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COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

16 November 2012

**Case No. 2**

**Swedish Trade Union Confederation (LO) and Swedish Confederation of  
Professional Employees (TCO) v. Sweden**  
Complaint No. 85/2012

**SUBMISSIONS OF THE GOVERNMENT  
ON ADMISSIBILITY AND MERITS**

**Registered at the Secretariat on 26 October 2012**



REGERINGSKANSLIET

A2012/2469/IE

24 October 2012

Ministry of Employment Sweden

Régis Brillat  
Head of the Department of the European  
Social Charter and the European Code of  
Social Security, Executive Secretary of the  
European Committee of Social Rights  
Council of Europe  
F-67075 Strasbourg

**Comments by the Swedish Government regarding collective complaint  
85/2012 submitted to the European Committee of Social Rights**

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Dear Régis Brillat,

I refer to your letter dated 9 July 2012, inviting the Swedish Government to comment on the collective complaint 85/2012 by the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Employees (TCO). On behalf of the Swedish Government, I would like to submit the following comments to the European Committee of Social Rights as regards the merits of the collective complaint. As regards the admissibility of the collective complaint, the Swedish Government has no observations to present.

**The collective complaint by LO and TCO**

LO and TCO argue that the imposition of fines against the trade unions by the Swedish Labour Court (judgment AD 2009 No. 89), the legislative changes introduced in Sweden as a consequence of the so called Laval case (C-341/05) by the European Court of Justice (ECJ), as well as the removal of the requirement for a legal representative in the Foreign Branch Offices Act (1992:160), and the consequences thereof, are in violation of articles 4, 6 and 19.4 of the European Social Charter.

LO and TCO have further submitted a similar complaint to the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization, to which the Swedish Government has submitted written comments.

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## Comments by the Swedish Government

### *Legislative changes after the so-called Laval case and legislative changes in the Foreign Branch Offices Act*

The core of the legislative changes referred to by LO and TCO is a new section 5 a in the Foreign Posting of Employees Act (1999:678). The changes refer to the Swedish trade unions' possibilities to take industrial action against a foreign employer who posts workers to Sweden in order to regulate employment conditions that go beyond the minimum requirements of the "hard core" of the EU Posting of Workers Directive<sup>1</sup>.

Although in part regulated by statutory law, the Swedish labour market is to a large extent self-regulated by its parties – the organisations of the employees and of the employers - and there are for example no statutory regulations on minimum pay. Through the legislative changes after the Laval case, the trade unions should submit, to the Swedish Work Environment Authority, those terms and conditions that the trade unions may pursue with the support of industrial action. The purpose of this regulation is that a service provider or posted worker from another country should thereby easily find out the requirements which may be upheld with the support of industrial action.

The legislative amendments do not affect the right to take industrial action in a purely national situation. Neither do they apply to the situation where, in accordance with the choice of law provisions, there is such a strong connection to Sweden that Swedish law will prevail.<sup>2</sup> The legislative changes only affect the situation where workers are employed by a foreign employer, and normally work outside of Sweden, and where those workers will work here temporarily. Nevertheless, the regulations ensure that posted workers are guaranteed a certain level of protection in terms of pay and other employment conditions, in accordance with the EU Posting of Workers Directive. The regulations do not affect the ability of foreign employers to sign a collective bargaining agreement with a Swedish trade union; the parties are free to do so if they wish to. Neither does the legislation affect workers' rights to form trade unions or to join trade unions, either Swedish or foreign.

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<sup>1</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

<sup>2</sup> REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I).



As pointed out by LO and TCO, a change in the Foreign Branch Offices Act, section 2, has entered into force. In essence, the requirement for a representative responsible for the business operations in Sweden has been removed as regards natural persons resident in the EEA. However, this requirement still applies as regards natural persons residing outside of the EEA. The change was deemed necessary in order for the legislation to comply with the EU Services Directive.<sup>3</sup>

According to our assessment, the legislative changes introduced in Sweden as a consequence of the Laval case by the ECJ, which entered into force on 15 April 2010, the judgment by the Swedish Labour Court in the Laval case, and the change in the Foreign Branch Offices Act, section 2, do not violate the provisions of the European Social Charter including the ECSR practice to date.

It may be noted that neither the Swedish Laval inquiry, nor the majority of the Swedish tripartite ILO-committee (Sw. *Svenska ILO-kommittén*), at the time of enactment considered the legislative proposal following the Laval case contrary to relevant international regulations.

