship – section 14-5 to 14-8
- Information and consultation in connection with collective redundancies – section 15-2
- References – section 15-15

According to section 18-7 the Labour Inspection Authority may, when issued ordered pursuant to the Working environment Act, impose a continuous coercive fine for each day, week or month that passes after expiry of the time limit set for implementation of the order until the order is implemented. A coercive fine may also be imposed as a single payment fine. The Directorate of Labour Inspection may waive accrued fines. In practice coercive fines are mostly used when the time limit for implementation is expired. The issued order will be repeated with a new time limit and at the same time the Labour Inspection Authority will make a decision to impose a continuous coercive fine from the new time set for implementation.

Article 18-8 gives the possibility to halt work. If orders are not complied with within the time limit, the Labour Inspection Authority may wholly or partly halt the enterprises activities until the order has been complied with. In event of immediate danger, the Labour Inspection Authority may halt those activities that are associated with the dangerous situation even if no order has been issued.

When employers or employees breach the provisions or orders contained in or issued pursuant to the Act they can be subject to penal provisions. The Labour Inspection Authority may notify to the Police severe breaches of law and regulation. After investigation the Police may impose a fine. If the accused will not pay the fine, the Police will bring the case to the Court.

According to Article 18-4 The Labour Inspection Authority shall have free access at all times to any premises subject to the act. Inspectors shall produce proof of their identity. If possible they shall take contact

with the employer and the safety representative. The safety representative may require that other representatives of the employees shall take part in the inspection. In enterprises where no representative is elected, the inspector shall, if possible, take contact with another representative of the employees. The employer or his representative shall be entitled to be present during the inspection and may be so ordered. The inspectors may decide that such right shall not apply during interviews of employees or if the presence of the employer would entail a major inconvenience or endanger the purpose of the inspection.

Unless weighty considerations indicate otherwise, the Labour Inspection Authority shall provide the employer with a written report on the result of the inspection. A copy of this report shall be given to the safety representative and, if necessary, to the occupational health service.

Article 18-5 of the Working Environment Act gives the Labour Inspection Authority access to information deemed necessary for performance of the inspection. The duty to give such information applies to all persons subject to inspection pursuant to the Working Environment Act, notwithstanding the duty of secrecy. The Labour Inspection Authority may decide the form in which the information shall be provided. The information may also be demanded by other public inspection authorities notwithstanding the duty of secrecy.

When the Labour Inspection Authority is informed of circumstances that are in contravention of the Working Environment Act, the name of the informant shall be kept secret. The duty of secrecy shall also apply in relation to the person whose affairs are reported.

Sweden

Description of a “typical” general inspection

A brief description is given below of the inspection process, from planning to the stage where measures have been taken by an employer, whereupon the transaction is concluded. In this connection it should be made clear that the message conveyed by our Rules of Inspection (RFI) to the inspectors, and strongly emphasised in various connections, is that of *pursuing*, without loss of momentum, the transactions initiated until all risks and deficiencies revealed have been dealt with.

- planning/selection

Planning includes selecting objects for surveillance and having a cogent purpose for the inspection.

A “surveillance index” has been devised for the selection of objects for inspection. RFI requires the inspector to use the surveillance index as an *aid* to the selection of objects for inspection, in addition to his personal knowledge of the hazards and deficiencies of the workplace and industry concerned. The surveillance index is always to be taken into account when selecting workplaces from a larger group, and that objects are primarily to be selected among workplaces having an index rating of 1.

All workplaces in our SARA register have an individual index rating (1, 2 or 3) which is computed automatically on the basis of adverse points scored for the following nine variables:

- Work injuries occurring at the workplace
- Work injuries for the industry
- Sickness allowance paid
- No. employees at the workplace
- Occurrence of certain types of document suggesting work environment problems
- SAM status at the workplace
- Last inspection of the workplace
- Demands of the work and degree of direct control/influence
- Fatal accidents in the industry to which the workplace belongs

10% of all workplaces, i.e. the 10% of the workplaces which the highest adverse scores, receive an index rating of 1, the next 20% are rated 2 and the remaining 70% are rated 3.

