

REPORT
on the Free Movement of Workers
in Sweden in 2010-2011

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Introduction

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2010 and until the beginning of June in 2011. The report focuses on the application of Council Regulation 1612/68 (now 492/2011) and issues related to Directive 2004/38 and more within the framework of the Treaty of the Functioning of the European Union (TFEU); (Article 45).¹ Legal amendments in Swedish law, draft legislation and judicial practice will be in focus on certain areas embraced by the regulations. (Concerning comments on certain cases from the ECJ, see Chapter VIII, section 6.)

The report also in particular deals with equal treatment and access to work, matters concerning family members in connection with workers from other Member States, the relationship between Regulation 1612/68 and Regulations 1408/71-883/04 concerning social security and more. Further, EU enlargement issues will be dealt with and certain case law from the Court of Justice of the European Union/European Court of Justice (ECJ) will be illuminated. Published literature, articles in periodicals etc. in 2010 and 2011 up to June have been observed (see Chapter VIII, section 5).

Note that referring to the EEA agreement and the agreement between the EU and Switzerland, the term EU citizen also should embrace citizens from EEA countries outside the EU as well as Swiss citizens.

A short overview

In 2010 and 2011 the situation on the labour market has changed. The economic growth has increased and there is a demand for labour in many lines of business. In particular, there is a demand for well highly educated, experienced and skilled workers. This means that there are still unemployment problems among older workers as well as young people. Especially the unemployment among youngsters is considered to be a serious problem (see Chapter VI, section 6).

Regarding law and the situation on the free movement of workers in Sweden, the transposition of Directive 2004/38 is settled in the main. Further, concerning EU case law on the matter – for instance the *Metock* case – the situation seems to be satisfying. This statement also includes the situation for jobseekers, and in 2010 an amendment has been made concerning the moving allowance to be granted a job-seeker, even if the work is offered outside Sweden.

The situation for Roma workers in Sweden and in general for people of Roma origin is considered to be problematic. There are indications on discrimination on the labour market

1 Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, in 2011 replaced by Regulation (EU) No 492/2011 on freedom of movement for workers within the Union Text with EEA relevance (*Official Journal L 141*, 27/05/2011 P. 0001 - 0012), Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

and Roma people have been expelled referring to begging etc. These measures have been subject to serious critique from the Parliamentary Ombudsmen as being contrary to the Aliens Act.

In 2011, the transposition of Directive 2007/59/EC on the certification of train drivers was coming into force.

Concerning access to work within the framework of Regulation 1612/68 (as well as the new Regulation 492/2011) there has been no certain amendments concerning the equal treatment, language requirements or the requirements for obtaining positions in the public sector including nationality conditions. However, for work as school teacher a teacher's diploma will be introduced and minor amendments have been made concerning language requirements.

Frontier work is considered to be important, and in particular there is commuting in the expansive Öresund region relying on the bridge between Malmö and Copenhagen. There is an ongoing co-operation between both the Governments and the local communities in the area and efforts are made in order to facilitate the development of the labour market in the region.

The situation in sport in relation to EU law is considered to be good. In 2010 new amendments have been made in many of the sport associations statutes, even if the situation was satisfying already before.

Concerning transitional measures imposed on new Member States, Sweden has not introduced any measures. A general impression is that no certain problems have occurred regarding the in-flow of workers and other persons from the new Member States, even if the Roma people's situation has been observed.

In 2011 a new Social Security Code came into force and even in the new act a division between social benefits based on residence or where a person is working is made. In principle this division seems to be in conformity with EU law.

A new act on labour immigration was coming into force in 2008. The meaning was that a work permit should be granted a third-country national that has been offered an employment by an employer.² A requirement is that the employment should make it possible for the foreigner to provide for him- or herself. Regarding the Union preference principle, a work permit should be granted only if the decision is consistent with Sweden's commitments to EU.

Regarding this, in 2011 a public investigation have presented a proposal on circular migration, meaning by example that amendments should be made in order to facilitate the bringing of social benefits to third-countries for shorter work periods in Sweden.

2 Government's proposition 2007/08:147 Nya regler för arbetskraftsinvandring.

Chapter I: The worker: Entry, residence, departure and remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Article 7(1a) of Directive 2004/38/EC. The Article deals with the right of residence for more than three months for by example workers that are Union citizens. The Article that deals with the right of residence for more than three months for, by example, workers that are Union citizens, was transposed into Swedish law by the introduction of ch. 3a concerning the right of residence in the Aliens Act.³ In year 2010 and so far in June 2011 no further amendments have been made.

Article 7 (3 a-d) of the Directive 2004/38/EC. In accordance with the Aliens Ordinance ch. 3a § 1 a worker that ceases to work for different reason should legally still be considered as a worker. However, if the worker has become unemployed after not longer than one year of employment, the worker should not keep his status as a worker for more than six months, and if the worker has been temporary employed less than one year he or she will keep his or her residence right for six months, if he or she has been involuntarily unemployed and if he or she has registered as a jobseeker at the employment office.⁴ Further, a worker that begins a vocational training will maintain the right to residence.

Article 8(3a) of the Directive 2004/38/EC. In order to register the Union citizenship for residence periods more than three months, a Member State may only require an identity card or passport and a confirmation of engagement from the employer or a certificate of employment. The regulation has been transformed into Swedish law by an amendment of the Aliens Ordinance ch. 3a § 8.

Concerning workers, the requirement for the granting of the residence right is that the worker shows a passport or identity card and a document certifying that he or she has an employment in Sweden. Further, the Union citizen's duty to register at the Swedish Migration Board – if he or she has the intention to stay for more than three months – is regulated in the Aliens Act ch. 3a § 10.

Article 14 (4 a-b) of Directive 2004/38/EC. Under certain circumstances an expulsion measure may in no case be adopted against Union citizens or their family members if the citizen is for example a worker, or if the citizen is a jobseeker and he or she is continuing to seek employment and, further, if he or she has a genuine chance to be engaged. Following from Article 14(1) Union citizens and their family members should have a right of residence as long as they do not become an unreasonable burden on the social system of the host Member State.⁵

3 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och varaktigt bosatta tredjelandsmedborgares ställning, p. 43 (transposed through SFS 2006:219). Further regulations on the matter have been introduced in the Aliens Ordinance (2006:97). Concerning comments on aliens law in general, see Wikrén, G. & Sandesjö, H., *Utlänningslagen med kommentarer*, 9th edition, Norstedts, Stockholm 2010.

4 Compare the Government's proposition 2005/06:77, p. 43.

5 The meaning of the term 'unreasonable burden on the social system' has still not been developed in Sweden by the Migration Board in the legal praxis concerning refused entry. Compare Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 43.

Matters concerning expulsion are dealt with in the Aliens Act ch. 8, and in accordance with ch. 8 § 1(6) an EU citizen – including a worker and his or her family members independent of nationality – may not be *refused entry* referring to the reason that the citizen does not have sufficient means for living.

A foreigner that has a right of residence may be *expelled* from Sweden referring to public order or security (the Aliens Act ch. 8 § 7a).⁶ However, if the foreigner has a permanent right of residence there must be particular reasons for such a decision. If the foreigner has children in Sweden or has been staying in Sweden for the last ten years, he or she may be expelled only if the measure is absolutely necessary referring to public security.⁷ (EU citizens cannot be expelled referring to the health criteria.⁸)

Article 17 of Directive 2004/38/EC. The Article deals with exemptions for persons no longer working in the host Member State and their family members, regarding the right to permanent residence to be granted by the host state after the worker's engagement has ceased.

These matters are regulated in accordance with the Directive in the Aliens Ordinance, ch. 3a § 5. (Further, the family members' entitlements in these respects are regulated in § 6).

Article 24(2) of Directive 2004/38/EC concerning the right to equal treatment and the possibility for a Member State to make an exception from right to social assistance (including benefits referring to Article 14.4b of the Directive) during the first three months of stay. Concerning social assistance, a local authority should consider the need expressed by people staying the municipality independent of nationality. The term to 'stay' in the local municipality is of vital importance in accordance with the Social services Act (2001:453). In principle, for periods of stay up to three months and not having residence in the local community, a person is entitled only to acute social assistance in emergency situations.⁹

In accordance with the Aliens Act ch. 8 §§ 1 and 2, in general an EU citizen could not be refused entry referring to insufficient means for staying in Sweden. In accordance with the Aliens Act ch. 8 § 2, an EU citizen who has not been qualified for a right of residence – which means that the stay is less than three months – could be refused entry (the term covers also the situation when the foreigner already is in Sweden) if he or she is an unreasonable burden on the social system.¹⁰

However, from this rule there is an exception for jobseekers, workers, self-employees as well as family members of those categories. Hence, in the coming practice regarding jobseekers a key issue is the criteria for being a jobseeker, since the definition in the Directive also embraces that the person should have a chance to get a job (compare the Directive, Article 14.4b, which concerns jobseekers).

6 Government's proposition 2005/06:77, pp. 76 and 196.

7 Concerning judicial practice, in MIG 2009:21 the Migration Court of Appeal – referring to Directive 2004/38/EG considered that a Croatian citizen married to a Union citizen and committing serious criminal activities in Sweden should be expelled as being a serious threat to public order and security (referring to the Aliens Act, Ch. 3 a §§ 3 and 4, Ch. 5 kap. §§ 3 and 17a, Ch. 8 §§ 1, 7a and 17a).

8 Government's proposition 2005/06:77, p. 78.

9 Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, pp. 25 f.

10 See again Government's proposition 2005/06:77, pp. 72 f.; compare *ibid*, pp. 193 ff.

2. SITUATION OF JOBSEEKERS

A *jobseeker* should be granted a residence right if he or she has ‘a real chance to get a job’ (the Aliens Act ch. 3a § 3[2]). Further, a jobseeker being a Union citizen is explicitly *not* embraced by the duty to register for staying more than three months in accordance with the Aliens Act ch. 3a § 10. The reason is that a jobseeker’s stay in Sweden is supposed to be temporary, and if he or she will get a job the person should register as a worker etc.¹¹ (However, if the jobseeker wants to enjoy benefits at the employment office, he or she must register at the office.)

Concerning the recital and in the light of the judicial practice from the ECJ, and in the Government’s proposition presented in 2006 there was an explicit reference to Case C-292/89 *Antonissen*.¹² In a guideline report from the National Board of Health and Welfare it is said that after ‘approximately’ six months the jobseeker must have ‘a real chance to get a job’ etc.¹³

A jobseeker (as well as workers, self-employees and family members of those categories) who has not been qualified for a right of residence – which means that the stay is less than three months – cannot be refused entry (the term covers also the situation when the foreigner already is in Sweden), if he or she is not an unreasonable burden on the social system (Aliens Act ch. 8 § 2).¹⁴

Concerning jobseekers, see also below Chapter VI, section 6.)

