

**REPORT**  
**on the Free Movement of Workers**  
**in Sweden in 2006**

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**CONTENTS**

Chapter I.	Entry, residence and departure
Chapter II.	Access to employment
Chapter III.	Equality of treatment on the basis of nationality
Chapter IV.	Employment in the public sector
Chapter V.	Members of the family
Chapter VI.	Relevance/Influence/Follow-up of recent Court of Justice Judgements
Chapter VII.	Policies, texts and/or practices of a general nature with repercussions on the free movement of workers
Chapter VIII.	EU enlargement
Chapter IX.	Statistics
Chapter X.	Social security
Chapter XI.	Establishment, provision of services, students
Chapter XII.	Miscellaneous



## INTRODUCTION

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2006. The report focuses on the application of Council Regulation 1612/68 and issues related to Council Directive 68/360 within the framework of the EC Treaty, Article 39.<sup>1</sup> However, the Directive 68/360 is among the regulations that have been replaced by Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU.<sup>2</sup>

In accordance with the Directive 2004/38, article 40, Member States should bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2006. The Directive was transposed into Swedish law by that date and the Aliens Act (2005:716) was for example amended by introducing a new chapter 3a on the right of residence (uppehållsrätt) as well as a chapter 3a in the new Aliens Ordinance (2006:97). Concerning entry, residence and departure the report focuses on these amendments following from the Directive, and the reporter's account for the laws in force involves these amendments.<sup>3</sup>

Further, there are comments concerning the right to free movement of services, the right to establishment, discrimination, equal treatment etc. and some aspects of the application of Council Regulation 1408/71 on social security and more.<sup>4</sup> There are also comments on the Collins case and more cases from the European Court of Justice.

Amendments in Swedish national legislation and judicial practice are dealt with as well as draft legislation and judicial practice. Further, I will particularly comment on the access to employment in the public sector. Published literature in 2006, articles in periodicals etc. on the matters dealt with are listed.<sup>5</sup>

Special attention will also be paid to the enlargement issue even though the Swedish Riksdag did not approve any certain regulations putting restrictions on the right to free movement for citizens from the new Member States in 2004, and the same position has been taken by Sweden regarding Rumania and Bulgaria.

Concerning procedural matters it is the Migration Board that is dealing with residence permits etc. Until March 2006 an appeal against the decision taken by the Migration Board should be handed in to the Aliens Board (Utlänningsnämnden, UN).<sup>6</sup> However, on March 31, 2006, a new Aliens Act was in force and an amended legal procedure was introduced.<sup>7</sup>

The new legal procedure means that appeals against decisions taken by the Migration Board should be dealt with in three Immigration Courts. The Aliens Board ceased to exist and the new established Supreme Immigration Court should take the final decisions on appeals.

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1 Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community. 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.

2 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.

3 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och varaktigt bosatta tredjelandsmedborgares ställning.

4 Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.

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

6 Concerning judicial practice in 2005, only two cases referring to the EEA Agreement have been decided by the Aliens Board.

7 Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden.

## SWEDEN

(Concerning the term EU/EEA citizens used in the report; referring to the agreement between the EU and Switzerland this term in general also should embrace Swiss citizens.)

**CHAPTER I: ENTRY, RESIDENCE, DEPARTURE***Texts in force*

- Utlänningslagen (2005:716), the Aliens Act.<sup>8</sup>
- Utlänningsförordningen (2006:97), the Aliens Ordinance.<sup>9</sup>
- Passlagen (1978:302), the Passport Act.
- Lagen om särskild utlänningskontroll (1991:572), the Act on special control of foreigners.

**1. Entry**

The main rule in the Aliens Act is that foreigners should show a passport before entering Swedish territory (ch. 2 § 1). However, there can be exceptions to that rule, and the Government could take decisions that other rules should apply. Concerning EEA citizens (and Swiss citizens) and their family members, an identity card should be accepted for entry and stay in Sweden (the Aliens Ordinance § 17; compare the Directive article 5.1).

Restrictions on the right to enter Sweden could be imposed referring to public order or security. Concerning refused entry referring to health there are no such regulations in Swedish law, even if there is a regulation in the Aliens Ordinance that makes it possible to refuse entry for a third country national that is living in another Member State and applies for resident permit in order to work in Sweden.

A sending away decision should not be taken because the EU citizen or his or her family members cannot show a passport or identity card, if the identity could be confirmed in any other way (compare the Directive article 5.4). Explicitly referring to Case C-459/99 *Mrax* a person who is a family member should have a possibility to show his or her identity in another way, and further, the family member could not be refused entry if the EU citizen can prove his or her identity and the relationship and if the person concerned is not a threat to public order, security or health.<sup>10</sup>

The possibility to *expel* a person that does not correspond to the requirement to have sufficient means for staying in Sweden should not apply to EEA citizens (compare the Directive article 6.1). Further, either a family member that is not a EU citizen him- or herself should be turned away referring to insufficient means.<sup>11</sup>

There is no requirement for *visa* for EU citizens having a residence card (uppehållskort). (See the Aliens Ordinance ch. 3 §1.15.) (Further, concerning family members that are not EU citizens, see Chapter V.)

Concerning visas, the Schengen Agreement's visa rules apply in Sweden. If a visa is obtained in another EU/EEA country it should be valid also in Sweden. However, in exceptional cases there are restrictions concerning this. From many countries there are no requirements for visa and, hence, citizens from these states can enter/stay in Sweden for three months without a visa.<sup>12</sup> The calculation of the three months period is in accordance with the Schengen Convention.

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8 The new Aliens Act came into force on March 31, 2006, replacing the former Aliens Act 1989:529. Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden.

9 The new Aliens Ordinance came into force on April 30, 2006, replacing the former Aliens Ordinance 1989:547.

10 Government's proposition 2005/06:77, p. 66.

11 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och varaktigt bosatta tredjelandsmedborgares ställning, pp. 61 and 64.

12 A full list of countries where there are no visa requirements can be found in the Aliens Ordinance ch. 3 § 1 (amendment in 2006). See also SOU 2005:49 Unionsmedborgares rörlighet inom EU, p. 89.

## 2. Residence

The right of residence in accordance with Directive 2004/38 was transposed into Swedish law in 2005. The national regulations can be found in the Aliens Act ch. 3a which was introduced explicitly referring to the Directive.<sup>13</sup>

The term right of residence was introduced in the Aliens Act ch. 3a § 1 in 2006. The term means a right for EU citizens and their family members to stay in Sweden for more than three months without a residence permit.<sup>14</sup> The right of residence should be granted immediately if the requirements are fulfilled and should remain as long as the requirements are fulfilled.

In the Aliens Act ch. 3a §§ 3 and 4 there are further specifications of the categories embraced by the right of residence.<sup>15</sup> They are workers, self-employees, job seekers having a real chance to get a job, students or other persons having sufficient means for maintenance for themselves and family members, and, further, a health insurance also covering accompanying family members.

An EU citizen with a right of residence should register at the Migration Board if he or she has the intention to stay in Sweden for more than three months (the Aliens Act ch. 3a § 10).

As stated above the possibility to expel a person that does not correspond to the requirement to have sufficient means for staying in Sweden should not apply to EEA citizens (the Aliens Act ch. 8 § 2; compare the Directive article 6.1). However, in accordance with the Directive a Member State might expel a person as long as he or she does “not become an unreasonable burden on the social assistance system” (article 14.1).

The matter was also discussed by the Riksdag concerning the right for citizens from other Member States to search for employment in Sweden and to be entitled to social assistance. A starting point was a public investigation that was presented in 2005 referring to, among others, the *Collins* case C-138/02.<sup>16</sup> The outcome was a passage in the Aliens Act ch. 8 § 2 saying that 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.<sup>17</sup> (Concerning job seekers and social benefits – see also Chapter III and section concerning “social benefits”.)

However, there is an exception for workers, self-employees, those in search of work as well as family members of those categories. In the coming practice regarding job seekers a key issue is the criteria for being a job seeker 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).

A foreigner with a right of residence should keep that right as long as the preconditions are fulfilled. If this is the situation and if the foreigner will not be granted a residence permit, the foreigner could be expelled referring to the Aliens Act ch. 8 § 7.<sup>18</sup>

An EU citizen and his or her family members (if they are third country nationals; see also Chapter V) should be granted a *permanent right of residence* after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7). However, 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, temporary stay abroad up to twelve months for studies or vocational training, maternity and childbirth, serious illness, for posting of worker or any other particular reason, should not be considered as a break of the five year period.<sup>19</sup>

13 Government's proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och varaktigt bosatta tredjelandsmedborgares ställning.

14 Introduced through Act 2006:219. Government's proposition 2005/06:77, p. 70 ff.

15 Government's proposition 2005/06:77, p. 70 ff.

16 SOU 2005:34 Socialtjänsten och den fria rörligheten.

17 Government's proposition 2005/06:77, s. 72 f.; compare pp. 193 ff.

18 Concerning the use of the terms expulsion and turning away (or rejection or turn back), see Government's proposition 2005/06:77, p. 74 ff.

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



## SWEDEN

The Migration Board is in charge of issuing the documents giving proof of the right of residence (the Aliens Ordinance ch. 3a §§ 7–10). When the foreigner applies for a right of residence he or she should show a passport or identity card and documents showing his status as a worker etc., and that he or she has sufficient means and a health insurance. Concerning family members they must show proof of the relationship. If the application is for a permanent right of residence the applicant must show proof of the length of the stay and – if that is relevant – proof of the relationship. Further, concerning family members, see Chapter V.

### **3. Departure**

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).<sup>20</sup> If the foreigner has a permanent right of residence there must be particular reasons for such a decision, and 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 for public security. (EU citizens cannot be expelled referring to the health criteria.)<sup>21</sup>

#### *Judicial practice*

Concerning entry, residence and departure there is no judicial practice in 2006 to report on the free movement of workers or other persons.<sup>22</sup>

#### *Recent legal literature*

Lokrantz Bernitz, H., *Unionsmedborgarskapet och dess inverkan på den fria rörligheten för personer*, Sieps rapport 2006:7, Stockholm.

