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EUROPEAN SOCIAL CHARTER

17th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF SWEDEN

Articles 2, 4, 5, 6, 21, 22, 26 and 29

for the period 01/01/2013 - 31/12/2016

Report registered by the Secretariat on

24 October 2017

CYCLE 2018

REVISED EUROPEAN SOCIAL CHARTER

17th National Report on the implementation of

the Revised European Social Charter

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THE GOVERNMENT OF SWEDEN

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29 for the period

01/01/2013 – 31/12/2016)

Seventeenth report

Submitted by the Government of Sweden

in accordance with the Ministers' Deputies' decisions:

- 2 May 2006 adopted at their 936rd meeting (point 4.2),
- 26 March 2008, adopted at their 1022nd meeting (point 4.2),
- 2 April 2014, adopted at their 1196th meeting (point 4.7)

on the measures taken to give effect to the following provisions of the

Revised European Social Charter

Articles 2, 4, 5, 6, 21, 22, 26 and 29 for the period of 1 January 2013 to 31 December 2016.

Articles 2.1, 2.2, 2.4, 4.2, 4.5 and 28 have not been ratified by Sweden.

In accordance with Article 23 of the Revised Charter, copies of this report have been communicated to

(1) Svenskt Näringsliv (Confederation of Swedish Enterprise)
(2) Sveriges Kommuner och Landsting (the Swedish Association of Local Authorities and Regions)
(3) Arbetsgivarverket (Swedish Agency for Government Employers)
(4) Landsorganisationen i Sverige (the Swedish Trade Union Confederation)
(5) Tjänstemännens Centralorganisation (the Swedish Confederation of Professional Employees)
(6) SACO, Sveriges Akademikers Centralorganisation (the Swedish Confederation of Professional Organisations)

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Article 2 – The right to just conditions of work

Article 2§3

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to the previous report, with the following addition.

During the reporting period, amendments of the Annual Leave Act (1977:480) have been made to the effect that days during which workers have been absent from work without pay due to short-time work should be counted towards the period of time during which the worker shall be considered to have been employed. Such absence should also be taken into account when calculating the number of days with holiday pay that the worker is eligible for. Moreover, a worker has in some instances a right to abstain from his annual leave and compensation in lieu of annual leave, if his or her leave coincides with a period of time when the worker was absent due to short-time work.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reference is made to previous reports.

Article 2§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

Amendments have been made of the Working Hours Act (1982:673) to the effect that administrative fines may apply in additional cases of violations of the Act than was previously the case.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

Reference is made to previous reports.

Article 2§6

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reference is made to previous reports.

Article 4 – The right to a fair remuneration

Article 4§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures on national net average wage3 (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid. Where the above figures are not ordinarily available from statistics produced by the States party, Governments are invited to provide estimates based on ad hoc studies or sample surveys or other recognised methods.

Reference is made to previous reports, with the following addition.

According to statistics from the National Mediation Office (Medlingsinstitutet), a government agency under the Ministry of Employment, the national average wage amounted to 32 000 SEK gross per month (the year of 2015), 31 400 SEK (2014) and 30 600 SEK (2013).

The gross wage for earners, all sectors:

P10 (10th percentile)
21 600 (2015)
21 200 (2014)
20 800 (2013)

P50
28 600 (2015)
28 000 (2014)
27 300 (2013)

P90
45 100 (2015)
44 500 (2014)
43 300 (2013)

Quote P90/P10
2.09 (2015)
2.10 (2014)
2.09 (2013)

Since the parties in the labour market are responsible for wage formation, and since there are no legislation regarding national minimum wages, the P10 figure can be useful as 10 per cent of all earners have wages equal to, or below the amount. Minimum wages can be found in collective agreements, but only in some sectors. Theses minimum wages are agreed though negotiations. In the trade sector the lowest average minimum wage for 18-year-olds amounts to 19 419 SEK gross, the year of 2015.

Article 4§3

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

From 1 January 2017 the Discrimination Act (2008:567) was amended regarding the rules on active measures. A general framework for active measures intended to promote equal rights and opportunities was introduced. The changes also include extending work on active measures in working life and in the area of education to all grounds of discrimination in the Discrimination Act.

Further, the amendments of the Act conferred upon employers an obligation to conduct annual wage surveys/mappings to detect, address and prevent unjustified wage differences between men and women. Employers with at least ten employees shall document its work on wage mappings.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

In January of 2014 the Government appointed an inquiry chair to propose how to work to address discrimination can be organised and made more effective (terms of reference 2014:10). The submitted its report (SOU 2016:87) in December of 2016. The report has been referred for consultation to various relevant actors, such as government agencies, municipalities and the social partners.

