REPORT

on the Free Movement of Workers in Sweden in 2012-2013

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Introduction

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2012 and until the beginning of June in 2013. The report focuses on the application of Council Regulation 492/2011 (former 1612/68) and issues related to Directive 2004/38 and more within the framework of the Treaty of the Functioning of the European Union (TFEU); (Article 45). Legal amendments in Swedish law, draft legislation and judicial practice will be in focus on certain areas embraced by these regulations.

Further, EU enlargement issues will be dealt with and certain case law from the Court of Justice of the European Union/European Court of Justice (ECJ) will be illuminated. Published literature, articles in periodicals etc. in 2012 and 2013 up to June have been observed.

Note that referring to the EEA agreement and the agreement between the EU and Switzerland, most regulations dealt with should embrace citizens from EEA countries outside the EU as well as Swiss citizens.

In Sweden there are three Migration Courts situated in Stockholm, Göteborg and Malmö. In 2013 another Migration Court was established in Luleå situated in the north of Sweden (Government decision in May 2012).

A short overview

In 2012 the situation on the labour market declined and unemployment figures was increasing. In March 2013 new reports indicated that the number of employees that was getting a notice for redundancy was decreasing and that the labour market situation began to be more stabilized. There is a demand for labour in many lines of business. In particular, there is a demand for well highly educated, experienced and skilled workers. This means that there are still unemployment problems in particular among immigrants from third-countries, elderly and young people.

Concerning law and the legal situation on the free movement of workers in Sweden, the transposition of Directive 2004/38 is settled in the main. However, in 2012, a public investigation presented a follow up study concerning Directive 2004/38. The investigation was appointed as a result of criticism from the European Commission as well as the Swedish Ministry of Justice. Many suggestions for amendments of the Aliens Act as well as the

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2 Riksdag & departement 8/2013 (March 11, 2013; reports from the Employment agency).
3 Official report Ds 2012:60 Uppföljning av rörelsedirektivets genomförande. For references to letters on the matter from the Commission as well as the Swedish Ministry of Justice, see the Official report, pp. 39 f.
4 See Official report Ds 2012:60.
Aliens Ordinance and other regulations as well were presented by the committee referring to the criticism.\(^5\)

Further, concerning EU case law on the matter – for instance the Zambrano case – the situation seems to be satisfying. This statement also in general includes the situation for job-seekers.

A suggestion for an amendment in 2012 by another public investigation to introduce a new act dealing with EU-citizens’ and their families’ right has a mostly technical character. If it will lead to a Government’s proposition and a following decision by the Riksdag in line with the suggestions from the committee, it will not mean any substantial changes (today these matters are regulated in the same acts and regulations as other regulations dealing with foreigners’ rights, for instance as asylum seekers).

The situation for Roma workers in Sweden and in general for people of Roma origin is still considered to be problematic in 2012 and 2013. There are still problems, in particular on the local community level dealing with entitlements on social assistance. A concrete problem for the local administration is to judge if – often Roma people – has ‘a real chance to get a job’. Further, there are indications on discrimination on the labour market and Roma people are often said to be begging in the streets etc.

In 2012 Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities came into force.

Concerning access to work within the framework of Regulation 492/2011 (former Regulation 1612/68), there has been no certain amendments to report on concerning the equal treatment, language requirements or the requirements for obtaining positions in the public sector including nationality conditions.

Frontier work is considered to be important. There is an on-going co-operation between both on Government level and between the local communities, in particular in the Öresund region, and efforts are made in order to facilitate the development of cross-border commuting and more between the labour markets in the region. In May 2012 the Free Movement of Workers network organized a Danish/Swedish seminar on cross-border work between Denmark and Sweden in order to highlight certain problems from a judicial point of view.

The situation in sport in relation to EU law is considered to be good. In 2012–2013 only minor amendments have been made in many of the sport associations statutes, even if the situation was satisfying already before.

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

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

The act on labour immigration that came into force in 2008, meaning that a work permit should be granted a third-country national if he or she has been offered an employment by an employer.\(^6\) Regarding the Union preference principle, a work permit should be granted only

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\(^5\) Official report Ds 2012:60 Uppföljning av rörelsedirektivets genomförande. According to the Committee’s the amendment should come into force at July 1, 2013, but this rather optimistic schedule will not be realized.

\(^6\) Government’s proposition 2007/08:147 Nya regler för arbetskraftsinvandring.
if the decision is consistent with Sweden’s commitments to EU. However, a better control of the application of the law and abuse has been debated and measures have been recommended.
Chapter I
The Worker: Entry, Residence, Departure and Remedies

In 2012, a public investigation presented a follow up study concerning Directive 2004/38. Many suggestions from the report will commented on in the following. Here, the reporter will only point at the proposal meaning that the Migration Board’s decision on residence right for EU citizens could be appealed against by introducing a new § 5b in the Aliens Act, ch. 14.

Further, in August 31, 2012, a public investigation suggested the introducing of a new act, in particular dealing with EU-citizens’ rights (including family members etc.). The aim is to make a more clear distinction between regulations concerning EU citizens and other foreigners, and in principal, the proposal does not mean any substantial legal amendments.

1. Transposition of Provisions Specific for Workers

Article 7(1a) of Directive 2004/38/EC. The Article that deals with the right of residence for more than three months for, by example, workers that are Union citizens, was transposed into Swedish law in 2006 by the introduction of ch. 3a concerning the right of residence in the Aliens Act. In year 2012 and so far in June 2013 no further amendments have been made.

Article 7 (3 a-d) of the Directive 2004/38/EC. In accordance with the Aliens Ordinance ch. 3a § 1, workers that for different reasons cease to work should legally still be considered as workers. If the worker has become unemployed after more than one year of employment and if he or she has registered as a job-seeker at the employment office, the worker should not keep his or her status as a worker for more than six months.

Also a worker that has been involuntary unemployed during the first twelve months of work maintains his or her status if he or she has registered as a job-seeker at the employment office). If the worker has been temporary employed less than one year he or she will keep his or her residence right for six months, if he or she has been involuntarily unemployed and if he or she has registered as a job-seeker at the employment office. Further, a worker that begins a vocational training will maintain the right to residence. Otherwise, in 2012 and 2013 no further amendments have been made.

Article 8(3a) of the Directive 2004/38/EC. In order to register the Union citizenship for residence periods more than three months, a Member State may only require an identity card or passport and a confirmation of engagement from the employer or a certificate of employment, or documents showing self-employment or – if the citizen is a student – he or she is

7 Official report Ds 2012:60 Uppföljning av rörelsedirektivets genomförande.
8 Official report SOU 2012:57 Tydligare regler om fri rörlighet för EES-meborgare och deras familjemedlemmar.
10 Amendment of the Aliens Ordinance through Regulation F 2011:408.
11 Compare the Government’s proposition 2005/06:77, p. 43.
registered at a recognized higher education (and has a full covering sickness insurance and ensures that he or she will provide for him or herself including following family members). The regulation has been transformed into Swedish law by an amendment of the Aliens Ordinance ch. 3a § 8, and no further amendments on the matter have been made in 2012 and 2013.

Concerning workers, the requirement for the granting of the residence right is that the worker shows a passport or an identity card and a document certifying that he or she has an employment in Sweden (not to be applied on job-seekers). Further, the Union citizen’s duty to register at the Swedish Migration Board – if he or she has the intention to stay for more than three months – is regulated in the Aliens Act ch. 3a § 10. However, the duty to register should not apply to citizens or family members, if the citizen is Norwegian, Finnish or Danish, or to EU citizens that are job-seekers. From the same regulation it follows that a third-country national being a family member to a EU citizen should apply for a residence card within three months.

In 2012, a public investigation presented a proposal meaning that an EU citizen staying in Sweden for more than three months should not be embraced by a duty to register. A reason for the suggested amendment is that to register is not needed for getting a right to residence.

*Article 14 (4 a-b) of Directive 2004/38/EC.* Only under very special circumstances an expulsion measure may be adopted against Union citizens or their family members if the citizen is for example a worker, or if the citizen is a job-seeker and he or she is continuing to seek employment and, further, if he or she has a genuine chance to be engaged by an employer. Following from Article 14(1) Union citizens and their family members should have a right of residence as long as they do not become an unreasonable burden on the social system of the host Member State.

Concerning the latter it could be noted that the Migration Court in Case MIG 2011:19 took the decision that an EU citizen was not considered to have sufficient financial assets only for the reason that she had certain benefits as support for the elderly and housing (äldreförsörjningsstöd and bostadsbidrag).

Matters concerning refused entry to Sweden as well as expulsion are dealt with in the Aliens Act ch. 8, and in accordance with ch. 8 § 1 third section, an EU citizen – including a worker and his or her family members independent of nationality – may not be refused entry referring only to the reason that the citizen does not have sufficient means for living (referring to article 5.1c of the Schengen Convention).

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). However, if the foreigner has a permanent right of residence there must be particular reasons for such a decision. If the foreigner has children in Sweden or has been staying in Sweden for the last ten years, he or she may be

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12 In Case MIG 2010:5 a person was considered to be a worker even if the employment was a low paid part-time employment.
13 In Case MIG 2008:34 the Migration Court took the decision that it was not against Directive 2004/38 that it is not possible to appeal against a decision not to issue a residence card, since the card in itself is not giving the holder an independent certain right.
14 Official report Ds 2012:60 Uppföljning av rörelsedirektivets genomförande.
15 The meaning of the term ‘unreasonable burden on the social system’ has still not been developed in Sweden by the Migration Board in the legal praxis concerning refused entry and stay. See also Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 43.
16 Government’s proposition 2005/06:77, p. 76 and 196.
expelled only if the measure is absolutely necessary referring to public security.  

