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CPA's in Scandinavia (including Finland)

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Introduction

- CPA's; a quite recent legal figure in Scandinavian context
 - A relatively simultaneous discourse and reform ambition in Scandinavian countries stemming from R(99)4.
 - Prof. Dr Jur. Svend Danielsen (Denmark) has been key to the reforms in all countries as an appointed expert to several governmental inquiries in the matter
 - Presently there are legislation in force, or soon to be introduced, in all Scandinavian countries (with Sweden as the last straggler)



Setup

- Description of the various Scandinavian legislations on CPA's, similarities and differences, with respect to:
 - Establishment of a CPA
 - Formal requirements
 - Restrictions regarding content/scope
 - Supervision
 - Revocation of a CPA
- Some final remarks



CPA:s in Sweden – Bill

- No real opposition towards CPA:s as such in Sweden. Government plans to put forward a bill on CPA:s in late spring this year, although the first proposal was put forward 2004. Critique (then) in the referral round regarding the CPA:s entry into force, supervision, changes in legislation regarding ordinary powers of attorney and a proposition on decision making competence ipso iure for "P":s relatives.
- CPA:s is considered a welcome contribution to existing adult guardianship measures, hoping to reduce the need for measures as mentor- and administratorship
- The (now) proposed CPA will be a springing power of attorney. It will come into effect i) when the principal is considered permanently and substantially incapable to manage the affairs covered by the CPA, and ii) when it has been registered by the Chief Guardian in the principal's home municipality. The choice of authority responsible for maintaining the register has been criticized in the current referral round.
- The CPA may cover financial and/or personal matters, but not decisions regarding health care matters (i.e. choice of treatment, participation in research etc.)



CPA Bill and the CRPD

- No references to CRPD in the governmental investigation
- In relation to art. 12 para. the proposal risks to lead to substitute decision-making in the same way as a mentorship can
 - Only one paragraph in the proposal concerns the principals involvement in the decision making (Ch. 1 para. 13) which states that the attorney shall act in the interest of the principal and that the attorney shall, if appropriate and provided that the CPA does not state otherwise, consult the principal in important questions



Country	Establishment/coming into effect	Formal requirements	Restrictions on content	Supervision	Revocation
Sweden (Bill)	<p>CPA effective when:</p> <p>i) The principal due to a "mental disorder, illness, injury or a similar condition" is "enduringly incapable" to manage the matters covered by the CPA, and</p> <p>ii) the CPA is registered with the Chief Guardian ("Överförmyndaren")</p> <p>The issuer may appoint one or several attorneys</p> <p>Application for registration may be made when the requirements under i) is at hand</p> <p>The issuer may stipulate a formal court declaration as an additional requirement</p>	<p>i) The issuer must be 18 years or more when signing the CPA,</p> <p>ii) CPA must be signed in the simultaneous presence of two witnesses (specific requirements regarding the witnesses)</p> <p>iii) The CPA must clearly state that it is effective when the issuer is incapable of managing the matters covered by the CPA</p>	<p>i) Cannot (according to the specific Bill) include provisions with regards to decisions concerning health care; a more recent Bill (covering issues concerning mentally disabled adults in health-, welfare- and research matters) has suggested that a CPA also may include provisions in health-, welfare- and research matters</p> <p>ii) Must appoint a natural person</p>	<p>i) Possible to make provision on supervision in the CPA (making account to a specific person or to the Chief Guardian)</p> <p>ii) Regardless of any provisions under i) the attorney have to provide information to the Chief Guardian regarding the management if requested to do so</p> <p>iii) If the Chief Guardian finds that the attorney is misusing the CPA or is inept, the Chief Guardian can decide that the attorney cannot use the CPA</p>	<p>i) The issuer may recall the CPA at any time, a provision on the contrary is invalid,</p> <p>ii) If a god man or an administrator is appointed the CPA is invalid in the matters covered by that measure,</p> <p>iii) If the CPA has come into force, but the principal's health condition has improved so that the requirements for the CPA are no longer met, the CPA is ineffective (although some security provisions for third party)</p>



CPA's in Finland - Intressebevakningsfullmakt

- Finland has recently ratified the CRPD, in force since June 10th this year
- The Finnish Guardianship legislation (lag om förmyndarverksamhet – 1.4.1999/442) is similar to Swedish law, although declaration of incapacity (co-decision-making order, limited guardianship, plenary guardianship) is still possible in Finland
- Regulation on CPA's are in force in Finland (lag om intressebevakningsfullmakt 25.5.2007/648)
- The regulation, in relation to art 12, is equivalent with the Swedish Bill (or rather the other way around)