In 2016 the Discrimination Ombudsman (*DO*) has produced a report called Motivated or linked to gender? - An analysis of employers' efforts to counter the inequality of pay gap between women and men. The purpose of the report is to provide insight into how employers are working to detect, remedy and prevent unreal pay gap between women and men.

3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

The wage difference between men and women has decreased every year since 2007, and stood at 12.0 per cent in 2016. This is apparent from the Swedish National Mediation Office's processing of the wage structure and there processing of the wage structure statistics. Differences in wages can be due to a number of different factors. If, with the aid of standard weighting, consideration is given to the explanatory factors that are available in the statistics, there is still an unexplained difference between the genders of 4.5 per cent (for further information, see the appendices). The single most significant explanation for differences that remain is that wage levels are generally lower in sectors of the labour market where women make up the majority of the workforce, while sectors with higher wage levels generally are male-dominated. During the last couple of years, wage differences have decreased partly due to the fact that women's wages have increased more than men's.

In response to the Committee´s questions the following may be of interest.
A natural or legal person who violates the prohibitions of discrimination or reprisals or who fails to fulfil their obligations to investigate and take measures against harassment or sexual harassment under this Act shall pay compensation for discrimination for the offence resulting from the infringement (Chapter 5, Section 1 of the Discrimination Act). The amount of compensation is determined by the courts in each case. Moreover, if someone is discriminated against by termination of a contract or agreement or by some other such legal act, the legal act shall be declared invalid if the person discriminated against requests this (Chapter 5, Section 3 of the Discrimination Act). Where an employer refuses to comply with a judgment whereby a court has declared that a termination or summary dismissal, the employment relationship shall be deemed dissolved. However, the employer shall pay compensation to the employee with a reasonable amount taking into consideration the employee's salary and the period of time that he or she has been employed (Chapter 5 Section 3 a of the Discrimination Act). The compensation shall not be set at a lower amount than what is stipulated in Section 39, paragraphs 2-3 of the Employment Protection Act (1982:80, below referred to as the EPA). In addition, unfair dismissals are also regulated under the EPA. Section 34 of the EPA States, *inter alia*, that where notice of termination is given without objective grounds, the notice shall be declared invalid upon the application of the employee. Moreover, under Section 39 of the EPA, the following applies. Where an employer refuses to comply with a court order that notice of termination or a summary dismissal is invalid, or that a fixed-term employment shall be valid for an indefinite term, the employment relationship shall be deemed to have been dissolved. As a consequence of the employer's refusal to comply with the court order, the employer shall pay damages to the employee. Damages are to be determined according to the

employee's total period of employment with the employer at the time of dissolution of the employment relationship. Damages may not be determined, however, in such a manner that such damages are calculated on the basis of a greater number of months than have actually been commenced with the employer. Where the employee has been employed by the employer for less than six months, the amount assessed shall correspond to six months' pay.

Article 4§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition in response to the Committee´s specific requests on further information in its conclusions of 2014.

The periods of notice of termination are set out in the Employment Protection Act (below referred to as EPA, Sections 11-12) have not been amended during the reporting period. As far as the Government is aware, there are no collective agreements that are incompatible with the EPA in terms of periods of notice of termination.

When it comes to the application in practice of deductions of income under Section 13 of the EPA, the Government would like to provide the following information. The burden of proof to demonstrate that conditions for making deductions under the provisions are fulfilled rests with the employer. This follows from case-law from the labour Court (AD 1990 no 82 and 2012 no 30). Case law from the Labour Court further stipulates that the provision is only applicable to remuneration from another employment, and not earnings that the employee has received from other sources of income, such as incomes stemming from the employee's own business or age pension benefits.

The employer is entitled to deduct income that the employee obviously could have earned from other suitable employment during the period of notice of termination. In order for this rule to apply, the employer must demonstrate that the worker during the period in question had the possibility to find suitable employment elsewhere that he or she could have accepted without inconvenience. This rule could also apply if the employer during the notice period has offered the employee a different position in another company, but the employee has declined that offer (AD 1975 no 21, AD 1980 no 145 and AD 1983 no 30). In determining what constitutes suitable employment in this context, reasonable consideration shall be had to *inter alia* the employee's work experience and his or her personal circumstances.