In 2012, a public investigation suggested that appeals against a general court’s decisions on deportation because of crimes should be dealt with by the Migration Board or the Migration Courts and not by the Government (suggested amendment of the Aliens Act ch. 8 § 14).  

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

These matters are regulated in the Aliens Ordinance, ch. 3a § 5 in accordance with the Directive. (Further, the family members’ entitlements in these respects are regulated in § 6 of the Ordinance). Concerning family members, the requirements concerning the activity and stay period should not apply, if the EU national’s partner is a Swedish citizen (amendment in 2011 through Ordinance F 2011:408).

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

To sum up concerning the right to social assistance: during the first three months in Sweden, EU citizens and their family members who are not economically active do not have a right to social assistance other than in emergencies. Assistance is then normally granted as means for food and travel to their country of residence. EU citizens who are economically active for instance workers or jobseekers have in principle the same right to social assistance as other residents in Sweden.

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

However, from this rule there is an exception for job-seekers, workers, self-employees as well as family members of those categories. Hence, in the coming legal practice regarding job-seekers a key issue is the criteria for being a job-seeker, since the definition in the Direc-

17 Concerning judicial practice, in Case MIG 2009:21 the Migration Court of Appeal – referring to Directive 2004/38/EG considered that a Croatian citizen married to a Union citizen and committing serious criminal activities in Sweden should be expelled as being a serious threat to public order and security (referring to the Aliens Act, Ch. 3 a §§ 3 and 4, Ch. 5 kap. §§ 3 and 17a, Ch. 8 §§ 1, 7a and 17a).
18 Government’s proposition 2005/06:77, p. 78.
19 Official report Ds 2012:17 Överflyttning av vissa utlänningsärenden till den ordinarie migrationsprocessen.
21 See again Government’s proposition 2005/06:77, pp. 72 f.; compare ibid, pp. 193 ff.
tive also embraces that the person should have a chance to get a job (compare the Directive, Article 14.4b, which concerns job-seekers).

2. **SITUATION OF JOB-SEEKERS**

A *job-seeker* should be granted a residence right if he or she has ‘a real chance to get a job’ (the Aliens Act ch. 3a § 3[2]). Further, a job-seeker being a Union citizen is explicitly *not* embraced by the duty to register at the Migration Board in accordance with the Aliens Act ch. 3a § 10 for staying more than three months.22 (However, if the job-seeker wants to enjoy benefits at the employment office, he or she must register at the office.)

As stated above, in 2012 a public investigation suggested that the duty to register also for other EU-citizens should be taken away.

Concerning job-seekers right to stay and in the light of the judicial practice from the ECJ, there was an explicit reference to Case C-292/89 *Antonissen* in the Government’s proposition on the transposition of Directive 2004/38 presented in 2006.23 Further, in a guideline report from the National Board of Health and Welfare it is said that after ‘approximately’ six months the job-seeker must have ‘a real chance to get a job’ etc.24

A job-seeker (as well as workers, self-employees and family members of those categories) who has not been qualified for a right of residence – which means that the stay is less than three months – cannot be refused entry (the term covers also the situation when the foreigner already is in Sweden), if he or she is not an unreasonable burden on the social system (Aliens Act ch. 8 § 2).25

The criteria being an unreasonable burden on the social system (Aliens Act ch. 8 § 2) has still up to May 2013 not been concretized in legal praxis and there are problems reported from local authorities’ dealing on the matter.

Another practical problem for local authorities is to apply the criteria to ‘have a real chance to get a job’. In a report broadcasted on radio in May 2013 it was said that in Stockholm the local authority considers a person seeking social assistance after three months stay not to have a ‘real chance to get a job’.26 Hence, disregarding the formal legal situation, policy documents etc. from central State authorities, there is a lack of knowledge on these matters on the local level, and there is a need for further assistance to the local municipalities to meet these kind of situations in practice. (See also below, point 4. Free movement of Roma workers.)

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22 The reason is that a job-seeker’s stay in Sweden is supposed to be temporary, and if he or she will get a job the person should register as a worker etc. Government proposition 2005/06:77, p. 110.
23 Government’s proposition 2005/06:77, p. 44. Furthermore, in accordance with the Aliens Act ch. 8 § 2, an EU citizen who has not been qualified for a right of residence – which means that the stay is less than three months – could be expelled if he or she is an unreasonable burden to the social system (compare Government’s proposition 2005/06:77, pp. 72 ff., 193 ff.). However, there is an exception for job-seekers, workers, self-employees, as well as family members of those categories. Also in a report presenting up to date guidelines in 2008 for the granting of social entitlements for job-seekers there is a reference to the *Antonissen* case, see Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 35.
25 See again Government’s proposition 2005/06:77, pp. 72 ff. and 193 ff.
26 Sveriges Radio (public service).
There is also practical problems reported concerning job-seekers having difficulties to get a social security number. 27 The charity organisation Stadsmissionen in Stockholm has noticed an increasing number of homeless EU-migrants in Stockholm. They often do not have serious social problems, a spokesman for the organisation said, but a critical issue is to get a personal number. You need this in order to register at the employment office, to get a job in contact with an employer, find an apartment, get a bank account and more.

The reporter cannot confirm to what extent this is a real problem. Disregarding this kind of practical problems, the legal situation in principle seems to be in accordance with EU law. In accordance with the Act on personal registration (1991:481; Folkbokföringslagen), a person should be registered as settled if the person is expected to stay for 12 months in Sweden (3 §). In order to be registered at a certain place he or she should have a permanent address (6 §). Further, this is important for getting for instance social assistance from the local society.

Further, a person that is registered as living on a certain address, should get a personal number (i.e. a personal code/identity number or social security number) in accordance with 18 §. In accordance with the Act on personal registration 18a §, and a State authority can ask for a person not fulfilling these criteria to get a corresponding personal number (18 §), for instance for a foreign student studying at a university in Sweden.

The State authority in charge for issuing personal numbers is the Swedish Tax Agency. 28 In a guiding decision taken in 2010 (Decision 131 380303-10/111), the Tax Agency has clarified the situation and also explicitly refers to the free movement of workers perspective. 29 In principle, if a person has a right to residence in Sweden and meets the criteria given in the Act on personal registration 3 §, he or she – family members included – should get a personal registration number.

The decision taken by the Tax Agency will be based on the information provided for by the applicant, and the applicant must show a right to residence. Hence, the Migration Board’s decision on the matter might be important; anyone who certifies a registration of residence or a residence card should have a right of residence. Further, for registration it is required that immigrating EEA nationals and their family members show a valid passport or national identity card, and for family members, the family relationship must be proved. (In the decision, the Tax Agency also makes statements concerning the Metock case.)

3. OTHER ISSUES OF CONCERN

In 2012 a public investigation presented a proposal for the transposition of Council Directive 2009/50/EC on the conditions for third-country nationals for the purposes of highly qualified employment (Blue Card) 1. 30 For the transposition of the directive the committee suggests the introducing of a new chapter in the Aliens Act.

27 Riksdag & departement 28/2012, p. 8.
28 http://www.skatteverket.se/2.18e1b10334be88be80000.html. See also Folkbokföringsförordningen (1991: 749).
29 The decision is available at http://www.skatteverket.se/rattsinformation/stallningstaganden/2010/stallningstaganden2010/13138030310111.3.la0986721295e544e1800005173.html.
The committee proposes the introduction of a residence and work permit for highly qualified employment designated EU Blue Card. To qualify for an EU Blue Card the applicant’s pay should at least reach 150 percent of the average gross annual earnings in Sweden. Refusal of an application for an EU Blue Card or a withdrawal of the EU Blue Card may be appealed against.

Later in June 2013, the Riksdag took the decision to introduce a new regulation which came into force at August 1, 2013.\textsuperscript{31} The Aliens Act was amended by the introducing of a new chapter 6a regarding the Blue card. Beyond the rule suggested by the former investigation committee, that the beneficiary should earn at least 150 percent of the average gross annual, the employee should have an education on university level or five years occupational experience. Further, amendment were made in the Study loan act (1999:1395) ch. 1 § 4 and the Social Security Code ch. 35 § 17.

The Blue Card Directive provides for derogations to be made in relation to certain provisions of the Directive on family reunification and the Directive on the status of third-country nationals. For those who have an EU Blue Card and there family members more favorable rules should apply.

The committee proposes that family members should have a right to be reunited with those who have an EU Blue Card and that decision on residence permits for the family members should be announced no later than six months after the application. Further, a foreigner who has an EU Blue Card should be credited with periods of residence in other Member States in order to achieve the requirement of five years of residence when applying for resident status in Sweden.

4. **FREE MOVEMENT OF ROMA WORKERS**

In principle and in accordance with law, Roma workers that are EU citizens should enjoy full right to equal treatment as other EU citizens. However, in practice there are problems in particular concerning the Roma workers, who belong to an ethnic group that in many countries is subject to discrimination. Roma people are many times subject to non-equal treatment also in the Swedish society, and in many cases it is claimed that there is obvious discrimination on ethnic grounds.\textsuperscript{32}

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

The practical problems referred to concerning job-seekers (see above point 2 concerning job-seekers) and the access to personal numbers as well as the application of the term being an unreasonable burden on the social system (Aliens Act ch. 8 § 2), could be more problem-


\textsuperscript{32} A general overview was presented in 2010 in Official report SOU 2010:55 Romers rätt – en strategi för romer i Sverige. (The public investigation did not address problems with EU law and the free movement of Roma workers.)
atic for job-seekers belonging to Roma people, since it could mean even more seriously for this group that was mentioned in particular in the reports on the matter.