3. OTHER ISSUES OF CONCERN

The Swedish employment agency pays a certain grant for commuting (*pendlingsstöd*) to a person that cannot find a work on their domicile. However, this grant was only paid if the jobseeker finds a work in Sweden, and this order was questioned by the Commission in 2009. After that a public investigation was appointed in 2009, and the result from the investigation was presented in April 2010.¹⁵

A starting point for the proposal presented by the investigation was that the grant and a certain moving allowance (*flyttningsbidrag*) should be paid, even if the job is in another Member State, and if the jobseeker had been registered at an employment office for six months and is prepared to accept jobs offered by the office.

11 Government proposition 2005/06:77, p. 110.

12 Government’s proposition 2005/06:77, p. 44. Furthermore, in accordance with the Aliens Act ch. 8 § 2, an EU citizen who has not been qualified for a right of residence – which means that the stay is less than three months – could be expelled if he or she is an unreasonable burden to the social system (compare Government’s proposition 2005/06:77, pp. 72 f., 193 ff.). However, there is an exception for job seekers, workers, self-employees, as well as family members of those categories. Also in a report presenting up to date guidelines in 2008 for the granting of social entitlements for job seekers there is a reference to the *Antonissen* case, see Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 35.

13 Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 59.

14 See again Government’s proposition 2005/06:77, pp. 72 f. and 193 ff.

15 Official report SOU 2010:26 *Flyttningsbidrag och unionsrätten*.

In 2010 an amendment in line with the proposal was introduced in Ordinance (1999:594) om flyttningsbidrag. Further, an applicant for a job in another Member State should be entitled to reimbursement for travelling and lodging (8 §).

4. FREE MOVEMENT OF ROMA WORKERS

Roma workers that are EU citizens should enjoy full right to equal treatment as other EU citizens. However, in practice there are problems in particular concerning the Roma workers, who belong to an ethnical group that in many countries is subject to discrimination. In general Roma people are subject to non-equal treatment also in the Swedish society, and in many cases it is claimed that there is obvious discrimination on ethnic grounds.¹⁶

There are people belonging to this minority who come to Sweden as workers referring to EU law. Certain problems have been reported concerning this category. A general impression is that Roma people in many respects have worse living conditions compared with other groups in the society.¹⁷ In a free movement of workers perspective, the problems seems to concern Roma people that either (1) arrive to Sweden as jobseekers from another Member State or (2) arrive to Sweden with the intention to seek for asylum referring to the difficult situation in their country of origin.

The first group is said to be subject to discrimination on the labour market, but it is also claimed that these persons often are not qualified for many jobs because of low educational level etc. The result is that people, if they do not find a job, try to earn their living in other ways if their country of origin cannot offer them a decent living. Hence, it has been a controversial matter if, for instance, begging – which at least could mean that the person is not an ‘unreasonable burden on the social system’ – should be a reason for expulsion.

In June 2011, the Parliamentary Ombudsmen (JO) seriously criticized the police authority in the Stockholm County for the expelling of a number of Roma people to Romania in 2010.¹⁸ The police referred to the Aliens Act, ch. 8 § 2, and that the foreigners had dealt with begging and that they could not provide for themselves.

The Parliamentary Ombudsmen took the decision that the expulsions were contrary to Swedish law (see Aliens Act, ch. 8 § 3). Further, the Ombudsmen also pointed at EU law and the hindrance against expulsion of EU citizens that follows from Directive 2004/38 and the amendments made in Swedish law.

Concerning the second group, it has been claimed by NGO:s (Amnesty International) that Roma people seeking asylum sometimes are refused an appropriate examination of their cases referring to the Aliens Act ch. 8 § 6.¹⁹ In particular, Roma people from the Balkan Peninsula seem to have difficulties to get their applications for asylum tried.

16 Official report SOU 2010:55 Romers rätt – en strategi för romer i Sverige.

17 Official report SOU 2010:55 Romers rätt – en strategi för romer i Sverige. (The public investigation was made in a human rights perspective and did not address problems with EU law and the free movement of Roma workers.)

18 The Parliamentary Ombudsmen (JO), Allvarlig kritik mot Polismyndigheten i Stockholms län, som avvistat utlänningar med motiveringen att dessa ägnade sig åt tiggeri och dagdriveri, Decision on 2011-06-28, dnr 6340-2010.

19 A representative from Amnesty/Sweden in Swedish Radio in May 30, 2011. The Aliens Act Ch. 8 § 6 reads as follows: ‘The Swedish Migration Board may direct that the Board’s order to refuse entry under Section 4, first paragraph may be enforced even if it has not become final and non-appealable (refusal of entry with

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An Official report presented in 2011 stated that there has been a decrease in the number of asylum seekers that have been granted asylum referring to the formulation in the Aliens Act, ch. 5 § 6; ‘an overall assessment of the alien’s situation there are found to be such exceptionally distressing circumstances...’²⁰ This section is explicitly focusing on health as the main factor, but the decrease in asylum grants is partly connected to the addressed problems for Roma people.

immediate enforcement), if it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds’.

20 Official report Ds 2011:14 Synnerligen ömmande omständigheter och verkställighetshinder – en kartläggning av tillämpningen.

Chapter II: Members of the family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

The term *family member* of an EU citizen or his or her husband/wife/cohabitant is defined in the Aliens Act ch. 3a § 2 and means

- ‘an alien who accompanies an EEA national to Sweden or joins an EEA national in Sweden and who is
- the spouse or cohabiting partner of the EEA national,
 - a direct descendent of the EEA national or of his or her spouse or cohabiting partner, if the descendent is dependent on either of them for means of support or is under 21 years of age or
 - a direct ascendant of the EEA national or of his or her spouse or cohabiting partner, if the relative is dependent on either of them for means of support.’²¹

Family members must show proof of the relationship for entitlements referring to family relationships. If an application is for a permanent right of residence the applicant must show also proof of the length of the stay.

Concerning workers and their family members and the issue of *reverse discrimination*, the matter has not been brought up in the Swedish debate during year 2010 to 2011 in June.

2. ENTRY AND RESIDENCE RIGHTS

Concerning entry, from 2006 family members of an EU citizen that are not EU citizens themselves must show a passport since Directive 2004/38 does not stipulate that a family member that is a third-country national is entitled to enter a Member State only by showing an identity card.²² A motive for the Swedish amendment was said to be the risk that false identity documents could be used when entering Sweden.²³

From May 20, 2011, a new residence permit card will be issued for third-country nationals in accordance with Regulation No 380/2008. Amendments have been made in the Aliens’ Act ch. 9 introducing the new §§ 8a and 8b, and the amendments will come into force in July 1, 2011.²⁴

In accordance with the Aliens Act ch. 3a § 1, family members of an EU citizen have a right to stay in Sweden for more than three months without a residence permit.²⁵ The right of

21 The categories ‘spouse or cohabiting partner’ includes registered partner. This follows from ch. 3 § 1 in the Act (1994:117) on registered partnership and an amendment made in 2005. The term ‘registered partner’ means a married partner as well as a cohabitant (which is not a requirement from the Directive); see Government’s proposition 2005/06:77, pp. 71 and 183.

22 See Government’s proposition 2005/06:77, p. 63.

23 Government’s proposition 2005/06:77, p. 64. Before 2006 family members that were not EU citizens themselves could enter Sweden by showing an identity card (compare the former Directive 68/360).

24 Government’s proposition 2010/11:123 Biometriskä kännetecken i uppehållstillståndskort, referring to Council Regulation (EC) No 380/2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals.

25 See also Government’s proposition 2005/06:77, p. 70 ff.

residence should be granted immediately if the requirements are fulfilled and should remain for as long as the requirements are fulfilled.

A family member with a right of residence should register him or herself at the Migration Board if the stay is longer than three months (the Aliens Act ch. 3a § 10). In the Aliens Act ch. 3a §§ 3 and 4, there are further specifications of the categories embraced by the right of residence.²⁶

Family members of persons within those categories mentioned above are also entitled to the right of residence (the Aliens Act ch. 3a § 3). Family members of persons that are *not* workers, self-employees or jobseekers must have a health insurance (ch. 3a § 3.3).

If a family member of an EU citizen that has a right to residence is a third-country national, the family member should apply for a *residence card* within three months (the Aliens Act ch. 3a § 10 [in line with Directive 2004/38/EC]).²⁷ The residence card should be issued by the Swedish Migration Board. However, the regulation on residence card should not apply to citizens or family members, if the citizen is Norwegian, Finnish or Danish or the EU citizens that are jobseekers.²⁸

Family members of an EU citizen should be granted a *permanent right of residence* after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7). Temporary stay abroad up to six months or military service for a longer period should not influence the calculation of the five-year period (§ 8). Further, neither should temporary stay abroad up to twelve months for studies or vocational training, maternity and childbirth, serious illness, posting of the worker or any other particular reason, be considered as a break of the five-year period.²⁹

Concerning *judicial practice*, in Case MIG 2007:56 the Migration Court of Appeal took the decision – referring to the Aliens Act, Ch. 3a § 10 – that a third-country national being a family member to a union citizen should show a passport proving his or her identity, and he or she must be given the opportunity to do so before a decision on expulsion is taken.

In 2010 and 2011, there are three cases from the Migration Court of Appeal to be mentioned, confirming EU law: MIG 2010:5 (a part-time employee from a Member State was considered to be a worker), MIG 2010:8 (residence right and stay period calculation) and MIG 2010:14 (permanent residence right after five years stay).

Concerning children's rights and Swedish law, in MIG 2009:22 the Migration Court of Appeal declared that when examining a minor EEA citizen's right to residence (the parents were an EU citizen and a third-country national), the child should be entitled to an independent examination before the court.

26 See also Government's proposition 2005/06:77, p. 70 ff.

27 See also Government's proposition 2005/06:77, pp. 117 f. and 119.

28 Concerning judicial practice, in 2009 the Migration Court of Appeal in Case MIG 2008:34 took the decision that – referring to the Aliens Act Ch. 3a 10 § – the non-possibility to appeal against a decision on a residence card, is not contrary to EU law, since the card *per se* is not connected to any right. However, referring to Directive 2004/38/EC, there is an unconditional right to examine the right to residence before a court.

29 Further specifications are presented in the Aliens Ordinance, ch. 3a §§ 5 and 6.

3. IMPLICATIONS OF THE *METOCK* JUDGMENT

C-127/08 *Metock* concerned four Africans married to Irish citizens.³⁰ The Irish authorities claimed that the marriages did not mean that they should be entitled to residence permits in Ireland. The Africans should, according to the authorities, have been staying lawfully in another EU State. However, the ECJ did not agree to the position taken by the Irish authority.

The Swedish Migration Board's practice concerning immigration of family members is in line with the case. The regulation referred to is the Aliens Act ch. 3a § 10, section 3, from which it follows that the third-country national as a family member to an EU citizen should apply for a residence card not later than three months after the arrival in Sweden.

