REPORT
on the Free Movement of Workers
in Sweden in 2011-2012

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Introduction

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2011 and until the beginning of June in 2012. 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).1 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 2011 and 2012 up to June have been observed (see Chapter VIII, section 5).

Note that referring to the EEA agreement and the agreement between the EU and Switzerland, 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 May 2012 the Government took the decision to establish a fourth Migration Court to be located to Luleå in the north of Sweden. The new court will start to work in October 1, 2013.

A short overview

In 2011 and 2012 the situation on the labour market has declined and the impact from the global financial crisis is noticeable, even if the Swedish economy is considered to comparatively strong. However, 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 immigrants from third countries, older workers and young people.

Regarding law and the situation on the free movement of workers in Sweden, the transposition of Directive 2004/38 is settled in the main. Further, concerning EU case law on the matter – for instance the Zambrano case – the situation seems to be satisfying. This statement also includes the situation for job-seekers, and in 2011 an amendment came into force concerning the moving allowance to be granted a job-seeker, even if the work is offered outside Sweden.

The situation for Roma workers in Sweden and in general for people of Roma origin is considered to be problematic. There are indications on discrimination on the labour market and Roma people have been expelled referring to begging etc. These measures have been subject to serious critique from the Parliamentary Ombudsmen in 2011 as being contrary to the Aliens Act.

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In 2011, the transposition of Directive 2007/59/EC on the certification of train drivers was coming into force, and 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 1612/68 (as well as the new Regulation 492/2011) there has been no certain amendments concerning the equal treatment, language requirements or the requirements for obtaining positions in the public sector including nationality conditions.

Frontier work is considered to be important, and in May 2012 the Free Movement of Workers network organized a Danish/Swedish seminar on cross-border work between Denmark and Sweden. There is an ongoing co-operation between both the Governments and the local communities in the area and efforts are made in order to facilitate the development of cross-border commuting and more between the labour markets in the region.

The situation in sport in relation to EU law is considered to be good. In 2011–201 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 measures. A general impression is that no certain problems have occurred regarding the in-flow of workers and other persons from the new Member States, even if the Roma people's situation has been observed.

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

The new act on labour immigration that came into force in 2008 meaning that a work permit should be granted a third-country national that has been offered an employment by an employer.2 Regarding the Union preference principle, a work permit should be granted only if the decision is consistent with Sweden’s commitments to EU. However, a better control of the application of the law has been recommended and measures have been taken.

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

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2 Government’s proposition 2007/08:147 Nya regler för arbetskraftsinvandring.
Chapter I
The Worker: Entry, residence, departure and remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Article 7(1a) of Directive 2004/38/EC. The Article deals with the right of residence for more than three months for by example workers that are Union citizens. The Article that deals with the right of residence for more than three months for, by example, workers that are Union citizens, was transposed into Swedish law by the introduction of ch. 3a concerning the right of residence in the Aliens Act. In year 2011 and so far in June 2012 no further amendments have been made.

Article 7 (3 a-d) of the Directive 2004/38/EC. In accordance with the Aliens Ordinance ch. 3a § 1, a worker that ceases to work for different reason should legally still be considered as a worker. 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.

In 2011 there was an amendment meaning that also a worker that has been involuntary unemployed during the first twelve months of work should maintain his or her status if he or she has registered as a job-seeker at the employment office (amendment of the Aliens Ordinance through Regulation F 2011:408), and if the worker has been temporary employed less than one year he or she will keep his or her residence right for six months, if he or she has been involuntarily unemployed and if he or she has registered as a job-seeker at the employment office. Further, a worker that begins a vocational training will maintain the right to residence.

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

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-seeker s). 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 Dan-

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

5 In Case MIG 2010:5 a person was considered to be a worker even if the employment was a low paid part-time employment.
ish, or to EU citizens that are job-seeker s.\textsuperscript{6} 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.

\textit{Article 14 (4 a-b) of Directive 2004/38/EC.} Under certain circumstances an expulsion
measure may in no case be adopted against Union citizens or their family members if the
citizen is for example a worker, or if the citizen is a 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 em-
ployer. 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 sys-
tem of the host Member State.\textsuperscript{7}

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(6) 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.

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).\textsuperscript{8} However, if the foreigner has a permanent right
of residence there must be particular reasons for such a decision. If the foreigner has children
in Sweden or has been staying in Sweden for the last ten years, he or she may be expelled
only if the measure is absolutely necessary referring to public security.\textsuperscript{9} (EU citizens cannot
be expelled referring to the health criteria.\textsuperscript{10})

\textit{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).

\textit{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 (includ-
ing 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 munici-
pality is of vital importance in accordance with the Social services Act (2001:453). In princi-

\textsuperscript{6} In Case \textit{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.

\textsuperscript{7} 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
43.

\textsuperscript{8} Government’s proposition 2005/06:77, pp. 76 and 196.

\textsuperscript{9} Concerning judicial practice, in Case \textit{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).