Wikrén, G. & Sandesjö, H., *Utlänningslagen med kommentarer*, eight edition, Stockholm 2006.

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<sup>20</sup> Government's proposition 2005/06:77, p. 76.

<sup>21</sup> Government's proposition 2005/06:77, p. 78.

<sup>22</sup> The judicial practice concerning these matters in the year 2006 has solely dealt with third country nationals and applications for residence permit referring to asylum or family connection to refugees. See <http://www.rattsinfosok.dom.se/lagrummet/index.jsp>

## CHAPTER II. ACCESS TO EMPLOYMENT

### *Text(s) in force*

- Regeringsformen (1974:152), the Instrument of Government.
- Lag (1994:260) om offentlig anställning, the Act on public employment.
- Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område, the Act on professional activity in health and public medical service.
- Högskolelagen (1992:1434), the University Act.
- Further – see footnotes!

### **1. Equal treatment in access to employment**

If a union citizen is a job-seeker, he or she should not be entitled to social assistance during the period he or she is looking for a job (compare Directive 2004/38, Article 24.2).<sup>23</sup> However, referring to the Collins case, in situations when a job seeker has a “sufficient connection” to the Swedish labour market, an official investigation has stated that the job seeker very probably could have a right to equal treatment regarding social benefits.<sup>24</sup> Exceptions of the rule should also be made in case of emergency.<sup>25</sup>

A crucial question concerning job seekers is for how long a person could have a right to stay in Sweden searching for job. Regarding this the committee – referring to the Antonissen case in 1991 – advocated a sixth months rule (“or longer”) as a “rule of thumb” for a right to stay in Sweden searching for a job, even though exceptions could be made in line with the statements from the ECJ.<sup>26</sup>

In 2006 the Government presented a proposition regarding the transposition of Directive 2004/38/EC.<sup>27</sup> Regarding the right to social assistance the Government referred to the Official report discussed above (SOU 2005:34), but concerning equal treatment it was only stated that the Government’s Office was “dealing with the matter”.<sup>28</sup>

However, disregarding that statement an amendment on the matter was made in connection with the transposition of Directive 2004/38/EC.<sup>29</sup> Hence, a new regulation was introduced in the Aliens Act ch. 8 § 2 stipulating that an EU citizen, who is not qualified for a right of residence (uppehållsrätt) could be expelled if the person constitutes an unreasonable burden to the social benefit system.<sup>30</sup>

23 Official report SOU 2005:34, p. 162. An amendment is suggested as a new regulation 4 ch. 1 §a in the Social services Act (ibid. p. 163).

24 Official report SOU 2005:34, p. 162.

25 Nordic citizens are not suggested to be embraced by the regulation (referring to Directive 2004/38, Article 24.2).

26 Case C-292/89 *The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* ECR 1991 I-745. Further, regarding the “sixth months rule” suggested by the committee it coincides with the Migration Board’s practice concerning the period a job seeker can stay in Sweden without having a residence permit. See Government’s proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning, p. 44 ff. See also Official report SOU 2005:34, p. 162.

27 Government’s proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning.

28 Government’s proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning, p. 126 ff.

29 Government’s proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning, p. 126 ff.

30 Compare Government’s proposition 2005/06:77 Genomförande av EG-direktiven om unionsmedborgares rörlighet inom EU och om varaktigt bosatta tredjelandsmedborgares ställning, p. 193 ff. See also Edström, *Svensk arbetsrätt i EU – mellan lag och kollektivavtal*, i Edström (editor), *Svensk rätt i EU*, Uppsala 2007, p. 81–98.

A “job seeker” is however exempted from the risk for being expelled and a key issue for the regulation to apply is – referring to the Directive – if the job seeker has a real chance to find a job in Sweden.

In a free movement perspective equal treatment in access to employment is important and the basic regulations for equal treatment and access to public services such as employment agencies are commented on in Chapter III and IV (especially section 2. Equality of treatment).

## **2. Language requirement**

Basically, the request for language skills should be based on the qualifications necessary for the employment position. Hence, language requirements in the private sector are not formally regulated if the private activity is not regulated by public law. An example of this is that a private school offering education on the comprehensive school level and financially founded by the State, has to fulfil certain requirements in order to be recognised by the State authority. Such requirements can include demands for certain language skills.

Beyond that the employers in the private sector are free to set up language requirements if necessary and as long as these requirements do not interfere with discrimination law. The starting point for judging the legitimacy of language requirements is what qualifications are needed for the performance of the work concerned.

## **3. Recognition of diplomas**

In order to facilitate the mutual recognition of higher education diplomas between Member States and especially to make Swedish higher education more attractive to foreign students, the Government in 2005 presented a proposition with suggestions in line with the Bologna process that was introduced in 1988.<sup>31</sup>

The higher education structure and the diplomas from higher education should be amended into a three step model with a basic level (a bachelor degree; in practice around the first three years in an educational programme), an advanced level (leading to a master exam) and a doctoral level. Basically, these matters are regulated in the University Act (1992:1434).

The Swedish universities work to make higher education adapted to the Bologna process has been very extensive in 2006. An explicit strive is to increase the exchangeability of the higher education within the EU.

Concerning the transposition of Directive 2005/36/EC the Swedish State authorities in charge have been given the task to evaluate and to recognise qualifications achieved in another Member State.<sup>32</sup> However, a standpoint presented by experts is that there is no indication that foreigners showing a diploma or certificates on qualifications from another Member State have problems on the Swedish labour market.<sup>33</sup>

When it comes to professions regulated in the meaning of article 3.1 (a) in Directive 2005/36/EC, the basic professional qualifications are often defined in acts adopted by the Riksdag or in governmental ordenances. However, concerning education and training in some cases, the more detailed requirements have been left to authorities under the Government to decide or, which is the case concerning lawyers, to the Swedish Bar Association. In deciding which educational and training standards that should be required, the competent authorities enjoy a high degree of independence.

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<sup>31</sup> Government proposition 2004/05:162 Ny värld – ny högskola.

<sup>32</sup> Ingmanon, Staffan, Erkännande av yrkeskvalifikationer inom EU – det svenska perspektivet, in Edström (editor), *Svensk rätt i EU – en antologi*, Iustus, Uppsala 2007.

<sup>33</sup> Ingmanon, Staffan, Erkännande av yrkeskvalifikationer inom EU – det svenska perspektivet, in Edström (editor), *Svensk rätt i EU – en antologi*, Iustus, Uppsala 2007.

In Sweden most regulated professions are found in the health care sector. In the main, health care is organised in the public sector, but there are also many private enterprises practising health care. (The requirements dealt with also embrace public employment; hence, these matters are also analysed in Chapter IV Employment in the public sector.)

In 2005 there were 17 professions in Swedish health care which have been regulated since 1998.<sup>34</sup> Hence, for the following occupational groups there are, according to Act (1998:531) ch. 3 § 2, demands for authorization, which, *inter alia*, means that a specified education is required: pharmacist (apotekare), occupational therapist (arbetsterapeuter), midwife (barnmorska), chiropractor (kiropraktor), speech therapist (logoped), doctor (läkare), naprapath (naprapat), optician (optiker), psychologist (psykolog), psychotherapist (psykoterapeut), dispenser (receptarie), X-ray nurse (röntgensjuksköterska), physiotherapist (sjukgymnast), hospital physicists (sjukhusfysiker), nurse (sjuksköterska), dental hygienist (tandhygienist) and dentist (tandläkare).<sup>35</sup> Further, there are regulations on European doctors, the approval of exams from foreign countries etc.<sup>36</sup>

In 2006 another four professions were regulated in accordance with the Riksdag's approval of a Government proposition on demands for authorization concerning the following professions: audionom (audionom), biomedical analysts (biomedicinsk analytiker), dietitian (dietist) and orthopaedist engineer (ortopedingenjör).<sup>37</sup> The new rules were coming in to force on April 1, 2006. Further, the following occupational groups – for which authorization already is required – got their professional titles protected in 2006: optician, chiropractor and naprapath.<sup>38</sup> The Government was also authorized to decide that educations other than those listed in Act (1998:531) could give right to authorization.<sup>39</sup>

For access to a regulated profession it is not always sufficient that the applicant holds a foreign diploma that has been recognized in Sweden. Some additional requirements can also apply. For the professions mentioned above authorization should not be granted if it is proved that the circumstances are such that the authorization – if it had been granted – should be revoked.<sup>40</sup> That means that the applicant must comply with the professional ethical standards that apply for the profession in question. The same holds true for, *inter alia*, lawyers.<sup>41</sup> Nothing implies that these or other additional requirements are contrary to Directive 2005/36/EC or the case law of the Court of Justice.

During 2006 no decisive measures were taken in Sweden to transpose Directive 2005/36/EC on mutual recognition of professional qualifications even if forthcoming measures could be anticipated.<sup>42</sup>

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34 Government proposition 1997/98:109 Yrkesverksamhet på hälso- och sjukvårdens område.

35 Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 2).

36 Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 8).

37 Government's proposition 2005/06:43 Legitimation och skyddad yrkestitel. See Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 2), amended in 2006 through SFS 2006:50.

38 Government's proposition 2005/06:43 Legitimation och skyddad yrkestitel.

39 Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 11).

40 Lag (1998:531) om yrkesverksamhet på hälso- och sjukvårdens område (ch. 3 § 2).

41 Regulations for the Swedish Bar Association § 3.

42 Later on in 2007 new rules have been adopted in order to adapt Swedish law to the new directive, including the rules giving rights to persons with a foreign diploma to exercise a regulated profession in Sweden on a temporary and occasional basis. As regards the regulated professions in the health care sector, to give an example, this has been achieved by a new regulation adopted by the National Board of Health and Welfare. (see the administrative regulation from the National Board of Health and Welfare SOSFS 2007:23 [M]).