Further, in an internal message the Migration Board in September 17, 2008, stated that the *Metock* case should not have influence on the Board's practice, since the Aliens Act should apply in line with the *Metock* judgement. The *Metock* case was also subject to discussion at the Ministry of Justice in 2008.³¹

In a decision in 2010, the *Swedish Tax Agency* – in charge of the national registration – certified that in order to be entitled to residence for more than three months, an EU citizen should be a worker etc. Also family members have a residence right beyond the same period, independent of citizenship, if the family member belongs to any of the categories within the scope of the Aliens Act, ch. 3a § 2 (spouse, cohabitee, registered partner etc.).³²

Further, in the decision the Tax Agency referred to *Metock* and confirmed that a relationship could have been established even after the entry to Sweden. Hence, it was stated by the agency that it was not possible to make a request meaning that the parties should have been living together abroad before.

The matter is closely related to the question concerning marriage of convenience that is dealt with in the following.

4. ABUSE OF RIGHTS, I.E. MARRIAGES OF CONVENIENCES AND FRAUD

In accordance with the Aliens Act ch. 5 § 3a (1), a foreigner that has the intention to marry or to be a cohabiting partner to a person in Sweden, should be granted a residence permit if the relationship is considered to be serious and if there are no particular circumstances against the arrangement.

Further, in accordance with ch. 5 § 17a (1) and (2), a residence permit may not be granted if the application is based on false information or if a marriage or a cohabiting relationship is a relationship of conveniences and fraud.

The problem is to decide whether the information provided is correct or not. Concerning fraud or marriage or partnerships of conveniences, which should not be accepted in accord-

30 Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform* (Reference for a preliminary ruling from the High Court [Ireland]).

31 Justitiedepartementet (Ministry of Justice), EU-nämndens kansli 2008-09-11, Agenda with Comments. Available at <http://www.regeringen.se/content/1/c6/11/12/27/73cd35e0.pdf>

32 Skatteverkets ställningstaganden, Folkbokföring av EES-medborgare och deras familjemedlemmar (2010-06-01). Dnr/målnr/löpnr: 131 380303-10/111. Accessible at <http://www.skatteverket.se/rattsinformation/stallningstaganden/2010/stallningstaganden2010/13138030310111.5.1a098b721295c544e1f80005173.html> (Accessed 2011-06-07.)

ance with the Aliens Act ch. 5 §17a (2), the matter was discussed in the preparatory works approved by the Riksdag before the transformation of the Family Reunification Directive 2003/86/EC.³³

The starting point should be that the information presented concerning a marriage etc. is correct. However, if the Migration Board suspects that a marriage could be a pro forma marriage, a deeper examination should be carried out.

Regarding the burden of proof, it is the State authority that must prove that the marriage is a pro forma marriage etc. The investigation should be made in the same way as when investigating whether a marriage is serious or not. That is, an examination concerning for instance the establishment of the relationship and the parties' familiarity etc. Concerning the criteria of a pro forma marriage, the preparatory works explicitly refer to the practice in the ECJ.

In the Government's proposition, approved by the Riksdag (referring to article 17 of Directive 2003/86/EC), it was explicitly stated that before a withdrawal of a residence permit concerning family reunification, considerations should be made regarding the 'nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin...'³⁴ (The wording exactly follows the text in article 17 of Directive 2003/86/EC.)

Recently the Migration Board has been commissioned by the Government to present statistics concerning residence permits and marriage of conveniences and fraud including child marriages. In a communication to the Government, the Board in 2011 presented an account for 53 cases that had been dealt with by the Board.³⁵

In the communication the Migration Board also pointed at certain shortages concerning the regulations on the matter. For instance, it does not follow from the act that a person must be at least 18 years old, if he or she has the intention to come to Sweden for marriage.

However, applications for residence permits when partners having the intention to marry are minors, should regularly be rejected by the Migration Board. Even if a couple already is married, both parties should be at least 18 years old, but in accordance with praxis, the Board approves the application for residence if there are exceptional situations, for instance if a young woman is pregnant or if the couple already have children.

Further, there is an ongoing public investigation on these matters, and in May, 2012, the result from the investigation should be presented.

Concerning *judicial practice*, in Case MIG 2009:11, the Migration Court of Appeal took the decision that a third-country national should not be entitled to a residence right referring to a marriage that exclusively had been entered into in order to bypass the regulations in the Aliens Act ch. 3a.³⁶

33 Government's proposition 2005/06:72 Genomförande av EG-direktivet om rätt till familjeåterförening samt vissa frågor om handläggning och DNA-analys vid familjeåterförening, p. 39 f. Concerning the practical examination if a pro forma marriage or other relationship is serious, see also Official report SOU 2002:13 Vår anhörginvandring, pp. 151 ff.

34 Government's proposition 2005/06:72, p. 50.

35 Skrivelse 2011-02-15 till Justitiedepartementet, Enheten för migration och asylpolitik, *Delredovisning av Migrationsverkets uppdrag att föra viss statistik* (Ju2010/5032/EMA). Available (in Swedish) at: <http://www.migrationsverket.se/download/18.46b604a812c6cdd7dba800021229/GD-mall+uppdrag+vers2.pdf>

36 In MIG 2008:41 the reference person in Sweden had committed crimes of violence, and the court found that there was a risk that the foreigner would be subject to violence and, further, that the couple had not met regu-

5. ACCESS TO WORK

Family members of EU citizens and persons having a permanent right of residence in another Member State have right to access to work in Sweden, i.e. they do not have to apply for a work permit (the Aliens Ordinance ch. 5 § 1). Further, they should have the right to equal treatment.

6. THE SITUATION OF FAMILY MEMBERS OF JOBSEEKERS

Family members to *jobseekers* are entitled to the right of residence (the Aliens Act ch. 3a § 4 referring to § 3(2) concerning jobseekers having a ‘real chance to get a job’).³⁷ Further, if the family member has a right of residence he or she is embraced by the right to equal treatment as family members of other categories mentioned above.³⁸

larly. Considering these circumstances the court found there were particular reasons not to grant a residence permit for marriage.

³⁷ Family members of persons that are *not* workers, self-employees, job seekers must have a health insurance (the Aliens Act ch. 3a § 3.3).

³⁸ Compare Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, pp. 47 f.

Chapter III: Access to employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

Several of the regulated professions can be exercised both in the private and public sector, e.g. doctors, nurses and school teachers (concerning teachers and a new certificate, see below). However, the same professional qualification requirements and the same rules of recognition apply irrespective of whether the employer is an actor on the private or the public sector.

1.1 Equal treatment in access to employment (e.g. assistance of employment agencies)

A jobseeker from another Member State has the right to equal treatment at the employment office as nationals. A precondition for receiving benefits at the employment office is that the jobseeker has registered at the employment office.

1.2 Language requirements

In the *private sector* language requirements are not regulated by law. However, in practice language can be used as a requirement for access or promotion by a private employer on condition that the requirements do not interfere with Swedish discrimination law or Community law.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

Appointments for employment in the public sector should be ruled by objectivity. In accordance with the Constitution and the Act on public employment (1994:260; § 4) merit and competence should be decisive, but competence should be the most important criterion. The required merits and skills are defined by the employer for each position before recruitment, and requirements should be based on the post subject to the recruitment procedure.

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above. Beyond that the equal treatment principle is founded on Regulation 1612/68 and EC law should apply for instance concerning nationality and discrimination. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

In 2010 the Riksdag approved a proposal from the Government to introduce new requirements for positions as school teachers and pre-school teachers.³⁹ The meaning is that a teacher's certificate will be required for the improvement of the school system's quality. In

³⁹ Government proposition 2010/11:20 Legitimation för lärare och förskollärare. Amendments of the School Act (2010:800).

order to fulfil the new requirements, a teacher should have an exam as a teacher (basic requirement) and he or she should have been working as a teacher for at least one year (introductory period).

Concerning teachers from other Member States, a teacher's diploma from another Member State fulfills the basic requirement (following from Directive 2005/36EC), but beyond that the introductory period will also be required.⁴⁰

For foreign teachers, the teacher's certificate will be issued by the Swedish National Agency for Higher Education, which is the authority that evaluates higher education diplomas obtained in other states. However, it is still unclear how and if the requirement for a one year introductory period could be fulfilled by previous work as a teacher in another Member State.

In principle, only teachers that are certified should be employed on positions as permanently employed teachers. Partly the new regulation will come into force in July 1, 2011, and full implementation will be reached in July 1, 2012.

2.1 Nationality condition for access to positions in the public sector

Restrictions meaning demands for *Swedish citizenship* are founded in the Constitution ch. 11 § 9. Further requirements are regulated in the Act on public employment (1994:260) as well as in different ordinances giving instructions concerning courts and other public authorities. In general, decisions on employment matters in the public sector should be ruled by objectivity and should be taken on impartial grounds and individuals must be treated equally.⁴¹ However, when the employment is in the exercising authority there is a restriction on the right to equal treatment regarding employment in the public sector in accordance with the TFEU, Article 45.4 (former Article 39.4 of the EC Treaty).

According to the Act on public employment §§ 5 and 6, a non-Swedish citizen cannot join the police force or be employed as a prosecutor within the judicial system or be employed by the army (see also Lagen 1994:261 om fullmaktsanställning; the Act on employment with letters of appointment).

Further, the Government can prescribe Swedish citizenship as a condition for employment connected to exercising authority or for positions that are of significance to State security. Hence, there are many public functions (for instance committees with elected representatives exercising public authority), which are embraced by a requirement for Swedish citizenship.

A consequence of the demand for Swedish citizenship for certain positions is that foreigners are excluded from particular employments in the public sector, for instance the position as head of authority that is directly under the Riksdag and positions at the Government offices directly under the Government. However, a position as a judge within the judicial

40 Government proposition 2010/11:20 Legitimation för lärare och förskollärare, pp. 79 f. (Concerning this matter, see also the opinion from the Swedish National Agency for Higher Education, referred to in the Government proposition, p. 37.)

41 Further, see Mulder, Ingående av offentlig anställning, in Aune, H. et al. (editors), *Arbeid og rett. Festschrift til Henning Jakhellns 70-årsdag*, Cappelen Damm, Oslo 2009, pp. 467–476.

system is not exclusively reserved for Swedish citizens, since it is possible for an experienced lawyer to obtain a position as a judge.⁴²

There are also demands for Swedish citizenship, for instance concerning employments as law clerks at the district courts (tingsrätter).⁴³ Also at the Swedish enforcement service (kronofogdemyndigheten) there is still a demand for Swedish citizenship for the access to many positions such as Head of the enforcement district, Inspector at the enforcement service and Assistant at the enforcement service.⁴⁴

A common denominator for these positions is that the officials are exercising authority towards the citizens. To sum up, a schematic look at the positions for which there are demands for citizenship shows that Swedish citizenship requirements are most frequent for positions in the public sector in the following areas:

- The Riksdag (for instance positions as head of offices in the Riksdag, the Riksdag's accountants etc.).
- The courts (for instance prosecutors etc. with some exceptions).
- The police force (most positions as policemen and leading positions).
- The military force.
- The enforcement service (positions exercising public authority).
- Other (leading positions in for instance the Electricity security board; Elsäkerhetsverket).

