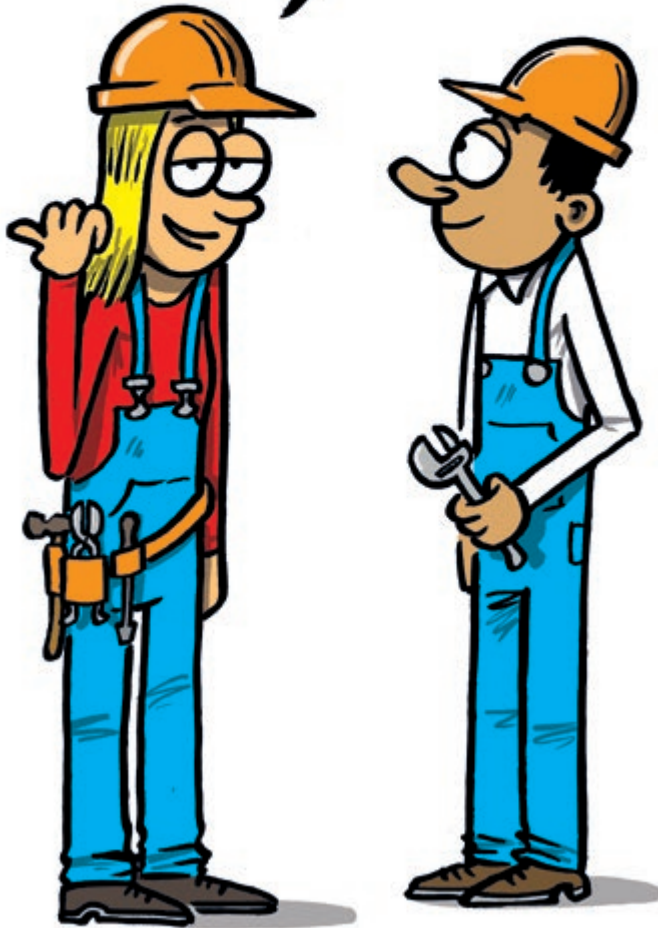




EU needs to be changed!



**LO
KNOWS
HOW!**



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Photo: Joacim Schwartz

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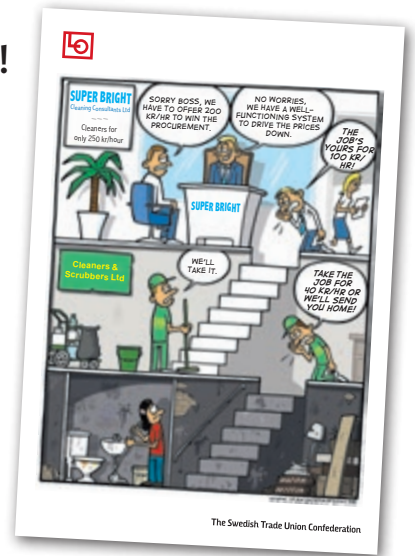
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An EU where we compete and working conditions

Swedish wages and working conditions must apply in Sweden. This is not the case today. To change this, the EU itself must change, both in terms of legislation and treaties. Consequently, the Swedish Trade Union Confederation (LO) is demanding that a social progress protocol should be incorporated in the EU treaties, establishing that fundamental trade union rights and freedoms are not subsidiary to the economic freedoms on the EU internal market. And in the event of a conflict, fundamental human and trade union rights shall have priority.

There is a consensus today that the EU is facing major challenges. There are several challenges: the euro crisis, the refugee situation and the decision by the United Kingdom to leave the EU. Leading representatives are now open about the EU being in a crisis. And the future structure of the EU is now being discussed.

The European Union is important for Sweden. We need an EU that safeguards democracy and human rights in working life, both within and outside the EU. The goal of European trade union cooperation is to strengthen the position of workers in an internal market with free movement of capital, labour, goods and services. Otherwise there is a risk of an increasing imbalance between capital and labour, leading to more precarious employment contracts and downward pressure on wages.

The fact that LO is fundamentally positive towards the EU does not mean that we unreservedly accept the Union regardless of its structure. The regulation of the EU internal market influences which groups in society will gain or lose. If EU regulations facilitate, or in the worst case force, competition with wages and working conditions, the EU has no future. It will lead to the Union being perceived, with good reason, as a threat by large groups in the labour market. This creates attitudes that make it more difficult to handle common challenges, such as the large groups of people forced to flee for their lives to Europe. Ultimately, this will also undermine support for free movement within the EU.