#### 4. Nationality condition for captains of ships flying Swedish flag

*Nationality conditions for access to the posts of captains and first officers of ships.* In Case C-405/01 the ECJ stated that a Member State has the right to reserve a position as a captain and first officer to nationals of the Member State on certain conditions.<sup>43</sup> First, a precondition is that employees in such positions in fact are exercising authority and that the dealing with such activities is regular. Secondly, these kinds of assignments should not be a small part of the duties connected with the position.

The texts in force regarding these matters in Sweden are found in the Vessel Safety Regulation (Fartygssäkerhetsförordningen 2003:438) and further regulations are promulgated by the Swedish Maritime Administration (Sjöfartsverket).<sup>44</sup> In Sweden there has been a nationality condition for access to posts as captains of ships in the mercantile marine and fishing boats. However, in 2006 and referring to EC law, an amendment was made meaning that the commander-in-chief should be an EEA citizen and, further, he should be more than 20 years of age (the Vessel Safety Ordinance Ch. 4 § 1).<sup>45</sup> The amended regulation came into force on January 1, 2007.

Regarding ship commanders from other Member States the applicant must show proof of a certain education on knowledge in adequate Swedish regulations.<sup>46</sup> Further, in accordance with attachment no. 23 to SJÖFS 2000:1 (reprinted 2005:5) the commander must be educated on the Swedish Merchant Shipping Act (Sjömanslagen), the Work Environment Act and more.

Finally, in 2006 a public investigation was appointed.<sup>47</sup> The task is to investigate if there should be a certain certificate on qualification for a position as a pilot (lots) to guide ships on the sea. Today there is no such requirement but normally persons with captain qualifications are recruited. The result of the investigation will be presented at the end of 2007.

#### *Recent legal literature*

Ingmanson, Staffan, Erkännande av yrkeskvalifikationer inom EU – det svenska perspektivet, in Edström, Örjan (ed.), *Svensk rätt i EU – en antologi*, Iustus, Uppsala 2007, p. 199-223.

In the debate there are also notes on *Case C-330/03* from the ECJ concerning the partial mutual recognition of diplomas from other Member States.

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43 Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española v Administración del Estado*.

44 See Sjöfartsverkets författningssamling 2000:01 Sjöfartsverkets föreskrifter och allmänna råd om utbildning och behörigheter för sjöpersonal (Swedish Maritime Administration's statute-book SJÖFS 2000:01, reprinted in 2005:5), including amendments referring to Council Directive 94/58/EC on the minimum level of training of seafarers (and amendments following Directive 98/35/EC).

45 Compare Case C-47/02 *Albert Anker, Klaas Ras and Albertus Snoek v Bundesrepublik Deutschland*.

46 See SJÖFS 2005:33 amending SJÖFS 2000:1 om utbildning och behörigheter för sjöpersonal ch. 1 § 6.4.

47 Kommittédirektiv Committee directions 2006:116 Utredning om den svenska lotsningsverksamheten och dess framtid.

### CHAPTER III: EQUALITY OF TREATMENT ON THE BASIS OF NATIONALITY

#### *Texts in force*

- Regeringsformen 1974:152, the Instrument of Government (see also Chapter IV).
- Discrimination law (see Chapter VII).

#### **1. Working conditions, social and tax advantages**

##### *Working conditions*

The Instrument of Government stipulates that public authority should be exercised with “respect for all human beings’ equal value” (ch. 1 § 2), and the public sphere should counteract all discrimination based on “national or ethnical origin” and more. Further, for instance Regulation 1612/68 is of course directly applicable and there are different regulations in order to secure equal treatment. Restrictions are founded in law and regarding the public sector these matters are dealt with in the present report Chapter IV, and in Chapters VI and VIII the restriction of certain welfare entitlements is analysed.

In Swedish law there is a ban on discrimination referring to different grounds. In discrimination law references to “nationality” are not made although references to ethnical origin are frequent.<sup>48</sup>

Concerning access to employment there are regulations on nationality made in the Act (1994:260) on public employment (for certain positions) and for instance in the Vessel Safety Regulation (captains on certain vessels; see Chapter II.4). For employment there may also be education requirements concerning for instance Swedish regulations for the activity concerned, even though such requirements do not mean that Swedish nationality is required.

##### *Social benefits*

In an Official report presented in 2005 the investigation committee dealt with an analysis of the social entitlements referring to *Case C-138/02 Collins* and *Case C-456/02 Trojani* and more from the ECJ.<sup>49</sup> The committee argued that social assistance regulated in the Social Service Act (2001:453) is comprised by the benefits referring to Regulation 1612/68.

The committee also claimed that the term social assistance in Directive 2004/38 is synonymous with the term social assistance used in Regulation 1408/71. Thus it should be possible to restrict this social entitlement, but only for certain categories, the committee argued.

Following this, concerning EU/EEA citizens that are *not* workers or self-employees, or not a person in these categories having the right to stay after ceased activity, or not belonging to the family to a person in any of these categories, the committee suggests restrictions regarding social assistance. Hence, an EU citizen who is *not* a worker etc. should not have the right to assistance based on the Social Services Act ch. 4 § 1 during the first three months. However, if there is an emergency situation the person should be entitled to assistance.

The restrictions suggested refer to Directive 2004/38, Article 24.2. In accordance with Article 24.2 a Member State should not be obliged to grant social assistance during the first three months to a citizen from another Member State who is staying in the State.<sup>50</sup> However, concerning persons who *are* workers or self-employees, or persons from any of these categories having the right to stay after ceased activity, or belonging to the family to a person in any

48 See for instance the Act (2003:307) on ban on discrimination (§ 1) and the Act (1999:130) on measures to counteract ethnic discrimination in working life (§ 1).

49 Official report SOU 2005:34 Socialtjänsten och den fria rörligheten.

50 Further, see Article 14.4b (an EU citizen and his family members should not be sent out from the host Member State after three months if the citizen is still looking for a job and it is possible that he will have a job).

of these categories, the committee also stated that EC law does not admit any restrictions on the right to social assistance in accordance with the Social Services Act ch. 4 § 1. (Concerning job-seekers and the right to social assistance, see Chapter II point 1!)

### *Tax advantages*

In a Government's proposition presented in 2005 it was suggested that Swedish seamen employed by European ship-owners should be exempted from Swedish *taxes* if they work outside Sweden for at least six months per year.<sup>51</sup> The amendment – coming into force on January 1, 2006, means that ship-owners from other Member States should be treated in the same way as Swedish ship-owners in these respects.

Further, in accordance with a Government's proposition in 2005, from January 1, 2006, employers should have the same right to make *tax reductions* when the employer, referring to a collective agreement on occupational (or service), deposits money to a foreign pension institute as if the money was deposited to a Swedish institute.<sup>52</sup>

### *Frontier workers*

Since a long time there is an established co-operation between the Nordic countries with an open Nordic labour market. Even if the today open labour market is relying on EC law and the free movement of workers regulations, the long tradition of co-operation between the Nordic countries means that the situation is not new.<sup>53</sup>

However, since the building of the Öresund bridge between Denmark and Sweden cross border working has developed very fast in the southest part of Sweden, and in the Öresund region around 10,000 persons regularly commute between Sweden and Denmark as frontier workers. Ninety percent of those frontier workers are living in the Skåne province and are commuting to Copenhagen.<sup>54</sup> Hence, the Öresund bridge has shown to be a very important infrastructural investment facilitating quick transportation and free movement of workers between Denmark and Sweden.

Many – especially Danish citizens – have also moved to their neighbouring country Sweden, but they still work in Denmark commuting from Sweden. In the year 2005 around 3,500 Danish settled in Sweden. The main reasons – beyond the Öresund bridge – are lower living costs including cheaper houses in Sweden.<sup>55</sup>

The Öresund committee (Öresundskomiteen) is an organised political platform for the development of further integration, strengthening the infrastructure, accessibility and integration through culture and more. Many projects of co-operation have been conducted between Denmark and Sweden and there is an ongoing economical integration within the region. Further, the committee has published a number of reports concerning, for instance, regional statistics, residence market, commuting and future perspectives.<sup>56</sup>

The labour market in the region embraces in the main the Danish Copenhagen area and the Malmö area in Sweden. In both countries also the surrounding local municipalities and area representatives are participating. From Sweden especially Helsingborg, Lund and

51 Government's proposition 2005/06:21 Förändring i sexmånadersregeln för sjömän, m.m.

52 Government's proposition 2005/06:22 Skattefrågor med anledning av tjänstepensionsdirektivet, referring to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision. Official Journal L 235, 23/09/2003, p. 0010-0021.

53 See Kruse, Den gemensamma nordiska arbetsmarknaden och EU, Köpenhamn 1997.

54 The figures are very roughly estimated, see Öresundspendlarna, Öresundsbro konsortiet & Öresundskommittén, January 2006, available at <http://www.oresundskomiteen.dk/regionen-i-siffror/se/publikationer/pendlereSV.pdf>

55 For further details, see the report *Bro, bostad, bil och kärlek – ökar flyttströmmen från Danmark till Skåne* (published by Malmö stad, Migrationsverket, Region Skåne, Skatteverket, Öresundskomiteen, February 2006) available at [http://www.oresundskomiteen.dk/regionen-i-siffror/se/publikationer/bro\\_bil\\_bostad\\_karlek.pdf](http://www.oresundskomiteen.dk/regionen-i-siffror/se/publikationer/bro_bil_bostad_karlek.pdf)

56 See [http://www.oresundskomiteen.dk/regionen-i-siffror/se/html/00\\_03.html](http://www.oresundskomiteen.dk/regionen-i-siffror/se/html/00_03.html)

## SWEDEN

Landskrona municipalities and Region Skåne have great interest in future developments, and for instance the national employment offices in both countries provide information on employments and information concerning taxes, social security, double settling and more.