Country	Establishment/coming into effect	Formal requirements	Restrictions on content	Supervision	Revocation
Finland	CPA effective when: i) Similar to Sweden (although more detailed provisions) and, ii) the CPA is affirmed by the Guardianship Authority ("Förmyndarmyndigheten")	Similar to Sweden	i) Attorney may not consent to marriage, adoption, legal paternity or testaments or other decision of such personal nature ii) No restrictions with regards to decisions concerning health care matters	i) The Guardianship Authority is responsible for supervision ii) The attorney must account for the state of the principal's estate when commencing the assignment iii) The attorney have to provide information to the Guardianship Authority regarding the management if requested to do so	i) The issuer may recall the CPA at any time, a provision on the contrary is invalid, ii) If a Guardian of interests is appointed the CPA is invalid in the matters covered by that measure



CPA's in Norway - Framtidsfullmakt

- Norway has both signed and ratified (2013) the CRPD, with a declaration
- Guardianship measures and CPA's are regulated in the same law (lov om vergemål LOV-2010-03-26-9, Ch. 10 deals with CPA's)
- The available support in exercising "P":s legal capacity is similar to Swedish legislation. Substitute decision-making is possible, the measure can be limited to certain property and/or dispositions



Country	Establishment/coming into effect	Formal requirements	Restrictions on content	Supervision	Revocation
Norway	<p>i) The CPA enters into force ipso iure when the granter is “incapable to care for her/his interests in relation to the matters covered by the CPA due to a mental disorder, including dementia, or a severely impaired health condition”.</p> <p>The attorney decides when the CPA has entered into force</p> <p>ii) No requirements of registration or other affirmation is needed, but the attorney may demand that the County Governor (Fylkesmannen) confirms the CPA’s entry into force</p>	Similar to Sweden	<p>i) Similar to Finland,</p> <p>ii) The attorney cannot consent to coercion</p>	<p>i) Possible to make provision on supervision in the CPA (making account to a specific person or to the Chief Guardian)</p> <p>ii) The attorney have to provide information to the County Governor regarding the management if requested to do so</p>	<p>i) The issuer may recall the CPA at any time if s-/he understands the legal significance of the measure, a provision on the contrary is invalid,</p> <p>ii) If a god man or an administrator is appointed the CPA is invalid in the matters covered by that measure,</p> <p>iii) If a guardianship measure (vergemål) is made, the County Governor shall revoke the CPA</p>



Danish legislation

- Denmark has signed and ratified the CRPD
- Danish legislation (værgemålsloven, lov nr. 388 af 14. juni 1995) is, alike the other Nordic countries, similar to Swedish legislation although declaration of incapacity (only plenary guardianship is available) is still possible as a last resort measure.
- Legislation on CPA's has been signed, will entry into force probably sometime between 2-5 months



Country	Establishment/coming into effect	Formal requirements	Restrictions on content	Supervision	Revocation
Denmark	<p>CPA effective when:</p> <ul style="list-style-type: none"> i) Granters health: Similar to Sweden and, ii) the CPA has been declared as being in force by the State Administration (“Statsförvaltningen”) by application from the granter or the attorney, iii) The application to the State Administration shall enclose a certificate by a physician regarding the granter’s health status, unless the application is made by the granter iv) The State Administration may obtain further information on the granter’s situation before making a declaration 	<ul style="list-style-type: none"> i) The CPA must (some exceptions to be expected) be made on-line in written form to the CPA register, and ii) be acknowledged in front of a notary 	<ul style="list-style-type: none"> i) The CPA may include provisions on representations in financial as well as personal matters, ii) Decisions on health care matters are excluded (as it seems in the preparatory works) 	<ul style="list-style-type: none"> i) The State Administration are responsible for supervision, ii) The granter may appoint a third party to supervise the use of the CPA, iii) The attorney must provide information to the State Administration regarding the management if requested to do so, iv) 	<ul style="list-style-type: none"> i) The granter can always recall a CPA, if s-/he understands the significance of the measure (different course of actions depending if the CPA are in force or not), ii) if stated in the CPA, the third party overseer may recall the CPA, in all or partly, iii) a CPA ends if there is a guardian appointed to the granter, iv) the State Administration can revoke a CPA if the requirements for the CPA is no longer at hand



Final remarks

- Regulations on CPA's are in force in two of the four countries, the last two will most likely have legislation in force within a year
- The usage of CPA's seems to be quite low, with reservation to the fact that there are no need to register a CPA in Norway
- There are some differences in the respective regulations, and some fairly large (e.g. the formal requirements and rules on entry into force) which may pose a problem in the future given the mobility in the Scandinavian countries