In 2011 the Parliamentary Ombudsmen (JO) had seriously criticized the police authority in the Stockholm County, referring to the Aliens Act ch. 8 § 2, for the expelling of a number of Roma people to Romania in 2010. The Ombudsmen took the decision that the expulsions were contrary to Swedish law (see Aliens Act, ch. 8 § 3). The Ombudsmen also pointed at EU law and the hindrance against expulsion of EU citizens that follows from Directive 2004/38 and the amendments made in Swedish law.

In February 2012 the Government launched a new strategy for inclusion of the around 50,000 person with Roma origin in Sweden. The long term strategy means that within 20 years Roma people should have exactly the same rights and possibilities in society as other ethnical groups. To begin with, around 4,500,000 Euro was allocated for certain local projects during the years 2012–2015. Beyond that around 800,000 Euro will be set off per year for measures within the national politics for minorities.

33 The Parliamentary Ombudsmen (JO), Allvarlig kritik mot Polismyndigheten i Stockholms län, som avvisat utlänningar med motivering att dessa ägnade sig åt tiggeri och dagdriveri, Decision on 2011-06-28, dnr 6340-2010.
34 Riksdag & Department, February 16, 2012.
Chapter II
Members of the Family

1. The Definition of Family Members and the Issue of Reverse Discrimination

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

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

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

Concerning the definition of a ‘family member’ there is a suggestion presented in the Official report Ds 2012:60 that also other family members that are dependent on the EU citizen for their livelihood, should be included in the citizen’s household or if serious health requires that the citizen will take care of the family member (suggested amendment of the Aliens Act ch. 3a § 2).

The suggested amendments is responding to a former criticism from the Commission meaning that Directive 2004/38 has not been correctly transposed into Swedish law. Further, the suggested amendment means a more wide interpretation of the term family member in Swedish law referring to EU law.

In the Official report Ds 2012:60 there is a suggestion for an amendment meaning that also a Swedish citizen’s family member that is not an EU citizen should be embraced by the right to residence (amendment of the Aliens Act ch. 3a § 4). Here the public investigation refers to the EUCJ Cases 291/05 Eind (REG 2007 I-10719), C-390/90 Sing (REG 1992 I-04265) and C-434/09 McCarthy.

Concerning workers and their family members and the issue of reverse discrimination, the matter has not been brought up in the Swedish debate during year 2012 and during the first five months of 2013. However, the suggestions presented in Official report Ds 2012:60 also points at the issue of reverse discrimination, since a family member to an EU citizen

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35 The categories ‘spouse or cohabiting partner’ includes registered partner. This follows from ch. 3 § 1 in the Act (1994:117) on registered partnership and an amendment made in 2005. The term ‘registered partner’ means a married partner as well as a cohabitant (which is not a requirement from the Directive); see Government’s proposition 2005/06:77, pp. 71 and 183. Regarding the term ‘dependent’ in the Aliens Act ch. 3a § 2, see the Migration Court Case MIG 2009:37 referring to EUCJ Case C-1/05 Jia.
from another Member State than Sweden is already embraced by the right to residence in accordance with the Aliens Act ch. 3a § 4.

Following this, the term EEA citizen should also embrace a Swedish citizen’s family member that is not an EU citizen within the framework of the Aliens Ordinance (suggestion for amendment of the Ordinance ch. 1 § 4). Further, also such a family member should have the right to a permanent residence right after five years stay, even if the connection to the primary EU citizen no longer is present (suggestion for amendment of the Aliens Ordinance ch. 3a by introducing a new 6a §).40

Further, concerning the issue of reverse discrimination, there is a proposal in Ds 2012:60 meaning that also a family member to a Swedish citizen returning to Sweden after using his or her right to free movement, should certify the connection to the Swedish citizen (the interesting formulation here is the reference to EU free movement regulation).

2. ENTRY AND RESIDENCE RIGHTS

In accordance with the Aliens Act ch. 3a § 1 EU citizens and their family members have a basic right to stay in Sweden for more than three months without having a residence permit.41 The right of residence should be granted immediately if the requirements are fulfilled and should remain for 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.42

A family member with a right of residence should register him or herself at the Migration Board if the stay is longer than three months (the Aliens Act ch. 3a § 10).

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

Concerning entry, an EU citizen’s family members that are not EU citizens themselves must show a passport since Directive 2004/38 does not stipulate that a family member that is a third-country national is entitled to enter a Member State only by showing an identity card.43

Third-country nationals that are members of the family to EU citizens and have a residence right, should – as stated above – apply for a residence card to be issued by the Swedish Migration Board – within three months after the arrival to Sweden (the Aliens Act ch. 3a § 10; compare Case MIG 2008:34).44

Family members of an EU citizen should be granted a permanent right of residence after five years stay without interruption (the Aliens Act ch. 3a §§ 6 and 7). Temporary stay abroad up to six months or military service for a longer period should not influence the calculation of the five-year period (§ 8).

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41 See also Government’s proposition 2005/06:77, p. 70 ff.
42 See also Government’s proposition 2005/06:77, p. 70 ff.
43 See Government’s proposition 2005/06:77, p. 63 f. A motive for this is the risk that false identity documents could be used when entering Sweden.
44 See also Government’s proposition 2005/06:77, pp. 117 f. and 119. In May 20, 2011, a new residence card was introduced for third-country nationals. Further, compare EU case law; C-162/09 Lasal (periods of unemployment), C-325/09 Dias, C-424/10 and C-425/10 Ziolkowski and Szeja, C-147/11 and C-148/11 Czop and Punakova.
Further, neither should temporary stay abroad up to twelve months for studies or vocational training, maternity and childbirth, serious illness, posting of the worker or any other particular reason, be considered as a break of the five-year period. Concerning recent legal praxis, see Case MIG 2012:10 (periods of stay before Directive 2004/38 was taken).

Concerning the Aliens Act ch. 3a § 4 and family members’ residence rights, there are many references made to legal practice from the EUCJ; i.e. by example C-480/08 Teixeira och C-310/08 Ibrahim.

Concerning children’s rights and Swedish law, in Case MIG 2009:22 the Migration Court of Appeal declared that when examining a minor EEA citizen’s right to residence (the parents were an EU citizen and a third-country national), the child should be entitled to an independent examination before the court. In MIG 2012:15 the Court took the decision that also a minor EU citizen should have a health insurance and that such a request is not discriminatory (see Aliens Act ch. 3a § 4) and, further, referring to this also the child’s parents were denied residence right.

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

Three cases from the Migration Court of Appeal to be mentioned, in particular confirming EU law: Case MIG 2010:5 (a part-time employee from a Member State was considered to be a worker), Case MIG 2010:8 (residence right and stay period calculation) and Case MIG 2010:14 (permanent residence right after five years stay referring to Dias).

In April 2012 the Migration Board asked for a sharpening up the rules on family reunification. The reason was a judgment from the Migration Court giving a man having a residence permits the right to bring his new wife and her son to Sweden. The problem was that the man had been found guilty and condemned to prison for repeated assault against a former wife in Sweden.

In accordance with a suggestion presented in a former Official report also a non-EU family member to a Swedish citizen should register at the Migration Board when staying in Sweden for more than three months. However, the amendment in principle did not mean any substantial changes in law only meantin (see the Aliens Act ch. 3a § 10). Further, such a family member should also apply for a residence card and the Migration Board should immediately certify the application, and the residence card should be issued within six months (Aliens Ordinance ch. 3a § 7).

Further, the Migration Board’s decision on residence right should be in writing (amendment of the Aliens Act ch. 13 § 10). (Before, the Commission has pointed out that the Swedish Act (1986:223) on public administration (Förvaltningslagen) 20 § – where there are exceptions from the rule that a State authority’s decision should be motivated – gives far more exceptions than what is admitted referring to Directive 2004/38.)

In accordance with an official committee’s suggestions, it should also be possible to appeal against a decision on residence right (suggestion for an amendment by introducing a new § 5b in ch. 14 of the Aliens Act). However, in accordance with the Migration Court in

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45 Further specifications are presented in the Aliens Ordinance, ch. 3a §§ 5 and 6.
46 Riksdag & Departement, April 26, 2012.
47 Compare the Official report Ds 2012:60, pp. 85 f.
Case *MIG 2008:34* a decision not to have a right to appeal against a decision on residence right should be considered as being contrary to Directive 2004/38.49

Concerning visa applications, an amendment has been in made in the Aliens Ordinance ch. 3 § 11 meaning that the dealing with an application for visa should be exercised quickly.50

3. **Implications of the Metock Judgment**

Case C-127/08 *Metock* concerned four Africans married to Irish citizens.51 The Irish authorities claimed that the marriages did not mean that they should be entitled to residence permits in Ireland. The Africans should, according to the authorities, have been staying lawfully in another EU State. However, the EUCJ did not agree to the position taken by the Irish authority.

In an internal message the Swedish Migration Board already in September 17, 2008, stated that the Aliens Act should apply in line with the *Metock* judgment.52 (The *Metock* case was also referred to by the Swedish Tax Agency in the previously mentioned guiding decision from 2010 [Decision 131 380303-10/111]).53 In principle, if a person has a right to residence in Sweden and meets the criteria given in the Act on personal registration 3 §, he or she – family members included – should get a personal registration number.