Fixed-term employment contracts may, under Section 4, paragraph 1 of the EPA, be entered into under certain circumstances specified in sections 5-6 of the EPA. Fixed-term employment terminates without prior notice of termination upon the expiry of the term of employment or when the work is complete, unless otherwise agreed or prescribed in section 5 a or section 6 if the EPA (Section 4, paragraph 2 of the EPA). Fixed term-employments are defined in Section 5 of the EPA. It states that a contract of employment for a fixed term may be concluded for a general fixed-term employment, for a temporary substitute employment, for a seasonal employment, and when the employee has attained the age of 67, Further, Section 5 a stipulates that certain fixed-term employment becomes employment for an indefinite term under certain circumstances. Certain amendments of the provision were made during the reporting period and entered into force on 1 May 2016. The purpose of the amendment was to improve the situation for employees who run the risk of getting stuck in fixed-term employment and to ascertain that the EPA fulfils the requirements to prevent

misuse under Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. Under the current wording of the provision, the following applies. General fixed-term employments transitions into an employment for an indefinite term if the employee has been employed in a general fixed-term employment for on aggregate more than two years during a five-year period, or during a period when the employee has been hired in fixed-term employments with the same employer in the form of general fixed-term employment, temporary substitute employment or seasonal employment and the employments have been consecutive. An employment is considered consecutive if it is entered into within six months from the final day of the previous employment. Furthermore, a temporary substitute employment transitions into an employment for an indefinite term if an employee has been hired by the employer for more than two years during a five-year period. In respect of persons who have reached 67 years of age, exemptions are made from Section 5 a so that general fixed-term employment or temporary substitute employment shall not become indefinite term employment pursuant to the provision (Section 5 b § of the EPA.

When it comes to probationary periods, the EPA states the following (Section 6 of the Act). A contract for probationary employment of a limited duration may be entered into, provided that the probationary period does not exceed six months. Where the employer or employee does not wish the employment to continue after the expiry of the probationary period, notification of such must be given to the other party not later than at the expiry of the probationary period. In the absence of the above-mentioned notice, the probationary employment shall become indefinite-term employment. Unless otherwise agreed, probationary employment may also be terminated prior to the expiration of the probationary period.

It should be mentioned in this context that deviations from, *inter alia*, Sections 5- 6, of the EPA may be made through a collective bargaining agreement. If the contract has not been entered into or approved by a central organisation of employees, it is required that a collective bargaining agreement entered into or approved by a central organisation of employees applies as regards other issues between the parties or that such a collective bargaining agreement is temporarily inapplicable

Moreover, it follows from section 15 of the EPA that an employee who is employed for a fixed term as provided in Section 5 and who will not be given further employment when the employment ends, must be notified to this effect by the employer not less than one month before the expiration of the period of employment. Entitlement to such notification shall be contingent upon the employee, upon the expiration of employment, having been employed by the employer for more than twelve months during the past three years. Where the period of employment is too short for notification to be given one month in advance, it shall instead be given upon the commencement of employment. Where a seasonal employee, who at the end of the employment has been employed by the employer for a specific season for more than six months during the past two years, will not be given further seasonal employment at the beginning of the new season, the employer must notify the employee to this effect at least one month prior to the commencement of the new season.

The Government wishes to draw attention to the fact that Section 15 only applies to certain specific forms of employment that are considered fixed-term employments under the EPA, as stipulated in section 5 of the Act. The main rule is that employment contracts apply for an indefinite term. For such employment contracts, other provisions on periods of notice of termination apply, as described above.

No specific provisions apply for part-time contracts. Such contracts can be terminated under the same circumstances as full time contracts.

As regards notice periods for workers coming under the Civil Service Act (also referred to as the Public employment Act, 1994:260), the rules are essentially the same as under the EPA. However, when it comes to information from the employer that a contract of probationary employment will not be extended, the Act stipulate that such information must be given in writing. Moreover, under section 33 of the Act, there are special rules for certain heads of administrative agencies. The provision states that if the head of the Swedish Agency for Government Employers is employed on a fixed-term contract, he or she may be removed from the position before the expiry of this term if this is necessary in the best interests of the Agency. It also states that if the head of another administrative agency that reports immediately to the Government is employed on a fixed-term contract, he or she may be transferred to another state post that is subject to the same appointment terms, if this is required for organisational reasons or is otherwise necessary in the best interests of the agency. Currently, 195 heads of agencies are hired under these conditions.

When it comes to domestic workers, the domestic work Act on (1970:943) stipulates that the period of notice of termination on employment shall be at least one month for both the employer and the employee. If the worker has been employed for at least five years at the time of the dismissal, he or she is entitled to a period of notice of termination of two months. If the worker has been employed for at least ten years, the corresponding period shall be three months.

Employees who belong to the same family as the employer are exempted from the scope of the EPA. This is also the case for certain other categories of employees. In practice, labour related disputes involving such employees have been adjudicated by the Labour Court on the basis of general principles of labour law and contract law.