\textsuperscript{10} Government’s proposition 2005/06:77, p. 78.
ple, 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.\textsuperscript{11}

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.\textsuperscript{12}

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 Directive 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.\textsuperscript{13} (However, if the job-seeker wants to enjoy benefits at the employment office, he or she must register at the office.)

Concerning the recital and in the light of the judicial practice from the ECJ, and in the Government’s proposition presented in 2006 there was an explicit reference to Case C-292/89 Antonissen.\textsuperscript{14} 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.\textsuperscript{15}

(Up to June 2012 the Swedish Unemployment Insurance Board [IAF] has not reported any decision on the right to unemployment benefit that could be of relevance in the light of Antonissen.\textsuperscript{16})

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

\textsuperscript{12} See again Government’s proposition 2005/06:77, pp. 72 ff.; compare ibid, p. 193 ff.
\textsuperscript{13} 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.
\textsuperscript{14} 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, p. 72 ff., 193 ff.). However, there is an exception for job-seeker s, 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-seeker s 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.
\textsuperscript{15} Socialstyrelsen (the National Board of Health and Welfare), EG-rätten och Socialtjänsten – en vägledning, Stockholm 2008, p. 59.
\textsuperscript{16} http://www.iaf.se/ (Internet 2012-06-04.)
A foreigner already is in Sweden), if he or she is not an unreasonable burden on the social system (Aliens Act ch. 8 § 2).\footnote{See again Government’s proposition 2005/06:77, pp. 72 f. and 193 ff.}

A remark regarding Swedish job-seekers in other EU Member States, is that from May 2010 to August 2011 around 300 persons were seeking job in other Member States supported by unemployment benefits from the Swedish unemployment insurance.\footnote{The Swedish Unemployment Insurance Board (IAF), \textit{Fakta om arbetslöshetsförsäkringen 2012:1. Vilka personer söker arbete i Europa med svensk arbetslöshetsersättning?} Stockholm 2012.}

(Concerning job-seekers, see also below Chapter VI, section 6.)

### 3. OTHER ISSUES OF CONCERN

Until 2011 the Swedish employment agency paid a certain grant for commuting (\textit{pendlingsstöd}) and job-seeking to a person that could not find a work on their domicile. However, this grant was only paid if the job-seeker found a work in Sweden.

An amendment was introduced in Ordinance (1999:594) \textit{om flyttningsbidrag} and came into force at February 1, 2011.\footnote{Amended through Ordinance 2010:1909. See also Official report SOU 2010:26 Flyttningsbidrag och unionsrätten.} Further, an applicant for a job in another Member State should be entitled to reimbursement for travelling and lodging (8 §).

### 4. FREE MOVEMENT OF ROMA WORKERS

Roma workers that are EU citizens should enjoy full right to equal treatment as other EU citizens. However, in practice there are problems in particular concerning the Roma workers, who belong to an ethncal group that in many countries is subject to discrimination. In general Roma people are subject to non-equal treatment also in the Swedish society, and in many cases it is claimed that there is obvious discrimination on ethnic grounds.\footnote{For a general overview, see Official report SOU 2010:55 Romers rätt – en strategi för romer i Sverige. (The public investigation was made in a human rights perspective and did not address problems with EU law and the free movement of Roma workers.)}

In a free movement of workers perspective, the problems seems to concern Roma people that either (1) arrive to Sweden as job-seekers from another Member State or (2) arrive to Sweden with the intention to seek for asylum referring to the difficult situation in their country of origin.

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

In June 2011, the Parliamentary Ombudsmen (JO) seriously criticized the police authority in the Stockholm County for the expelling of a number of Roma people to Romania in
2010. The police referred to the Aliens Act, ch. 8 § 2, and that the foreigners had dealt with begging and that they could not provide for themselves.

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

It has been claimed by NGO:s (Amnesty International) that Roma people – and in particular Roma people from the Balkan Peninsula – seeking asylum sometimes are refused an appropriate examination of their cases referring to the Aliens Act ch. 8 § 6.

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

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 is 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.

22 A representative from Amnesty/Sweden in Swedish Radio in May 30, 2011. The Aliens Act Ch. 8 § 6 reads as follows: ‘The Swedish Migration Board may direct that the Board’s order to refuse entry under Section 4, first paragraph may be enforced even if it has not become final and non-appealable (refusal of entry with immediate enforcement), if it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds.’
24 Riksdag & Department, 16 February, 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 de-
  scendent 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.

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*.

Beyond that and 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*.

In April 2012 the Migration Board asked for a sharpening up the rules on family reunifi-
cation. The reason was a judgment from the Migration Court giving a man having a resi-
dence permit 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.  

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 2011 and during the
first six months of 2012.