In Case *MIG 2011:17* a third-country national had entered into a cohabitation relationship in Sweden.54 In principle, the Court said, a third-country national might derive a residence right in such a situation independent of if the third-country national has entered Sweden before or after becoming a family member. However, a cohabitant is not a family member in accordance with article 2.2 of the Directive 2004/38, but such a status is recognized through the Aliens Act. By this national law has a wider application than what follows from the Directive.

However, in the actual Case *MIG 2011:17* the primary person/EU citizen was both a citizen in Poland and in Sweden. Both article 3.1 of the Directive 2004/38 as well as the Aliens Act ch. 1 § 3b should apply only if the EU citizen is staying in a Member State other than his or her home State. (The Migration Court referred explicitly to *Metock* and Case C-434/09 *McCarthy*, where a person has not used her right to move to another Member State.55) Regarding the matters dealt with in the case, see also Cases *MIG 2008:30* and *MIG 2009:11*.

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49 See also Case MIG 2007:53.
50 Introduced through Ordinance F2013:286. See also Official report Ds 2012:60, p. 51, referring to Council Regulation 539/2001. (The policy on quick dealing concerning visa applications was already before established in administrative praxis.)
51 Case C-127/08 Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform (Reference for a preliminary ruling from the High Court [Ireland]).
52 The *Metock* case was also subject to discussion at the Ministry of Justice in 2008. Justitiedepartementet (Ministry of Justice), EU-nämndens kansli 2008-09-11, Agenda with Comments. Available at [http://www.regeringen.se/content/1/c6/11/12/27/73cd35e0.pdf](http://www.regeringen.se/content/1/c6/11/12/27/73cd35e0.pdf) (Internet 2013-06-10.)
55 A remark from the reporter is that the EUCJ in Case C-148/02 *Avello* where EU citizens citizenship in two Member States resulted in a conclusion that might lead to another conclusion in Case *MIG 2011:17*. 
In a decision in 2010, the Swedish Tax Agency – that is in charge of the national registration procedure – certified that in order to be entitled to residence for more than three months, an EU citizen should be a worker etc. Also family members have a residence right beyond the same period, independent of citizenship, if the family member belongs to any of the categories within the scope of the Aliens Act, ch. 3a § 2 (spouse, cohabite, registered partner etc.).\(^{56}\) (The Tax Agency’s decision [no. 131 380303-10/111] is also discussed above in Chapter I, point 2.)

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

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

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

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

Further, in accordance with ch. 5 § 17a (1) and (2), a residence permit should not be granted if the application is based on false information or if a marriage or a cohabiting relationship is a relationship of conveniences and fraud.\(^{57}\) Hence, the starting point should be that the information presented concerning a marriage etc. is correct. However, if the Migration Board suspects that a marriage could be a pro forma marriage, a deeper examination should be carried out.

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

In the Government’s proposition, approved by the Riksdag (referring to article 17 of Directive 2003/86/EC), it was explicitly stated that before a withdrawal of a residence permit concerning family reunification, considerations should be made regarding the ‘nature and solidity of the person’s family relationships and the duration of his residence in the Member

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\(^{57}\) The problem is to decide whether the information provided is correct or not. Concerning fraud or marriage or partnerships of conveniences, which should not be accepted in accordance with the Aliens Act ch. 5 §17a (2), the matter was discussed in the preparatory works approved by the Riksdag before the transformation of the Family Reunification Directive 2003/86/EC. Government’s proposition 2005/06:72 Genomförande av EG-direktivet om rätt till familjeåterförening samt vissa frågor om handläggning och DNA-analys vid familjeåterförening, p. 39 f.
State and of the existence of family, cultural and social ties with his/her country of origin...\textsuperscript{58} (The wording exactly follows the text in article 17 of Directive 2003/86/EC.)

In 2011 the Migration Board was commissioned by the Government to present statistics concerning residence permits and marriage of conveniences and fraud including child marriages.\textsuperscript{59} In the following communication the Migration Board also pointed at certain shortages concerning the regulations on the matter. For instance, it does not follow from the act that a person must be at least 18 years old, if he or she has the intention to come to Sweden for marriage.

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

In May 2012 a public investigation suggested that the criminalization of arrangement and forced marriages and marriages involving children up to 18 years age should be strengthened.\textsuperscript{60} The scope of the ban should be widened and the possibility to grant an exemption from the 18 years limit was suggested to be abolished. Marriages in a country where marriages between persons below 18 years of age is not banned by law, should not be embraced by the suggested amendment.\textsuperscript{61} However, the age limit should apply to marriages entered into abroad under Swedish law (i.e. at Swedish embassies). According to the Swedish ministry in charge, a Government proposal on the matter will be presented in 2014 (Memo A2013/1281/A).

Critics – the Swedish Bar Association and more – have claimed that it might be difficult to prove intent when force has not occurred and that it may therefore be difficult to trap someone for forced or child marriages. Further, there is a risk, the critics argue, that the victim of the crime does not dare to talk about what happened.

Regarding the proposal in the Official report Ds 2012:60, meaning that a Swedish citizen’s family member that is not an EU citizen should be embraced by the right to residence (see above, Chapter I, point 1. The definition of family members...), there is also a suggested addition to the Aliens Act ch. 3a § 4, that a right to residence should not apply if a marriage or cohabitant relationship is a marriage of conveniences and fraud or if an adoption is made for the only purpose to obtain a residence right.\textsuperscript{62} (The corresponding regulation in the Aliens Act ch. 5 § 17a concerning marriages of conveniences etc. do not embrace situations where residence rights are involved.)

Concerning judicial practice, in Case MIG 2009:11, the Migration Court of Appeal took the decision that a third-country national should not be entitled to a residence right referring

\textsuperscript{58} Government’s proposition 2005/06:72, p. 50.
\textsuperscript{59} In a communication to the Government, the Migration Board in 2011 presented an account for 53 cases that had been dealt with by the Board. See Skrivelse 2011-02-15 till Justitiedepartementet, Enheten för migration och asylpolitik, Delredovisning av Migrationsverkets uppdrag att föra viss statistik (Ju2010/5032/EMA). Available at: http://www.migrationsverket.se/download/18.46b604a812cbed7d3b480021229/GD-mall+uppdrag+vers2.pdf (in Swedish).
\textsuperscript{60} Official report SOU 2012:35 Stärkt skydd mot tvångsäktenskap och barnäktenskap.
\textsuperscript{61} Before that – in 2011 – a public investigation Official report SOU 2011:45 Kvinnor och barn i rättens gränsland, was presented concerning women and children that have been exposed to violence after being granted residence permits referring to a connection to a person in Sweden.
\textsuperscript{62} Official report Ds 2012:60, pp.55 ff and 85. Here, the Committee also refers to COM [2009] Final. See also Case MIG 2009:11 (EU law could not be called upon in order to legitimize a marriage of convenience).
to a marriage that exclusively had been entered into in order to bypass the regulations in the Aliens Act ch. 3a concerning entry and stay.63

5. **ACCESS TO WORK**

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

In 2012 the Government presented a proposition meaning that a person convicted of sexual offenses against children in another Member State should not be able to hide it when the person searches a job, for example, in a nursery school, in Sweden.64 The amendment came into force at January 1, 2013, and it was in line with the Council Framework Decision 2009/315/JHA on the organization of the exchange of information extracted from criminal records between the Member States.

6. **THE SITUATION OF FAMILY MEMBERS OF JOB-SEEKERS**

Family members to job-seekers are entitled to the right of residence (the Aliens Act ch. 3a § 4 referring to § 3(2) concerning job-seekers having a ‘real chance to get a job’).65 Further, if the family member has a right of residence he or she is embraced by the right to equal treatment as family members of other categories mentioned above.66

Nothing else to report on in 2012/13.

7. **OTHER ISSUES CONCERNING EQUAL TREATMENT (SOCIAL AND TAX ADVANTAGES)**

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

Practical problems have been reported concerning difficulties to obtain personal number, even if it is unclear to what extent and if this kind of problems occurs in connection with certain groups (see above Chapter 1, point 2. Situation of job-seekers).

Concerning social security, in December, 2012, the Government presented a proposition before the Riksdag to approve the new Nordic Convention on social security of June 12, 2012.

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63 In Case **MIG 2008:41** the reference person in Sweden had committed crimes of violence, and the court found that there was a risk that the foreigner would be subject to violence and, further, that the couple had not met regularly. Considering these circumstances the court found there were particular reasons not to grant a residence permit for marriage.

64 Government’s proposition 2011/12:163 Utbyte av uppgifter ur kriminalregister mellan EU:s medlemsstater.

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

2012, and that the Convention shall apply as national law in Sweden. The Convention replaces the former Convention of 18 August 2003 on the matter.

The new Convention was taken referring to the need to clarify EU rules in the Nordic region and adjust the Nordic coordination with the EU Regulations 883/2004/EC and 987/2009/EC. Amendments were also made to deal with problems that may arise for people moving between the Nordic countries.

In Case C-461/11 the EUCJ tried the a residence requirement for the right to debt settlement in accordance with the Swedish Act (2006:548) on debt settlement (§ 4; Skuldsaneringslagen). The decision from the EUCJ meant that the residence requirement was contrary to Article 45 of the TFEU and the right to free movement of workers. So far in June 2013 there is no new legal amendment or praxis on the matter.
Chapter III
Access to Employment. (a) Private sector and b) public sector

1. **ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR (A)**

Several of the regulated professions on the Swedish labour market can be exercised both in the private and public sector, e.g. doctors, nurses, school teachers and more. However, the same professional qualification requirements and the same rules of recognition apply irrespective of whether the employer is an actor on the private or the public sector.