When it comes to other cases of termination of employment on other grounds, such as bankruptcy and invalidity, the following information may be of interest.
Under the Wage Guarantee Act (1992:497), the State is liable for the payment of an employee's claim (State wage guarantee) against an employer who has been declared bankrupt in Sweden or another Nordic country, or in a country within the European Union (EU State) or within the European Economic Area (EEA State) other than Sweden is subject to insolvency proceedings referred to in Article 2(1) of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer. In the case of bankruptcy payment is made under the guarantee for such a claim for pay or other remuneration and for pension that has a priority right under Section 12 or 13 of the Rights of Priority Act (1970:979). Payment under the guarantee is also made for claim for pay during the period of notice of termination for a period after one month from the bankruptcy decision. Claims for pay during the period of notice of termination are subject to the guarantee for at most during the period of notice of termination that is calculated under Section 11 of the EPA.As regards compensation for invalidity, the Government would like to draw attention to the following.

An individual who is dismissed from his or her employment due to illness and is unable to perform another job which is common in the labour market has the right to remuneration in the form of sick benefits. If the invalidity is permanent the individual is eligible for

remuneration amounting to approximately 65 per cent of his or her previous income. If the invalidity is not permanent, remuneration amounts to at the most SEK 543 per day, seven days per week. If an individual lacks the ability to work or needs to switch jobs due to an occupational illness or injury sustained due to a previous job, he or she is entitled to occupational injury annuity (. This form of remuneration covers 100 per cent of the loss of income. In addition, about 90 per cent of the workers are covered by insurances through collective agreements that in the vast majority of cases entitle them to additional remuneration if they become unemployed for reasons related to sickness or injuries.

Workers who have become unemployed for other reasons may under certain circumstances be entitled to unemployment benefits. Individuals who have been members of an unemployment insurance fund for at least twelve consecutive months may, subject to certain conditions, receive compensation based on their previous average income during the twelve months preceding the unemployment. The benefit is however subject to certain caps, the maximum amount of benefit being SEK 910 per day for five days a week during the first 100 days of unemployment. Thereafter, the cap is set at SEK 760 per day for five days a week. Individuals who do not qualify for unemployment benefits based on previous income, such as individuals who are not members of an unemployment insurance fund, are entitled to a basic level of benefit currently capped at SEK 365 per day.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

Article 5 – The right to organise

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reference is made to previous reports.

Article 6 – The right of workers to bargain collectively

Article 6§1

1) *Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.*

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

Reference is made to previous reports. However, since the Committee wishes the next report to provide full and up-to-date information (conclusion 2014) the following can be stated.

The labour market parties in Sweden are responsible for wage formation and they also have a central responsibility for the other conditions in the labour market. The legislation supports this, for example through rules on rights of association and negotiation and the right to take industrial action. The labour market parties bear the main responsibility for maintaining industrial peace.

The main features of the Swedish labour market model can be summarised as follows:
- The legislation in large part constitutes a framework within which the labour market parties have a great deal of freedom to regulate the precise conditions, *inter alia* by way of collective agreements
- Many of the legal regulations can be replaced with collective agreements.
- There is no legislation on minimum wages or universal application of collective agreements.
- Collective agreements apply to most of the employees on the labour market.
- Disputes are resolved in the first instance through negotiation.

The Employment (Co-Determination in the Workplace) Act (1976:580) is based on the idea that disputes between employers and employees should be resolved through negotiations. The trade union therefore has a legal right to negotiate with the employer or their organisation and vice versa. The right of negotiation of a party means there is a corresponding obligation for the counterparty to attend the negotiations. If it fails to do so, it risks having to pay damages. The provisions of the Act distinguish between three different kinds of negotiations:
- Co-determination negotiations
- Dispute negotiations, and
- Agreement negotiations.

Co-determination negotiations generally relate to issues of a work or company management nature, where the employer's decisions involve a change of activities or a change of employment conditions for individuals. Before making a decision involving a significant change, the employer has an obligation, on its own initiative, to request negotiations with the trade unions at the workplace. If the local parties are unable to agree on what decision the employer should make, the matter may be referred for central negotiations between the respective organisations of each side. If these parties are also unable to reach agreement, the final decision rests with the employer.

The legal framework regarding co-determination negotiations is applicable to the private as well as the public sector. How joint consultation shall be conducted may also be further specified in collective agreements.

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to the information submitted under Article 6 § 4.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

Reference is made to previous reports.

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports and to Article 6 § 1 regarding joint consultation. Because the Committee requests that the next report provide full and up-to-date information (conclusion 2014) the following can be mentioned.

The Swedish National Mediation Office has three principal tasks:

- to promote an efficient wage formation process,
- to mediate in labour disputes, and
- to oversee the provision of public statistics on wages and salaries.

The Swedish National Mediation Office may appoint mediators if there is a risk of industrial action on the labour market or if the parties negotiating a collective agreement make a request to that effect. The legal framework is applicable to the private as well as the public sector.