The surveillance index system is still a subject of development work and calibration, because workplaces in certain industries with known work environment hazards – restaurants and retail trade, for instance – do not always score correctly in the system.

The inspector has a discretionary power of inspecting workplaces other than those belonging to index group 1, great importance being

attached to the inspector's knowledge of the individual workplaces. This is subject to the inspector's immediate superior keeping the activity under close observation, so as to see whether the inspector is systematically inspecting workplaces belonging to index group 3.

- Advice

In the most cases the employer is advised of the impending inspection, either by telephone or in writing. In the advice the employer is called upon to ensure that a safety delegate can take part in the inspection. Most construction site inspections are unannounced.

- Conduct

On arrival at the object for inspection the inspector contacts an employer's representative and, if not previously known, produces his official ID. If no employer's representative is available the inspector must carefully consider whether it is advisable and possible for the inspection to take place as planned or whether it should be postponed.

The inspector also contacts the safety delegate, the standard practice in *Sweden* being for a safety delegate normally to be present throughout the inspection. This does not preclude the employer or safety delegate talking to the inspector in private. If in the course of such a conversation, information is supplied which occasions stipulations by SWEA, the information must of course be transmitted to the other party.

An inspection normally begins with an introductory discussion between the inspector, employer and safety delegate. The inspector explains the reason for the inspection and the principal issues he will be addressing, as well as the length of time the inspection is expected to take. The extent of this introduction depends a great deal on whether the inspector has visited the workplace before or whether this is the first time the workplace has been inspected by SWEA. One of the inspector's obligatory tasks is to verify the formally correct and complete name/designation and address of the employer against the data pre-printed in the report form which the inspector has downloaded from SARA beforehand.

The employer can then give a brief, relevant account of organisation, production etc. at the workplace and of its work environment management, etc.

The safety delegate has the opportunity of raising issues which in his or her view should be addressed during the inspection and of otherwise commenting on and supplementing the employer's account.

This introductory discussion is often followed by questions from the inspector, to check how the workplace handles its systematic work environment management. The employer is asked to describe this, after which the safety delegate can give his or her view of the matter.

The normal procedure in all discussions with employer and safety delegate is for questions to be put to them alternately, so as to give the inspector as comprehensive a picture of things as possible. SWEA always aims to secure the participation of a safety delegate or other employee representative in the inspection, knowing from experience that this helps to ensure as correct and comprehensive a picture as possible of work environment conditions in the workplace.

At this stage of the inspection it is not uncommon for the inspector also to request for an account of measures taken on account of accidents and serious incidents reported to SWEA. It is also normal practice for the inspector to ask to see records of prescribed inspections by accredited bodies of lifting gear and pressure-retaining devices.

Following this introduction, the inspection often continues with a tour of the workplace facilities, again with employer's representatives and safety delegates taking part. In addition, questions of different kinds are often addressed to individual employees who happen to be present.

If, during the inspection, the inspector becomes aware of the firm being in breach of a provision which carries a direct penal sanction, this is pointed out. At the same time it is made clear that the inspector is not personally authorised to take a decision in this matter and that, accordingly, a report will be sent to the decision-making officer, who will then have to decide whether or not to lay a criminal complaint with a public prosecutor. The same procedure applies when the employer is in breach of a provision carrying a sanction charge, e.g. by using an uninspected pressure vessel.

Alternatively, the physical tour of the workplace precedes the processing of questions connected with systematic work environment management etc.

An "ordinary" inspection often includes elements of information, e.g. concerning hazards and applicable work environment provisions. In this connection the inspector usually hands over a number of SWEA information brochures, as well as drawing attention to the great amount of information obtainable from the SWEA website. The message given to our inspectors, on the other hand, is to avoid giving concrete advice to employers during an inspection concerning the practical measures which he must take to eliminate work environment hazards or deficiencies remarked on, the reason being that more often than there are many different ways of averting a particular risk.