Further, the Swedish Government would like to stress that the legislative changes were considered necessary in order for the Swedish legislation to comply with EU law on freedom to provide services and non-discrimination, as interpreted by the ECJ in the Laval case.

To conclude, the Swedish Government is of the opinion that Sweden does not violate any of the invoked articles of the European Social Charter.

#### **Additional information on new legislative initiatives**

As regards posted workers working temporarily in Sweden, there are several new legislative initiatives, which may be valuable to take into account.

*Assignment of a parliamentary committee regarding posting of workers*  
There is as of yet no unbiased and comprehensive investigation of the consequences of the legislative changes after the Laval case. However, on 27 September 2012 a parliamentary committee was assigned, which shall be composed of representatives of all parliamentary parties, with the

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<sup>3</sup> DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2006 on services in the internal market.

purpose of evaluating the changes of the Foreign Posting of Employees Act after the Laval case.

The committee shall investigate the situation of posted workers in Sweden. After having made such an investigation, the committee shall, in summary:

- i) evaluate whether the application of the regulation ensures that fundamental employment conditions of posted workers in Sweden can be safeguarded;
- ii) in terms of foreseeability, assess and evaluate the practice of the Swedish Work Environment Authority's statutory task of providing information and the trade unions' obligation to submit information on collective bargaining agreements to the Swedish Work Environment Authority, and if necessary propose legislative changes in this regard;
- iii) consider necessary changes to safeguard the Swedish labour market model in an international context.

During the investigation, the committee shall pursue a dialogue with representatives of the social partners on the Swedish labour market. The proposals of the committee shall further include an analysis of the consequences, if any, in relation to relevant international regulations. The committee shall present its work on 31 December 2014. The Swedish Government would be happy to submit in due time further information to the European Committee of Social Rights regarding the conclusions of this newly assigned parliamentary committee.

*Contact person and obligation to report posting of workers<sup>4</sup>*

A Bill is planned to be submitted to the Swedish Council on Legislation and thereafter to the Swedish parliament at the latest on 30 November 2012. According to the planned Bill, a foreign employer must report that it posts workers to Sweden. Further, the employer must appoint a contact person in Sweden, which shall be authorised to receive notice on behalf of the employer. The contact person shall further be able to provide documentation demonstrating that the requirements of Foreign Posting of Employees Act, as regards employment conditions for posted workers, are met.

The purpose of the planned proposal is twofold; to ensure that the Foreign Posting of Employees Act works in practice and to ascertain posted workers, whose employments are in essence governed by the laws of other countries, are ensured protection in accordance with the

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<sup>4</sup> Budget Bill for 2013, 2012/13:1, part 14 p. 67.



requirements of the “hard core” of the EU Posting of Workers Directive. The planned proposal will, from a practical point of view, facilitate the work of Swedish trade unions and authorities as they may acquire knowledge about employers who post workers to Sweden. Such knowledge may also, where applicable, facilitate negotiations regarding collective bargaining agreements.

The Swedish Government would of course be happy to provide the European Committee of Social Rights with further information once the planned Bill has been submitted to the Council on Legislation and the Swedish parliament.

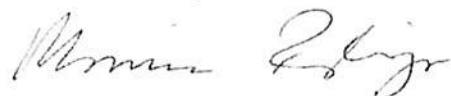
*Posted agency workers*

On 18 September 2012, a Bill regarding agency workers was submitted to the Swedish parliament, which includes a proposal that will increase the trade unions’ possibilities to take industrial action in order to regulate the terms and conditions of employment of posted agency workers. According to the Bill, the trade unions may take industrial action as regards posted agency workers in order to regulate employment terms that go beyond the minimum levels of the “hard core” of the EU Posting of Workers Directive. This will provide trade unions with powerful tools to ensure fair terms and conditions of posted agency workers in accordance with relevant EU law.<sup>5</sup> The legislative changes are proposed to enter into force on 1 January 2013.

*Other information*

Finally, as you may already know, a directive to improve the application of the EU Posting of Workers Directive is currently being negotiated at EU level.<sup>6</sup>

Yours sincerely,



Monica Rodrigo  
Director-General for Administrative and Legal Affairs

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<sup>5</sup> Directive 2008/104/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 November 2008 on temporary agency work, and Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

<sup>6</sup> COM (2012) 131 final Proposal for a DIRECTIVE 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.