The Swedish National Mediation Office appoints special mediators in disputes between employers and trade unions in their negotiations on wages and general employment conditions. The mediators therefore work on behalf of the Swedish National Mediation Office, but are not its employees. Many of them have previously been negotiators or held senior positions at some of the labour market parties. The task of the mediators is to ensure that the parties come to an agreement and that industrial action is avoided. The Swedish National Mediation Office also has four permanent mediators affiliated to it. They are responsible for different geographical areas and are called in to assist in local disputes at company level.

The Swedish National Mediation Office appoints special mediators with the consent of the parties. The law also provides for mediators to be appointed without consent. This can take place if one of the parties has given notice of industrial action and the Swedish National Mediation Office considers that mediators may be able to affect a good resolution to the dispute. This kind of compulsory mediation is highly unusual. In practice, the parties always agree to the mediation of their conflicts. If a negotiating procedure agreement between the

parties has been registered with the Swedish National Mediation Office, mediators cannot be appointed against the will of the parties.

A negotiating procedure agreement (sometimes called a negotiating agreement) is a collective agreement in which the parties in certain industries have agreed on the forms that negotiations on new collective agreements for wages and general conditions should take. If such an agreement contains timetables for the collective agreement negotiations, time frames and rules for the appointment of mediators, rules on the powers of the mediators and rules on the termination of the agreement, the parties can register this with the Swedish National Mediation Office. Once the agreement has been registered, mediators cannot be appointed in a dispute between these parties without their consent. Around 1.4 million employees are covered by such negotiating procedure agreements. One example is the Industry Agreement between eight employer organisations and five trade unions in industry.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, inter alia, compulsory arbitration.

Please, see appendix with information from the National Mediation Office 2013-2016.

Article 6§4

1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

During the reference period, the Government has appointed a commission of inquiry to give proposals on how to transpose what is commonly referred to as the Enforcement Directive (Directive 2014/67/EU of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’)) into Swedish law. The inquiry presented its proposals in two different reports (SOU 2015:13 and 2015:38).

Moreover, in 2012, a Parliamentary Committee of inquiry was assembled to review certain amendments made of Swedish legislation on the posting of workers following the judgment of the EU Court of Justice in the case of Laval un Partneri (case C-341/05, Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet and Others). The Committee presented its final report in September of 2015.

In addition to the inquiries referred to above, a ministry memorandum was presented in 2016 that concerns subcontracting liability and Swedish collective agreement conditions in cases of posting.

After having considered the proposals presented in the inquiries and the memorandum referred to above, the Government presented a Bill to Parliament containing its proposals on amendments of the Posting of workers act in February of 2017. The Bill has been adopted by Parliament and entered into force on 1 June 2017. The legislative amendments mean that trade unions will always be able to demand a Swedish collective agreement with regard to posting employers, ultimately by means of industrial action. This will strengthen protection for posted workers and opportunities for trade unions to ensure that these workers actually receive the wage and other employment conditions to which they are guaranteed by employers under the Posting of Workers Directive. It is also means that posted workers who are not members of the trade union that concluded the agreement should have the right to demand certain collective agreement conditions in a Swedish court. Retaliatory protection for posted workers is also included. The Bill also includes provisions on increased transparency and predictability when posting workers, intended to improve the ability of foreign employers to find out in advance what conditions apply in the Swedish labour market.

In light of the Committee's conclusions in its report of 2014, the Swedish Government would like to underline that the regulatory framework regarding posting of workers, at first hand, allows for the possibility to conclude collective agreements voluntarily. If this is not possible, trade unions are able to demand a Swedish collective agreement with a scope limited to the minimum conditions set out in the Posting of Workers Directive. Further, in reaching its conclusions on how to amend the legislation, the Government has carefully considered the proportionality of its proposals and their compliance with EU law as well as Sweden's other international obligations.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.

Reference is made to previous reports.

Article 21 – The right to information and consultation

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

Sweden has implemented EU directive 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers (below referred to as "the directive"), by way of a Government Bill (2016/17:120). The Bill has been adopted by Parliament and the proposed

amendments of Swedish law will enter into force on 1 October 2017. The aforementioned directive affords to seafarers the same labour rights that apply to other employees. However, Swedish law did not previously contain any exceptions in this regard for seafarers. The forthcoming domestic legislation therefore contains mainly formal amendments of Swedish legislation, such as updates of references made to certain EU legislation. The only substantive change introduced as a result of the transposition of the directive (i.e. Government Bill 2016/17:120) into Swedish law is an amendment of the Act on European Work Councils (2011:427). A new provision will be introduced which states that meetings of special negotiating bodies and European Works Councils shall, if possible, be planned in a manner that facilitate the participation of members of such bodies or councils, or their alternates, who are also members of the crews of seagoing vessels.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

Reference is made to previous reports.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

In Sweden´s last report, it was mentioned that the Swedish regulatory framework comprises, *inter alia*, approximately 100 regulation booklets issued by the Swedish Work Environment Authority. However, the number of regulations has decreased as a result of Sweden's ambition to simplify the regulatory framework, without lowering the level of protection. Moreover, since the last report, several rules have been revoked as they were considered obsolete. As a result, the number of regulation booklets issued by the Swedish Work Environment Authority is now about 80.