2.2 Language requirements

For employment in the public sector merit and competence should be decisive, but competence should be the most important criterion. The required merits and skills are defined by the employer for each position before recruitment, and requirements should be based on the post subject to the recruitment procedure.

A request for language skills should basically be based on the qualifications necessary for the employment. Considering the Act on public employment § 4, good language skills – and especially in Swedish – could in practice be a very important qualification when the recruitment is made if skills in Swedish language is considered to be important for the performance of the work.

For access to some employments, knowledge of the Swedish language is a formal requirement. For instance, for a position as school teacher the requirement for a certain proof of competence will be issued only if the applicant has the necessary knowledge in Swedish language.⁴⁵

42 The Swedish Code of procedure, ch. 8 § 2, was amended in 2002 and the demand for Swedish citizenship was taken away (Government's proposition 2001/02:92 Avskaffande av medborgarskapskrav för advokater m.fl.). Already before this amendment the Code of procedure had been amended in line with the Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, and the amendment in 2002 was correcting some imperfections. (Government's proposition 1998/99:108 Advokaters etableringsrätt.)

43 See Förordning (1996:381) med tingsrättsinstruktion § 44 ('Endast den som är svensk medborgare får inneha eller utöva en anställning som tingsnotarie').

44 See Förordning (2007:781) med instruktion för Kronofogdemyndigheten 11 § ('Endast den som är svensk medborgare får anställas som rikskronofogde, chefskronofogde, kronofogde, biträdande kronofogde, kronofogdeaspirant, kronokommissarie, kronoinspektör eller kronoassistent').

45 Concerning the regulation of professions, another example is the veterinary profession, which in Sweden is generally regulated in the Act (1994:844) on the competence for exercising the veterinary profession. In the Ordinance (2009:1386) on activity concerning health care for animals, ch. 3 § 1, the Swedish Board for

From July 1, 2011, concerning school teachers, the former regulation meaning there was an exception to this rule for applicants that had another mother language than Danish, Faeroese, Icelandic or Norwegian, will cease following from amendments of the new School Act 2010:800.

For access to most regulated professions within healthcare there are no absolute requirements for the Swedish language, but language competence could be an important qualification to consider.⁴⁶

2.3 Recognition of professional experience for access to the public sector

(The kind of situation the question refers to, does not exist in Sweden. Therefore the reporter's comments are of a general nature.)

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above (see above sections 2, 2.1 and 2.2). Beyond that the equal treatment principle is founded on Regulation 1612/68 and EC law should apply for instance concerning nationality and discrimination. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

(Several of the regulated professions can be exercised both in the private and public sector, e.g. doctors. In principle, the same professional qualification requirements and the same rules of recognition should apply. However, at the same time it should be noted that a private employer has more space compared with an employer in the public sector where the procedure is ruled by public law; again see above sections 2, 2.1 and 2.2).

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

In 2009 a decision was taken to introduce certain qualification requirements were introduced for work as hospital orderly for animals (djursjukvårdare), and the amendment was coming into force on January 1, 2010.⁴⁷

In December 2009 a public investigation presented a proposal to introduce amendments in law concerning the transposition of Directive 2007/59/EC on the certification of train drivers (lokförardirektivet).⁴⁸ In 2010 the Government presented a proposition before the Riksdag and a new act was introduced, implementing the directive. The act was coming into force on July 1, 2011.⁴⁹

Agriculture (Jordbruksverket) certifies applicants from other Member States. In ch. 3 § 2 (3), it is stipulated that foreign veterinarians from other countries should complete the education from their country with basic knowledge concerning Swedish law and the Swedish language.

46 Compare SOSFS 2007:23 [M] Socialstyrelsens föreskrifter om erkännande av yrkeskvalifikationer inom hälso- och sjukvården, issued by the National Board of Health and Welfare. Accessible at <http://www.socialstyrelsen.se/sosfs/2007-23> (2011-06-07).

47 Government's proposition 2008/09:09 Verksamhet inom djurens hälso- och sjukvård.

48 Official report Ds 2009:54 Lag- och förordningsförändringar för att genomföra Europaparlamentets och rådets direktiv 2007/59/EG.

49 Government's proposition 2010/11:122 Behörighet för lokförare.

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Discrimination referring to sex, age etc. is prohibited in accordance with the Discrimination Act (2008:567) ch. 1 § 1.⁵⁰ From January 1, 2011, the protection in law against discrimination referring to sexual orientation will be explicitly embraced also by Constitutional law.⁵¹

In 2010 a public investigation suggested that the control of illegal labour immigration should be reinforced.⁵² Before an engagement, the employer should make a control if a third-country national has the right to stay and work in Sweden, and the tax authority should be informed. The proposal is in line with Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

50 See also Constitutional law ch. 1 § 2, which means that public power should be exercised in a way that counteracts discrimination referring to age. In general, in 2010 a comprehensive book on discrimination law was presented: Fransson, S. & Stüber, E., *Diskrimineringslagen. En kommentar*, Norstedts, Stockholm 2010.

51 Konstitutionsutskottets betänkande 2010/11:KU4 En reformerad grundlag (vilande grundlagsbeslut, m.m.).

52 Official report SOU 2010:63 EU:s direktiv om sanktioner mot arbetsgivare.

Chapter IV: Equality of treatment on the basis of nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

The right to equal treatment for employment in *the public sector* should be secured through the regulations referred to above (see above Chapter III, sections 2, 2.1 and 2.2). Beyond that the equal treatment principle is founded on Regulation 1612/68 and EC law should apply for instance concerning nationality and discrimination. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

The new certificate for teachers that will be introduced means that for getting a permanent employment based on the certificate, a teacher should have gone through a one year introductory period.⁵³ However, as stated above it is still unclear how and if this requirement could be fulfilled by previous work as a teacher in another Member State.

Concerning age discrimination, in an Official report presented in 2010 a suggestion to reinforce the ban of discrimination because of age was put on the table, and the suggested amendments are going beyond the requirements stipulated by EU law.⁵⁴ The meaning is to broaden the scope to embrace the same situations as other discrimination grounds, i.e. sex discrimination etc. In accordance with the proposal the amendments should come into force in January 1, 2012.

2. SOCIAL AND TAX ADVANTAGES

According to Article 7.2 of Regulation 1612/68 migrating workers shall enjoy the same social and tax advantages as workers from the host Member State. The Article has direct effect and there is no specific national legislation intended to implement it.

Another central Community rule on the subject is Article 24 of Directive 2004/38/EC, according to which migrating workers and members of their families shall enjoy equal treatment with nationals of the host state. However, the host state shall not be obliged to confer entitlement to social assistance during the first three months of the stay, an exception where there is no regulation in Swedish law.

Concerning the right to social assistance, in principal the Social Services Act makes no difference between Swedish nationals and nationals from other Member States.⁵⁵ The decisive criterion is that the person seeking social assistance is lawfully resident in Sweden and stays in a local community.

⁵³ Government's proposition 2010/11:20 Legitimation för lärare och förskollärare.

⁵⁴ Official report SOU 2010:60 Ett utvidgat skydd mot åldersdiskriminering. Age discrimination and the judicial praxis from the ECJ has been observed in the Swedish debate in 2011; see Ingmanson, S., Förbudet mot åldersdiskriminering i EU-domstolens praxis, *Europarättslig Tidskrift* (2011), pp. 229–246.

⁵⁵ The Social services Act (2001:453), ch. 4 § 1.

As regards tax advantages, judgements from the ECJ form the background to a former governmental proposal on new rules concerning tax deductions and tax exemptions for payments to pensions funds established in other Member States.⁵⁶

From the ECJ case law follows that a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in one Member State, whereas no such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States contravene the former EC Treaty, Articles 39, 43, 49 and 50 (now corresponding Articles 45, 49, 56 and 57 of the TFEU).⁵⁷

Concerning life insurances, in April 2010 a public investigation was appointed in order to examine national regulations concerning the move of life insurances between insurance companies.⁵⁸

2.1 General situation as laid down in Art. 7 (2) Regulation 1612/68

Basically, Regulation 1612/68 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to 1612/68, for instance housing allowance, implies that the worker is residing in Sweden.

The benefits that should be granted to a person based on residence and work respectively are listed in the Social Security Act ch. 3.⁵⁹ In principle, a social benefit that is not covered by Regulations 1408/71 - 883/04 and based on residence should be granted to a worker etc. referring to Regulation 1612/68, Article 7.2, and the principle of equal treatment, even if the worker is not settled in Sweden (for instance if he or she is a cross-border commuter working in Sweden but living in another Member State).⁶⁰

The State authority in charge of the application of Regulation 1408/71 is the Swedish Social Insurance Agency (Försäkringskassan; concerning State authority in charge of unemployment benefits, see footnote).⁶¹ Comments on the application of regulations concerning benefits based on work or residence have been published in instructions issued by the former Swedish National Insurance Board (Riksförsäkringsverket), and there are short comments on

56 The ECJ cases referred to is Case C-150/04 *Commission v Denmark* and Case C-522/04 *Commission v Belgium*.

57 Concerning previously made amendments, see Finansdepartementet (the Ministry of Finance), *Nya skatteregler för pensionsförsäkring*, Promemoria February 1, 2007, and Finansdepartementet (the Ministry of Finance), Skr. 2006/07:47, *Meddelande om kommande ändringar av skattereglerna för pensionsförsäkring* (1 februari 2007), Government's proposition 2007/08:55 *Nya skatteregler för pensionsförsäkring*, m.m. with amendments of the Act (1999:1229) on income-tax law (Lag om inkomstskatt). Further, in October 2008 the Government presented a proposition meaning amendments of the regulations concerning the taxation of personnel options regulated in the Income tax Act (1999:1229); Government's proposition 2007/08:152 *Slopad avskattning för personaloptioner*. Hence, the former demand on taxation on the options when a person moves abroad was abolished on January 1, 2009. The amendment follows from EC law and a judgement from the Swedish supreme administrative court (Case no. 6324-06).

58 Committee directions (Kommittédirektiv) 2010:43.

59 In an instruction issued by the former Swedish National Insurance Board in 2004 – to be applied by the Social Insurance Agency – there was a general and very short comment on the classification on social benefits in relationship to Regulation 1408/71 and Regulation 1612/68. Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004.