The Danish and Swedish Governments have also later on decided to appoint a working group that should investigate the possibilities to increased measures on information and guidance. The group should also analyse the possibilities to increased co-operation on matters concerning cross border commuting.<sup>57</sup> Further, there is a need to analyse better co-operation in matters concerning employment agencies, unemployment insurance and social security.

### *Recent legal literature*

Hansson, L., EU, Sverige och inkomstskatten – Florians kamp för att få skatta som en vanlig Svensson, in Edström (editor), *Svensk rätt i EU*, Iustus Förlag, Uppsala 2007, pp. 135–150.

Ståhl, K. Skatterna och den fria rörligheten inom EU - svensk skatterätt i förändring? SIEP rapport 2006:8, Stockholm 2006.

Lokrantz Bernitz, H., Unionsmedborgarskapet och dess inverkan på den fria rörligheten för personer. SIEP rapport 2006:7, Stockholm 2006.

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<sup>57</sup> A declaration from the Swedish Ministers in charge of labour market and social security, May 9, 2007. Information is available on the Government's website: <http://www.regeringen.se/sb/d/8566/a/82192>



**CHAPTER IV: EMPLOYMENT IN THE PUBLIC SECTOR***Texts in force*

- Regeringsformen (1974:152), the Instrument of Government.
- Lagen (1994:260) om offentlig anställning, the Act on public employment.
- Other regulations (Discrimination law referring to EC law founded on the EC Treaty, article 13; see also footnotes).

**1. Access to public sector***1.1. Nationality condition for access to positions in the public sector*

Concerning nationality condition for access to employment in the public sector there are some basic regulations to consider. 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. However, in correspondence with Article 39.4 of the EC Treaty there is a restriction on the right to equal treatment regarding employment in the public sector, in practice when the work is in the exercising authority.<sup>58</sup> Hence, citizenship is prescribed as a condition for certain employments in the Swedish State.

For many positions in the public sector there are different qualification requirements. Since many activities could be organised both in the public sector and the private sector, I have dealt with these matters also in Chapter II (Access to employment; see above). Concerning for instance the health care sector the employer could be a public institution or a private firm; and in addition to that a person exercising a certain profession could be self-employed.

Restrictions meaning demands for Swedish citizenship are founded in the Constitution ch. 11 § 9. Further requirements are regulated in the Act on public employment as well as in different ordinances giving instructions concerning courts and public authorities.

Hence, 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).

In addition to these regulations the Government can prescribe Swedish citizenship as a condition for employment connected to exercising authority or positions that are of significance to the security of the country. Further, there are many public functions (committees exercising public authority; not employments), 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 are excluded. However, a position as a judge within the judicial system is nowadays not exclusively reserved for Swedish citizens since it is possible for an experienced lawyer to obtain a position as a judge.

In the year 2000 an Official report was presented dealing with the existing requirements for Swedish citizenship for employment and more in the public sector.<sup>59</sup> The investigation committee laid proposals of breaking up the restrictions concerning foreigners' right to employment (and public functions). The guiding principle should be the right to equal right and liabilities for persons residing in Sweden irrespective of citizenship.

The judgement made by the investigation committee was that Swedish citizenship should be required when the motivation is State security and Sweden's relations to other

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<sup>58</sup> See Nyström, *EU och arbetsrätten*, third edition, Stockholm 2002, p. 162 ff.

<sup>59</sup> Official report SOU 2000:106 Medborgarskapskrav i svensk lagstiftning. See also Sandesjö, H. & Björk, K., *Nya medborgarskapslagen med kommentarer*, Norstedts förlag, Stockholm 2005.

countries. Also public activities that interfere with the citizens' legal relations should still be reserved for Swedish citizens.

In March 2007 there are still many demands for Swedish citizenship, for instance concerning employments as law clerks at the district courts (*tingsrätter*).<sup>60</sup> Also at the Swedish enforcement service (*kronofogdemyndigheten*) there is still (in March 2007) a demand for Swedish citizenship for the access to many positions such as Head of the enforcement district (*kronofogde*), Inspector at the enforcement service and Assistant at the enforcement service.<sup>61</sup>

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 such 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 (many positions).
- Other (leading positions in the Electricity security board; *Elsäkerhetsverket*).<sup>62</sup>

In February 2006 the reporter made a complete follow-up of the regulations stipulating a requirement for Swedish citizenship dealt with in the Official report presented in the year 2000. The examination showed that most requirements for Swedish citizenship still were present. However, for two positions amendments had been made – in comparison with the state of affairs in the year 2000 – meaning that the requirements for Swedish citizenship for obtaining certain positions had been abolished:

- Clerks in a court of appeal (*överrättsnotarie*) and
- Clerks in an administrative court of appeal (*kammarrättsaspirant*).

However, a position as a clerk in a court of appeal or a clerk in an administrative court of appeal is usually the starting point for a career within the judicial system, and since there are requirements for Swedish citizenship for obtaining a position as a reporting clerk (*fiskal*) it may not be tempting for a foreigner to apply for a position as a clerk at the courts.

A reason for these differences regarding the requirements for Swedish citizenship could be that a reporting clerk fulfils particular duties as a judge. More precisely, a clerk does not exercise public authority by taking decisions, since a clerk only makes the presentation of reports before the court. However, concerning the position as a lawyer acting in the courts there is no requirement for Swedish citizenship.<sup>63</sup>

60 See Ordinance (1996:381) med tingsrättsinstruktion § 44 (“Endast den som är svensk medborgare får inneha eller utöva en anställning som tingsnotarie”).

61 See Ordinance (1988:784) med instruktion för exekutionsväsendet § 20. (“Endast den som är svensk medborgare får anställas som regionkronodirektör, chefskronofogde, kronofogde, biträdande kronofogde, kronofogdeaspirant, kronokommissarie, kronoinspektör eller kronoassistent.”)

62 Another example that might not be controversial is the demand for Swedish citizenship in accordance with the Security protection Act (1996:627; *Säkerhetsskyddslagen*). Employments may be subject to certain restrictions referring to the need for “security protection”. Such restrictions should be founded in a need for protection against espionage, sabotage, terrorism etc. (6 §). The holder of a position that is classified as subject to certain security in the public sector (the state, local authority or county council) must be a Swedish citizen (29 §). The Government is in charge of making the classification of a position for security reasons, but the authority to classify can be delegated to authorities under the Government, and this possibility is used in many cases. Further, in individual cases the Government may admit an exception to the rule on Swedish citizenship (29 §).

63 In 2002 the Swedish Code of procedure ch. 8 § 2 was amended and the demand for Swedish citizenship was taken away (Government's proposition 2001/02:92 *Avskaffande av medborgarskapskrav för advokater m.fl.*). The amendment came into force on July 1, 2002. Already before this amendment the Code of procedure had been amended in line with the Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent

Beyond these amendments there have also been amendments concerning the requirements for Swedish citizenship to become an elected representative in certain commissions and committees, but such commissions are not to be considered as employments and, hence, I will not go deeper into the matter.

Considering the nationality requirements etc. and the restrictive attitude regarding the right for non-Swedes to exercise authority, it is not surprising that in general it seems to be more difficult to make a career in the Swedish State administration.<sup>64</sup>

### 1.2. Language requirement

Appointments for employment in the public sector should be ruled by objectivity. In accordance with the Constitution and the Act on public employment § 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.

Basically, a request for language skills should 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 a position as a teacher in schools the requirement for a certain proof of competence will be issued only if the applicant has “the knowledge in Swedish language that is necessary”.<sup>65</sup> However, the regulation should only apply when the applicant has another mother language than Swedish, Danish, Faeroese, Icelandic or Norwegian.

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 (1994:85) on the competence for exercising the veterinary profession 1 §, it is stipulated that a foreign veterinary has to complete his education concerning Swedish law and the Swedish language on a basic level.

However, for access to most regulated professions there are no absolute requirements for the Swedish language, but regarding language the following information – which means that language competence could be an important qualification to consider – is provided by the National Board of Health and Welfare.

The following Information concerning the language requirements for Medical doctors qualified outside the EU/EEA/Switzerland are presented by the National Board of Health and Welfare<sup>66</sup>

“The National Board of Health and Welfare, being the Swedish Authority responsible for registration of medical practitioners, annually receives a large number of enquiries from foreign medical graduates

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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). Further, at the same time some other requirements for Swedish citizenship were abolished. Government proposition 1998/99:108 Advokaters etableringsrätt. The amendments were in the following laws: lagen (1919:426) om flottning i allmän flottled (dealing with members of floating boards), lagen (1952:166) om häradsallmänningar samt allmänningssstyrelser och ekonominämnder enligt lagen (1952:167) om allmänningsskogar i Norrland och Dalarna tas bort (dealing with members in boards for common land forests in Northern Sweden).

64 In 2005 an examination was presented showing that immigrants and minorities comparatively are underrepresented among the employees in the State administration. In 2001 around five percent of the employees in the public service were immigrants (born in another country) compared with the immigrants’ share of the total population, which in the same year was around 12 percent. See Official report Ds 2005:12 Makten och mångfalden. Eliter och etnicitet i Sverige, p. 139 (Report from the Ministry of Justice).

65 The School Act 1985:1100, ch. 2 § 4b.

66 A practical aspect is that the patient’s log book should be written in Swedish, see the National Board of Health and Welfare’s statute statute-book SOSFS 1993:20 (M).

## SWEDEN

wishing to practise medicine in Sweden. As a rule, the Board is unable to comply with these requests as a result of the conditions described below.