The basic simple fact is that social acceptance of free movement requires reg-

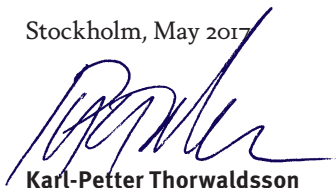
e with wages has no future

ulated labour markets and equal treatment of workers. Otherwise, people will turn against free movement and in the worst case start pointing the finger at mothers and fathers arriving in Sweden to support their families, instead of at the irresponsible and semi-criminal companies that ruthlessly exploit these people. There can be no free movement without equal treatment!

This is also ultimately a question of democracy. LO cannot accept a situation in which judges in the European Court of Justice determine the requirements that trade union organisations can impose on foreign companies.

If we are to overcome the challenges we are facing there must be brave political representatives that are able to acknowledge the mistakes that have been made. Who acknowledge that the one-sided focus of EU cooperation on de-regulation and free movement of services has created a gigantic market for companies that exploit people and compete with poor wages and working conditions. And finally, who not only acknowledge these problems, but also propose and implement solutions, despite the difficulties. Otherwise the problems we are facing will not go away. LO is prepared to take its part in changing the EU.

Stockholm, May 2017



Karl-Petter Thorwaldsson

President of the Swedish Trade Union Confederation (LO)



Photo: Lars Forsstedt

EU and low wage competition

The Member States have empowered the EU to create a common market with free movement of goods, services, capital and people. At the same time, the Member States have essentially retained control over what constitutes the core of national democracy. It is still States that tax, redistribute and regulate the labour market; in addition in Sweden it is the social partners that are responsible for wage formation.

National regulation often constitutes an obstacle to free movement. This has created an ever present conflict about what should take precedence. About which national laws and rules should be regarded as acceptable obstacles to free movement.

For trade union organisations, this is about the right to constitute an obstacle. Trade union demands for collective agreements and equal treatment are an obstacle to companies that want to compete with low wages and poor working conditions. That is the purpose of a trade union. The question is whether this should be an acceptable obstacle in the EU internal market or not? The question of which obstacles are to be considered acceptable is the fundamental political conflict of the EU project. This is not just a matter of labour market regulation. The tension is also present in principle in other political areas, such as tax-funded healthcare, rent controls and the sale of alcohol.

Today it is ultimately the European Court of Justice that determines whether an obstacle is to be regarded as acceptable or not. It was this review that the Swedish trade union movement lost in the Laval case when the European Court of Justice found that demanding equal treatment was an unacceptable obstacle to the free movement of services.

The Swedish labour market

The Swedish labour market model is based on collective agreements between trade unions and employers. It is a successful model.

Collective agreements regulate conditions for pay, working hours, holidays and overtime. The agreements also include important insurance schemes that supplement the national pension and provide extra cover for occupational injury, illness and unemployment, for example.

The collective agreements provide security for workers. The agreement is binding on the employer, who cannot threaten an employee with lower pay or poorer conditions.



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The collective agreements create stability for employers. There is an obligation to keep industrial peace during the period of the agreement and the parties in a sector or industry can negotiate practical solutions to specific problems for that particular industry. Collective agreements contribute to Sweden being one of the countries in Europe that has the least number of days of industrial conflict.

Collective agreements are good for the economy. Through central, nationwide collective agreements the trade union movement takes responsibility for

growth and jobs. If the Swedish labour market model with collective agreements is to work, lower wages and poorer conditions of employment cannot be an instrument of competition in the labour market. An important part of the Swedish model is therefore that trade unions are to be able to force collective agreements and ensure competitive neutrality.

The Laval case

In 2004, when the Latvian company Laval was engaged to renovate school premises in Vaxholm, the company refused to sign a collective agreement, on the grounds that it already had an agreement with the Latvian trade union. The conditions in the Latvian agreement were, however, clearly worse than those that apply to employees in Sweden. The Latvian building workers received about SEK 35 per hour, in some cases even less.