1.1. **Equal treatment in access to employment**

In 2012 a public investigation suggested an amendment concerning the right to Special employment assistance (Särskilt anställningsstöd; see Ordinance 1997:1275 on employment assistance). The suggested amendment means that also a non-EU family member to a Swedish citizen that has registered at the Migration Board when staying in Sweden for more than three months might be entitled to employment assistance (the amendment follows from the above mentioned suggested amendment of the Aliens Act ch. 3a § 10).

In accordance with the suggestion in Official report Ds 2012:60 also a non-EU family member to a Swedish citizen should register at the Migration Board when staying in Sweden for more than three months (suggested amendment of the Aliens Act ch. 3a § 10).

The same official committee also suggested – in line with the amendment of the Aliens Ordinance ch. 3a § 10 – the same category to be entitled to the labour market measure New start job. The New start job (Nystartjobb) is for persons who at the beginning of the year is between 20–26 years of age and have been unemployed for at least six months; there is a tax relief for the employer, reducing the employer’s costs for the employment.

A general requirement also for access to the measures and benefits mentioned above, is that the person is registered as a job-seeker at the employment office, and there are no restrictions on the right to register as a job-seeker.

1.2. **Language requirements**

In the private sector language requirements are in principle not regulated by law. However, in practice language can be used as a requirement for access or promotion by a private em-

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69 The employment assistance may be assigned to unemployed persons, registered at the Employment office, who for a six month period have participated in the job and development guarantee or if you have been participated in the job guarantee (see below) for young people in 15 months. The employer will have a financial contribution; i.e. up to 85 percent of the wage to be paid for the employment.
71 Nystartjobb – i.e. tax relief for the employer – might also be granted for persons being 26 years or older, and have been looking for work for at least 12 months. (Employing somebody who at the beginning of the year is 26 years or older, has been looking for work for at least 12 months). See Ordinance Förordning (2006:1481) om stöd för nystartjobb.
employer on condition that the requirement does not interfere with Swedish discrimination law or Community law.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR (B)

For employment in the State sector merit and competence should be decisive, but competence should be the most important criterion (the Constitution ch. 12 § 5 and the Act on public employment 1994:260 § 4). Further, appointments for employment in the public sector should be ruled by objectivity.

The required merits and skills are defined by the employer for each position before recruitment, and requirements should be based on the post subject to the recruitment procedure.

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above. Beyond that the equal treatment principle is founded on Regulation 492/2011 (former 1612/68) and EC law should apply for instance concerning nationality and discrimination. Further, there is ban on discrimination in following from Act (1994:1219) on the European Convention on Human Rights (article 9) as well as from the Discrimination Act (2008:567), which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc. (§ 4).

The introducing in 2011 of new requirements for positions as school teachers and preschool teachers was delayed in 2012. The intention was that full implementation should have been reached in July 1, 2012. However, in practice the regulation did not apply in 2012, but in 2013 the situation has been improved and the procedure has been intensified, following from a proposal from the Government.

For foreign teachers, the teacher’s certificate is issued by the Swedish National Agency for Higher Education, which is the authority that evaluates higher education diplomas obtained in other states. Concerning teachers from other Member States – and independent of the new certificate – a teacher’s diploma from another Member State should fulfill the basic requirement (following from Directive 2005/36EC). Further, regarding the proposal in 2013, the new amendments should not interfere with EU law concerning equality and occupational qualifications. However, it is still unclear how and if the requirement for a one year introductory period could be fulfilled by previous work as a teacher in another Member State.

73 Utbildningsutskottet 2011/12:20 Senare tillämpning av vissa bestämmelser om legitimation för lärare och förskollärare. Regarding the enforcement in 2013, see Lagrådsremiss, Vissa skolfrågor (3 juni 2013).
74 Government proposition 2010/11:20 Legitimation för lärare och förskollärare, pp. 79 f. (Concerning this matter, see also the opinion from the Swedish National Agency for Higher Education, referred to in the Government proposition, p. 37.)
75 Lagrådsremiss, Vissa skolfrågor (3 juni 2013), p. 35.
2.1. **Nationality condition for access to positions in the public sector**

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, when the employment is in the exercising authority there is a restriction on the right to equal treatment regarding employment in the public sector in accordance with the TFEU, Article 45.4.

Restrictions meaning demands for Swedish citizenship are founded in the Constitution. In accordance with the Constitution ch. 11 § 11, a judge in a court should be a Swedish citizen. Beyond that, requirements on citizenship for positions dealing with jurisdiction should be regulated in law.

Further requirements concerning the public sector are regulated in the Act on public employment (1994:260) as well as in different ordinances giving instructions concerning courts and other public authorities.

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.

Further, the Government can prescribe Swedish citizenship as a condition for employment connected to exercising authority or for positions that are of significance to State security (the Act on public employment § 6 pp. 2 and 3). Hence, there are many public functions (for instance committees with elected representatives exercising public authority), which are embraced by a requirement for Swedish citizenship.

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

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

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

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77 However, regarding citizenship, it is possible for a lawyer from another Member to act as a lawyer in a Swedish court; 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.). Already before this amendment the Code of procedure had been amended in line with the Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, and the amendment in 2002 was correcting some imperfections. (Government’s proposition 1998/99:108 Advokaters etableringsrätt.)

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

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

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

For access to some employments, knowledge of the Swedish language is a formal requirement. For instance, for a position as school teacher the requirement is that the employee has the necessary knowledge in Swedish language.80

Concerning school teachers and teachers, the former regulation – meaning there was an exception to this rule on ‘necessary knowledge in Swedish language’ for applicants that had another mother language than Danish, Faeroese, Icelandic or Norwegian – has ceased, following from amendments of the new School Act 2010:800 that came into force in July 1, 2011.

For access to most regulated professions within healthcare there are no absolute requirements for the Swedish language, but language competence could be an important qualification to consider.81

2.3. 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 sections 2, 2.1 and 2.2). Beyond that the equal treatment principle is founded on Regulation 492/2011 (former 1612/68) and EU law should apply for instance concerning nationality and discrimination as well as the European Convention on Human Rights. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

(Several of the regulated professions can be exercised both in the private and public sector, e.g. doctors. In principle, the same professional qualification requirements and the same rules of recognition should apply. However, at the same time it should be noted that a private employer has more room for other considerations compared with an employer in the public sector where the procedure is ruled by public law).

80 Concerning the regulation of professions, another example is the veterinary profession, which in Sweden is generally regulated in the Act (2009:302) on the activities of animal health (Lag om verksamhet inom djurens hälso- och sjukvård). In the Ordinance (2009:1386) on activity concerning health care for animals, ch. 3 § 1, the Swedish Board for Agriculture (Jordbruksverket) certifies applicants from other Member States. In ch. 3 § 1 there are references to EU law and in § 2 (3), it is stipulated that foreign veterinaries from other countries should complete the education from their country with basic knowledge concerning Swedish law and the Swedish language.

3. Other aspects of access to employment

In 2012, Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities, was transposed into Swedish law and the amendment came into force on May 1, 2012.82

In November 2012, the Riksdag took the decision to embrace the ban on discrimination referring to age, to include the access to accommodation, healthcare, social services, social security, unemployment benefits and public employment.83

In 2012 a public investigation was appointed in order to investigate the introducing of more distinct regulations concerning equal treatment and in particular the employers’ duty to take active measurements for equal treatment.84 The result is expected to be presented in November 2013.

82 Government’s proposition 2011/12:80 Nya lagar för yrkestrafik och taxi.
83 Arbetsmarknadsutskottet (the Riksdag’s standing committee for labour market issues) 2012/13:3 (2012-10-04).
84 Committee directions (kommitté direktiv) 2012:80 Aktiva åtgärder för att förebygga diskriminering och främja lika rättigheter och möjligheter.
Chapter IV
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Specific issue: Working conditions in the public sector

Please see the Commission Staff Document and the reports by Prof Ziller and lay emphasis on developments which are not covered by these reports:

- Recognition of professional experience for the purpose of determining the working conditions (e.g. salary; grade, career perspectives)
- Taking into account of diplomas for determining working conditions (salary, grade, career perspectives etc)
- Equal treatment in relation to issues like civil servant status, trade union rights etc.

In general, detailed rules on discrimination are laid down in the Discrimination act (2008:567). The Act applies to discrimination on the grounds sex, transsexual identity, ethnic origin, religion or religious belief, handicap, sexual orientation or age. The act was coming into force January 1, 2009, when several previous acts on discrimination was brought together in the new act.

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above (see above Chapter III, sections 2, 2.1–2.3). Beyond that the equal treatment principle is founded on Regulation 492/2011 (former 1612/68) and EU law should apply for instance concerning nationality and discrimination.

A comment is that the regulations mentioned above primarily have focus on citizenship, while the term nationality is used in article 18 of the TFEU. In practical terms a person can be a Swedish citizen but at the same time have a non-Swedish ethnical background. However, in Regulation 1612/68 the term citizenship is used in connection with the right to equal treatment for workers from other Member States, although the term nationality also is used (see articles 6.1 and 7.1).

Further, since 1994 the European Convention on Human Rights should apply as Swedish law. In accordance with article 14 of the Convention, the regulated rights should apply irrespective of sex, race, nationality, social origin etc.

The Discrimination act does not expressively role out discrimination on grounds of nationality. In accordance with the preparatory works, the wording ‘ethnic origin’ in discrimination law includes nationality. However, should there be any indistinctness, the TFEU, article 45 as well as the EU Charter on Fundamental Rights, article 21.2, and Regulation 492/2011 (former 1612/68) should apply.