### *Medical practice*

Foreign medical graduates are unable to work – temporarily or permanently – in the medical profession without passing a complementary training program in Sweden. This program involves courses and tests in the Swedish language, a medical exam as well as practice and introductory courses in the medical legislation of this country. However, due to the lack of resources to provide this complementary training, the Board is unable to offer this compulsory program to other foreign medical graduates than those who have gained status as residents in Sweden. This is granted by the Swedish Board of Migration for political, humanitarian or family reasons. A permit based on offer of employment is not significant in this context.<sup>67</sup>

### *1.3. Recruitment procedures: follow-up of Burbaud case*

Concerning *the Burbaud Case C-285/01* from the ECJ the French “concour system” was tried regarding access to training followed by access to a post.<sup>68</sup> An applicant for a position as administrator in the French health care service had to go through a test for the admission to an education even though the person, who was a citizen from another Member State, could show a certificate from a corresponding education from that State.

With the (possible) exemption of certain professions – where there is a demand for Swedish citizenship (for instance prosecutors) – there are no such positions in Sweden where “concour systems” are used for recruitment. Concerning the Swedish policy it can be noticed that in the Burbaud case the Commission, France, Italy, Sweden and the applicant made comments on the case before the final decision taken by the ECJ. The Swedish State argued that the French position on the matter was contrary to EC law.<sup>69</sup>

### *1.4. Recognition of diplomas*

The *recognition of diplomas for access to employment in the public sector* or for providing services is important for many categories on the labour market. Most employees in regulated professions are employed in the public sector. However, if there is for instance a private hospital the same requirements regarding formal competencies should apply, and the situation is the same in private schools, even if there could be certain demands regarding qualification if the school has a certain direction (for instance in a Montessori school where the teacher should be educated in that kind of pedagogical philosophy).

### *1.5. Recognition of professional experience for access to the public sector*

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above (see section 1.2 and the account for language requirements). Beyond that the equal treatment principle is founded on Regulation 1612/69 and EC law should apply. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equal depending on sex, disability, ethnic background etc. (compare the EC Treaty, article 13).

In 2006 an Official report presented a far going proposal on the co-ordination of discrimination law referring to EC directives founded on the EC Treaty, article 13. There is in 2006/2007 seven different acts on discrimination and the committee suggested them to be

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67 The complete text is available on [http://www.socialstyrelsen.se/Amnesord/utbildning\\_o\\_kompetens/legitimationer/tredjeland/LKinfor\\_kompeng.htm](http://www.socialstyrelsen.se/Amnesord/utbildning_o_kompetens/legitimationer/tredjeland/LKinfor_kompeng.htm) (2007-03-09).

68 Case C-285/01 *Isabel Burbaud v Ministère de l'Emploi et de la Solidarité*. Reference for a preliminary ruling: Cour administrative d'appel de Douai - France.

69 See also Government's communication Regeringens skrivelse 2003/04:60 Berättelse om verksamheten i Europeiska unionen under 2003, p. 308.

replaced in 2008 by a single new Act on the ban and other measures against discrimination based on sex.<sup>70</sup>

The new act should apply not only to working life (including recruitment situations) but also membership in trade unions and other idealistic associations, the access to education, services and places to live, social security including unemployment benefits, health care services, study loans, public employment and more.

## **2. Equality of treatment**

### *2.1. Recognition of professional experience for the purpose of determining the professional advantages*

The recognition of professional experience for fixing wage levels etc. in employments is mainly regulated through collective agreements. Following from the Ordinance (1976:1021) on State collective agreements § 1, the State employer should apply the same collective agreement terms to all employees independent of their affiliation to the trade union that is part in the collective agreement (in practice that means that nationality is not a criterion that could make any difference). Hence, especially in the public sector the same criteria should apply when fixing wages and other benefits in connection with the employee's position, independent of the employee's nationality. (In principle, but for other reasons, the same effect will occur on other labour market sectors.)

Further, within the framework of the collective agreement the individual employee and the employer can make individual adjustments, which means that there is a scope for individual negotiations on wage levels. However, the employer should apply the same criteria independent of nationality or any other factor that may be considered as non-pertinent for the matter. The trade unions follow even the result from such negotiations on the individual level since the result may not be contrary to the collective agreement in the sector, and, further, possible irrelevant wage differences that this kind of individual agreement might lead to, could be subject to collective bargaining.

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70 Official report SOU 2006:22 En sammanhållen diskrimineringslagstiftning.

## CHAPTER V. MEMBERS OF THE FAMILY

### *Text(s) in force*

- Utlänningslagen (2005:716), the Aliens Act.
- Utlänningsförordningen (2006:97), the Aliens Ordinance.
- Passlagen (1978:302), the Passport Act.
- Lagen om särskild utlänningskontroll (1991:572), the Act on special control of foreigners.
- Studiestödslagen (1999:1395), the Study loan Act.

### **1. Residence rights**

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

- Husband/wife or cohabitant.
- Registered partner.<sup>71</sup>
- Children (grandchildren or great grandchildren included) under 21 or older if they are financially dependent on their parents etc.
- Relatives in the ascending line or who are financially dependent on the EU citizen etc.

If the 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* in line with Directive 2004/38/EC; (see the Aliens Act ch. 3a § 10).<sup>72</sup> 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 EU citizens that are job seekers.

Family members of an EU citizen that are not EU citizens themselves could not any longer enter Sweden by showing an identity card (compare the former Directive 68/360). From 2006 they must show a passport since the new Directive 2004/38 does not stipulate that a family member that is a third country national is entitled to enter Sweden by showing an identity card.<sup>73</sup> Hence, the regulation on this matter has been sharpened referring to the Directive. A motive is said to be the risk that false identity documents could be used when entering Sweden.<sup>74</sup>

An EU citizen and his or her family members (if they are third country nationals; see also Chapter I.1) should be granted a *permanent right of residence* after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7).<sup>75</sup>

There is no requirement for *visa* for family members to EU citizens that are not EU citizens themselves beyond what follows from Regulation 539/2001 (see the Aliens Ordinance Ch. 3 § 1.15 and Ordinance 2006:262; compare the Directive article 5.2). If there should be a demand for visa for family members of an EU citizen, the administrative procedure should be speeded up.<sup>76</sup>

EU citizens and their family members have a right to stay in Sweden for three months if they have the documents that have to be shown when they enter Sweden (compare the Di-

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71 The including of this category follows from ch. 3 § 1 in the Act (1994:117) on registered partnership. Amendment in 2005 through SFS2005:447. The term "registered partner" should 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. See also Government's proposition 2004/05:137 Assisterad befruktning och föräldraskap.

72 See also Government's proposition 2005/06:77, p. 117 f. See Government's proposition 2005/06:77, p. 119.

73 See Government's proposition 2005/06:77, p. 63.

74 Government's proposition 2005/06:77, p. 64.

75 See Government's proposition 2005/06:77, p. 119.

76 Government's proposition 2005/06:77, p. 65.

rective article 6). A crucial issue concerning family members from third countries is how the three months period is calculated, and concerning a third country national the period was earlier calculated from the date the person entered the Schengen territory independent of which country the foreigner entered. Hence, in 2006 an amendment was made meaning that if the third country national is a family member of an EU citizen, the calculation of the three months period should be made equal to the EU citizen.<sup>77</sup>

As stated in Chapter I(2) an EU citizen and his or her family members (if they are third country nationals) should be granted a *permanent right of residence* after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7).<sup>78</sup> Concerning temporary stay abroad for military service etc., see Chapter I(2).

Following from an amendment referring to the Directive 2004/38/EC, article 5.3, a note (or stamp) should not be made in an EU citizen's family member's passport, if the family member is a third country national and has a residence card.<sup>79</sup>

Finally, in *Case C-109/01 Akrich* from the ECJ the question was if a third-country national from Morocco that was married to a female EU citizen, should have a right to residence in the UK independent of if the EU citizen had been using her right to free movement and was established in another Member State. Further, the third-country national had been married to the EU citizen when he was staying in the UK unlawfully and he was deported to the other Member State where his spouse was established. Later on he applied to the UK authorities for leave to enter the UK as a spouse of his wife settled in the UK.

In accordance with the Aliens Act ch. 3a § 2 family members to an EU citizen should be entitled to residence even if the family members are third-country nationals. Even if a similar situation as in *Akrich* has not been tried by the Swedish courts, the reporter's conclusion is that in such a situation Swedish law is not contrary to Community law. Also the fact that the European Convention on Human Rights including the right to respect for family life, which is referred to in *Akrich*, should apply as law in Sweden leads to the same conclusion.

## **2. Access to work**

Concerning family members the transposition of Directive 2004/38, article 23, into Swedish law means that family members of an EU citizen – and independent of the family member's nationality – are excepted from the work permit requirements (see the Aliens Act ch. 2 § 8 and the Aliens Ordinance ch. 5 § 1; amended in 2006). A prerequisite is that the foreigner has been granted a right of residence. The exception also means that the family member has the right to activity as self-employed.

In comparison with previous legislation on the matter the amendment meant that the circle of family members that is excepted from the work permit requirement has been increased.<sup>80</sup>

## **3. Access to education (study grants)**

Before Directive 2004/38/EC the right to equal treatment in the main embraced workers and self-employees as well as their family members. These categories have already before been entitled to Swedish study loans in accordance with the Study loan Act (1999:1395). The equal treatment principle expressed in the Directive, article 24, means that EU citizens from other Member States (and their family members that are not EU citizens themselves), having a permanent residence right, shall enjoy equal treatment with the nationals of the host Member State. However, the Directive admits that the right to study loan could be restricted if the person does not have a permanent right of residence.

<sup>77</sup> Government's proposition 2005/06:77, p. 70.

<sup>78</sup> Government's proposition 2005/06:77, p. 48 f.

<sup>79</sup> Government's proposition 2005/06:77, p. 68.

<sup>80</sup> Compare Government's proposition 2005/06:77, p. 126.

## SWEDEN

In accordance with the Swedish Study loan Act the right to study loan is restricted, following an amendment that came into force on July 1, 2006.<sup>81</sup> Hence, only foreign citizens with a permanent right of residence independent of nationality, who can derive rights from EC law concerning social benefits, should be equal to Swedish citizens regarding the right to study loans (see the Study loan Act ch. 1 § 4). A reason for the restriction is that the Swedish study loans system is considered to be generous looked upon in an international perspective.