60 Official report SOU 2005:34 *Socialtjänsten och den fria rörligheten*, p. 57.

61 The Swedish Unemployment Insurance Board (Inspektionen för arbetslöshetsförsäkringen) is responsible for issues relating to unemployment benefits.

the classification on social benefits in relationship to Regulation 1408/71 and Regulation 1612/68.⁶²

Regarding parent's allowance and the free movement of families, an academic thesis was published in 2010.⁶³

2.2 *Specific issue: the situation of jobseekers*

In Case C-258/04 *Ioannidis* the ECJ ruled that it was contrary to the former EC Treaty, Article 39 (now Article 45 of the TFEU), for a Member State to refuse to grant a tide over allowance ('arbetslöshetsunderstöd' in Swedish) to a national of another Member State seeking his first employment, and who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.⁶⁴

Concerning *Ioannidis*, Swedish law regarding unemployment benefits was sharpened up in 2007, when the so called 'study provision' (studerandevillkoret) was taken away. Hence, a former student is not entitled to unemployment benefit and this should apply independent of nationality. Students' organisations have together with trade unions – in 2011 also the LO – requested that the 'study provision' should be re-introduced.⁶⁵

Referring to Case C-138/02 *Collins* and the right to social assistance, the crucial matter is if a person should be considered as a jobseeker, and a criterion on the matter is that a person is registered as a jobseeker at an employment office and, further, that he or she has 'a real chance to get a job'.⁶⁶

Concerning Cases C-22/08 and C-23/08 *Vatsouras* and *Koupatantze*, the crucial matter is if the applicants as jobseekers were considered to be entitled to benefits reserved for workers or national jobseekers.⁶⁷ So far – and still in 2011 – the cases have not been commented on in the Swedish debate. Until there is administrative or legal practice going in another direction, the reporter cannot find there is a risk for incongruence between the ECJ case law and Swedish law on the matter.

62 Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004, pp. 35 f. (In the instruction there is an explicit reference to the Regulation 1612/68, article 7.) The instruction is available on the website <http://www.forsakringskassan.se/press/publikationer/vagledningar/index.php>

63 Holm, E., *Fri rörlighet för familjer. En normativ analys av föräldrapenningen och EU-rätten*, Juristförlaget, Lund 2010. For a review, see Ingmanson, S., *Fri rörlighet för familjer – en bokaanmälan*, in *Förvaltningsrättslig Tidskrift* (2011; in press).

64 Case C-258/04 *Office national de l'emploi v Ioannis Ioannidis*. Further, concerning social assistance to EU citizens that are staying in a local municipality, there is also reason to consider the Social services Act (2001:453) ch. 2 § 2 and ch. 4 § 1. The meaning is that a person, independent of nationality, should be entitled to assistance. Referring to *Collins* a public investigation in 2005 came to the conclusion that a job seeker is entitled to social assistance, but he or she may not be a burden to the social system.

65 <http://sacobloggen.se/2011/03/09/studerandevillkoret-inte-nog/> (accessed 2011-06-22).

66 Compare Government's proposition 2005/06:77 and Official report SOU 2005:34 *Socialtjänsten och den fria rörligheten*, p. 162.

67 Joined Cases C-22/08 and C-23/08 *Athanasios Vatsouras and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg 900*.

Chapter V: Other obstacles to free movement of workers

In 2010-2011 the situation on the labour market in Sweden has turned around and there is a demand for labour. However, the crucial matter for the employers often is disagreements between the unemployed workers' skills and the employers' needs. The result is unemployment at the same time as there is a demand for labour, and this situation could in practice also mean an obstacle to the free movement of workers.

Another obstacle to the free movement of workers and the possibility to get a job in Sweden could be dependent of a foreigner shows insufficient knowledge in the Swedish language. Concerning measures taken to counteract this kind of shortcomings and in order to stimulate new immigrants' learning in Swedish language, an experimental activity was introduced in a number of local municipalities in October 2009.⁶⁸

From July 1, 2010, the activity was extended to embrace all local communities.⁶⁹ A certain economical bonus should be granted those who fulfil the studies in Swedish in time. The primary target group is refugees, asylum seekers and their relatives, but the measure could also be suitable for other groups such as workers, including jobseekers and family members from other Member States.

In 2010 there was a Riksdag's decision meaning that a new activity with pilots for the establishment of newly arrived immigrants on the labour market should start.⁷⁰ The pilots could be, for instance, private firms or organisations, and the immigrant should be free to choose a pilot guiding the immigrant to find a job. Also this measure is primarily aimed to serve refugees, asylum seekers etc.

Concerning social benefits, in March 2011, a public investigation suggested that it should be easier for workers to bring unemployment benefits and more to countries outside the EU.⁷¹ The aim is to facilitate so called 'circular migration' which means that workers from third countries could come and go to Sweden in order to increase the labour supply on the labour market (even if also other motives are emphasised).

68 Government's proposition 2008/09:156 Sfi-bonus – försöksverksamhet för att stimulera nyanlända invandra-re att snabbare lära sig svenska.

69 Government's proposition 2009/10:188 Nationell sfi-bonus.

70 Arbetsmarknadsutskottet 2009/10:1.

71 Official report SOU 2011:28 Cirkulär migration och utveckling.

Chapter VI: Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES)

The Nordic countries have developed a far going co-operation establishing an open Nordic labour market including frontier work.⁷² Further, since 1957 passports have not been required for Nordic citizens travelling from one Nordic country to another. Around 40,000 citizens are commuting daily or weekly between these countries, and the same number yearly moves to another Nordic country.⁷³

The development of co-operation between the neighbour states has also enjoyed financial support from the EU. According to information from the Government Sweden will be granted 232 million Euro for developing projects within the framework of the European territorial collaboration during the period 2007–2013.⁷⁴

In order to facilitate people to move between the Nordic countries, the Nordic Council of Ministers provides basic information concerning the Nordic countries on the website ‘Hello Norden’.⁷⁵ You can read about cars and housing, find information about rights and obligations in society, and you can read useful articles on what you have to be aware of in practice when planning a move to a Nordic country.

For many years there has been a tendency towards increased commuting between the Nordic countries. Between 2001 and 2004 the increase was 26 percent and per year the figure was 8 percent.⁷⁶ In the year 2004 around 71,000 persons had income from work in another Nordic country, and among these workers 36,582 individuals were characterized as commuting workers (new figures are announced to be presented in 2010, but still these figures have not been available).

The most significant development is relying on the Öresund bridge between Malmö and Copenhagen. In 2006 most of the frontier workers were commuting from Sweden to Denmark and from Sweden to Norway. Further, it is more usual that men are working commuters compared with women, and many are young people.⁷⁷

The labour market in the Malmö-Copenhagen region embraces in the main the Danish Copenhagen area and the Malmö area in Sweden and in the region around 10,000 persons are regularly commuting between Sweden and Denmark as frontier workers. Ninety percent of those frontier workers are living in the Skåne province and are commuting to Copenha-

72 The Nordic common labour market was formally established in 1954. Concerning development of the common Nordic labour market and labour mobility in Scandinavia, see Nordiska ministerrådet (the Nordic Council of Ministers), *The Common Nordic Labour Market at 50*. Rapport TemaNord 2008:506. Copenhagen 2008.

73 See <http://www.norden.org/sv/om-samarbetet/samarbetsomraaden/flytt-och-pendling/om-flyttning-och-pendling> (accessed 2011-06-10).

74 The Government’s website <http://www.regeringen.se/sb/d/2712/a/14891> (October 10, 2007).

75 See <http://www.norden.org/en/resources/moving-to-or-between-the-nordic-countries> (accessed 2011-06-10).

76 Nordiska ministerrådet (the Nordic Council of Ministers), *Arbetspendling i Norden – en kunskapsöversikt*. Rapport TemaNord 2008:523. Copenhagen 2007.

77 Nordiska ministerrådet, *Norden i tal 2009* (ANP 2009:747), s. 29. See also Nordiska ministerrådet (the Nordic Council of Ministers), *Arbetspendling i Norden – en kunskapsöversikt*. Rapport TemaNord 2008:523. Copenhagen 2007.

gen.⁷⁸ The national employment offices in both countries provide information about employments and information concerning taxes, social security, double settling and more.

In 2010 the Öresundskomiteen published a report dealing with the regional labour market in the Copenhagen-Malmö region.⁷⁹ The committee emphasises that there is – and probably will continue be – a shortage of labour in the region. In particular there is a need for personnel in healthcare services, but also high skilled workers such as masters of engineering, school teachers and teachers in nursery schools, skilled workers in the construction industry etc.

A forum to focus on boarder obstacles between the Nordic countries has been established by the Nordic Council of Ministers, and the forum lists a number of boarder obstacles between the Nordic countries.⁸⁰ Even if these problems in the main have to do with social security matters, they often in practice could mean restrictions on the free movement of workers. For instance, there are different regulations concerning people that are long time sick-listed, judgments for early retirement pensions, the right to subsidized transportation services for disabled and more.⁸¹

In 2009 the Government took the decision to counteract border obstacles in the Nordkallotten area by granting founding to a project in order to stimulate free movement of workers and cooperation at Nordkallotten between the Nordic countries.⁸²

In a communication to the Riksdag, the Government in March 2010 made an account for the efforts for the taking away of boarder obstacles between the Nordic countries.⁸³ Among other issues, there are ongoing efforts to co-ordinate the training of electricity installers (elinstallatörer) in the Nordic countries. A better co-ordination of the training would facilitate the free movement of workers between the Nordic countries.

Many factors have an impact on migration and commuting between the Nordic countries. For instance taxes, social entitlements (as mentioned above) and unemployment benefits. Concerning taxes, the Danish and Swedish Governments signed an agreement on certain tax matters and more.⁸⁴

The agreement facilitates commuting between the two Member States, Sweden and Denmark, in the Öresund region. Tax reductions for travelling between the countries for work were also granted in Denmark. Further, workers and commuters moving between the countries should be granted tax reduction for pension insurances paid in the other country.

In accordance with the above mentioned agreement between the Danish and Swedish Governments concerning compensation for tax decline – when people, for instance, work in Denmark but are settled in Sweden – the state where the work is performed should pay an amount for levelling out tax income between the two countries.⁸⁵

78 The figures are very roughly estimated, see Öresundspendlarna, Öresundsbro konsortiet & Öresundskomiteen, January 2006, available at <http://www.oresundskomiteen.dk/regionen-i-siffror/se/publikationer/pendlereSV.pdf> For more statistical figures concerning commuting between Denmark and Sweden, see <http://www.oresundskomiteen.dk/neobuilder.php?id=2004101216323264000056251>.

79 Öresundskomiteen, *33 Hinder, utmaningar och möjligheter. Öresundsmodellen 2010*, 2010.

80 <http://www.norden.org/sv/nordiska-ministerradet/samarbetsministrarna-mr-sam/graenshindersarbete/graenshinder> (accessed 2011-06-13.)

81 <http://www.norden.org/no/search?SearchableText=gr%C3%A4nshinderforum> (Accessed 2011-06-13.)

82 Pressrelease from the Ministry of Social Affairs (December 8, 2009).

83 Government's communication 2009/10:90 Nordiskt samarbete 2009.

84 Government's proposition 2003/04:149 Avtal mellan Sverige och Danmark om vissa skattefrågor m.m.

85 The agreement on certain tax matters was subject to renegotiations in 2009. Riksdag & Departement, no. 8/09, p. 14.

A comment is that in principle the agreement means a practical combination of the EU principle – that benefits should be based on where you work – with the traditional principal that benefits ought to be based on residence.