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86 Government’s proposition 2007/08:95, p. 118.
2. Social and Tax Advantages

According to Article 7.2 of Regulation 492/2011 (former 1612/68), migrating workers shall enjoy the same social and tax advantages as workers from the host Member State. The Article has direct effect and there is no specific national legislation intended to implement it.

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

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

The access to social assistance from the local municipality is a practically important issue. The general rule is that the municipality in which the individual 'stays' is responsible for the support and help to individuals in need for social assistance.

In order to be entitled to full assistance, a person must be staying at least a year in the municipality. Hence, persons who are not registered in a municipality are only entitled to emergency or acute assistance (see Case RÅ 1995 ref. 70).

There are many social rights, such as parts of social insurance, which are linked to the individual as resident and written in a local municipality. It is partly parts of the parental insurance, some labour market contributions paid under the insurance, housing etc.

As regards tax advantages, judgements from the EUCJ formed the background to a previous governmental proposal on rules concerning tax deductions and tax exemptions for payments to pensions founds established in other Member States.

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

In the Government’s proposition on the State financial budget before 2012, the so called ‘expert tax’ was introduced. The meaning is that foreigners who come to Sweden for work

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87 The Social services Act (2001:453), ch. 4 § 1.
88 The EUCJ cases referred to was Case C-150/04 Commission v Denmark and Case C-522/04 Commission v. Belgium. Concerning previously made amendments, see Finansdepartementet (the Ministry of Finance), Nya skatteregler för pensionsförsäkring, Promemoria February 1, 2007, and Finansdepartementet (the Ministry of Finance), Skr. 2006/07:47, Meddelande om kommande ändringar av skattereglerna för pensionsförsäkring (1 februari 2007), Government’s proposition 2007/08:55 Nya skatteregler för pensionsförsäkring, m.m. with amendments of the Act (1999:1229) on income-tax law (Lag om inkomstskatt). Further, in October 2008 the Government presented a proposition meaning amendments of the regulations concerning the taxation of personnel options regulated in the Income tax Act (1999:1229); Government’s proposition 2007/08:152 Slopad avskattning för personaloptioner. Hence, the former demand on taxation on the options when a person moves abroad was abolished on January 1, 2009. The amendment follows from EC law and a judgement from the Swedish supreme administrative court (Case no. 6324-06).
should be called ‘experts’ and will have lower taxes, if the will earn more than around 9,500 Euros per month.\(^8^9\)

Further, the amendment means that 25 percent of the ‘expert’s’ wage will not be subject to taxation during the first three years. The same should apply to payments for expenses for children’s’ schooling, moving expenses and travels back to the home country. This also means lower costs for football clubs, ice hockey clubs and more.

2.1. General situation as laid down in Art. 7 (2) of Regulation 492/2011

Basically, Regulation 492/2011 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to 492/2011, for instance housing allowance, implies that the worker is residing in Sweden.

The benefits that should be granted to a person based on residence and work respectively are from January 1, 2011, listed in the new Social Security Code (replacing around thirty former acts on different social benefits).\(^9^0\) In principle, a social benefit that is not covered by Regulations 1408/71 - 883/04 and based on residence, should be granted to a worker etc. referring to Regulation 492/2011, Article 7.2, and the principle of equal treatment, even if the worker is not settled in Sweden (for instance if he or she is a cross-border commuter working in Sweden but living in another Member State, even if there are many practical problems and unclear situations in these respects).\(^9^1\)

The State authority in charge of the application of Regulation 1408/71 is the Swedish Social Insurance Agency (Försäkringskassan; concerning State authority in charge of unemployment benefits, see footnote).\(^9^2\) Comments on the application of regulations concerning benefits based on work or residence have been published in instructions issued by the former Swedish National Insurance Board (Riksförsäkringsverket), and there are short comments on the classification on social benefits in relationship to Regulation 1408/71 and Regulation 1612/68 (now 492/2011).\(^9^3\)

An EU citizen or a family member to an EU citizen should after five years stay in Sweden be entitled to a permanent right of residence in Sweden (the Aliens Act ch. 3a §§ 6 and 7). When calculating the five year period temporary stay up to six months or longer if the reason is military service should not be considered as a break of the five year period (§ 8).

Neither should temporary stay abroad up to twelve months for studies or vocational training, maternity and childbirth, serious illness, posting of the worker or any other particular reason, be considered as a break of the five-year period (§ 8).\(^9^4\) The permanent residence right is unconditional and a two year stay abroad should not have been interrupted (§ 9); regarding this there is a reference to Case C-325/09 Dias.

\(^8^9\) Riksdag & Departement, September 20, 2011.
\(^9^0\) See Government’s proposition 2008/09:200 Socialförsäkringsbalk, and Government’s proposition 2009/10:69 Socialförsäkringsbalk. Kompletteringar av socialförsäkringsbalken. (The act was introduced through SFS 2010:111.)
\(^9^2\) The Swedish Unemployment Insurance Board (Inspektionen för arbetslöshetsförsäkringen) is in charge of issues relating to unemployment benefits.
\(^9^3\) Riksförsäkringsverket, Tillämplig lagstiftning. EU, socialförsäkringskonventioner, m.m. Vägledning 2004:11, Stockholm 2004, pp. 35 f. (In the instruction there is an explicit reference to the Regulation 1612/68, article 7.) The instruction is available on the website http://www.forsakringskassan.se/press/publikationer/vagledningar/index.php
\(^9^4\) Further specifications are also presented in the Aliens Ordinance, ch. 3a §§ 5 and 6.
2.2. *Specific issue: the situation of job-seekers*

Concerning social entitlements and the connection to a local municipality (see above point 2. Social and tax advantages), job-seekers from other Member States has usually, unlike Swedish citizens, no residence municipality where they are registered. Therefore, they are entitled only to temporary social assistance, which in practice makes it more difficult for them to establish themselves, find accommodation and to find employment on an equal basis as Swedish citizens.

In *Case C-258/04 Ioannidis* the EUCJ ruled that it was contrary to the former EC Treaty, Article 39 (now Article 45 of the TFEU), for a Member State to refuse to grant a tide over allowance (‘arbetslöshetsunderstöd’ in Swedish) to a national of another Member State seeking his first employment, and who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.95

Concerning Ioannidis, Swedish law regarding unemployment benefits was sharpened up already in 2007, when the so called ‘study provision’ (studerandevillkoret) was taken away. Hence, a former student is – independent of nationality – not entitled to unemployment benefit.

Referring to *Case C-138/02 Collins* and the right to social assistance, the crucial matter is if a person should be considered as a job-seeker, and a criterion on the matter is that a person is registered as a job-seeker at an employment office and, further, that he or she has ‘a real chance to get a job’.96 As referred to above in Chapter I, point 1, practical problems have been raised when local communities in charge of the right to social assistance judge whether a job-seeker has ‘a real chance to get a job’.

Concerning Cases C-22/08 and C-23/08 Vatsouras and Koupatantze, the crucial matter is if the applicants as job-seekers were considered to be entitled to benefits reserved for workers or national job-seekers.97 So far – and still in 2012 and 2013 – the cases have not been commented on in the Swedish debate. Until there is administrative or legal practice going in another direction, the reporter do not consider there is a risk for incongruence between the EUCJ case law and the application of Swedish law on the matter.

Further, at the seminar on cross-border work between Denmark and Sweden, held in Copenhagen in May 31, 2012, and organised by the Free Movement of Workers network, there were indications on difficulties for cross-border workers, even if there is an ongoing cooperation between the local communities in the Malmö-Copenhagen region in order to resolve problems.

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


97 Joined Cases C-22/08 and C-23/08 Athanasios Vatsouras and Josif Koupantzate v Arbeitsgemeinschaft (ARGE) Nürnberg 900.
Chapter V
Other Obstacles to Free Movement of Workers

Still in 2012 and in 2013 the global financial crisis has had an impact also on the Swedish economy, but there is still a demand for skilled and experienced labour. There is a matching problem on the labour market and a gap between the unemployed workers’ skills and the employers’ needs. The result is unemployment along with a demand for labour, and this situation could in practice also mean an obstacle to the free movement of workers, in particular for low skilled job-seekers from other Member States.
Chapter VI
Specific Issues

1. FRONTIER WORKERS (OTHER THAN SOCIAL SECURITY ISSUES)

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

The development of co-operation between the neighbour states has also enjoyed financial support from the EU. According to information from the Government, Sweden has been granted 232 million Euro for developing projects within the framework of the European territorial collaboration during the period 2007–2013.

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

The most significant development is relying on the Öresund bridge between Malmö and Copenhagen. The labour market in the Malmö-Copenhagen region embraces in the main the Danish Copenhagen area and the Malmö area in Sweden. In 2009 there were 20,000 commuters crossing borders for work in the Copenhagen/Malmö region. In 2006 ninety percent of those frontier workers were living in the Skåne province and are commuting to Copenhagen. In 2012 the figures are more balanced in this respect between the two countries.

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

Disregarding these efforts it has been claimed that the ‘mental barriers’ against to work in a neighbouring country are the most significant issue.

As mentioned above and discussed at the 2012 seminar in Copenhagen regarding cross-border work between Sweden and Denmark, there are situations where living in one Member State and working in the other could mean difficulties for the access to social entitlements and labour market support. For instance, obviously there are co-ordination problems when working in one state and being part-time employed in a neighbouring state.

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100 The Government’s website http://www.regeringen.se/sh/d/2712/a/14891 (Internet 2013-06-04).