Since the Building Workers' Union, together with the entire Swedish Trade Union Confederation, consider that employees who work in Sweden should receive the same wages and working conditions, regardless of whether they are employed by a Swedish or a foreign company, or of whether they are in Sweden temporarily or permanently, they blockaded the work.

Laval brought an action against the Building Workers' Union before the Swedish Labour Court. The Labour Court had no objections to the Building Workers' Union blockade, but found that the measure was in compliance with Swedish legislation. The European Court of Justice, however, found that Swedish legislation in this area was not compatible with EU law and the Labour Court therefore decided that the trade unions should pay damages. This was despite the fact that the Building Workers' Union had complied with Swedish law.

The EU ruling meant a serious obstacle to equal treatment of workers in the Swedish labour market. The European Court of Justice restricted the number of conditions that may be imposed and the level of these conditions was limited to the absolute minimum in the country of work. For example, as regards wages, this gives a clear competitive advantage to the foreign company, as the lowest wages in many collective agreements are considerably lower than the normal wage in the industry.

After the ruling in the Laval case, trade union organisations may continue to demand more favourable conditions to achieve equal treatment, but we may not take industrial action to push through these demands. This is unacceptable. Ultimately, the right of negotiation without the right to take industrial action is just a right to collective begging.

The EU treaties need to be changed

To handle the problems that have arisen through the European Court of Justice's ruling in the Laval case, among others, LO demands that a social progress protocol should be incorporated in the EU treaties. Fundamentally it is a matter of regulating what should be considered acceptable obstacles to the EU's free movement of services. Our demand is that equal treatment should apply to everyone working in the Swedish labour market, even those who are posted to Sweden temporarily. Such a demand is an obstacle to companies that want to compete with poor wages and working conditions. But this is an obstacle that must be allowed if EU cooperation is to be socially acceptable.

Some of the problems with the EU rules have been made worse through decisions made in the Swedish Parliament, and the current Government is now taking action that will improve our chances of bringing good order in the labour market. The amendments to our Swedish Lex-Laval legislation that have made it possible to take industrial action to force collective agreements with companies posting workers is one example. Some improvements can also be achieved through amendments to EU legislation. The ongoing renegotiation of EU legislation that specifically regulates the issue of posted workers could lead, for example, to a situation in which the difference between demands that can be made of a Swedish company and a company that posts workers from another EU country decreases. LO's affiliates also work daily to ensure equal treatment of workers in the Swedish labour market.

But in the long term the EU treaties must be amended to deal with the conflict between the EU's economic freedoms and the Member States' ability to regulate the labour market, for example. Respect for the social partners' possibility to independently regulate wages and working conditions in collective agreements is also a matter of respect for basic human rights.

The right to form and join trade unions for the protection of one's interests is part of the UN Universal Declaration of Human Rights of 1948. These rights may not be restricted because the EU and its Member States want to increase trade in services in the EU internal market. A restriction on the freedom of organisation is a restriction on democracy.

Fundamentally it is a question of democracy

The EU political institutions have left it to the European Court of Justice to decide on the question of which obstacles to free movement are to be accepted.

We now have a situation in which all measures that actually, potentially, directly or indirectly may hinder free movement must be possible to justify as appropriate and proportional. Ultimately it is the European Court of Justice that determines whether an obstacle is to be accepted or not. That is a position of power that is not acceptable for a non-elected institution.

The question of which obstacles should be regarded as acceptable is an important redistribution policy issue that politics cannot leave to lawyers. If we are to regain political and thus democratic control over which obstacles are regarded as acceptable, the delimitations in the EU treaties must be clearer.

The proposal put forward by LO along with the rest of the European trade union movement is the social progress protocol.

Our proposed social progress protocol does not mean a ban on all restrictions on the right to strike. What we propose is that the EU, just as all other functioning legal systems, must be based on fundamental human rights and that all restrictions on these rights must be justified. Fundamental rights should not be restricted because a company wishes to compete with wages and working conditions.

The demand for a social progress protocol is a priority for LO, but the conflict between the EU's economic freedoms and the Member States' right of regulation can arise in areas other than the labour market. Which restrictions regarding tax-funded medical care, public housing or the sale of alcohol can be regarded as acceptable obstacles? To prevent the European Court of Justice from limiting policy discretion in more areas it would therefore be reasonable from LO's perspective to have a broader review of the EU treaties, aimed at creating clearer delimitation of the respective competence of the EU and the Member States.