2. ENTRY AND RESIDENCE RIGHTS

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

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

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25 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 Gov-
ernment’s proposition 2005/06:77, p. 71 and 183.
27 See also Government’s proposition 2005/06:77, p. 70 ff.
A family member with a right of residence should register him or herself at the Migration Board if the stay is longer than three months (the Aliens Act ch. 3a § 10). In the Aliens Act ch. 3a §§ 3 and 4, there are further specifications of the categories embraced by the right of residence.  

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

Concerning entry, from 2006 family members of an EU citizen that are not EU citizens themselves must show a passport since Directive 2004/38 does not stipulate that a family member that is a third-country national is entitled to enter a Member State only by showing an identity card.

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).

Concerning Regulation No 380/2008, in May 20, 2011, a new residence card was introduced for third-country nationals. Amendments have been made in the Aliens’ Act ch. 9 introducing the new §§ 8a and 8b; the amendments came into force in July 1, 2011.

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

Further, neither should temporary stay abroad up to twelve months for studies or vocational training, maternity and childbirth, serious illness, posting of the worker or any other particular reason, be considered as a break of the five-year period. (See also the reporter’s comments on Case C-325/09 Dias in Chapter VIII, point 6.)

Concerning the right to appeal against a negative decision concerning visa, an amendment has been introduced in the Aliens Act ch. 14 § 5a. The amendment came into force in July 1, 2011.

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.

Later in 2010, there were three cases from the Migration Court of Appeal to be mentioned, 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).

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28 See also Government’s proposition 2005/06:77, p. 70 ff.
29 See Government’s proposition 2005/06:77, p. 63 f. A motive for the Swedish amendment was said to be the risk that false identity documents could be used when entering Sweden.
30 See also Government’s proposition 2005/06:77, pp. 117 f. and 119.
32 Further specifications are presented in the Aliens Ordinance, ch. 3a §§ 5 and 6.
33 Government’s proposition 2010/11:121 EU:s viseringskodex.
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.

3. IMPLICATIONS OF THE METOCK JUDGMENT

Case C-127/08 Metock concerned four Africans married to Irish citizens. 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 Migration Board in September 17, 2008, stated that the Metock case should not have influence on the Board’s practice, since the Aliens Act should apply in line with the Metock judgement.

In Case MIG 2011:17 a third-country national had entered into a cohabitation relationship in Sweden. 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 and 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.) Regarding the matters dealt with in the case, see also Cases MIG 2008:30 and MIG 2009:11.

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

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

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34 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]).
35 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.
37 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.
agency that it was not possible to make a request meaning that the parties should have been living together abroad before.

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

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

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

Further, in accordance with ch. 5 § 17a (1) and (2), a residence permit may not be granted if the application is based on false information or if a marriage or a cohabiting relationship is a relationship of conveniences and fraud. The 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 State and of the existence of family, cultural and social ties with his/her country of origin...'

(The wording exactly follows the text in article 17 of Directive 2003/86/EC.)

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

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

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39 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.

40 Government’s proposition 2005/06:72, p. 50.

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 the arrangement of forced marriages and marriages involving children up to 18 years age to be criminalized. The existing possibility to grant an exemption from the 18 years limit is suggested to be abolished. However, 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.

Before that – in 2011 – a public investigation 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.

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

5. ACCESS TO WORK

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

6. THE SITUATION OF FAMILY MEMBERS OF 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’). 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.

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42 Official report SOU 2012:35 Stärkt skydd mot tvångsäktenskap och barnäktenskap.
43 Official report SOU 2011:45 Kvinnor och barn i rättens gränsland.
44 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.
45 Family members of persons that are not workers, self-employees, job-seekers must have a health insurance (the Aliens Act ch. 3a § 3.3).
Chapter III
Access to Employment

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

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

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

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

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 employer on condition that the requirement does not interfere with Swedish discrimination law or Community law.

Concerning language requirements for self-employees, see also above (point 1 in this chapter) the notes on a public investigation concerning ‘circular migration’ presented in 2011.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR

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

The right to equal treatment for employment in the public sector should be secured through the regulations referred to above. Beyond that the equal treatment principle is founded on Regulation 492/2011 (former 1612/68) and EC law should apply for instance concerning nationality and discrimination. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

The introducing in 2010 of new requirements for positions as school teachers and preschool teachers has been delayed in 2012. The new regulation came into force in July 1,

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2011, and the intention was that full implementation should have been reached in July 1, 2012. However, the recognition procedure showed up to be complicated and in practice the regulation will not apply in 2012.

The meaning when introducing the diploma and new requirements was that a teacher's certificate should be required for the improvement of the school system's quality. In order to fulfill the new requirements, a teacher should have an exam as a teacher (basic requirement) and he or she should have been working as a teacher for at least one year (introductory period). In principle, only teachers that have certified should be employed on positions as permanently employed teachers.

Concerning teachers from other Member States – and independent of the new certificate – a teacher's diploma from another Member State fulfills the basic requirement (following from Directive 2005/36EC), but beyond that the introductory period should also be required.