103 The figures are very roughly estimated, see Öresundspendlarna, Öresundskro konsortiet & Öresundskommit- tén, January 2006, available at http://www.oresundskomiteen.dk/regionen-i-siffor/se/publikationer/pendlerSV.pdf (Internet 2012-06-11.)

104 Finn Lauritzen, director of the Öresundskomiteen, in Lund 2012-06-01.
Further, if the possibility to financial support for participation in a labour market activity in Sweden is linked to how long a person has been out of work and has been participating in other activities, problems may arise if a person has been a worker or is a job-seeker in Denmark but not in Sweden.

Hence, there may be a number of ‘combined’ situations of residence, working periods, periods of unemployment etc. where the right to access to social entitlements may be unclear.

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

Regarding the Hartmann case, there is nothing new to report on concerning Sweden.

2. **SPORTSMEN/SPOrTSpWOMEN**

Rules on the composition of teams of professional players have been adopted by the sporting associations for basketball, ice-hockey, football and volleyball. New amendments introduced in 2010 and 2011, but from the statutes it follow that that there are no restrictions as regards the number of players from other Member States. Hence, an unlimited number of players/EU citizens from other Member States could be on the players list in teams playing on top-level. However, the number of players from third countries can be restricted. (Players having a double citizenship are treated as EU citizens if at least one of the citizenships is in a Member State.)

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

Especially concerning football, the regulations on certain matters taken by the Swedish Football Association have been in force since 2008. Concerning international transfer of players there is a reference to the FIFA regulations explicitly stating that the FIFA regulations on the matter ‘must always’ apply (ch. I § 1 of the Football Associations Representation statutes).

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 and 21 years (the Football Association’s statutes [from 2008; still in force 2012]).

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

Concerning reimbursement for the training and education of young players (between the age of 12 and 21 years), the Swedish Football Association’s Representation statutes regulate that when a young player signs a professional contract as a professional player, the new club should pay a fee in accordance with the statutes ch. 5. For instance in 2013 if the player is 18 years old the fee in the highest league in Sweden (Allsvenskan) is 52,500 SEK (around 6,124 Euros), and if the player is 21 years old the fee is 131,500 SEK (around 15,340 Euros). (See the Representation statutes 2013, ch. 5 § 9.)

3. THE MARITIME SECTOR

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

The pay and wage level concerning seamen is regulated in collective agreements on the Swedish labour market. In May, 2013 a new collective agreement on wages and more was concluded between the parties. There are no provisions in the collective agreements on the maritime sector meaning that nationals from other Member States should be treated in a way that would be contrary to EU law. Further, there are no differences made between EU-nationals and third-country nationals in the agreements.

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

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106 See also the Swedish Volleyball Associations’ Competition statutes and the Swedish Basketball Associations’ Competition statutes and the Swedish Hockey Associations’ Competition statutes.

107 The collective agreement *Storsjöavtalet* between SEKO (Facket för service och kommunikation) and SARF (Sjöfartens Arbetsgivareförbund) with general terms on wage and employment conditions for seamen 2011–2012, the collective agreement *Färjeavtalet* between SEKO (Facket för service och kommunikation) and SARF (Sjöfartens Arbetsgivareförbund) with terms on wage and employment conditions for seamen on ferries 201–2012, and the collective agreement Allmänna anställningsvillkor 2011–2012 för personal i skärgårdstrafik between SEKO (Facket för service och kommunikation) and ALMEGTA Tjänsteföretagen – Tourism och sjöfart, with general terms on wage and employment conditions for seamen on boats in archipelago traffic. The Agreement on temporary employees (TAP), i.e. the General Agreement between SEA and SEKO for temporary employees on ships for which an agreement on application has been signed (this agreement is translated into English). These Collective agreements are available in Swedish at http://www.sjofolk.se/component/docman/cat_view/20-kollektivavtal.html?orderby=dmdate_published&ascdesc=DESC (Internet 2013-06-05.)

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

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

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

Furthermore, in 2012, the Riksdag approved that Sweden ratifies the ILO Maritime Labour Convention (MLC 2006) as the eight Member of the EU. At the same time Directive 2009/13/EC concerning the ILO Convention 2006 was transposed.

Before that, in 2011, the Riksdag had approved the ratification of the so called STCW Convention, and the Riksdag’s decision also introduced amendments in Act (1998:958) on the rest of seafarers.

4. **Researchers/Artists**

Researchers. In 2008 Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, was transmitted into Swedish law

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


113 Government’s proposition 2010/11:117 Godkännande av den reviderade STCW-konventionen. (i.e. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.)
through the Act (2008:290) on the approval for research principals to receive guest researchers (Lag om godkännande för forskningshuvudmän att ta emot gästforskare).\textsuperscript{114}

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

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

As stated above (see Chapter IV, section 2) a certain so called ‘expert tax’ was introduced in 2012. The exception concerning taxes for foreigners who come to Sweden for work as experts will also have a possible impact on guest researchers’ taxation if they fulfill the requirements (for instance if the will earn more than around 9,500 Euros per month).\textsuperscript{115}

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

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

Since 2010, a foreign athlete/sportsman can make a request for paying taxes in accordance with the Act (1999:1229) on income tax in Sweden.\textsuperscript{116} On the other hand he or she will have the right to tax reductions for expenses related to the activity. The amendment meant an adaptation to EC law and the practice developed by the EUCJ referred to (for instance case C-527/06 Renneberg and more).\textsuperscript{117}

5. **ACCESS TO STUDY GRANTS**

Nationals from other Member States with the status of Community workers or self-employees and members of their families should enjoy equal treatment as regards study grants and study loans in accordance with the Study Loan Act (1999:1395) ch. 1 § 4.\textsuperscript{118}

Foreigners having a permanent residence right and who are entitled to social rights referring to EU law, should also be treated the same as Swedish nationals (ch. 1 § 5). The same should apply to persons having a permanent right of residence in Sweden or if they have a permanent right of residence in another Member State and a residence permit in Sweden (the Study Loan Act ch. 1 § 6).

\textsuperscript{114} Government’s proposition 2007/08:74 Genomförande av EG-direktivet om ett särskilt förfarande för tredjelandsmedborgares inresa och vistelse i forskningssyfte. (See also Ordinance Förordning [2008:353] om godkännande för forskningshuvudmän att ta emot gästforskare.)

\textsuperscript{115} Riksdag & Departement, September 20, 2011.

\textsuperscript{116} Government’s proposition 2008/09:182 Beskattning av utomlands bosatta artister, m.fl. See also Lagrådsremsiss 26 mars 2009 Beskattning av utomlands bosatta artister m.fl.

\textsuperscript{117} Concerning the practice from the EUCJ (see the referral, pp. 31-37) and Finansdepartementet (The Ministry of Finance), Beskattning av utomlands anställda artister, m.fl. (Memorandum December 11, 2008.)

Further, guest researchers and their family members have the right to certain benefits in connection with studies (the Study Loan Act ch. 1 § 7).\footnote{Concerning these matters, see also information provided by the State authority in charge: CSN (Centrala studiestödsnämnden), see CSN Fact sheet: Swedish student aid for non-Swedish nationals for studies abroad, available at http://service.csn.se/CSNOrder/GemensammaFiler/Blanketter/4201B.pdf (Internet 2012-06-15.)}

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

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

On this basis, the children of foreign cross-border workers should be considered eligible for aid for studies in the country where parents are working, even though the child has not been resident in the country.

In Case C-542/09 Commission v Netherlands, the EUCJ rejected a residence requirement applied in the Netherlands for entitlement to certain studies. The case was about a condition of residence for some time in order to be entitled to study in another country, which in this case affected children to frontier workers employed in the Netherlands but living in a neighboring country.

Case C-542/09 is likely to affect the requirements of the Swedish student aid system targeting EU citizens’ family members when the primary person is a frontier worker having residence in another Member State but working in Sweden. The Swedish State authority in charge (CSN) has ‘changed the procedures’ for examination of the residence requirement in the context of studying abroad (the Central Authority’s for Study finance [CSN])\footnote{Internet 2013-03-01.}, but still there is no administrative practice confirming what more concrete should apply in Sweden.

In a report presented by the Free movement of workers network concerning study grants in 27 Member States, the definition of ‘family member’ in accordance the Study Loan Act (1999:1395), referring to Aliens Act (2005:716), has been criticized.\footnote{It could be noticed that no other definition is found in the administrative regulations by the Centrala studiestödsnämnden. Centrala studiestödsnämndens föreskrifter och allmänna råd (CSNFS 2006:7) om utländska medborgares rätt till studiestöd.}

In the report it was claimed that the restriction mentioned is incompatible with EU law for the position of children of Union workers following Cases C-480/08 Teixeira and C-310/08 Ibrahim, where the EUCJ explicitly confirmed the independent position of Article 10 of Regulation 492/2011 vis-à-vis, in particular, Directive 2004/38.\footnote{Case C-480/08 Teixeira [2010] ECR I-1107, para. 54–60 and Case C-310/08 Ibrahim [2010] ECR I-1065, para. 45-59.}

Children of Union workers who have resided with a (former) worker-parent in the host Member State remain ‘children’ for the purposes of Article 10 Regulation 492/2011 irrespective of their age or dependency on the (ex) worker-parent and can thus continue to claim equal treatment as regards educational benefits.