The inspection ends with the inspector apprising the employer and safety delegate of the deficiencies, accident risks and health hazards which have been observed. The inspector also explains, as far as possible, what stipulations will be contained in the inspection notice to be transmitted later. If a final assessment on a particular topic is not possible at this juncture, the inspector informs the employer and safety delegate of his assessment by telephone before the inspection notice is sent to them.

- Subsequent work

After returning to the office on completion of the inspection, the inspector writes an inspection notice to the employer, describing the risks and deficiencies observed in the course of the inspection. In direct conjunction with each deficiency/risk, the inspector clearly and correctly indicates the measures which the employer has to take. Each stipulation is accompanied by the statutory provision on which it is founded. In addition to stipulations, the inspector can write recommendations and information, which must be formulated in such a way that they cannot be taken for stipulations.

The inspection notice ends with SWEA requesting the employer to notify AV by a certain date of the measures taken with reference to the deficiencies described and the stipulations made.

The inspection notice is normally sent *within 3 weeks* of the inspection visit taking place. A copy of it is sent to the safety delegate. The inspection notice is signed personally by the inspector and is normally sent off without the inspector's superior being involved.

A point to be noted concerning the Swedish system is that an inspection notice is not a legally binding document and therefore cannot be appealed either. The inspection notice can be termed the employer's both first and last chance of voluntarily taking the measures indicated.

The content of an inspection notice can be amended if the employer contacts the inspector and submits that new circumstances have emerged, making the stipulations irrelevant or incorrect. If SWEA amends an inspection notice, both the employer and the safety delegate are notified to this effect in writing. There are also cases of the employer requesting additional time in which to submit a report to SWEA. Under RFI, the response time fixed cannot normally be extended, and it is therefore important that the employer should clearly indicate reasons for requesting a respite. Extension of the response time must always be preceded by careful examination by the inspector. Routine extension is not permissible. In exceptional cases a second extension can be granted after the matter has been submitted for consideration by the decision-making officer.

- Conclusion of the transaction following stipulations in the inspection notice

Before a transaction can be concluded, a written or verbal report is needed from the employer, stating the measures taken in response to SWEA's stipulations. SWEA should take reasonable steps to verify that measures have been taken. If the safety delegate has co-signed the report to SWEA together with the employer, SWEA will be more disposed to accept the report at face value. In certain situations, follow-up is

needed in the form of a return visit to the workplace. The number of follow-up visits has grown in recent years.

- Reminder

If no report concerning measures taken has been received from the employer within the allotted time, a reminder is sent. This has to be done *within 2 weeks* of the predetermined response date having passed.

- Notice of possible coercive action

If no report is received after the reminder, the employer is normally notified that SWEA is considering recourse to an injunction or prohibition in order to prevail on the employer to take requisite measures. The same applies, of course, if the employer has submitted a report which SWEA finds inadequate.

Sometimes a follow-up inspection of the employer's premises is needed before notice is sent. The notice must normally be sent off *not more than 6 weeks* after the response date in the inspection notice has passed. The inspector is not personally authorised to send the notice, which instead has to be signed by a member of the district management.

Notice of a possible injunction/prohibition can also be sent off without being preceded by stipulations in an inspection notice if swift action is needed or if previous experience or observation during the inspection suggests that the employer will not take any measures voluntarily.

The notice particularises the stipulations which the impending and legally binding injunction/prohibition will contain and when, as the case may be, the measures indicated in the injunction must be taken or when the impending prohibition will enter into force. The notice also makes clear that the employer now has an opportunity, within a certain time – usually 3 weeks – of submitting viewpoints and objections. A copy of the notice is sent to the safety delegate.

A large proportion of the employers receiving notice that SWEA contemplates resorting to an injunction or prohibition realises at this stage, if they have not done so already, that they will have to take the measures which SWEA is demanding, and so the statement received from the employer may indicate that measures have now been taken or will have been taken by a certain time. It has to be decided on the merits, factoring in previous experience of the employer's reliability, whether an injunction/prohibition is to be issued when the report states that measures will have been taken by some future date.