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

2.1. Nationality condition for access to positions in the public sector

In general, decisions on employment matters in the public sector should be ruled by objectivity and should be taken on impartial grounds and individuals must be treated equally. 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. (See also Lagen 1994:261 om fullmaktsanställning; the Act on employment with letters of appointment.)

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.

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48 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.)

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

50 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.)
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.

2.2. Language requirements

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

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

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

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, fol-
lowing 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.54

2.3. Recognition of professional experience for access to the public sector

(The kind of situation the question refers to, does not exist in Sweden. Therefore the reporter’s comments are of a general nature.)
The right to equal treatment for employment in the public sector should be secured through the regulations referred to above (see 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. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

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

3. OTHER ASPECTS OF ACCESS TO EMPLOYMENT

In 2010 the Government presented a proposition introducing amendments for the transposition of Directive 2007/59/EC on the certification of train drivers (lokförardirektivet), and the amendment was coming into force in July 1, 2011.55 Further, 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, 2012.56

Discrimination referring to sex, age etc. is prohibited in accordance with the Discrimination Act (2008:567) ch. 1 § 1.57

From January 1, 2011, the protection in law against discrimination referring to sexual orientation is explicitly embraced also by Constitutional law (the Instrument of Governance ch. 1 § 2).58

56 Government’s proposition 2011/12:80 Nya lagar för yrkestrafik och taxi.
57 See also Constitutional law ch. 1 § 2, which means that public power should be exercised in a way that counteracts discrimination referring to age. In general, in 2010 a comprehensive book on discrimination law was presented: Fransson, S. & Stüber, E., Diskrimineringslagen. En kommentar, Norstedts, Stockholm 2010.
58 Amended through law SFS 2010:1408. See also Konstitutionsutskottets betänkande 2010/11:KU4 En reformerad grundlag (vilande grundlagsbeslut, m.m.).
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

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 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.

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. However, in accordance with the preparatory works, the wording ‘ethnical origin’ in discrimination law includes nationality. Further, 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.

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.


60 Government’s proposition 2007/08:95, p. 118.
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 dece-
sive criterion is that the person seeking social assistance is lawfully resident in Sweden and
stays in a local community.

As regards tax advantages, judgements from the EUCJ formed the background to a pre-
vious governmental proposal on rules concerning tax deductions and tax exemptions for
payments to pensions funds 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 insti-
tutions 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).

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

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
should be called 'experts' and will have lower taxes, if the will earn more than around 9,500
Euros per month.

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 (1612/68)

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 allow-
ance, implies that the worker is residing in Sweden.

The benefits that should be granted to a person based on residence and work respectively
are listed in the Social Security Act ch. 3. In principle, a social benefit that is not covered

61 The Social services Act (2001:453), ch. 4 § 1.
62 The EUCJ cases referred to was Case C-150/04 Commission v Denmark and Case C-522/04 Commission v.
Belgium.
63 Concerning previously made amendments, see Finansdepartementet (the Ministry of Finance), Nya skattereg-
gler för pensionsförsäkring, Promemoria February 1, 2007, and Finansdepartementet (the Ministry of Fi-
nance), 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 per-
sonnel 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).
64 Committee directions Dir. 2010:43 Vissa livförsäkringsfrågor.
65 Riksdag & Departement, September 20, 2011.
66 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 bene-
fits in relationship to Regulation 1408/71 and Regulation 1612/68. Riksförsäkringsverket, Tillämplig lag-
stiftning, EU, socialförsäkringskonventioner, m.m. Vägledning 2004:11, Stockholm 2004.
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). 67

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). 68 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). 69

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). 70 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.

2.2. Specific issue: the situation of job-seekers

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. 71

Concerning Ioannidis, Swedish law regarding unemployment benefits was sharpened up in 2007, when the so called ‘study provision’ (studerandevillkoret) was taken away. Hence, a former student is – 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 per-

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68 The Swedish Unemployment Insurance Board (Inspektionen för arbetslöshetskrisningen) is responsible for issues relating to unemployment benefits.
69 Riksförsäkringsverket, Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m. Vägledning 2004:11, Stockholm 2004, p. 35 ff. (In the instruction there is an explicit reference to the Regulation 1612/68, article 7.) The instruction is available on the website http://www.forsakringskassan.se/press/publikationer/vagledningar/index.php.
70 Further specifications are also presented in the Aliens Ordinance, ch. 3a §§ 5 and 6.
71 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.
son is registered as a job-seeker at an employment office and, further, that he or she has ‘a real chance to get a job’.\textsuperscript{72}

Concerning Cases C-22/08 and C-23/08 \textit{Vatsouras} and \textit{Koupatantze}, the crucial matter is if the applicants as job-seeker s were considered to be entitled to benefits reserved for workers or national job-seeker s.\textsuperscript{73} So far – and still in 2011 and 2012 – 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.