COLLECTIVE AGREEMENTS AND EQUAL TREATMENT? THAT WOULD PUT AN END TO FREE COMPETITION IN THE EU LABOUR MARKET!?

WHY DO YOU WANT TO DESTROY PERFECTLY FUNCTIONING COMPETITION?

THE EU COURT OF JUSTICE

WORK FOR 100 KR/HR

WORK FOR 70 KR/HR

WORK FOR 50 KR/HR

WORK FOR 20 KR/HR

CEO

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Several industries are vulnerable

Many people believe that low-wage competition in the EU only affects the construction and transport industries. This is not true. The number of sectors affected by unfair competition is growing. In 2016 we could read about the staff agency Orange that hired out staff to municipalities and county councils in Sweden. The pay for their employees could be as low as SEK 18 per hour and no taxes or social security contributions were paid in Sweden.

The proportion of posted workers in the forestry industry is relatively high, at more than 10 per cent of the labour force. The examples of abuse are many. One example is the company Baltic Trio, which in 2012–2013 had almost all its operations in Sweden and performed forest clearing for a large Swedish customer. The wages paid were half the minimum wage in the collective agreement. Taxes and contributions were probably not paid either in Sweden or in Estonia, but when the Swedish tax authority performed an audit the Estonian authorities issued retroactive attesting documents.

In the private service sector the problem is constantly present in several industries, such as hotels, restaurants and cleaning. One example is the Bulgarian company FIN which cleaned at Piteå Havsbad resort and itself reported payroll expenses to the tax authorities for 2013 equivalent to SEK 18 per hour. Nor is the manufacturing industry immune. There are examples of companies engaging Polish workers as “self-employed” for remuneration of SEK 70 000 per year.

An industry often used to exemplify the problem of competing with wage and working conditions in the EU is the road transport market. It is a telling example when EU regulations, as they are today, contribute to unfair competition and social dumping in the European transport market on a scale that is impossible to ignore. Companies bus drivers to Sweden, where they work for months at a time for a few thousand a month while living in the vehicle.

A study from Lund University shows that every day there are thousands of foreign vehicles in Sweden conducting illegal transport services. There are several reasons for this situation and, apart from an amendment to the EU treaties, the solution must be a change in both Swedish and European legislation.

This is by no means a comprehensive review of the extent of the problem, but rather an attempt to briefly illustrate how the problem is spreading.



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How LO is working on the question

Achieving an amendment to the EU treaties is a long-term project that LO has pursued ever since the ruling in the Laval case in 2007. The proposal for a social progress protocol was prepared by the European trade union movement after the Laval case and a number of similar legal cases in the European Court of Justice. The proposal aims to prevent competition with wages and working conditions by ensuring that fundamental trade union rights and freedoms take priority over the economic freedoms of the EU internal market.

The trade union proposal for a social progress protocol was also part of the final negotiations ahead of the second Irish referendum on the Lisbon Treaty in 2009. However, at the decisive summit meeting, the British government imposed an absolute requirement that the protocol be removed. Thus we were a hair's breadth from a social progress protocol in the EU in 2009.

Three years later, in 2012, the LO Congress decided that LO should intensify its work on the question. As a direct consequence of the decision, a joint working group was set up, with representatives from LO and the Swedish Social Democratic Party, to try and find a common approach in future amendments to the EU treaties.

An agreement was presented at the end of 2013. The conclusion was that in future EU treaty amendments, the support of the Swedish labour movement would be conditional on the introduction of a social progress protocol.

This was followed up after the 2014 parliamentary election, when Prime Minister Stefan Löfven affirmed in the Statement of Government Policy that “equal pay for equal work in accordance with laws and agreements in the country of work is a principle that must apply throughout Europe. The Government will initiate efforts to bring about a change to the EU treaties, establishing that the free movement of companies cannot be used to circumvent national laws and collective agreements.”

The next step in the process was to try and broaden the work and seek support from political parties in other Member States.

Consequently, LO, together with the Social Democratic Party, took the initiative for a joint effort with the social democratic parties in Germany and Austria and the trade union confederations DGB and ÖGB.

