

Elżbieta Bieńkowska  
European Commissioner for Internal Market,  
Industry, Entrepreneurship and SMEs  
European Commission  
Rue de la Loi / Wetstraat 200  
1049 1049 Brussels  
Belgium

2017-03-14

Dear Commissioner Bieńkowska,

On 9 December 2016, the Commission issued three reasoned opinions against Sweden for failure to implement the new public procurement directives (COM ref SG-Greffe 2016D/18684, 18685 and 18686). With this letter, TCO (The Swedish Confederation for Professional Employees) would like to provide the Commission with additional information regarding the Swedish implementation process.

TCO is a trade union confederation with 14 affiliates that together organise almost 1.4 million white collar workers. TCO is the tenth largest and fastest growing trade union confederation in the EU. The members of our affiliates work both in the public sector entities that procure goods and services, as well as in the private sector firms that provide them. Public procurement is thus of great importance to TCO and its members.

### **Sweden's failure to fully implement the public procurement directives**

In its replies to the Commission's reasoned opinions, dated 9 February 2017, the Swedish government acknowledges that the implementation of the new directives is not yet complete.

The failure in the implementation regards key provisions in the directives aimed at safeguarding the rights of workers. This is particularly worrying as greater attention to social considerations was highlighted as one of the novelties of the new directives.<sup>1</sup>

In the worst case, this could develop into an example of when the promise of the EU to deliver a more social Europe to its citizens fails due to incomplete implementation at national level.

The new Directives recall the principle that the applicable obligations in the fields of environmental, social and labour requirements established by Union law, national law, collective agreements or by relevant international environmental, social and labour law

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<sup>1</sup> See link to press release: [http://europa.eu/rapid/press-release\\_MEMO-14-20\\_fr.htm](http://europa.eu/rapid/press-release_MEMO-14-20_fr.htm)

provisions, have to be complied with in the performance of public contracts as laid down in article 30.3 directive 2014/23/EU, 18.2 directive 2014/24/EU and article 36.2 directive 2014/25/EU (hereafter article 18.2).

Over the past decade, the lack of provisions that prevent bidders from winning public contracts by offering a low cost based wholly or in part on wages and working conditions being below those of its competitors has increasingly become a problem in Sweden.

The problem has to varying degrees been identified as EU public procurement law, national legislation implementing EU legislation, and the narrow interpretation of EU law by Swedish authorities. Therefore, the new directives were warmly welcomed by Swedish stakeholders. Apart from clarifying the legal situation they are also seen as a possibility for the EU to deliver to its citizens. Implemented correctly, the directives will contribute to President Jean-Claude Juncker's goal of achieving a more social Europe.

### **The current political context in Sweden**

Sweden is governed by a minority government consisting of the Social Democratic Party and the Green Party. The current government initiated a governmental investigation which came to the conclusion that article 18.2 has to be implemented through the inclusion of specific provisions in the procurement legislation. Such proposals were also included in the legislative proposal that the government submitted to parliament.

As mentioned in the Swedish government's notification to the European Commission, the part of the legislative proposal aiming at fully implementing article 18.2 in the national legislation was voted down by the opposition majority in the Swedish parliament. The decision of the Swedish parliament also included a declaration urging the Swedish government, if it did not consider the directives fully implemented, to return to the parliament with a new legislative proposal taking the opposition's concerns, such as possible negative effects on small- and medium sized enterprises, into account.

TCO would have preferred more far reaching provisions than those included in the government's original legislative proposal. Nonetheless we have worked hard to help the government and the opposition parties to find a solution, e.g. through drafting amendments that would address the opposition's concerns about small- and medium sized enterprises.

We know that our proposals have been at the centre of the discussions conducted between the government and the four centre-

right opposition parties. Unfortunately, they have not yet reached a compromise and we fear a political deadlock.

We are convinced that a precondition for a successful outcome in the Swedish parliament is that the Commission keeps up the pressure on Sweden. If no solution is found in the national political context, we expect the Commission to continue the infringement procedure against Sweden.

We are at your disposal should you have any further questions on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eva Nordmark". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eva Nordmark  
President of TCO