\textsuperscript{72} Compare Government’s proposition 2005/06:77 and Official report SOU 2005:34 Socialtjänsten och den fria rörligheten, p. 162.
\textsuperscript{73} Joined Cases C-22/08 and C-23/08 \textit{Athanasios Vatsouras and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg} 900.
Chapter V
Other Obstacles to Free Movement of Workers

In 2011–2012, the global economic crisis has an impact also on the Swedish economy, but there is still a demand for labour. However, a crucial matter for the employers often is the gap between the unemployed workers' skills and the employers' needs. The result is unemployment at the same time as there is a demand for labour, and this situation could in practice also mean an obstacle or to the free movement of workers.

Concerning social benefits, as mentioned above, in March 2011, a public investigation suggested that it should be easier for workers to bring unemployment benefits and more to countries outside the EU.\(^{74}\) The aim is to facilitate so called 'circular migration' which means that workers from third countries could come and go to Sweden in order to increase the labour supply on the labour market (even if also other motives are emphasised).

In May, 2012, the Riksdag took the decision to criticize the European Commission's proposal for the new 'Monti Regulation'.\(^{75}\) In short the Riksdag stated that free movement in the EU is positive, but social dumping must be countered. According to the Riksdag, the proposal from the Commission does not consider the principle on subsidiarity and do not secure fundamental rights, in particular concerning collective action, the freedom of establishment and the freedom to provide services.\(^{76}\)

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74 Official report SOU 2011:28 Cirkulär migration och utveckling.
75 The European Commission, Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, COM(2012) 130 final (Brussels, 21.3.2012).
76 Utlåtande 2011/12:AU14 Subsidaritetsprövning av förslag till Monti II-förordning.
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.\textsuperscript{77} 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.\textsuperscript{78}

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.\textsuperscript{79}

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’.\textsuperscript{80} You can read about cars and housing, find information about rights and obligations in society, and you can read useful articles on what you have to be aware of in practice when planning a move to a Nordic country.

For many years there has been a tendency towards increased commuting between the Nordic countries. Between 2001 and 2004 the increase was 26 percent and per year the figure was 8 percent.\textsuperscript{81} In the year 2004 around 71,000 persons had income from work in another Nordic country, and among these workers 36,582 individuals were characterized as commuting workers (new figures were announced to be presented in 2010, but still these figures have not been available).

The most significant development is relying on the Öresund bridge between Malmö and Copenhagen. In 2006 most of the frontier workers were commuting from Sweden to Denmark and from Sweden to Norway. Further, it is more usual that men are working commuters compared with women, and many are young workers.\textsuperscript{82}

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.\textsuperscript{83} In 2006 ninety percent of those frontier workers were living in the Skåne province and are commuting to Copenhagen.

\textsuperscript{77} The Nordic common labour market was formally established in 1954. Concerning development of the common Nordic labour market and labour mobility in Scandinavia, see Nordiska ministerrådet (the Nordic Council of Ministers), The Common Nordic Labour Market at 50. Report TemaNord 2008:506. Copenhagen 2008.


\textsuperscript{79} The Government’s website http://www.regeringen.se/sb/d/2712/a/14891 (Internet 2012-06-11).

\textsuperscript{80} See http://www.norden.org/en/resources/moving-to-or-between-the-nordic-countries (Internet 2012-06-11).


\textsuperscript{82} Nordiska ministerrådet, Norden i tal 2009 (ANP 2009:747), s. 29. See also Nordiska ministerrådet (the Nordic Council of Ministers), Arbetspendling i Norden – en kunskapsöversikt. Rapport TemaNord 2008:523, Copenhagen 2007.

In 2012 the figures are said to be more balanced in this respect between the two countries, but statistics are still not available in public.

The national employment offices in both countries provide information about employment 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.85

In 2010 the Öresundskomiteen published a report dealing with the regional labour market in the Copenhagen-Malmö region.86 The committee emphasises that there is – and probably will continue be – a shortage of labour in the region. In particular there is a need for personnel in healthcare services, but also high skilled workers such as masters of engineering, school teachers and teachers in nursery schools, skilled workers in the construction industry etc.

A forum to focus on boarder obstacles between the Nordic countries has been established by the Nordic Council of Ministers, and the forum lists a number of boarder obstacles between the Nordic countries.87 Even if these problems in the main have to do with social security matters, they often in practice could mean restrictions on the free movement of workers. For instance, there are different regulations concerning people that are long time sick-listed, judgments for early retirement pensions, the right to subsidized transportation services for disabled and more.88

Many factors have an impact on migration and commuting between the Nordic countries. For instance taxes, social entitlements (as mentioned above) and unemployment benefits. Concerning taxes, the Danish and Swedish Governments signed an agreement on certain tax matters and more.89

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

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

Further, referring to the agreement, it has been calculated that Sweden each year looses around 50,000,000 Euros compared with Denmark.90 The reason is that there are different tax regulations and more in the two countries, and in 2011 the loss-making is supposed to increase to more than the double.91