Further, referring to the agreement, it has been calculated that Sweden each year loses around 50.000.000 Euros compared with Denmark.⁸⁶ The reason is that there are different tax regulations and more in the two countries, and in 2011 the loss-making is supposed to increase to more than the double.⁸⁷

Concerning unemployment benefits and frontier workers in the Nordic countries, the Swedish Unemployment Insurance Board (IAF; Inspektionen för arbetslöshetsförsäkringen), is the Swedish state authority in charge of the supervision over the unemployment benefit insurance. Concerning residence and frontier work, an unemployed person that is residing in Sweden but has been working in another Member State, is entitled to unemployment benefits in Sweden. However, if the person is part-time unemployed in the other state, he or she should receive unemployment benefits in that state.⁸⁸

In 2008 the IAF published a report on problems concerning the co-ordination of national regulations, different conceptualisation of cross-border problems in neighbouring countries, and the need for more knowledge regarding benefits, national regulations etc. both at national local employment offices as well as among the frontier workers themselves.⁸⁹

Concerning the ECJ Case *C-212/05 Hartmann* dealing with the German child-care allowance and residence requirements. A German working in Germany but settled in Austria claimed that it was indirect discrimination to refuse his Austrian spouse child-care allowance because she was living in Austria.

In general, in January 1, 2011, a new *Social Security Code* came into force, and in accordance with the Government's proposition, there is a list comprising social benefits based on *residence* is presented in ch. 5 § 9 of the new Code, and a list comprising social benefits based on *work* is presented in ch. 6 § 6.⁹⁰ (Concerning the Social Security Code, see Chapter VIII for further information.)

Concerning adaptation to EU law, a previous example was the child-care allowance presented in 2007 and introduced through the Act on local governmental child-care allowance.⁹¹ In order to be entitled to the allowance from the local government, the child should be between 1 and 3 years of age, and both the child and one of the parents must be a registered resident of the municipality (§ 3).

86 *Sydsvenskan* (daily paper, article in June 12, 2011). <http://www.sydsvenskan.se/danmark/article263728/Sverige-forlorar-miljarder-pa-skatteavtal-med-Danmark.html> (Accessed June 12, 2011.)

87 For instance Denmark pays 8.3 percent calculated on the wage sum to Sweden as compensation for tax loss, while Sweden pays 21 percent. Further, there are different regulations depending on whether workers are employees in the private or in the public sector. *Ibid.*

88 See Inspektionen för Arbetslöshetsförsäkringen (IAF), *Report 2008:8. Gränsarbetare i Norden En redovisning och analys av hur tillämpningen av regelverket för arbetslöshetsförsäkringen fungerar avseende personer som är bosatta i Sverige och arbetar i ett annat nordiskt land*, Stockholm 2008. Accessible at <http://www.iaf.se/Tillsyn-Uppfoljning/Arkiv-for-granskningsresultat/Granskningsresultat-2008/Gransarbetare-i-Norden/> (Accessed in 2011-06-11.)

89 Inspektionen för Arbetslöshetsförsäkringen (IAF), *Rapport 2008:8. Gränsarbetare i Norden.*

90 Government's proposition 2008/09:200 Socialförsäkringsbalk.

91 Lag (2008:307) om kommunalt vårdnadsbidrag. Government's proposition 2007/08:91 Vårdnadsbidrag – familjepolitisk reform. See also Socialdepartementet (the Ministry of health and social affairs).

The local governmental child-care allowance should be embraced both by Regulation 1612/68 and 1408/71.⁹² In principle this means that the allowance should be co-ordinated with the corresponding benefits in other Member States.⁹³

The allowances should be introduced on the local level by municipalities, and the Swedish Social insurance office and the Swedish Association of Local Authorities and Regions (SKL), representing the local municipalities and county councils, have concluded an agreement on the matter, and further regulations concerning the coordination of the allowance with other family benefits have been developed.

2. SPORTSMEN/SPORTSWOMEN

The starting point in Swedish law is that professional athletes are considered either to be workers or self-employed persons, and that the same rules should apply to them as to other economically active persons. However, beside this the sporting associations on the national level apply their own rules and practices.

Rules on the composition of teams of professional players have been adopted by the sporting associations for basketball, ice-hockey, football and volleyball.⁹⁴ New amendments have been introduced in 2010 and 2011, but from the statutes it still in 2011 follows that there are no restrictions as regards the number of players from other Member States exist. Hence, an unlimited number of players from other Member States could be on the players list in teams playing on top-level. However, the number of players from third countries can be restricted.

A foreigner from any other country outside the EU should be treated as an EU-national, if he or she has been staying in Sweden for at least three years. Otherwise, regarding players from third countries, there should be not more than three players on the players list.

Especially concerning football, the regulations on certain matters taken by the Swedish Football Association have been in force since 2008.⁹⁵ Concerning international transfer of players there is a reference to the FIFA regulations meaning that the FIFA regulations on the matter should apply.

Regarding 'home ground players'. On a player list with 16 players in a team, at least 7 players should have been registered in a Swedish football club for at least three years, during

92 Government's proposition 2007/08:91 Vårdnadsbidrag – familjepolitisk reform, p. 51.

93 Concerning guidelines see the administrative circular issued in 2008 by the Swedish Association of Local Authorities and Regions: Sveriges Kommuner och Landsting, Cirkulärnummer 08:51 Kommunalt vårdnadsbidrag. EG-rättens betydelse för handläggning m.m. (2008-06-19).

94 See ch. 4 § 3 of the Swedish Basketball Associations' Competition statutes (draft in June 2011 to apply in 2011/2012; former ch. 3 § 4 applied in 2010/2011) http://iof1.idrottonline.se/ImageVaultFiles/id_45861/cf_74/110520_Utkast_Tävlingsbestämmelser_1112.PDF; ch. 4 § 3 of the Swedish Hockey Associations' Competition statutes http://www.google.se/url?sa=t&source=web&cd=4&ved=0CDMQFjAD&url=http%3A%2F%2Fwww.swehockey.se%2FImageVault%2FImages%2Fid_8584%2Fscope_0%2FImageVaultHandler.aspx&ei=5iH3TYLsJcui-gaFqZiSCw&usg=AFQjCNEILQDMSsZ4sYdofwfoQUDebAas3w; the Swedish Football Associations' Competition statutes 2011 http://svenskfotboll.se/ImageVault/Images/id_38710/ImageVaultHandler.aspx and Representation statutes 2011 http://svenskfotboll.se/ImageVault/Images/id_38711/ImageVaultHandler.aspx and § 140 of the Swedish Volleyball Associations' Competition statutes 2010-2011 <http://iof3.idrottonline.se/SvenskaVolleybollforbundet/ForeningForbundsinfo/Tavling/Volleyboll/> (All weblinks accessed 2011-06-14).

95 <http://www.svenskfotboll.se/files/%7B4CECF608-8F81-4A90-B0FD-9A56443C8254%7D.pdf>.

the period when the individual player was between the age of 15 and 21 years (the Football Association's statutes [from 2008] § 5).

According to representatives of the above mentioned sporting associations, a professional player, at the termination of the contract, is free to go to another club, even if no transfer fee is paid by the transferring club.⁹⁶ However, as regards young football players the Swedish Football Association has decided to observe UEFA's recommendations 'Investing in the Local Training of Players'. The aim of the UEFA recommendations is to secure the development and training of young players in football clubs 'in order to safeguard the future of our sport'.

Concerning reimbursement for the training and education of young players (between the age of 12 and 21 years), the Swedish Football Association's competition statutes regulate that when a young player signs a professional contract as a professional player, the new club should pay a fee in accordance with the statutes § 17.4. For instance if the player is 18 years old the fee is 50,000 SEK (around 4,300 Euros), and if the player is 21 years old the fee is 125,000 SEK (around 10,760 Euros) in the highest league in Sweden (Allsvenskan).

3. THE MARITIME SECTOR

In Sweden employment and working conditions are regulated in law and collective agreements. The general terms on working and employment conditions are regulated in collective agreements within the framework of law. Furthermore, regarding the maritime sector there are administrative regulations issued by the Swedish Maritime Administration (Sjöfartsverket). Beyond that, also EU Regulations and Swedish discrimination law should apply, the latter for instance regarding recruitment, employment and promotion.

The *pay and wage level* concerning seamen is regulated in collective agreements on the Swedish labour market.⁹⁷ There are no provisions in the collective agreements on the maritime sector meaning that nationals from other Member States should be treated in a way that would be contrary to EU law. Further, there are no differences made between EU-nationals and third-country nationals in the agreements.

A factor when setting individual wages is how many years a seaman has been working on vessels, and here the collective agreement makes no difference between Swedish vessels and vessels registered in other countries (Storsjöavtalet § 5 mom. 3). One factor for deciding certain criteria of relevance for the wage level is education, and regarding this the most im-

96 See also §§ 135 of the Swedish Volleyball Associations' Competition statutes, ch. 3 §§ 7 and 8 of the Swedish Basketball Associations' Competition statutes (not the draft), ch. 4 §§ 6 and 7 of the Swedish Hockey Associations' Competition.

97 The collective agreement *Storsjöavtalet* between SEKO (Facket för service och kommunikation) and SARF (Sjöfartens Arbetsgivareförbund) with general terms on wage and employment conditions for seamen 2011–2012, the collective agreement *Färjeavtalet* between SEKO (Facket för service och kommunikation) and SARF (Sjöfartens Arbetsgivareförbund) with terms on wage and employment conditions for seamen on *ferrys* 201–2012, and the collective agreement *Allmänna anställningsvillkor* 2011–2012 för personal i skärgårdstrafik between SEKO (Facket för service och kommunikation) and ALMEGA Tjänsteföretagen – Turism och sjöfart, with general terms on wage and employment conditions for seamen on boats in *archipelago traffic*. The Agreement on temporary employees (TAP), i.e. the General Agreement between SEA and SEKO for temporary employees on ships for which an agreement on application has been signed (this agreement is translated into English). These Collective agreements are available in Swedish at http://www.sjofolk.se/component/docman/cat_view/20-kollektivavtal.html?orderby=dmdate_published&asc_desc=DESC (accessed 2011-06-14).

portant collective agreement refers to Swedish upper secondary level of education for seamen (Storsjöavtalet § 5 mom. 3).⁹⁸

A crucial issue might be if the employer engages a contractor providing labour for work on a vessel. On this matter the collective agreement stipulates that the terms of the agreement between the employer and the contractor – regulating the contractor’s employees’ working conditions – should be founded on a collective agreement concluded between the Swedish trade union SEKO and the contractor (Storsjöavtalet § 21).⁹⁹ This would mean that the contractor’s employees should have the same working conditions and will enjoy equal treatment in these respects as ordinary employees that are members of the Swedish trade union are entitled to.

However, § 21 in the collective agreement could probably contravene foreign contractors to get a contract with a Swedish ship-owner, since the collective agreement in principle should be concluded between the SEKO and the contractor. Hence, this clause could possibly be questioned from EC law and the competition rules, and further the regulation could constitute a practical obstacle on the free movement of services. However, if the foreign contractor concludes a collective agreement with the Swedish trade union SEKO – in accordance with § 21 – the obstacle would disappear and at the same time the contractor’s employees would enjoy full equal treatment.