During the reference period, amendments have been made concerning the sanction scheme in cases of violations of Swedish law on working environment, for the purpose of making the scheme more efficient. The reform essentially consists in amendments of the Work Environment Act (1977:1160) to the effect that violations of the Act are subject to administrative fines instead of criminal liability. However, certain violations of the Act are still subject to criminal sanctions. A similar reform has been put in place regarding violations of working time legislation, although the method for calculating the size of the administrative fine differ compared to fees imposed for non-compliance with work environment regulations. As a consequence of the sanction scheme reform, amendments have also been made in the

Ordinance on Work Environment (1977:1166) and certain regulations handed down by the Work Environment Authority.

Further, minor amendments have been made of Chapter 2, Section 10 of the Work Environment Act (1977:1160) as a consequence of Sweden's transposition of council directive of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF). However, the amendments do not change the substantive content of the provision, which regards working time and mainly consists in references to other Acts containing provisions in that regard.

Apart from the amendments mentioned above regarding the sanction scheme, a minor change has been made in the Ordinance on Work Environment essentially stating that employers are obliged to report certain very serious incidents at the work place, such as deaths and severe physical injuries, to the Work Environment Authority,

Moreover, the Swedish Work Environment Authority hands down regulations within its area of responsibility on a regular basis. A number of such regulations have been issued during 2013-2016. For instance, such regulations have been issued regarding organisational and social aspects of working environment. Moreover, regulations have been issued for the purpose of transposing certain EU directives on product safety into Swedish law (for instance Directive 2014/34 of the European Parliament and of the council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (recast) and Directive 2014/29/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels).

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports, with the following addition.

In 2016, the Government launched its new strategy regarding work environment entitled A Work Environment Strategy for Modern Working Life. The strategy is based on three prioritised areas, namely zero tolerance of fatal accidents and the prevention of accidents at work, a sustainable working life and psychosocial work environment. Improving the work environment requires action on the part of both central government and the social partners. Consequently, the process of drawing up the Government's work environment strategy for modern working life, which began in winter 2015, was commenced in consultation with the social partners. In order to maintain and deepen this tripartite process, the Government intends to create a forum for dialogue in which to continually discuss ongoing, planned and future actions in this area with the social partners. The Government's strategy for its work environment policy indicates the direction this work will take over the course of the next five years. Within the scope of the strategy, the relevant work environment issues will undergo further work in dialogue with the social partners.

In connection to the launch of the working environment strategy, the Government decided to appoint a commission of inquiry which according to its terms of reference shall, *inter alia*,

conduct an analysis of whether the work environment rules currently in force are adequate considering the challenges of modern working life. The commission was also instructed to review the role and the powers of regional safety representatives in certain regards. Further, the Government has also appointed a commission of inquiry that was instructed to give proposals on how to establish and organize a new public agency that¸ *inter alia*, shall be responsible for collecting and disseminating knowledge about work environment-related issues and to evaluate the work environment policy. Subsequently, in 2017, the Government has taken the formal decision to establish such an agency. The agency is set to commence its work on 1 June 2018.

The Swedish Work Environment Authority is responsible for supervising that employers abide by the regulatory framework on work environment. To this end, the Authority regularly conducts inspections at work places. Each year, the authority focuses its inspections on certain sectors and issues. Since 2013, the inspections have focused *inter alia* on the issues of work environment for women. Specific sectors inspected include forestry, schools, the construction sector, the manufacturing industry and the transport sector. The inspections carried out by the work environment Authority are described in its annual report, which is published on its website. Those reports also contain information on the efforts made by the Authority to communicate and disseminate information on certain work environment issues, such as the sanction scheme, the work environment situation for women and on young people in working life.

In this connection, it is also of relevance to note the amendments regarding rules on active measures referred to above under Article 4 § 3.

3) Please provide pertinent figures, statistics or any other relevant information on employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

Reference is made to previous reports.