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84 The figures are very roughly estimated, see Öresundspendlarna, Öresundsbro konsortiet & Öresundskommittén, January 2006, available at http://www.oresundskomiteen.dk/regionen-t-siffror/se/publikationer/pendlereSV.pdf (Internet 2012-06-11).
85 Finn Lauritzen, director of the Öresundskomiteen, in Lund 2012-06-01.
88 http://www.norden.org/no/search?SearchableText=gr%C3%A4nshinderforum (Internet 2012-06-13).
90 For instance Denmark pays 8.3 percent calculated on the wage sum to Sweden as compensation for tax loss, while Sweden pays 21 percent. Further, there are different regulations depending on whether workers are employees in the private or in the public sector. Ibid.
Concerning unemployment benefits and frontier workers in the Nordic countries, the Swedish Unemployment Insurance Board (IAF; Inspektionen för arbetslöshetsförsäkringen), is the Swedish state authority in charge of the supervision over the unemployment benefit insurance. Concerning residence and frontier work, an unemployed person that is residing in Sweden but has been working in another Member State, is entitled to unemployment benefits in Sweden. However, if the person is part-time unemployed in the other state, he or she should receive unemployment benefits in that state.92

The IAF has also has published a number of memorandums for information on unemployment benefits in ten other Member States including Denmark.93

In the regional seminar concerning 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, several practical problem as well as legal problems regarding the co-ordination of social benefits when persons live in one Member States and work in a neighbouring Member State. For instance, there are – as stated above and disregarding the IAF-statements (see former footnote) – obviously co-ordination problems when working in one state and being part-time employed in a neighbouring state.

2. SPORTSMEN/SPORTSWOMEN

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

Rules on the composition of teams of professional players have been adopted by the sporting associations for basketball, ice-hockey, football and volleyball.94 New amendments 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

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94 See ch. 4 § 3 of the Swedish Basketball Associations’ Competition statutes 2011–2012; in accordance with ch. 4 § 3 there are no restrictions concerning players that are EU citizens, i.e. from other Member States; see http://iof1.idrottonline.se/ImageVaultFiles/id_45861/cf_74/110520_Utkast_Tävlingsbestämmelser_1112.PDF (Internet 2012-06-11); ch. 4 § 3 of the Swedish Hockey Associations’ Competition statutes 2010–2011 http://www.google.se/url?sa=t&source=web&cd=4&ved=0CDMQFjAD&url=http%3A%2F%2Fwww.swehockey.se%2FImageVault%2FImages%2Fid_8584%2Fscope_0%2FImageVaultHandler.aspx&ei=5iH3TYLsJcui-gaFqZiSCw&usg=AFQjCNElLODMSsZ4sYdofwIQQUDebAs3w (Internet 2012-06-11).

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. 4 § 20 of the Football Associations Competition 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]).

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 competition statutes regulate that when a young player signs a professional contract as a professional player, the new club should pay a fee in accordance with the statutes § 17.4. For instance if the player is 18 years old the fee in the highest league in Sweden (Allsvenskan) is 50,000 SEK (around 4,300 Euros), and if the player is 21 years old the fee is 125,000 SEK (around 10,760 Euros).

3. The Maritime Sector

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

The pay and wage level concerning seamen is regulated in collective agreements on the Swedish labour market. There are no provisions in the collective agreements on the mar-


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

97 The collective agreement Storsjöoavtalet 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 fer-
time 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 important collective agreement refers to Swedish upper secondary level of education for seamen (Storsjöavtalet § 5 mom. 3). 98

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

However, § 21 in the collective agreement could probably contravene foreign contractors to get a contract with a Swedish ship-owner, since the collective agreement in principle should be concluded between the SEKO and the contractor. Hence, this clause could possibly be questioned from 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.

(Regarding this, there is also reason to observe the Directive 2008/104/EC on temporary agency work, still in June 2012 not transposed into Swedish law; see Chapter VIII, point 3.)

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

98 Storsjöavtalet § 5 mom. 3 means that time spent in the mentioned education should be equalised with working time when calculating years in the seaman profession.
In 2012, the Riksdag approved that Sweden ratifies the ILO Maritime Labour Convention (MLC 2006) as the eight Member of the EU.\textsuperscript{101} At the same time Directive 2009/13/EC concerning the ILO Convention 2006 is transposed. Further, this means that 28 ILO Member States members representing now more than 56 per cent of the world gross tonnage of ships have now ratified the MLC, 2006, and the ILO expects that the MLC will come into full effect in 2013.\textsuperscript{102}

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.\textsuperscript{103}

4. RESEARCHERS/ARTISTS

Researchers

In 2008 Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, was transmitted into Swedish law through the Act (2008:290) on the approval for research principals to receive guest researchers (Lag om godkännande för forskningshuvudmän att ta emot gästforskare).\textsuperscript{104}

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

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

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{105}

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.

\textsuperscript{101} Government’s proposition 2011/12:35 2006 års sjöarbetskonvention. See also Council Decision of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation.