However, already before a foreigner is granted a permanent right of residence he or she could be entitled to study loans in accordance with the rules that apply to all foreign citizens. A precondition is that the foreigner has a “strong connection to Sweden”. In the administrative practice from the CSN (the national authority for handling the Swedish financial aid for students) that means that the foreigner should have stayed or worked in Sweden for the last two years, and these requirements are considered to be in conformity with the ECJ practice.<sup>82</sup>

### *Recent legal literature*

Hansson, L., EU, Sverige och inkomstskatten – Florians kamp för att få skatta som en vanlig Svensson, in Edström (editor), *Svensk rätt i EU*, Iustus Förlag, Uppsala 2007, pp. 135–150.

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81 Government’s proposition 2005/06:134 Utbildnings- och kulturdepartementets promemoria 2005-11-22. Amendment through Act 2006:654.

82 Lokrantz Bernitz, H., *Unionsmedborgarskapet och dess inverkan på den fria rörligheten för personer*. SIEP rapport 2006:7, Stockholm 2006, p. 56.



**CHAPTER VI: RELEVANCE/INFLUENCE/FOLLOW-UP OF RECENT COURT OF JUSTICE JUDGEMENTS AS WELL AS THE APPLICATION OF FREE MOVEMENT LEGISLATION IN THE SPORTS SECTOR**

In 2005 an Official report was presented dealing with Case C-138/02 *Collins* and Case C-456/02 *Trojani* and more (see above Chapter II concerning social benefits).<sup>83</sup> As reported in Chapter II an amendment has been made in the Aliens Act meaning that an EU citizen, who is not qualified for a right of residence (uppehållsrätt) could be expelled if the person constitutes an unreasonable burden to the social benefit system.

In Case C-258/04 *Ioannidis* the ECJ ruled that it is contrary to the Treaty, Article 39, for a Member State to refuse to grant a tideover allowance 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.<sup>84</sup>

The right to unemployment benefit on the basic level is regulated in the Act 1997:238 on unemployment insurance (Lag 1997:238 om arbetslöshetsförsäkring) § 18. Following from an amendment in 2006 the applicant should – in accordance with the Act § 12 – during a twelve month period immediately before he or she was unemployed, have been working for at least 6 months and at least 80 hours per month, or the applicant should have been working for at least 480 hours during a continuous period of 6 months and at least for 50 hours during each of these months. In addition to that the applicant should also be a member of the unemployment benefit fund.

In 2006 the law was sharpened in different respects and even further amendments were announced by the Government. Hence, the so called “study provision” has been taken away in Swedish law from January 1, 2007, which means that a former student is not entitled to unemployment benefit. However, an applicant who has finished a full time education after he or she has reached the age of 25 years may be entitled to unemployment benefits if the study period was preceded by full time work for at least 5 months (§ 16.2) and he or she has been a member of the unemployment benefit fund.<sup>85</sup>

In Case C-232/01 *Van Lent* a Belgian citizen had been stopped on a Belgian highway.<sup>86</sup> He was driving a car which was registered in Luxembourg and owned by a rental firm in that country. Van Lent, who had his residence in Putte, Belgium, was not allowed to drive the car in Belgium. The employer’s firm was not situated in Belgium. In the present case the ECJ stated that “Article 39 EC precludes national rules of a Member State, such as those in the present case, which prohibit a worker who is domiciled in that Member State from using on its territory a vehicle registered in another neighboring Member State, belonging to a leasing company established in that second Member State, and made available to the worker by his employer who is also established in the second Member State”.

In Sweden the regulations on the matter are found in the Act (2001:558) on road traffic register (Lag 2001:558 om vägtrafikregister), especially 12–15 §§. In accordance with 12 § a vehicle should be registered in Sweden, but referring to 14 § there is an exception to that rule if the vehicle is used in “international road traffic”. The prerequisites are that the vehicle should be owned by a citizen (or a company) that in the main has his or its residence in another country, and that the vehicle should be “temporarily” used in Sweden. Further, the regulation does not apply to vehicles registered in Denmark, Norway or Finland (15 §).

Experts on the National Road Administration (Vägverket) claim that “temporarily” means not longer than one year (the same rule explicitly applies to vehicles from the other Nordic countries; see 15 §). Hence, after one year the vehicle must be registered if it is used

<sup>83</sup> Official report SOU 2005:34 Socialtjänsten och den fria rörligheten.

<sup>84</sup> Further, concerning the situation in the *Ioannidis* case, there is also reason to observe Case C-138/02 *Collins* and Case C-224/98 *D’Hoop*.

<sup>85</sup> Amendment through Act 2006:827.

<sup>86</sup> Case C-232/01 Judgment of the Court (Fifth Chamber) of 2 October 2003. Criminal proceedings against Hans van Lent. Reference for a preliminary ruling: Politie rechtbank te Mechelen - Belgium.

in “international road traffic”. Further, regarding the time-limit it is the owner’s intention that should be the basis for the decision whether the vehicle should be registered or not.

The van Lent case has been considered by experts at the National Road Administration, and it is possible that a similar situation could occur in Sweden, for instance when Danish citizens living in Denmark but working in Sweden, drive their vehicles registered in Denmark on roads in Sweden for more than one year. In such cases it is not obviously clear if the driving in Sweden is “temporary”, and, further, if a new 12 months period starts when the vehicle has temporarily been outside Sweden. However, in 2006 there has not been any amendment in law regarding that situation.

In Case C-464/02 *European Commission v Denmark* the ECJ tried the Danish regulation that did not allow employees employed in a neighbouring Member State and resident in Denmark to use for business or private purposes a company vehicle registered in that neighbouring Member State where the undertaking of their employer was established.<sup>87</sup> That was the situation in particular when the company vehicle, which was registered in another Member State in which their employer had its registered office or principal establishment, only subject to the condition that the work in the foreign undertaking was their main employment and that tax is paid for that purpose. The ECJ found the Danish law and administrative practice to be contrary to the EC Treaty, article 39.

In a Swedish context there is again reason to refer to the Act (2001:558) on road traffic register, especially 12–15 §§. If the vehicle is used in “international road traffic” the car does not have to be registered in Sweden. Further, the vehicle should be owned by a citizen or a company that in the main has his or its residence in another country, and the vehicle should be “temporarily” used in Sweden. In accordance with the Act, a vehicle (including a connected trailer) registered in Denmark, Finland or Norway, should not be embraced by the registration requirement if the vehicle is used not more than one year. Hence, in principle a situation similar to the situation in the case dealing with the Danish law also could occur in Sweden if the period when the vehicle is used is going beyond a 12 months period.

Further, in accordance with the Motor-vehicle tax Act (1988:327) a vehicle that is registered in Sweden should be subject to motor-vehicle tax (6 §). If the vehicle is used abroad the tax should be paid back for the days that the vehicle has been used outside Sweden (69 §). Hence, the period for which tax should be paid back is not standardized in the way which Directive 83/182/EEC, article 4.2, indicates.<sup>88</sup> Further, it follows from the Swedish law that a vehicle that does not have to be registered referring to the 12 months rule should be exempted from taxation for the period when it is not registered.

### *The sport sector*

Concerning the sport sector the UEFA recommendations “Investing in the Local Training of Players”, approved by UEFA have been discussed by the Swedish Football Association. The aim of the recommendations is to secure the development and training of young players in football clubs “in order to safeguard the future of our sport”. The problem is that the football clubs do not invest in the training of young players. Instead rich clubs can recruit new already trained players from other clubs and pay the price for the recruitment.

In Sweden the Swedish Football Association has observed the UEFA recommendation. Concerning reimbursement for the training and education of young players (between the age of 12–21 years), the Football Association’s competition statutes regulate that when a young player signs a 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 100,000 SEK.<sup>89</sup>

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<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-464%2Fo2&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

88 Council Directive 83/182/EEC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another.

89 The Football Association’s competition statutes (only in Swedish) are available on <http://www.svenskfotboll.se/files/%7BAE515CBC-A141-4A14-8BF4-ABA6E95CoCA6%7D.pdf> (March 2007).

## SWEDEN

Concerning nationality and foreign players the Football Association's competition statutes (§ 20) regulate that an unlimited number of players from other Member States (including EEA States) could be on the player list in teams playing on top-level. A foreigner from any other country outside the EU should be treated as an EU citizen if he or she has stayed 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.

Further, at the Sweden Football Association's Representative Assembly in December 2006 the organisation took a decision 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 the period when the individual player was between the age of 15–21 years (see the statutes § 202 third section).

## **CHAPTER VII: POLICIES, TEXTS AND/OR PRACTICES OF A GENERAL NATURE WITH REPERCUSSIONS ON FREE MOVEMENT OF WORKERS**

A general matter to comment on is the shortage of labour that is current in different sectors of society. In 2006 an Official report (SOU 2006:87) presented suggestions for amended regulations concerning the immigration of labour from third countries.<sup>90</sup> A starting point for labour immigration from third countries is that the Swedish economy should be promoted. The proposals presented by the committee are:

- A new temporary work permit because of labour shortage. Basically the permit should be granted for 24 months and it could be prolonged for another 24 months period or it could lead to a permanent residence permit (the terms are not used consequently by the committee).
- A work permit for employments concerning international exchange of labour.
- A seasonal work permit (which already exists).
- Permanent residences permit referring to labour market reasons.

Further, family members of the worker should be granted residence permits for the same period as the worker.

A third country national is also suggested to be granted a visa explicitly for seeking job in Sweden for a period of three months.

The suggestions will not affect the Labour Market Board's ordinary probation in order to appoint that there is a real need for labour before the granting of a work permit. The Board should examine that there is not already a supply of labour in Sweden or other Member States in the kind of work the foreigner is looking for or has been offered. However, guest students should be exempted from the probation.

If the proposal will lead to a Government proposition it will result in amendments mainly in the Aliens Act and in the Aliens Ordinance.