Article 26 – The right to dignity at work

Article 26§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

From the 1st of January 2017 the Discrimination Act was amended regarding the rules on active measures. A general framework for active measures intended to promote equal rights and opportunities was introduced. The changes also include extending work on active measures in working life and in the area of education to all grounds of discrimination in the Discrimination Act.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

The Discrimination Ombudsman (DO) has conducted some 30 training courses for the purpose of disseminating knowledge on how employees shall be protected against sexual harassment. The target groups for these courses include managers, human resources officers

and union representatives. Moreover, DO has produced information material regarding the obligation of employers to take active measures against discrimination. Such information has also been made available on the DO's website. Particular efforts to disseminate information were done in connection with the entering into force of the new legislation on active measures.

It may also be mentioned that the Government in 2013 tasked DO to increase its work in certain regards connected to employers' mapping out of salaries and the efforts made by universities and community colleges to take active measures against discrimination. DO have, within the framework of this task, contributed to the development of an e-learning course for students and staff within universities and community colleges. Among other things, the course sheds light on how discrimination can be combatted and how to go about to take active measures against discrimination. It was launched in 2014 and can be accessed on DO's website.

3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

During 2013-2016 the Swedish Discrimination Ombudsman (DO) received 117 complaints about sexual harassment in working life. The vast majority of these (99) complaints were submitted by women.
During the same period, DO initiated legal proceedings before the District Court concerning sexual harassment in working life. DO later decided to withdraw its claims in two of these cases. Moreover, DO has settled two cases, and three judgments have been handed down in cases where DO represented the plaintiffs. In all of those, cases DO's claims were granted. Most of the cases concern young women having been subjected to sexual harassment by a male superior at the workplace.

DO's Judgments and settlements during the period in question:

ANM 2011/1182
A woman was subjected to sexual harassment by her manager on several occasions. It consisted in the manager touching her in a sexual manner although she did not consent. The behaviour persisted in spite of the woman telling her manager that she was uncomfortable with his behaviour. She was granted 75 000 SEK in compensation.

ANM 2015/97
In a bakery, a woman was on several occasions subjected to sexual harassment by a supervisor. The harassment consisted of unwelcome proposals and offensive comments of sexual nature and persisted although the woman made clear that the behaviour was unwelcome. Other employees testified that there has been a sexist jargon in the workplace, including, inter alia, coarse words. The woman received 50 000 SEK in discrimination compensation

ANM 2015/683
A 19 year-old woman was subjected to sexual harassment by her boss. She felt uneasy but did not have the audacity to tell her boss that and she did not dare to go back to her workplace after the incident. She received 50 000 SEK in compensation.

ANM 2013/306 and ANM 2013/1504
The case concerned a young woman who was subjected to sexual harassment during a recruitment process. When media reported about the case, several other women contacted DO to tell that they also had been subject to such harassment by the same boss. DO therefore decided to initiate legal proceedings on the part of one of the women that had been subjected to sexual harassment during a job interview. The case ended in a settlement entitling the women concerned to SEK 125 000 each in compensation.

In response to the question raised by the Committee on reinstatement, reference is made to the information submitted under Article 4 § 3.

Article 26§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

The Discrimination Act was amended on 1 January 2017 regarding active measures. The Discrimination Ombudsman has been requested for information and different types of participation, collaboration and courses have been extensive. The Ombudsman has prepared and put down extensive work to adjust information on the website and in certain support materials. The Ombudsman has based on established contacts in order to gain knowledge of the different target groups' needs for support and knowledge, but also to convey more in-depth information and knowledge to actors as part of a long-term change work.

The legislative framework regarding discrimination currently in force states *inter alia* the following. A natural or legal person who violates the prohibitions of discrimination or reprisals or who fails to fulfil their obligations to investigate and take measures against harassment or sexual harassment under the Discrimination Act shall pay compensation for discrimination for the offence resulting from the infringement. When compensation is decided, particular attention shall be given to the purpose of discouraging such infringements of the Act. The compensation shall be paid to the person who has been offended by the infringement. If an employer discriminates against someone or subjects someone to reprisals, the compensation for discrimination shall be paid by the employer.

The Swedish Work Environment Authority has issued the new provisions about organizational and social work environment (AFS 2015:4). The provisions came into effect in March 2016. The following provisions were repealed when the new provisions were enforced: National Board of Safety and Health general recommendations (AFS 1980:14) on mental and social aspects of the work environment, National Board of Safety and Health provisions (AFS 1990:18) on nursing care work in individual homes and National Board of Safety and Health provisions (AFS 1993:17) on victimization in working life. Social and organizational factors are the second most common cause of reported occupational illnesses, after musculoskeletal factors.

The new provisions have been developed in consultation with the labour market partners, and have a focus on preventive work environment management. The provisions regulate knowledge requirements, goals, workloads, working hours and victimization. The provisions are a tool for preventing social and organisational work environment risks and to clearly set out responsibility for these issues. The employer can prevent work related stress through

organizational measures. For instance, the provisions state that the resources shall be adapted to the demands in the work.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports, with the following addition.