\textsuperscript{103} 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).

\textsuperscript{104} Government’s proposition 2007/08:74 Genomförande av EG-direktivet om ett särskilt förfarande för tredje landsmedborgares inresa och vistelse i forskningssyfte. (See also Ordinance Förordning [2008:353] om godkännande för forskningshuvudmän att ta emot gästforskare.)

\textsuperscript{105} Riksdag & Departement, September 20, 2011.
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).

Following an amendment that came into force in 2010, a foreign athlete/sportsman can make a request for paying taxes in accordance with the Act (1999:1229) on income tax in Sweden. On the other hand he or she will have the right to tax reductions for expenses related to the activity. The amendment meant an adaptation to EC law and the practice developed by the EUCJ referred to (for instance case C-527/06 Renneberg and more).107

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 § 4.108

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

Further, guest researchers and their family members have the right to certain benefits in connection with studies (ch. 1 § 7). 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.

In 2010 there was a sharpening up regarding the requirements for study grants and the measures have a general application to students independent of nationality.110 Concerning Swedish students and students from other Member States, there are no changes from the current state of affairs, i.e. that there are no fees for the admission to higher education in Sweden.

106 Government’s proposition 2008/09:182 Beskattning av utomlands bosatta artister, m.fl. See also Lagrådssmiss 26 mars 2009 Beskattning av utomlands bosatta artister m.fl.
107 Concerning the practice from the EUCJ (see the referral, p. 31-37) and Finansdepartementet (The Ministry of Finance), Beskattning av utomlands ansätilda artister, m.fl. (Memorandum December 11, 2008).
109 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.)
110 Government’s proposition 2010/11:113 Ökad flexibilitet och förbättrad återbetalning inom Studiestödssystemet. Hence, from July 1, 2010, the CSN (the Central study benefit commission [not officially translated]) can request an immediate repay of study grants, independent of in which country the studies are or have been carried out, if the borrower neglects to fulfil the regular repayments. Further, the CSN can hold back payments if there is reason to believe that the student, for instance, has ceased to study. These amendments came into force on July 1, 2010.
However, concerning higher education for students that are third-country nationals fees for the admission to university education has been introduced from July 1, 2011.111

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 with the Study Loan Act (1999:1395), referring to Aliens Act (2005:716), has been criticized. The Swedish law restricts the definition of descendants/children to the definition found in Directive 2004/38: i.e. the child must be under the age of 21 or dependent on his or her parents in order to be regarded a family member.112 From this it follows that children over the age of 21 and not dependant on their parents are not eligible to receive study grants.113

In the report it is claimed that the restriction mentioned is incompatible with EU law for the position of children of Union workers following the 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 2004/38.114

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 National Board for 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.115

In December, 2011, a public investigation was appointed in order to modernize the study grants for young people (studiehjälp) being at least 16 years of age.116 The investigation should embrace for instans the grants in an EU law perspective and also the financial activity support (aktivitetsstöd; see below concerning young workers). The result from the investigation should be presented in June 30, 2013, at the latest.

6. YOUNG WORKERS

In general, the unemployment figure in Sweden was 7.8 percent in April 2012, and among young persons (15–25 years of age) the corresponding figure was 15–25 or 25.1 percent.117 Hence there is an ongoing debate regarding the unemployment situation, in particular among young persons and immigrants, i.e. in general third-country nationals who have arrived to

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111 The Riksdag’s standing committee for education (Utbildningsutskottet) 2009/10:15.
112 See the Aliens Act Chapter 3a § 2.
113 No other definition is found administrative regulations by the Centrala Studiestödsnämnden (Central Authority for Study finance): Centrala studiestödsnämndens föreskrifter och allmänna råd (CSNFS 2006:7) om utländska medborgares rätt till studiestöd.
116 Committee directions Dir. 2011:122 Modernisering av studiehjälpen och anpassning av studiestödet till nya studerande grupper.
Sweden as asylum seekers and thereafter have obtained a refugee status or have been granted a residence permit as family members to this group.

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).\(^{118}\)

- **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.\(^{119}\)

- **Arbetsmarknadsutbildning**: labour market educational programmes for unemployed workers older than 25 years to enhance their chances of obtaining a position on the labour market.\(^{120}\) (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.)

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).

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

119 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 nystartsjobb.

Chapter VII
Application of Transitional Measures

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

In 2003 the Swedish Riksdag approved the Government proposition to ratify the Treaty on the enlargement of the EU.\(^{121}\) In 2004 the Swedish Riksdag rejected a proposal to introduce certain transition rules for citizens from the new Member States including Malta and Cyprus.\(^{122}\)

2. Transitional Measures Imposed on Workers from Bulgaria and Romania

The position taken by the Riksdag in 2004 not to introduce certain transitional rules for citizens from the new Member States was maintained in 2006 before the affiliation of Rumania and Bulgaria to the EU on January 1, 2007.\(^{123}\) Hence, no transitional restrictions on the free movement of workers have been introduced in Sweden concerning Bulgaria and Romania.