Concerning social security, in 2010 the Riksdag approved that seamen on vessels in Swedish sea should have the right to the same sickness benefits as other workers.¹⁰⁰ Seamen on vessels sailing in foreign seas should have the same benefits as long as they are staying on the vessel. The amendments were coming into force at January 1, 2011.

4. RESEARCHERS/ARTISTS

Researchers. In 2008 Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, was transmitted into Swedish law through the Act (2008:290) on the approval for research principals to receive guest researchers (Lag om godkännande för forskningshuvudmän att ta emot gästforskare).¹⁰¹

If a reception agreement has been concluded between the responsible authority (for instance a university) and a researcher, the researcher should be granted a residence permit, provided that the foreigner does not constitute a threat to public order, security or health.

Following an amendment of the Aliens Ordinance ch. 4 § 7a, the residence permit for research in accordance with the Act (2008:290) on the approval for research principals to receive guest researchers, should be granted to a guest researcher and his or her family members, for at least one year or shorter if the assignment is for a shorter period than one year (amendment of the Ordinance in 2008).

98 Storsjöavtalet § 5 mom. 3 means that time spent in the mentioned education should be equalised with working time when calculating years in the seaman profession.

99 Edström, Kollektivavtal, fri rörlighet och konkurrensrätt – exemplet storsjöavtalet och bemanningsanställda, in Kerstin Ahlberg (ed.), *Vänbok till Ronnie Eklund*, Iustus Förlag, Uppsala 2010, pp. 151–168.

100 Government’s proposition 2009/10:161 Ändrade regler om ersättning vid sjukdom och ökad flexibilitet för anställning av sjömän.

101 Government’s proposition 2007/08:74 Genomförande av EG-direktivet om ett särskilt förfarande för tredjelandsmedborgares inresa och vistelse i forskningssyfte. (See also Ordinance/ Förordning [2008:353] om godkännande för forskningshuvudmän att ta emot gästforskare.)

Artists. The starting point in Swedish law is that an artist, depending on the facts of the case, is considered as being either employed or self-employed, and that the same rules should apply as for Swedish artists.

Concerning taxes, for artists having their residence outside Sweden there is a certain Act (1991:591) on a special income tax for non-resident artists, athletes and others. The act embraces both nature and legal persons domiciled or resident outside Sweden (§ 3). The taxable income includes cash payments or other remuneration for artistic or sporting activities, performed in Sweden (or on board a Swedish vessel) (§§ 7 and 8).

On April 16, 2009, a Government proposition concerning taxes to be imposed on artists and athletes/sportsmen was taken by the Riksdag.¹⁰² A foreign athlete/sportsman could make a request for paying taxes in accordance with the Act (1999:1229) on income tax in Sweden. On the other hand he or she will have the right to tax reductions for expenses related to the activity.

The amendment means an adaptation to EC law and the practice developed by the ECJ referred to (for instance case C-527/06 *Renneberg* and more). The amendment has been in force since January 1, 2010.

5. ACCESS TO STUDY GRANTS

Nationals from other Member States with the status of Community workers or self-employees and members of their families should enjoy equal treatment as regards student grants and study loans in accordance with the Study loan Act (1999:1395) ch. 1 § 4.¹⁰³ Foreigners having a permanent residence right and are entitled to social rights referring to EU law should also be treated the same as Swedish nationals (ch. 1 § 5). The same should apply to persons having a permanent right of residence in Sweden or if they have a permanent right of residence in another Member State and a residence permit in Sweden (ch. 1 § 6).

Further, *guest researchers* and their family members have the right to certain benefits in connection with studies (ch. 1 § 7).¹⁰⁴ (Concerning study grants, see also Chapter VI, section 5.)

Certain grants for students at the age of at least 16 years are embraced. Hence, also study grants (studiebidrag), grants for board and lodging (inackorderingstillägg) and extra grants (extra tillägg), should be granted to studying family members of EU citizens.

The educational institution for the studies must be recognised by the Swedish Government in order to entitle the student to the benefits. In an attachment to the Study grant Ordinance (2000:655) there are further regulations on the matter.

102 Government's proposition 2008/09:182 Beskattning av utomlands bosatta artister, m.fl. See also Lagrådsremiss 26 mars 2009 Beskattning av utomlands bosatta artister m.fl.; concerning the practice from the ECJ (see the referral, pp. 31–37) and Finansdepartementet (The Ministry of Finance), Beskattning av utomlands anställda artister, m.fl. (Memorandum December 11, 2008.)

103 Ingmanson, S., Migrerande studenter: välfärdsturister eller framtidsbyggare? *Europarättslig Tidskrift* (2007), pp. 241–274.

104 Concerning these matters, see also information provided by the State authority in charge: CSN (Centrala studiestödsnämnden), see *CSN Fact sheet: Swedish student aid for non-Swedish nationals for studies abroad*, available at <http://service.csn.se/CSNOrder/GemensammaFiler/Blanketter/4201B.pdf> (Accessed 2011-06-15.)

In 2010 there has been a sharpening up regarding the requirements for study grants and the measures have a general application to students independent of nationality.

Hence, from July 1, 2010, the CSN (the Central study benefit commission [not officially translated]) can request an immediate repay of study grants, independent of in which country the studies are or have been carried out, if the borrower neglects to fulfil the regular repayments. Further, the CSN can hold back payments if there is reason to believe that the student, for instance, has ceased to study. These amendments came into force on July 1, 2010.¹⁰⁵

Concerning Swedish students and students from other Member States, there are no changes from the current state of affairs, i.e. that there are no fees for the admission to higher education in Sweden.

Further, concerning higher education fees for the admission to university education will be introduced for students that are third-country nationals. These amendments came into force on July 1, 2011.¹⁰⁶

6. YOUNG WORKERS

Youth unemployment is high on the Swedish political agenda. While the unemployment rate in Sweden as a whole is below the EU27 average,¹⁰⁷ Sweden's youth unemployment rate is the fifth highest.¹⁰⁸ In the first quarter of 2011 kvartalet 2011, 25.3 percent of young people between 15–24 years were unemployed.¹⁰⁹

The Government has taken a number of different measures for the purpose of reducing youth unemployment. However, it appears that the Government has been careful to design these measures in such a way that they are equally accessible to individuals from other Member States. For example, lowering the taxes employers pay for employees under the age of 26 stimulates the labor market for all youth irrespective of origin.

With regard to several measures eligibility is however based on the individual having been registered as a jobseeker with the employment office.

The measures that could operate as obstacles to free movement rights are

- the *Jobbgaranti* (assistance in finding employment where a young worker under 25 has been actively searching work during a period exceeding three months),
- *Nystartjobb* (tax relief for employers employing somebody who has been looking for work for a longer period), and
- *Arbetsmarknadsutbildning* (education for unemployed to enhance their chances of obtaining a position on the labour market).¹¹⁰

Though there are no restrictions on the right to register as a jobseeker, it does require a commitment to move to Sweden for a longer period of time. Under such measures, it is pos-

105 Government's proposition 2010/11:113 Ökad flexibilitet och förbättrad återbetalning inom Studiestöds-systemet.

106 Utbildningsutskottet 2009/10:15.

107 Eurostat, *Euro area unemployment rate stable at 10.0%* (2010-07-30.)

108 Eurostat, *Five million young people unemployed in the EU27 in the first quarter 2009* (2009-07-23).

109 Näringslivets Ekonomifakta. Available at <http://www.ekonomifakta.se/sv/Fakta/Arbetsmarknad/Arbetsloshet/Ungdomsarbetsloshet-per-manad/?awc=> (Accessed 2011-06-27).

110 Förordning (2007:813) om jobbgaranti för ungdomar § 3, Förordning (2006:1481) om stöd för nystartjobb § 3 och Förordning (2000:634) om arbetsmarknadspolitiska program § 8.

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sible that foreign young workers who are not registered as active jobseekers might be placed at a comparative disadvantage.

Thus, while these measures intend to make it easier for young people who are in Sweden to find jobs, they make it more difficult for young jobseekers from other Member States to find jobs in Sweden.

Chapter VII: Application of transitional measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

In 2003 the Swedish Riksdag approved the Government proposition to ratify the Treaty on the enlargement of the EU.¹¹¹ In 2004 the Swedish Riksdag did not approve the former Government's suggestion to introduce – for the first two years after the affiliation of the new Member States – certain transition rules for citizens from these States (except for Malta and Cyprus).¹¹²

Concerning the free movement of workers the priority in the Swedish debate has been on the free movement of services derived from the TFEU, Article 56 (former Article 49 of the EC Treaty). The very extensive debate in Sweden in 2005–2008 and to some extent still in 2010 and 2011 has focused on the free movement of services and the posted workers' wages.¹¹³

A starting point for the debate was a case before the Labour Court in 2004 (Labour Court Cases AD 2004 no. 111 and 2005 no. 49), which ended up before the ECJ in Case 341/05 *Laval*.¹¹⁴

In 2010 the Government presented a proposition that was approved by the Riksdag on March 24, 2010.¹¹⁵ The meaning was that Swedish law on the right to take action against foreign employers posting workers to Sweden was adapted to EU law and the amendments came into force on April 15, 2010.

However, critics claim that – in particular considering the Lisbon Treaty – the imposed restrictions on the right to take industrial action still show some shortcomings regarding EU law and, further, that the amendments even could be contrary to the judicial practice from the European Court.¹¹⁶

Other critics claimed that the Riksdag was going beyond what was necessary for making Swedish law compatible with EU law, and on June 1, 2011, the Riksdag's majority approved a proposal meaning that foreign undertakings posting workers to Sweden should have a representative stationed in Sweden.¹¹⁷

111 Government's proposition 2003/04:25 om Europeiska unionens utvidgning 2004.

112 Government's communication Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget.

113 For an analysis of the debate, see Edström, The free movement of services in conflict with Swedish industrial relations model – or was it the other way around?, in Nils Wahl & Per Cramér, *Swedish Studies in European Law, Volume 1, 2006*, Oxford: Hart Publishing 2006, p. 129–156.

114 Case C-341/05 *Laval un Partneri* [2007] p. I-11767.

115 Government's proposition 2009/10:48 Åtgärder med anledning av Lavaldomen.

116 See for instance Lag & avtal, March 30, 2010.

117 Näringsutskottet 2010/11:19.

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

The position taken by the Riksdag in 2004 not to introduce certain transitional rules for citizens from the new Member States was maintained in 2006 before the affiliation of Rumania and Bulgaria to the EU on January 1, 2007.¹¹⁸ Hence, no transitional restrictions on the free movement of workers have been made in Sweden concerning Bulgaria and Romania.

¹¹⁸ See Government's proposition 2005/06:106 Bulgariens och Rumäniens anslutning till Europeiska unionen.