In 2016, the Government launched its new strategy regarding work environment entitled A Work Environment Strategy for Modern Working Life. The strategy is based on three prioritised areas, namely zero tolerance of fatal accidents and the prevention of accidents at work, a sustainable working life and psychosocial work environment. Improving the work environment requires action on the part of both central government and the social partners. Consequently, the process of drawing up the Government's work environment strategy for modern working life, which began in winter 2015, was commenced in consultation with the social partners. In order to maintain and deepen this tripartite process, the Government intends to create a forum for dialogue in which to continually discuss ongoing, planned and future actions in this area with the social partners. The Government's strategy for its work environment policy indicates the direction this work will take over the course of the next five years. Within the scope of the strategy, the relevant work environment issues will undergo further work in dialogue with the social partners.

Social and organizational factors have also been the theme for many inspection activities performed by the Swedish Work Environment Authority. The activities are not specifically directed at dock work but since there is a general focus on social and organizational factors dock work is also affected.

The mission of the Ombudsman is to disseminate experience and knowledge of discrimination so that discrimination can be counteracted. For example in year 2016 the Ombudsman has produced a report called Motivated or linked to gender? - An analysis of employers' efforts to counter the inequality of pay gap between women and men. The purpose of the report is to provide insight into how employers are working to detect, remedy and prevent unreal pay gap between women and men. The report contains a qualitative analysis of the documentation submitted by employers to the Ombudsman in the oversight of employers' efforts to counter the inequality of pay gap between women and men according to the law's requirements. The report also describes the similarities and differences identified in employers' accounts of their analysis of pay differentials that have been discovered in the mapping; similarities and differences in explanations of the gender differences in pay that employers have considered to be material in groups of jobs they have considered equal and equivalent.

3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Statistics on reports to the Discrimination Ombudsman divided on grounds and year

	2013	2014	2015	2016
Ethnicity	659	601	663	572
Disability	312	461	680	613
Sex	454	250	290	277
Transgender identity or expression	19	26	62	45
Religion or other belief	89	119	156	124
Sexual orientation	25	32	64	49
Age	194	269	280	210
Disadvantaging on parental leave	43	52	57	76
Total	1795	1810	2252	1966

In response to the questions posed by the Committee in its latest report on the burden of proof in discrimination cases, the Government would like to submit the following. The rules of burden of proof in discrimination cases is regulated it the Discrimination Act chapter 6 section 3. It states if a person who considers that he or she has been discriminated against or subjected to reprisals demonstrates circumstances that give reason to presume that he or she has been discriminated against or subjected to reprisals, the defendant is required to show that discrimination or reprisals have not occurred.

When it comes to case-law regarding moral harassment during the reporting period, the Discrimination Ombudsman has, for example, filed petition in two cases regarding harassment in restaurant businesses.

Article 29 – The right to information and consultation in collective redundancy procedures

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Reference is made to previous reports, with the following addition.

As the Committee is aware from previous reports, Swedish law confers upon employers an obligation to negotiate with the trade union with which it is bound by collective agreement before making significant changes in its activities, such as collective redundancies. This obligation applies also to employers that have not signed any collective agreement. Such employers must negotiate with all trade unions affected by a planned decision on collective redundancies. The obligation to negotiate is subject to exception only if there is extraordinary cause. Violations of this obligation are subject to damages, the amount of which are decided

in each case by the Labour Court, taking into account, *inter alia*, the union's interest of compliance with statutory provisions and provisions of collective agreements.

Hence, there is a firm main rule in Swedish law that employers shall negotiate decision on collective redundancies with trade unions. As far as the Government is aware, the social partners have not raised any issues with regard to Swedish law on this point.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reference is made to previous reports.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reference is made to previous reports.

List of Appendices

1. Summary of the annual report from the Swedish Mediation Office for 2013
2. Summary of the annual report from the Swedish Mediation Office for 2014
3. Summary of the annual report from the Swedish Mediation Office for 2015
4. Summary of the annual report from the Swedish Mediation Office for 2016

Annual reports (2013-2016) of the Mediation Office dealing specifically with wage differences between men and women could be accessed via the following links.

2016
http://www.mi.se/files/PDF-er/ar_foreign/Wagediff.pdf

2015
http://www.mi.se/files/PDF-er/lonestruktur/Wage%20differentials%202015.pdf

2014
http://www.mi.se/files/PDF-er/ar_foreign/eng_wage_differntials_2014.pdf

2013
http://www.mi.se/files/PDF-er/ar_foreign/eng_wage_differentials_2013.pdf