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90 Compare the Action Programme from the Commission concerning immigration of labour from third countries.

## CHAPTER VIII: EU ENLARGEMENT

In 2003 the Swedish Riksdag approved the Government proposition to ratify the Treaty on the enlargement of the EU.<sup>91</sup> In 2004 the Swedish Riksdag did not approve the 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).<sup>92</sup> However, it was stated that the development concerning the immigration from the new Member States should be observed, and a list of measures to be taken in order to follow up the migration from the new Member States was presented by the Government.<sup>93</sup>

The position taken by the Riksdag in 2004 not to introduce certain transitional rules for citizens from the new Member States has not been changed in 2006, and the debate on the matter has decreased and has still in 2006 been very low-voiced concerning workers being employed by a Swedish employer. Obviously, a reason for the non-appearance of a debate is that the immigration from the new Member States has been low and the social benefit costs have not increased in an unreasonable manner.

Concerning the affiliation of Rumania and Bulgaria to the EU on January 1, 2007, the Swedish Riksdag has not introduced any certain transitional rules. The political parties in the new Government after the elections in 2006 were earlier rising objections to the suggestion from the former Government to introduce transitional rules. This political standpoint has been maintained by the former parties in opposition and transitional rules concerning the new EU citizens from Romania and Bulgaria have not been introduced. Hence, it follows from logic that the new Government did not present any suggestions to transitional rules concerning Rumania and Bulgaria.<sup>94</sup>

*Free movement of services and the Enlargement.* Concerning the free movement of workers the priority in the Swedish debate has been the free movement derived from the EC Treaty, article 49, and the free movement of services. The debate in Sweden in 2005 as well as in 2006, concerning the enlargement and the new Member States has focused on the free movement of services and the posted workers' wages.

A starting point for the ongoing debate was a case before the Labour Court in 2004 (Labour Court Case AD 2004 no. 111). (See Case C-341/05 *Laval un Partneri*.) In a preliminary ruling the Court confirmed that right in a conflict between a contractor from Latvia and Swedish trade unions. Later on in Case 2005 no. 49 (the *Laval* case) on the same matter, the Labour Court decided to ask the ECJ for a preliminary ruling.<sup>95</sup>

Concerning the Swedish position in the *Laval* case, the new Government that came into power in 2006 has fulfilled the political line from the former Government to defend the Swedish model on industrial relations.<sup>96</sup>

Referring to the free movement of services in the EU the Government in 2005 has assigned an ongoing public investigation concerning the Work environment Act (1977:1160;

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

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

93 Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget.

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

95 The questions raised by the Labour Court to the ECJ in Case C-341/05 *Laval un Partneri* were in principle (1) if it is in accordance with the EC Treaty (the free movement of services and discrimination on grounds of nationality) and the Directive 96/71/EC on the posting of workers, for a trade union to take industrial action in order to make the employer sign a collective agreement, when there are no explicit regulations in Swedish law on the application of working and employment conditions in collective agreements, and (2) if the EC Treaty and the Directive 96/71/EC constitute an obstacle for a trade union to take industrial action in order to make the employer sign a collective agreement, even if the employer already is bound by a collective agreement, although the work in question is not under Swedish law.

96 See the utterance from the Swedish Government in the *Laval* Case, available on <http://www.tco.se/c96e7989-a9a2-41de-9512-06f732e482d6.fodoc>

## SWEDEN

Arbetsmiljölagen) to work out suggestions concerning a reinforced work environment protection, when contractors or subcontractors are engaged on the Swedish labour market.<sup>97</sup> The final report from the investigation should be presented in 2007.

### *Recent legal literature*

Doyle, Nicola, Gerard Hughes and Eskil Wadensjö, *Freedom of Movement for Workers from Central and Eastern Europe – Experiences in Ireland and Sweden*, SIEP report 2006:5, Stockholm 2006.

Edström, Ö., Svensk arbetsrätt i ett europeiskt perspektiv, in Björn Falkenhall & Daniel Rauhut, *Arbetsrätt, rörlighet och tillväxt (A2005:016)*. Institutet för tillväxtpolitiska studier ([ITPS](#)), Östersund 2006, pp. 241–281.

Edström, Ö., 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*. Hart Publishing, Oxford 2006, pp. 129–156.

Sigeman, T. & Inston, R., The Freedom to Provide Services and the Right to Take Industrial Action – An EC Law Dilemma, in *Juridisk Tidskrift*, 2006, pp. 365–374.

St Clair, S., Tjänstedirektivets undatag från ursprungslandsprincipen, in *Europarättslig Tidskrift*, no. 106 (2006), pp. 15–29.

Zieradska, U., Tjänstedirektivet – ett hot mot välfärden eller en tillväxtmotor?, in *Europarättslig Tidskrift*, no. 106 (2006), pp. 593–604.

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97 Kommittédirektiv Committee directions 2005:114 Tilläggsdirektiv till Utredningen om arbetsmiljölagen (N 2004:11).

**CHAPTER IX: STATISTICS**

The following table shows the statistical figures on migration from EU Member States to Sweden in 2006 (Nordic countries not included). The figures show the granting of permits under the EEA Agreement to persons for the first time in 2006.<sup>98</sup>

In 2006 the total number of immigrants from other EU Member States was 20,088 (compared with 18,069 persons in 2005) and the increase were persons coming from the 2004 new Member States. More than half of the immigrants were nationals from the new Member States. From "old" Member States German citizens are most frequent and from new Member States Polish citizens are the largest number of immigrants.

*Statistics on Immigration from other Member States in 2006 (12 months)*

(Referring to the EEA Agreement.) Nordic countries not included.

Nationality	Workers	Self-employed	Provider/reciever services	Students	Relatives	Total
Austria	88	6	3	145	44	286
Belgium	54	4	1	74	45	178
France	305	2	22	495	159	983
Germany	1361	69	77	1098	1099	3704
Greece	172	7	5	87	69	340
Ireland	62	4	4	16	11	97
Italy	207	6	16	193	132	554
Luxembourg	1	0	0	4	1	6
Netherlands	278	64	11	129	499	981
Portugal	60	2	7	70	30	169
Spain	170	4	10	307	81	572
UK	445	21	26	110	324	926
<b>Total "old" MS</b>	<b>3203</b>	<b>189</b>	<b>182</b>	<b>2728</b>	<b>2494</b>	<b>8796</b>
<i>New MS in 2004:</i>						
Czeck Republic	84	4	36	94	42	260
Cyprus	19	0	3	9	10	41
Estonia	315	12	19	82	87	515
Hungary	313	4	31	45	170	563
Latvia	226	8	19	69	87	409
Lithuania	720	19	5	88	294	1126
Malta	7	0	0	0	0	7
Polen	3927	226	355	265	2159	6932
Slovakia	76	1	28	19	26	150
Slovenia	31	1	0	10	13	55
<b>Total new MS</b>	<b>5718</b>	<b>275</b>	<b>496</b>	<b>681</b>	<b>2888</b>	<b>10058</b>
Others	40	1	15	130	1048	1234
<b>Total</b>	<b>8961</b>	<b>465</b>	<b>693</b>	<b>3539</b>	<b>6430</b>	<b>20088</b>

Source: Swedish Migration Board (January 31, 2007).

The figures indicate that even in 2006 there has not been any great strain on Sweden's welfare system and the welfare costs for citizens from new Member States have been reasonable. In fact, comparatively the number of immigrating relatives referring to a worker, stu-

<sup>98</sup> The figures concerning 2006 – including the granting of residence cards etc. – are available on [http://www.migrationsverket.se/pdfiler/statistik/statistik\\_5\\_2006.pdf](http://www.migrationsverket.se/pdfiler/statistik/statistik_5_2006.pdf)

## SWEDEN

dent etc. from the new Member States is not remarkably larger than from the old Member States.

Over the years there has been a remarkable increase of the immigration from other Member States. From 1994–2003 the immigration increased by around 50 percent (from 6,040 to 9,234 persons).<sup>99</sup> In 2004 the number was 14,959 persons coming from other Member States and in 2005 the corresponding figure was 18,069 persons.

The great leap was in 2004 when the migration from the new Member States was added to the migration from the “old” Member States, and in 2007 we could expect some new EU citizens to enter Sweden from the new Member States Bulgaria and Romania.

Concerning duration of mobility and repartition by sex/branch/skills-qualifications/region there are no figures available to the reporter.

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99 For a statistical overview for the period 1994–2005, see <http://www.migrationsverket.se/pdfiler/statistik/tabs8.pdf>



**CHAPTER X: SOCIAL SECURITY***Texts in force*

- Lag (1962:381) om allmän försäkring, the Act on public insurance.
- Socialförsäkringslag (1999:799), the Social Security Act.
- Socialtjänstlagen (2001:453), the Social Services Act.

Traditionally, the granting of Swedish (and Nordic) social benefits has depended on where a person has his national registration address. This situation gave rise to conflicts when the social security system faced EC law and measures were taken gradually. When the Social Security Act mentioned above was taken, the situation was clarified.<sup>100</sup> Hence, some social benefits or social security is now related to where a person has his residence and other social benefits are based on work.

The application of Regulation 1408/71 as well as the relationship to Regulation 1612/68 at the application of Swedish national law can be foreseen to be clearer following from the new Social Security Act. The reason is the marked line between social benefits based on residence or work and, further, the principle that a national from a Member State should be considered to have his residence in Sweden even if this literally is not the case, if the benefit in question is under Regulation 1408/71.

The State authority in charge of the application of Regulation 1408/71 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).<sup>101</sup> In an instruction issued by the National Insurance Board in 2004 – and now applied by the Social Insurance Agency – there is a general and very short comment on the classification on social benefits in relationship to Regulation 1408/71 and Regulation 1612/68.<sup>102</sup> Basically the 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.

Hence, in principle, a social benefit that is not covered by Regulation 1408/71 should be granted to a worker etc. referring to Regulation 1612/68 and the principle of equal treatment.