- h) Injunction/prohibition

If no statement has been received from the employer in response to the notice or if SWEA is not fully convinced that the employer will have tak-

en the measures concerned within the allotted time, SWEA issues a binding injunction or prohibition. This is normally decided on at the latest *within 3 weeks* of the time limit given in the notice for returning a statement has passed. The decision is made by the head of the district. Sometimes a follow-up inspection is needed before this decision can be taken.

Both injunctions and prohibitions can be appealed to an administrative court. This has to be done within three weeks of the employer being apprised of the decision. A safety delegate also has the right of appeal.

Most injunctions/prohibitions are issued subpoena, i.e. carry a contingent fine which the employer can be made to pay if the injunction/prohibition is not complied with. This decision is made by an administrative court on application being made by SWEA. The court has only to decide whether the injunction/prohibition is formally correct and must not undertake any assessment of the case on the merits.

If SWEA does not issue the injunction/prohibition subpoena, a party representing the employer (manager, supervisor) can be fined or sentenced to up to one year's imprisonment by a common court. In this case a prosecutor must file proceedings against the right person within the undertaking and prove that person to have infringed the injunction/prohibition either wilfully or by negligence. Because litigation of this kind is often expensive and not always successful, SWEA has normally found the issue of injunctions/prohibitions subpoena to be the most effective course.

Finland

Labour inspection in practice

Health and safety inspections in *Finland*

Enforcement activities are mainly carried out through inspections. An inspection is usually performed at the workplace or in some other place where work is done. During the inspection, compliance with the legal provisions on occupational safety and health is investigated. Inspections may also be carried out at firms or in the inspector's office only on the basis of documents. The other enforcement actions include, for instance, granting licences, making enforcement inquiries and giving statements to other authorities.

The inspector draws up a written inspection report on each inspection without delay, however within one month from the inspection. In the inspection report, the inspector records the written advice and improvement notices he or she has given and the inspection process. The temporary prohibition notices given are also recorded in the inspection report.

Health and safety inspection

Health and safety inspections are carried out as often and efficiently as is necessary for the purposes of enforcement. It is the duty of regional occupational safety and health authorities at the Regional State Administrative Agencies to carry out inspections in accordance with the performance targets agreed with the Ministry of Social Affairs and Health.

Preparing for an inspection and contact

Inspections are prepared in advance in order to be able to get a picture of the situation at the workplace, its health and safety problems, management systems and organisation.

The employer is normally informed in good time beforehand of the inspection and its date and time by a written notice. Besides the inspection time, the notice states the estimated duration of the inspection, the questions to be handled, the names of the authority participants and the names of the employer's representatives desired to be present. Those present in the inspection are usually the employer's occupational safety and health manager, the employees' safety and health representative, eventually other representatives from the workplace and often also the representative of occupational health care. The presence of the last-mentioned is often useful but it is to be decided by the employer.

An inspection may also be carried out without previous notice if this is necessary for enforcement purposes. After coming to the workplace, the inspector reports for inspection to the employer.

The content of inspection

The inspection agenda includes the groups of matters to be handled during the inspection. The agenda is revised according to the workplace in question.

The inspection agenda consists of four parts:

- checking the information that describes the situation of the workplace
- questions derived from the performance agreement and/or the objectives of the regional OSH authorities
- other matters associated with the working conditions or employment relations at the workplace
- matters brought up by the employer's and the employees' representatives.

Workplace visit

How comprehensively the matters are handled depends on the hazards and risks present at the workplace and its facility for managing occupational safety and health matters. A workplace visit is normally divided into three parts: initial meeting, workplace round and concluding meeting.

The purpose of the initial meeting is to ensure that the visit goes smoothly and to explain the objectives of the inspection and the matters to be handled as well as check the information on the workplace.

Even though the monitoring of occupational safety and health management procedures often means investigating the matter by discussions and inquiries and by inspecting the workplace documents, the inspection also comprises a visit to the workplace premises in order to find out how these procedures function in practice and to make observations about hazards and risks. When necessary, the inspector discusses with the employer or his or her representative in private. Inspectors' duty is to tackle breaches of the law. It is, however, important that people at the workplace understand that the workplace round does not mean that all defects would be discovered during it.

