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EUROPEAN SOCIAL CHARTER

15th National Report on the implementation of the European
Social Charter

submitted by

THE GOVERNMENT OF SWEDEN

Follow-up to Collective complaints 85/2015 and 12/2002

Report registered by the Secretariat on
2 November 2015

CYCLE 2016

REVISED EUROPEAN SOCIAL CHARTER

15th National Report on the implementation of
the Revised European Social Charter
submitted by

THE GOVERNMENT OF SWEDEN

- Follow up of Collective Complaints 85/2012 and 12/2002

Fifteenth report

submitted by the Government of Sweden

in accordance with article 21 of the Revised European Social Charter on the measures taken to give effect to the following provisions of the Revised European Social Charter

with reference to letter of 11 March 2015 from the Council of Europe to Sweden asking for a simplified report containing the following

I. information on the follow-up given to the decisions of the European Committee of Social Rights relating to the collective complaints:

- Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 03/07/2013, violation of Articles 6§2, 6§4, 19§4a and 19§4b,
- Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22/05/2003, violation of Article 5.

II. For the accepted provisions concerning thematic group “Labour rights”: articles 2, 4, 5, 6, 21, 22, 26, 28 and 29: the information required by the European Committee of Social Rights in the event of non-conformity for lack of information (Conclusions XX-3(2014)):

- No information required

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) Svenska Kommunförbundet (the Swedish Association of Local Authorities)
- (3) Landstingsförbundet (the Federation of Swedish County Councils)
- (4) Arbetsgivarverket (Swedish Agency for Government Employers)
- (5) Landsorganisationen i Sverige (the Swedish Trade Union Confederation)
- (6) Tjänstemännens Centralorganisation (the Swedish Confederation of Professional Employees)
- (7) SACO, Sveriges Akademikers Centralorganisation (the Swedish Confederation of Professional Organisations)

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Confederation of the Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 22/05/2003, violation of Article 5 [7](#)

Follow up of Collective Complaint No. 85/2012

Since the resolution of the Committee of Ministers, adopted 5 February 2014, finalizing the complaint procedure, Sweden has a new Government which took office in September 2014. With regard to previous information provided in national reports and in the collective complaint no 85/2012 the Government would like to add the following.

Parliamentary Committee of Inquiry regarding posting of workers

Sweden has previously submitted information on the Parliamentary Committee of Inquiry regarding posting of workers (herein after referred to as the “Committee”), which evaluated the changes to the Foreign Posting of Employees Act after the judgment issued by the Court of Justice of the European Union (herein after referred to as “CJEU”) in the Laval case (C-341/05).

In November the Government also assigned the Committee to consider which legal amendments and possible other measures that are necessary in order to strengthen the role of collective agreements as regards posting of workers.

In the new assignment the Government expressed that *lex Laval* does not sufficiently safeguard the role of collective bargaining agreements. The Government is of the opinion that there is a risk that this may lead to unfair conditions in terms of competition, wages and employment conditions. It is therefore important to amend the Foreign Posting of Employees Act (1999:678) in order to strengthen the role of collective bargaining agreements, as far as possible, within the framework of EU law.

The Committee presented its proposal on the 30th of September 2015.

The Committee makes a number of proposals, including the following.

- The appointment of a representative who is authorised to negotiate and conclude collective agreements, when requested by an employees’ organisation.

- Industrial action is always permitted to achieve a collective agreement for posted workers containing minimum conditions under applicable Swedish sectoral agreements.
- Introduction of a collective agreement for posted workers with special legal conditions.

With regard to consideration of these proposals, the Government will in due time submit further information on the continuing work including possible changes and/or amendments of relevant Swedish legislation.

The Government is committed to create a labour market with fair working conditions for all. In line with this, in the proposed Budget Bill for 2016, the Government wants to work in a broad perspective to strengthen and develop the Swedish labour market model, both nationally and internationally. The Government declares that i) the role of collective bargaining agreements must be safeguarded, ii) Swedish wages and conditions shall apply to all persons working in Sweden and iii) legislation must be designed so as to promote the application of terms agreed by the social partners in collective agreements. The Government intends to continue working on reviewing and strengthening the Foreign Posting of Employees Act.

Specifically on EU legislation governing posting of workers, priorities of the Government

The Government considers the right of free movement being a cornerstone of the EU, and a great strength. Mobility between EU Member States has had positive effects for growth, employment and competitiveness. Free movement plays an important role in getting more citizens into employment. However, it must not lead to weakened protection for workers. The Swedish Prime Minister proclaimed in the Statement of Government Policy in September 2015 that the principle shall be equal pay for equal work according to laws and collective agreements in the country where the posted worker temporarily performs work.

The Government welcomes the European Commission's intention to present a Labour Mobility Package, including a targeted revision on the Posting of workers directive, at the end of the year, and would like this to make it possible to carry out a revision in substance of the Posting of

workers directive. The Government's priority is to achieve the principle of equal pay for equal work according to laws and collective agreements, as far as possible, in the country where the posted worker temporarily performs work, while respecting the right of free movement. In light of these priorities, the Government is having discussions with other EU member states and the European Commission in this regard. An amendment of the Posting of workers directive could enable a more substantial revision of the so called lex Laval.

Taken into consideration the Government's priorities and on going work, the Government will in due time present relevant information connected to the follow up of the collective complaint no 85/2012.

Follow up of Collective Complaint No. 12/2002

With reference to information on Article 5 of the Revised European Social Charter (herein after referred to as "the Charter") in the 13th National Report of Sweden and to the Conclusions 2014 of the European Committee of Social Rights whereby Sweden is said to be in conformity with Article 5 of the Charter, the Government can only confirm that the respect to organise is upheld and that there is no closed shop clauses in any collective agreements.