As such, Swedish law is claimed to violate EU law where it does not provide study grants to children of Union workers over the age of 21 and who are no longer dependent on their parents. Further, in administrative praxis from the the National Board of Appeal for Student Aid (Överklagandenämnden för studiestöd; ÖKS) there is a decision concerning a
Polish 23 year old ‘child’ that was refused the status as ‘dependent’ referring to the Aliens Act ch. 3a § 2 and the result was that he was not qualified to be eligible for study grants.\(^1\)

However, in the Official report 2012:16 there are suggested amendments of the Aliens Act ch. 3a concerning the term family member (see above Ch. II, point 1), and in line with that the committee also suggests an amendment of the Study loan act, ch. 1 § 4.\(^2\)

6. **YOUNG WORKERS**

The employment situation for young people is still in 2013 considered to be problematic. In 2012 the Government tried to stimulate the labour market parties to conclude collective agreements on a ‘job pact’ and around 30,000 new jobs were supposed to be offered to young job-seekers. The idea was to make room for young people up to 25 years of age on the labour market by concluding agreements meaning that a young person should be entitled to 75 percent of the wage level. In return, 25 percent of the working hours should be spent on education and training. In order to make the concept more attractive for employers, the employer should have a tax relief.

However, the outcome from the collective bargaining following from the ‘job pact’ initiative has not been successful, since the labour market parties for different reasons have not managed to conclude collective agreements on the matter.

Otherwise, there are different measures in order to combat unemployment among young persons:

- **Jobbgaranti**; assistance in finding employment where a young person is between 16–25 years of age; a requirement is that the person should have been actively searching work during a period exceeding three months. More concrete, the unemployment office should map the person’s situation and make an action plan including measures, coaching and more in order to find a job. Further, the person could be entitled to financial activity support (aktivitetsstöd) or development payment (utvecklingsersättning).\(^3\)

- **Nystartjobb** for persons who at the beginning of the year is 20–26 years of age and have been unemployed for at least six months, there is a tax relief for the employer.\(^4\)

- **Arbetsmarknadsutbildning**; labour market educational programmes for unemployed workers older than 25 years to enhance their chances of obtaining a position on the labour market.\(^5\) (This measures could also include support to self-employment and more and could even be granted to younger persons; see § 30 of the Ordinance 2007:813, amended in 2012.)

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\(^3\) Ordinance Förordning (2007:813) om jobbgaranti för ungdomar. (See also Ordinance Förordning 1996:1100 om aktivitetsstöd.)

\(^4\) Nystartjobb – i.e. tax relief for the employer – might also be granted for persons being 26 years or older, and have been looking for work for at least 12 months. (employing somebody who at the beginning of the year is 26 years or older, has been looking for work for at least 12 months). Ses Ordinance Förordning (2006:1481) om stöd för nystartjobb.

A general requirement for access to these measures and benefits is that the person is registered as a job-seeker at the unemployment office and there are no restrictions on the right to register as a job-seeker (see also above Chapter I, point 2).
Chapter VII
Application of Transitional Measures

1. Transitional Measures Imposed on EU-8 Member States by EU-15 Member States and the Situation in Malta and Cyprus

In 2003 the Swedish Riksdag approved the Government proposition to ratify the Treaty on the enlargement of the EU.\(^{128}\) In 2004 the Swedish Riksdag rejected a proposal to introduce certain transition rules for citizens from the new Member States including Malta and Cyprus.\(^{129}\)

2. Transitional Measures Imposed on Workers from Bulgaria and Romania

The position taken by the Riksdag in 2004 not to introduce certain transitional rules for citizens from the new Member States was maintained in 2006 before the affiliation of Romania and Bulgaria to the EU on January 1, 2007.\(^{130}\) Hence, no transitional restrictions on the free movement of workers have been introduced in Sweden concerning Bulgaria and Romania.

\(^{129}\) Government’s communication Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget.
\(^{130}\) See Government’s proposition 2005/06:106 Bulgariens och Rumäniens anslutning till Europeiska unionen.
Chapter VIII
Miscellaneous

1. **RELATIONSHIP BETWEEN REGULATION 883/04 AND ART 45 TFEU AND REGULATION 492/2011**

Basically the Regulation 492/2011 (former Regulation 1612/68) and Regulations 1408/71-883/04 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to Regulation 492/2011, implies that the worker also is residing in Sweden; an example is the right to housing allowance.

From January 1, 2011, a new *Social Security Code*, with in principle a corresponding division, came into force, replacing around thirty former acts on different social benefits. Concerning different benefits there are transitional regulations depending on when a person has been qualified for a benefit etc.

Hence, a crucial issue from a free movement of workers perspective is if social benefits should be granted to a person based on residence and work respectively (see the list in the former Social Security Act ch. 3).

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


See above, Chapter III point 2.2 and Chapter VI point 1, concerning the regional seminar on cross-border work between Denmark and Sweden, held in Copenhagen in May 31, 2012, and organized by the Free movement of workers network in the EU. For instance, there are coordination problems concerning unemployment benefits in connection with part-time employment.

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

133 Government’s proposition 2008/09:200 Socialförsäkringsbalk (chapter 3).

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

In September 2012 the Government presented a proposition before the Riksdag on the transposition into Swedish law of Directive 2008/104/EC on temporary agency work. The proposition that was taken by the Riksdag was based on the suggestions presented by a public investigation in the beginning of 2011.

The new Act (2012:854) Act on hiring-out of employees (Lag om uthyrning av arbetstagare) came into force at Januar 1, 2013. Since most – but not all – of the labour market for temporary agency work is covered by collective agreements, the new act will not make any significant change to the situation concerning equal treatment etc.

### 3.1. Integration measures

There are no integration measures in particular for EU nationals beyond the basic courses in Swedish etc. that also are offered to foreigners in general. There are problems in particular concerning third-country nationals that have immigrated to Sweden, usually as asylum seekers or relatives to third-country nationals that have been granted residence permits. Possibly, the measures directed to this group can indirectly have a positive impact on EU citizens from other Member States regarding the labour market and integration. However, EU-citizens and their family members have a more favourable situation from the beginning.

Beyond this remark, there is nothing to report on for 2012–2013.

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

In 2008 the Aliens Act ch. 6 § 2 was amended in order to facilitate labour immigration from third countries. A work permit should be granted a third-country national that has been offered an employment by an employer. A requirement is that the employment should make it possible for the foreigner to provide for him- or herself.

The employment conditions regarding wage, insurance coverage and other terms of employment should not be worse than those who follow from collective agreements or otherwise what follows from the practice in the business. Further, the labour market examination previously made by the employment agency was abolished when the 2008 amendment of the Aliens Act came into force.

Regarding the *Union preference principle*, a work permit should be granted only if the decision is consistent with Sweden’s commitments to EU (the Aliens Act ch. 6 § 2). Further, the Migration Board should examine if the employer’s recruitment is in conformity with the principle. By example, a notice on employment made by the employment office will also be

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135 Government’s proposition 2011/12:178 Lag om uthyrning av arbetstagare.
136 Official report SOU 2011:5 Bemanningsdirektivets genomförande i Sverige.
accessibile at the Eures’ internet portal. Hence, in principle the employment offer will be presented for all job-seekers in the EU.

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

The labour immigration referring to the 2008 amendments of the Aliens Act ch. 6 § 2 has been under debate. From January, 2012, recruiting employers in certain lines of business must guarantee that wages will be paid, and if the employer has recruited labour before, he or she must give proof on that the workers have been paid.

However, many examples of abuse have been reported in 2012–2013. It has even been claimed that since 2008 a ‘market’ for false work offers has been established. Referring to these examples the Minister of Labour in 2013 in general terms has announced the introducing of measures in order to restrain abuse. Previously, also the OECD has recommended more frequent control of workers coming to Sweden from third-countries in order to counteract abuse in connection with ‘Sweden’s liberal laws for labour immigration’.

### 3.3. Return of nationals to new EU Member States

There is no policy, measures taken etc. to report on regarding the return of nationals to the new Member States in particular.

### 4. National organizations or non-judicial bodies to which complaints for violation of Community law can be launched

NGOs in Sweden engaged in migration issues are in practice only dealing with matters in the field of asylum and migration.

### 5. Seminars, reports and articles

The relevant articles in 2012 up to June 2013 are referred to in the text and in footnotes. However, regarding this, the report might be completed.

**Internet web links (2013, June 30)**

(Acts, authorities, statistics and more.)

Various Swedish laws, in English:

http://www.government.se/sb/d/3288/a/19564

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

http://www.sweden.gov.se/sb/d/5805/a/66122;jsessionid=axnOnhDLLWS_ (in English; 2010-04-30.)

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The Aliens Ordinance (2006:97); in force at April 30, 2006:  
http://www.sweden.gov.se/sb/d/5805/a/75618;jsessionid=aVxlo2sM-Ep- (in English; 2009-07-17.)

The official Swedish website to different Acts, Government’s propositions, the State authorities’ statute books, judicial practice and more (in Swedish although some information is translated into English):  
http://62.95.69.15/sfs/sfst_form2.html (search form in Swedish)

Government Offices of Sweden, official Swedish website to the Government including search form for public investigations, press releases and more (in English):  
http://www.sweden.gov.se/sb/d/573

The Swedish Migration Board, official website with information, statistics on migration and more:  
http://www.migrationsverket.se/info/start_en.html (in English)  
http://www.migrationsverket.se/ (in Swedish)

The National Courts Administration, official website link to guiding judicial decisions in Swedish courts:  
http://www.rattsinfosok.dom.se/lagrummet/index.jsp (in Swedish)

The Swedish Migration Board, Statistical figures:  
http://www.migrationsverket.se/info/790.html

List of cases from the Migration Courts in Sweden:  

Acts and more links concerning migration (the NGO Immigrant Institute):  
http://www.immi.se/lagar/ (in Swedish)