Chapter VIII: Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION 1408/71-883/04 AND ART 45 TFUE AND REGULATION 1612/68

Basically the Regulation 1612/68 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to 1612/68, implies that the worker also is residing in Sweden; an example is the right to housing allowance.

From January 1, 2011, a new *Social Security Code*, with in principle a corresponding division, came into force, replacing around thirty former acts on different social benefits.¹¹⁹ Concerning different benefits there are transitional regulations depending on when a person has been qualified for a benefit etc. Hence, the crucial issue from a free movement of workers perspective is if social benefits should be granted to a person based on residence and work respectively (see the list in the former Social Security Act ch. 3).¹²⁰

The new Social Security Code will in principle lead to the same conclusions, and in the Government's proposition there are corresponding lists.¹²¹ Hence, in accordance with the Government's proposition, a list comprising social benefits based on *residence* is presented in ch. 5 § 9 of the new Code, and a list comprising social benefits based on *work* is presented in ch. 6 § 6.¹²²

In principle, a social benefit that is not covered by Regulations 1408/71 - 883/04 and residence should be granted to a worker etc. referring to Regulation 1612/68, Article 7.2, and the principle of equal treatment, even if the worker is not settled in Sweden (for instance if he or she is a cross-border commuter working in Sweden but living in another Member State).¹²³

The State authority in charge of the application of Regulations 1408/71 - 883/04 is the Swedish Social Insurance Agency (Försäkringskassan). Comments on the application of regulations concerning benefits based on work or residence have been published in instructions issued by the former Swedish National Insurance Board (Riksförsäkringsverket), and there are short comments on the classification on social benefits in relationship to Regulation 1408/71 and Regulation 1612/68.¹²⁴

Further, *unemployment benefit* is an important part of the social security system. Basically the Swedish unemployment insurance consists of a basic insurance and income loss insurance. In order to receive money both from the basic insurance and the income loss insurance, a person has to fulfil the work condition.

119 See Government's proposition 2008/09:200 Socialförsäkringsbalk, and Government's proposition 2009/10:69 Socialförsäkringsbalk. Kompletteringar av socialförsäkringsbalken. (The new legislation was introduced through SFS 2010:111.)

120 In an instruction issued by the former Swedish National Insurance Board in 2004 – to be applied by the Social Insurance Agency – there was a general and very short comment on the classification on social benefits in relationship to Regulation 1408/71 - 883/04 and Regulation 1612/68. Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004.

121 Government's proposition 2008/09:200 Socialförsäkringsbalk (chapter 3).

122 Government's proposition 2008/09:200 Socialförsäkringsbalk.

123 Official report SOU 2005:34 Socialtjänsten och den fria rörligheten, p. 57.

124 Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m.* Vägledning 2004:11, Stockholm 2004, pp. 35 f. (In the instruction there is an explicit reference to the Regulation 1612/68, article 7.)

Concerning *social assistance*, in 2008 the National Board of Health and Welfare, presented a report and guidelines for local authorities providing public social assistance based on the Social Services Act (2001:453; Socialtjänstlagen). In accordance with the report, a worker that is an EU citizen should have fully right to equal treatment as Swedish citizens regarding social assistance.¹²⁵

On the local level, if a person does not have his or her residence in a municipality, the person only has the right to basic assistance in acute situations, for instance this could mean assistance for travelling to the municipality where the person has his or her residence.¹²⁶

2. RELATIONSHIP BETWEEN THE RULES OF DIRECTIVE 2004/38 AND REGULATION 1612/68 FOR FRONTIER WORKERS

No problems reported, at least so far, concerning Sweden.

3. EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS

3.1 Integration measures

There are no integration measures in particular for EU nationals beyond the basic courses in Swedish etc. that also are offered to foreigners in general. Otherwise in 2009 the Government presented a proposition in order to facilitate the integration of recently arrived foreigners to Sweden.¹²⁷ However, the categories in focus for these measures were people who had been granted residence permit referring to for instance a need of protection, temporary protection etc.

Concerning new measures taken in 2010, see above Chapter V.)

3.2 Immigration policies for third-country nationals and the Union preference principle

In order to facilitate labour immigration from third countries the Aliens Act, ch. 6 § 2 was amended in 2008. The meaning was that a work permit should be granted a third-country national that has been offered an employment by an employer.¹²⁸ A requirement is that the employment should make it possible for the foreigner to provide for him- or herself. The employment conditions regarding wage, insurance coverage and other terms of employment should not be worse than those who follow from collective agreements or otherwise what

125 Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 32.

126 Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 26. See also the Supreme Administrative Court Case RÅ 1995 ref. 70, which also prescribes the same practice for individuals living in other countries.

127 Government's proposition 2009/10:60 Nyanlända invandrades arbetsmarknadsetablering – egenansvar med professionellt stöd.

128 Government's proposition 2007/08:147 Nya regler för arbetskraftsinvandring.

follows from the practice in the business. Further, the labour market examination previously made by the employment agency is abolished.

Regarding the Union preference principle, a work permit should be granted only if the decision is consistent with Sweden's commitments to EU (the Aliens Act ch. 6 § 2). Further, the Migration Board should examine if the employer's recruitment is in conformity with the principle. By example, the notice on employment made by the employment office will also be accessible at the Eures' internet portal.¹²⁹ Hence, in principle the employment offer will be presented for all jobseekers in the EU.

Further, a permanent residence permit may be granted to a foreigner that, during the last five years, have had a residence permit for work for at least four years (amendment of the Aliens Act, ch. 5 § 5).

3.3 Return of nationals to new EU Member States

There is no policy, measures taken etc. to report on regarding the return of nationals to the new Member States in particular. Nothing to report on this matter.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The NGO's active on immigration issues are almost exclusively working with asylum seekers, refugees etc. and they are not involved in matters concerning the free movement of workers.

(Otherwise, concerning procedural matters it is the Migration Board that deals with applications for right of residence etc. Appeals against decisions taken by the Migration Board should in the first phase be dealt with in any of the three Migration Courts, and the Migration Court of Appeal is the final legal instance for appeal.)

5. SEMINARS, REPORTS AND ARTICLES¹³⁰

Official investigations and other relevant public literature are not listed here, but are referred to above in the report.

129 Wikrén G. & Sandesjö H., *Utlänningslagen med kommentarer*, 9th edition, Norstedts, Stockholm 2010.

130 The following Swedish juridical periodicals have been examined systematically: Svensk Juristtidning (SvJT), Juridisk Tidskrift (JT), Svensk skattetidning, Skattenytt, Europarättslig Tidskrift (ERT), Riksdag och departement, Lag & avtal, Arbetsmarknad och arbetsliv and Förvaltningsrättslig tidskrift. In the periodicals listed recent case law from the European Court of Justice is regularly presented.

Seminars

Each year the *Institute for Social Private Law* at Stockholm University arranges *seminars* on EU law, and the seminars often deals with EU and the labour market.¹³¹ For instance, in March, 2011, there was a seminar concerning EU law and workers from third-countries. In October, 2011, there will be a seminar ‘Latest news from Brussels – what’s on the Commission’s labour law agenda?’

EU & arbetsrätt is a well informed newsletter issued 4 times per year.¹³² The letter deals with EU labour law and also pays attention to regulations etc. concerning the free movement of workers.

Fransson, S. & Stüber, E., *Diskrimineringslagen. En kommentar*, Norstedts, Stockholm 2010. The book is a comprehensible account for discrimination law in Sweden with reference to EU law.

Government’s Communication 2010/11:105 Berättelse om verksamheten i Europeiska unionen under 2010. The communication is a general annual account for Sweden and in particular the positions taken by the Government in EU on different matters. However, concerning the free movement of workers, the communication is rather short regarding the year 2010.

Holm, E., *Fri rörlighet för familjer. En normativ analys av föräldrapenningen och EU-rätten*, Juristförlaget, Lund 2010. The author analyses the allowance as a benefit for the mother/father or as a family benefit (compare for instance case C-275/96 *Kuusijärvi*). Since social security primary is a national commitment, particular problems arise when people are moving between Member States, and the impact from EU law and the consequences of the dislocation for the free movement of families is analyzed.

Ingmanson, S., *Förbudet mot åldersdiskriminering i EU-domstolens praxis, Europarättslig Tidskrift* (2011), pp. 229–246. The article presents an account for the case law from the ECJ concerning age discrimination.

Kruse, A., *Arbetsdomstolens dom i Laval – Lojal tillämpning av EG-rätten eller vågåd egen tillverkning? Europarättslig Tidskrift* (2010), pp. 381–388. The author analyzes the Swedish Labour Court’s final judgment regarding the Laval case.

Lag & avtal is a periodical specialised in labour law and presents articles and comments also in EU law and the impact on Swedish labour law.

Ministry of Employment, *Pocket facts 2010. Statistics on integration*. Stockholm 2011.¹³³ This statistical fact book issued by the Ministry of Employment provides statistical facts on integration of foreigners in Sweden. In the main the figures illustrate integration of third-country nationals, even if there also are figures concerning EU nationals. (See also Chapter III, section 3.1.)

Riksdag och departement is a weekly periodical that continuously reports on decision taken by the Riksdag, public reports and investigations etc.

Svensk Juristtidning (SvJT), no. 4/2011. A thematic issue from the periodical concerning EU law and the impact on Sweden. Many different aspects are illuminated. One of the contributions is regarding labour law and touches upon the posting of workers.¹³⁴

131 Current seminars are announced at http://www.juridicum.su.se/social_civilratt/current_seminars.htm

132 <http://arbetsratt.juridicum.su.se/euarb/11-1/> (The newsletter is available free on internet.)

133 Available at <http://regeringen.se/sb/d/14316/a/170793>

134 Malmberg, J., *Arbetsrätten efter EU-inträdet, Svensk Juristtidning*, no. 4/2011, pp.430–439.

Lagerqvist Veloz Roca, A., Uppehållstillstånd, styrkt identitet och passkrav för inresa och vistelse i riket, *Förvaltningsrättslig Tidskrift*, 2010, pp. 383–410. The periodical is focusing on administrative law and the article presents an overview and account for the Swedish regulations on regulations concerning requirements for obtaining residence permit etc. in Sweden.

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The official Swedish website to different Acts, Government's propositions, the State authorities' statute books, judicial practice and more (in Swedish although some information is translated into English):

http://62.95.69.15/sfs/sfst_form2.html (search form in Swedish)

Government Offices of Sweden, official Swedish website to the Government including search form for public investigations, press releases and more (in English):

<http://www.sweden.gov.se/sb/d/573>

The Swedish Migration Board, official website with information, statistics on migration and more:

http://www.migrationsverket.se/info/start_en.html (in English)

<http://www.migrationsverket.se/> (in Swedish)

The National Courts Administration, official website link to guiding judicial decisions in Swedish courts:

<http://www.rattsinfosok.dom.se/lagrummet/index.jsp> (in Swedish)

The Swedish Migration Board, Statistical figures:

<http://www.migrationsverket.se/info/790.html>

Acts and more links concerning migration (the NGO Immigrant Institutet):

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