In September 2015 the leaders of the organisations met in Vienna to adopt

a joint agreement. In the agreement, the six organisations establish that they are to work together to strengthen trade union rights in the EU treaties as soon as possible. This must be through the addition of a social progress protocol to the treaties. Whether such a protocol is included in a coming amendment to the treaties should also be a decisive criterion, when the parties included in the agreement decide if they are to support the amendment in their respective national parliaments.

The next step in the work is to get more political leaders to join the agreement. The ambition of the LO Executive Council is to announce during the Congress period that political parties from a majority of the EU Member States have joined the agreement. In the opinion of LO, this would make it impossible to ignore the issue in future amendments to the treaties.

Representatives of some Swedish parties have stated that they are against a social progress protocol since it would give the EU “decision-making authority over the Swedish collective agreement model”. This is quite simply not true. On the contrary, our demand for a social progress protocol is to ensure national autonomy over the labour market, by strengthening the social partners' ability to independently regulate conditions in the labour market.

When will the EU treaties be amended?

It is impossible to say for certain when the next amendment to the EU treaties will be. One assessment based on the information available today, is that the next amendment to the treaties will probably be to enable consolidation of the Economic and Monetary Union. In June 2015 the chairs of the European Council, the European Commission, the European Parliament, the Eurogroup and the ECB presented a joint report on the future of the EMU, which proposes changes to the treaties in the period 2017–2025. The LO Executive Council will not accept such an amendment without a social progress protocol. In addition, in April 2017 the European Commission presented a White Paper on the future of the EU. The purpose is to initiate a discussion that will result in concrete reform proposals before the election to the European Parliament in 2019. In view of this, LO will continue its advocacy work for a social progress protocol.



Photo: Joacim Schwartz

“We must be prepared to pursue our demands!”

Johan Danielsson is a research officer and EU coordinator at the Swedish Trade Union Confederation (LO). He is responsible for LO’s work to achieve a social progress protocol to the EU treaties.

Why must the EU treaties be changed?

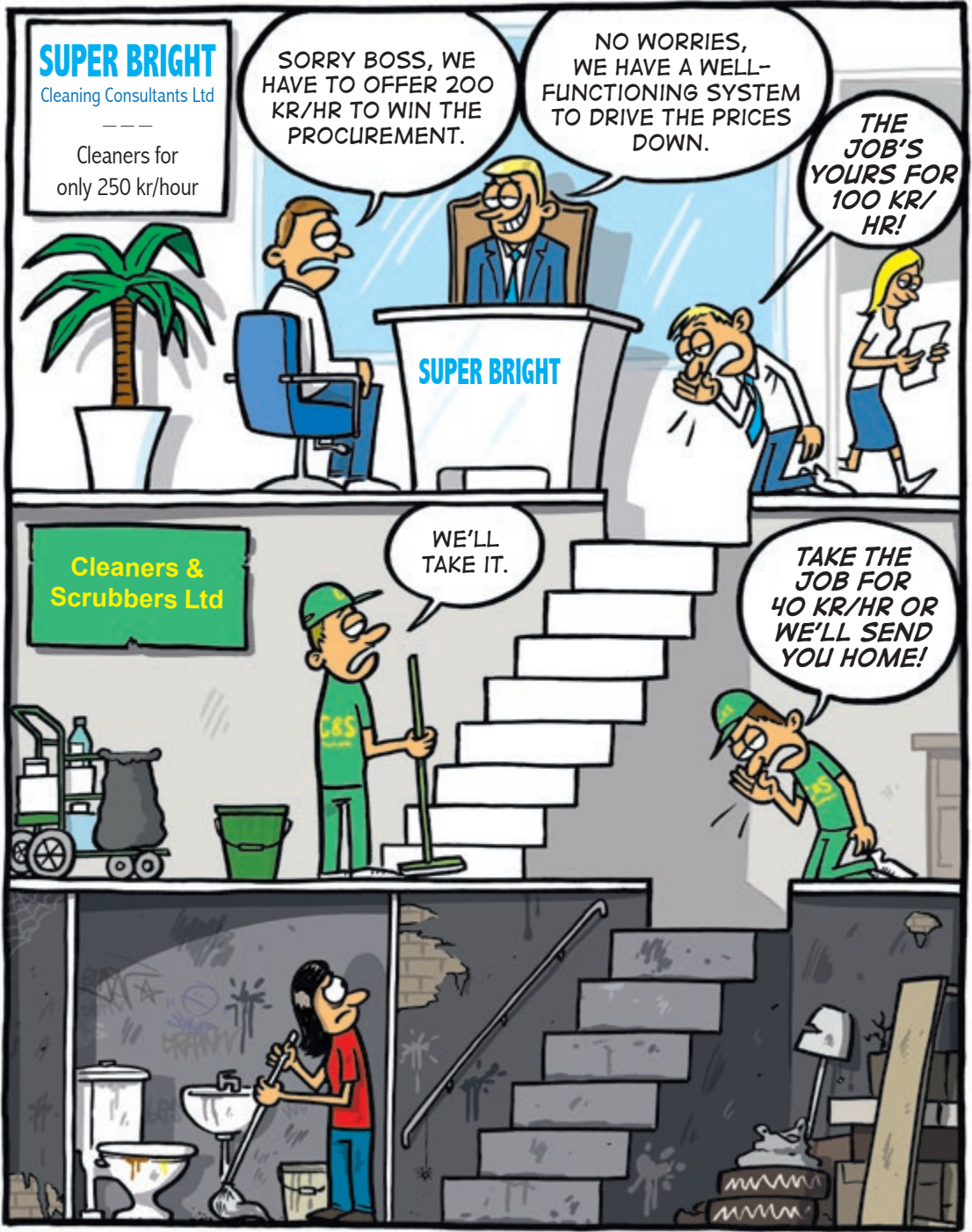
“That is the only way to change the fundamental imbalance built into the EU project. As long as the EU’s economic freedoms take precedence over fundamental human rights, the EU will continue to be a relatively one-sided instrument of deregulation.”