At the concluding meeting the inspector presents a summary of the central findings and those shortcomings in the management procedures and working conditions which need to be remedied. The inspector reports what measures the employer must take and listens to the representatives of the employer and the staff and makes sure that they have understood what is expected. The inspector also mentions the main points he or she is going to record in the inspection report and tells about the meaning of written advice and improvement notice. The inspector discusses with the employer or the representative about the timetables and monitoring practices for the implementation of written advice and improvement notices.

If during the workplace visit the inspector notices such essential defects or shortcomings which fall under the supervision of some other authority, these will be reported to the authority in question.

Inspection report

The inspector draws up a written inspection report of the workplace inspection within one month from the visit recording the inspection process and the measures required on the basis of the inspection in the report.

According to the enforcement act, the inspection report must describe the inspection process and specify the central findings, written advice and improvement notices issued as well as the meaning of written advice and improvement notice and eventual further measures. The results of measurements by work environment meters are attached to the inspection report.

The purpose of the inspection report is to make the employer take the measures indicated in it.

Inspection reports are generally public documents with the exception of information concerning, for instance, a person's health condition and economic situation.

Inspection process

The inspection report includes a description of the inspection process and identification data on the inspection as well as a description of the inspection's purpose and content. The identification data include the employer's name, inspection date and time and inspection number, workplace, cause of inspection, inspector's name and the names of those present in the inspection.

Inspections may also be carried out in some place other than workplace, for example in the inspector's office by investigating the documents.

The inspection report indicates what matters have been handled. In the cases of harassment and discrimination, for example, it is also recorded which legal provision is being enforced. Also, the inspection report indicates that carrying out an inspection does not mean taking an attitude to matters that are not inspected. If necessary, there is also a brief description of the inspection's purpose and content.

Central observations

The inspector assesses what is essential for occupational safety and health and for compliance with safety regulations at the workplace in question.

If defects or shortcomings are noticed at the workplace (the inspector gives written advice and improvement notices of these), they are indicated and specified in adequate detail in the inspection report. The report specifies in what respect the management of safety, a machine, equipment or the working conditions do not meet the requirements.

The central observations are recorded in the inspection report. If those concerned have presented dissenting opinions about the central

observations, these will be recorded, when necessary, with the related observations in the inspection report.

Written advice, improvement notices and prohibition notices recorded in the inspection report

The inspector records in the inspection report the written advice and the improvement notices given due to the work environment conditions which in the central observations have been found non-complying. Written advice is given in order to remedy a minor defect or slight shortcoming. If the hazard or risk from non-complying conditions is greater than minimal, instead of written advice the inspector gives an improvement notice to eliminate or remedy the non-complying condition. After the written advice or improvement notice it is indicated which legal provision includes the applicable requirement.

Occupational safety and health authorities may by decision issue a prohibition notice if a defect or shortcoming at the workplace causes the worker a risk to life or health. A penalty payment may be imposed to reinforce the prohibition notice. If the inspector has issued a temporary prohibition notice, this will be mentioned in the inspection report and reference to a decision to be given separately is made. The inspection report also mentions the observation on which the prohibition notice is based.

Distribution of the inspection report

The inspection report is always sent at least to the employer and the occupational safety and health representative and, when necessary, other persons concerned.

If the workplace has not an occupational safety and health representative, the employer must make the inspection report available to the workplace in a suitable manner, for instance on the notice board or intranet.

Monitoring

The inspector monitors that the employer has followed the written advice or improvement notice within the time limit. Monitoring may require a new workplace visit or written explanation. The inspector may monitor compliance with written advice in connection with the following workplace inspection.

If a defect or shortcoming indicated in the improvement notice is not eliminated or remedied within the time limit, the inspector may without delay forward the matter for handling to the field of responsibility for occupational safety and health at the Regional State Administrative Agency. Then the regional OSH authority starts to consider and prepare a binding decision. By the decision the authority may oblige the employer to remedy or eliminate the non-complying condition within a given time. To reinforce the decision, the authority may impose a penalty payment or threat that the non-complying condition will be remedied at the employer's expense or the work will be stopped. The decision is legally binding on the employer. The decision may be appealed in the administrative court.