In order to have the right to the following social benefits a person must have his or her *residence* in Sweden (the Social Security Act ch. 3 §§ 1 and 2):

- Health care.
- Parent's allowance, basic level.
- Prolonged child allowance.
- Disablement benefits.
- Support for having a car.
- Adoption allowance.
- Special additional pension benefit (to State pension), when taking care of a sick or disabled child.
- Assistance allowance.
- Housing allowance.

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100 The Government proposition 1998/99:119 Socialförsäkringens personkrets was presented before the Riksdag in May, 1999.

101 See Riksförsäkringsverket, *Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m. Vägledning* 2004:11, Stockholm 2004. The instruction is available on the website <http://www.forsakringskassan.se/press/publikationer/vagledningar/index.php>

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

## SWEDEN

- State pension (including early retirement pension and survivor's pension. State pension is depending on how many years you have been living in Sweden. For a full pension the requirement is 40 years of living in Sweden. (The basic requirement is 3 years.)
- Additional pension benefit.
- Housing supplementary allowance for pensioners.
- Maintenance benefits.
- Guarantee pension.
- Rehabilitation (referring to the Act 1962:381 on public insurance ch. 22).
- Handicap allowance and Care allowance (handikappersättning och vårdbidrag).
- Allowance for elderly more than 65 years of age.

In order to be entitled to the following social entitlements, which also are related to a person's income, the requirement is that the person is *working* in Sweden and (the Social Security Act chapter 3 § 4):

- Sickness benefit.
- Maternity allowance.
- Parents' allowance, beyond the basic guarantee level.
- Temporary parents' allowance (for instance if the child is sick).
- Supplementary pension as early retirement pension and survivor's pension (depending on the number of years you have been working; each year in work brings you pension points).
- Rehabilitation and rehabilitation benefit (for industrial injury).

Further, a person working in Sweden is also comprised by

- The industrial injury insurance.
- Compensation for taking care of a member of the family.
- Income based old-age pension.

*Unemployment benefit* is an important part of the social security. Basically the Swedish unemployment insurance consists of a basic insurance level and income reduction based level (the Act 1997:238 on unemployment insurance §§ 6 and 7; Lag om arbetslöshetsförsäkring). In order to be entitled to the unemployment benefit in Sweden there are certain prerequisites that must be fulfilled.

Following from an amendment in 2006 in accordance with the Act § 12, the applicant for unemployment benefit should have been working for at least 6 months and at least 80 hours per month — during a twelve month period immediately before he or she was unemployed, or the applicant should have been working for at least 480 hours during a continuous period of 6 months and at least for 50 hours during each of these months. In accordance with the Act § 3 a person must fulfil the stipulated requirements to be entitled to benefits, if nothing else follows from Regulation 1408/71. (Concerning unemployment benefits and students, see Chapter VI above.)

As shown above concerning the unemployment benefits there are different *qualification periods* that are required for the access to many social benefits. For instance, in order to have a State pension you must have been living in Sweden for at least three years.

(According to the Social Security Act, chapter 3 § 11; if there is a requirement for work permit or a residence permit having a corresponding effect, a person is not entitled to social benefits following from § 4.)

Finally, according to the *Social Services Act* the local authorities must provide for all persons living in Sweden as to their personal needs. This implies something like a minimum level of standard of living, although it shall be individualized.

### ***Pension schemes***

In 1998 a new statutory old age pension system was adopted.<sup>103</sup> Hence, the national pension system consists of

- The “pay-as-you-earn” pension (PAYE-pension).
- Premium reserve pension (PR-pension).
- Guaranteed pension (in some cases).

A person might have *additional pensions* as a union member (collective), *professional pension* and *private pension savings*. The collective systems for occupational pensions are based on collective agreements on the central national level. Practically all employees are covered by one of these collective pension systems and that is a reason why there are almost no special company schemes.<sup>104</sup>

Regarding pensions referring to a collective agreement, an employer should have the same right to make tax reductions when he, referring to a collective agreement on occupational (or service), deposits money to a foreign pension institute, as he has if the money is deposited in a Swedish institute.<sup>105</sup> (See also Chapter III above!)

In the pension system from 2001 the most important part is the earning-based PAYE-pension based on the individual’s lifelong average earnings and there is no guaranteed level of compensation. Instead the level of compensation is linked to an earnings index reflecting the general earnings trends. The longer you work the higher the pension. Individuals born in 1954 or later will have their entire pension from the new system. People born in 1938–1953 will partly have their pension from the old general additional pension (ATP) system.

In addition to the pension entitlements for regular income there are also extra pension allowances under some circumstances: if you have children, for the child during the first four years of your child’s life (only one parent for a single year), for study periods and for obligatory military service.

The guarantee pension is awarded only to those who have not obtained an earning-based pension that amounts to the guaranteed level (6,850 SEK per month). The PR-pension is the portion of your pension that you can place yourself.

A national from another Member State living in Sweden can be entitled to the guaranteed pension even though he or she has been living in Sweden for one year only prior to the retirement (compared to three years as in the main regulation concerning nationals from non-Member States). Further, if a person receives a basic pension and annuity from another Member State, the guaranteed pension in Sweden will not be reduced because of the foreign pension.<sup>106</sup> However, the guaranteed pension will be lower if you have not been living in Sweden for at least 40 years.

If a person moves abroad he is still entitled to Swedish PAYE-pension and PR-pension. If he is a citizen of a Member State he may also bring the guaranteed pension, but only if he moves to another country in the European Union (or to an EEA country).

### ***Recent legal literature***

*A comment:* In Swedish periodicals attention has been paid to Cases C-137/04 and C-185/04 concerning a European Commission Swedish official’s right to draw a parent’s al-

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103 Government proposition 97/98:151 Inkomstgrundad ålderspension, m.m. In accordance with the former pension system a basic pension (folkpension) was awarded to all residents. There was also a general additional pension (allmän tilläggspension, ATP) amounting to 60 percent of previous earnings to an upper limit and the level was also linked to a price index. The qualifying time for full additional pension was thirty years and the amount was based on “the best 15 years”.

104 Concerning the collective pensions systems it may be pointed out that there are no corresponding collective systems for self-employed persons.

105 Government’s proposition 2005/06:22 Skattefrågor med anledning av tjänstepensionsdirektivet.

106 For nationals from non-Member States the guaranteed pension may be reduced if the individual receive a basic pension and annuity from another country.

## SWEDEN

lowance based on the year she had been working at the Commission.<sup>107</sup> (The Swedish Social insurance office had refused to count in the period at the Commission when calculating the parent's allowance.)

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<sup>107</sup> See for instance Lag & Avtal in March 16, 2006, p. 35.

## CHAPTER XI: ESTABLISHMENT, PROVISION OF SERVICES, STUDENTS

### ***Establishment and provision of services.***

As stated above in Chapter V (section access to work) concerning family members and the transposition of Directive 2004/38, family members of an EU citizen – independent of the family member's nationality – have the right to carry on activity as a self-employed. A prerequisite is that the foreigner has been granted a right of residence.

### ***Students***

In 2006 the so called “study provision” was taken away in Swedish law concerning unemployment benefits from January 1, 2007, which means that a former student is not entitled to unemployment benefit. (See also Chapter VI.) However, if the study period is preceded by full time work for at least 5 months and if the student has been a member of the unemployment benefit fund, the former student may be entitled to unemployment benefits if he or she has finished a full time education after he or she has reached the age of 25 (Act 1997:238 on unemployment insurance § 16.2.)

### ***Recent legal literature***

Hansson, L., EU, Sverige och inkomstskatten – Florians kamp för att få skatta som en vanlig Svensson, in Ö. Edström (editor), *Svensk rätt i EU*, Iustus Förlag, Uppsala 2007, pp. 135–150.

## CHAPTER XII: MISCELLANEOUS

*Referencelist*

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SkatteNytt  
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Från riksdag och departement  
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Arbetsmarknad  
Förvaltningsrättslig tidskrift.

### **Swedish internet web links concerning legislation and more – Hyperlinks (2007)**

*The Aliens Act (2005:716); in force at April 1, 2006*

[http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst\\_lst&%24%7BOOHTML%7D=sfst\\_dok&%24%7BSNHTML%7D=sfst\\_err&%24%7BBASE%7D=SFST&%24%7BTRIPSHOW%7D=format%3DTHW&BET=2005%3A716%24](http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&%24%7BOOHTML%7D=sfst_dok&%24%7BSNHTML%7D=sfst_err&%24%7BBASE%7D=SFST&%24%7BTRIPSHOW%7D=format%3DTHW&BET=2005%3A716%24)

*The Aliens Ordinance (2006:97); in force at April 30, 2006.*

[http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst\\_lst&%24%7BOOHTML%7D=sfst\\_dok&%24%7BSNHTML%7D=sfst\\_err&%24%7BMAXPAGE%7D=26&%24%7BTRIPSHOW%7D=format%3DTHW&%24%7BBASE%7D=SFST&%24%7BFORD%7D=FINN&%24%7BFREETEXT%7D=&BET=2006%3A97&RUB=&ORG=&%24%7BSORT%7D=%C5R%2CLPNR+](http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&%24%7BOOHTML%7D=sfst_dok&%24%7BSNHTML%7D=sfst_err&%24%7BMAXPAGE%7D=26&%24%7BTRIPSHOW%7D=format%3DTHW&%24%7BBASE%7D=SFST&%24%7BFORD%7D=FINN&%24%7BFREETEXT%7D=&BET=2006%3A97&RUB=&ORG=&%24%7BSORT%7D=%C5R%2CLPNR+)

*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://www.lagrummet.se>  
[http://62.95.69.15/sfs/sfst\\_form2.html](http://62.95.69.15/sfs/sfst_form2.html) (search form)

## SWEDEN

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

<http://www.immi.se/lagar/>

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

<http://www.migrationsverket.se/english.jsp> (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>