Opponents have said that there are two problems with our demand for a social progress protocol. That no-one knows what it is and that there is no chance of it becoming a reality.

How would you respond to that?

“The claim that no-one knows what the social progress protocol is, is a rhetorical trick to belittle our demand. If you google “social progress protocol” the first hit is the ETUC’s concrete proposal that has been available since March 2008. Our proposal is not a projection area for the Right’s worst nightmares, but a specific and defined proposal.

“Having said that, it is true that far too few members of the LO affiliates, political activists and citizens in general are familiar with our demand. That is also the reason behind this brochure. It’s not enough for me and a few colleagues at the LO Headquarters to be upset. There must be many of us if we are to succeed in getting our demand met.”



EU needs to be changed!

An EU competing with wages and working conditions has no future.
LO has the solution! Visit www.lo.se/socialtprotokoll.

Place
for
stamp

And the other question, is there any chance of it becoming a reality?

“Of course! We must not let anyone fool us into thinking it’s impossible. The day we no longer believe it possible to achieve this type of change we are in trouble. If a political demand supported by the European trade union movement, European social democracy and a majority in the European Parliament is perceived as impossible to implement, then belief in democracy as a tool for change is failing. And if we give up on democracy we are in trouble.”

But when could it become a reality?

“That is a relevant question. The Laval judgment came in 2007 so admittedly it is moving slowly. My own and LO’s perspective is that sooner or later the EU treaties will be revised and we must then seize the opportunity. The treaties will not be amended just to add a social progress protocol. But next time the treaties is revised we must be ready to pursue our demand.”

In conclusion, what do you say to people who think that since we import fridges manufactured in countries with lower wages we must also accept that lorry drivers and building workers with lower wages come here?

“That the inability to differentiate between a person and a fridge is appalling. Unlike goods, people have rights that may not be violated. That is non-negotiable.”

Engage in the campaign!

The strength of LO rests with the members of our affiliates. Social progress will not be achieved by a few experts at the LO headquarters being upset about negative trends. It is by canalising the demands of our 1.5 million hard-working members that LO becomes a major player. This is also true when it comes to demands concerning EU policies and structure. There must be many of us who take part in the debate, if we are to succeed in getting our demands met. We must make it clear to political representatives – regardless of persuasion – that this is a question that engages LO affiliates and their members. It is therefore important that you too engage in the campaign:

- Share pictures and other material through social media.
- Learn more and download material at www.lo.se/socialprotokoll.
- Distribute postcards, this brochure and discuss it with colleagues.



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