\(^{122}\) Government’s communication Regeringens skrivelse 2003/04:119 Särskilda regler under en övergångsperiod för arbetstagare från nya medlemsstater enligt anslutningsfördraget.
\(^{123}\) See Government’s proposition 2005/06:106 Bulgariens och Rumäniens anslutning till Europeiska unionen.
Chapter VIII
Miscellaneous

1. RELATIONSHIP BETWEEN ART 45 TFUE AND REGULATION 492/2011 (1612/68) AND REGULATIONS 1408/71- 883/04

Basically the Regulation 492/2011 (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 1612/68, implies that the worker also is residing in Sweden; an example is the right to housing allowance.

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

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.

In principle, a social benefit that is not covered by Regulations 1408/71 - 883/04 and residence should be granted to a worker etc. referring to Regulation 492/2011 (1612/68), Article 7.2, and the principle of equal treatment, even if the worker is not settled in Sweden (for instance if he or she is a cross-border commuter working in Sweden but living in another Member State).

The State authority in charge of the application of Regulations 1408/71 - 883/04 is the Swedish Social Insurance Agency (Försäkringskassan). Comments on the application of regulations concerning benefits based on work or residence have been published in instructions issued by the former Swedish National Insurance Board (Riksförsäkringsverket), and there are short comments on the classification on social benefits in relationship to former Regulations 1408/71 and 1612/68 to be applied.

125 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.
126 Government’s proposition 2008/09:200 Socialförsäkringsbalk (chapter 3).
129 Riksförsäkringsverket, Tillämplig lagstiftning, EU, socialförsäkringskonventioner, m.m. Vägledning 2004:11, Stockholm 2004, p. 35 ff. (In the instruction there is an explicit reference to the Regulation 1612/68, article 7.)
2. **Relationship between the Rules of Directive 2004/38 and Regulation 1612/68 for Frontier Workers**

(See above Chapter VI, point 1, concerning the regional seminar concerning 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.)

3. **Existing Policies, Legislation and Practices of a General Nature that have a Clear Impact on Free Movement of EU Workers**

In the beginning of 2011 a public investigation presented a proposal on the implementation into Swedish law of Directive 2008/104/EC on temporary agency work. A new act on hiring out labour was proposed by the investigation, fulfilling the requirements from the Directive. However, the Government has not still in June 2012 put a proposal on the table before the Riksdag, even though the Directive should have been transposed into national law not later than December 5, 2011.

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. However, 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. Indirectly the measures directed to this group can also have an impact on EU citizens from other Member States regarding the labour market.

The Government has announced a coming integration strategy in order to reduce the gap in unemployment between immigrants of people born in Sweden. The gap today is around 17 percent and it takes a long time until immigrants are integrated on the labour market. For instance, the average time from granting a woman from a third-country a residence permit until she has an employment is nine years.

The Swedish National Audit Office (Riksrevisionen) has also pointed out in a report that it takes too long time for immigrants with a higher education to get a job (in Sweden around 300,000 persons). Shortcomings in the communication between state authorities as well as in regulations is said to be a reason. The Audit Office presents the example that it can take up to six years for a medical doctor from a third-country to be recognized for doing a doctor's work in Sweden.

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 of-

130 Official report SOU 2011:5 Bemanningsdirektivets genomförande i Sverige.
131 Riksdag & Departement, April 5, 2011
132 Riksdag & Departement, April 20, 2011.
ferred 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 is abolished.

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

Concerning labour immigration 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’ introduced in 2008.

(Already before that, in 2010 a public investigation had suggested that the control of illegal labour immigration should be reinforced. Before an engagement, the employer should make a control if a third-country national has the right to stay and work in Sweden, and the tax authority should be informed.)

In November 2011, the Migration Board announced a sharpening up of the application of the rules concerning the recruitment of foreign labour in accordance with the 2008 labour immigration law. The recruiting employer 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. The amendments have been applied since January 16, 2012.

In 2011 a public investigation concerning ‘circular migration’ was presented. The proposal aimed to facilitate labour immigration and migration to and from third-countries in a global perspective. According to the committee it should be easier to bring unemployment benefits to countries outside the EU, temporary residence permits for up to four years should be introduced, foreign students should be granted six months residence permit when they have finished their studies, and language requirements should be reduced for self-employed categories. Further, a remark is that the proposal does not concern only the private sector.

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.

133 Government’s proposition 2007/08:147 Nya regler för arbetskraftsinvandring.
136 The proposal was in line with Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.
137 Riksdag & Departement, November 23, 2011.
138 SOU 2011:28 Cirkulär migration och utveckling
4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

The NGO:s active on immigration issues are almost exclusively working with asylum seekers, refugees etc. and they are not involved in matters concerning the free movement of workers.139

5. SEMINARS, REPORTS AND ARTICLES

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

In Copenhagen in May 31, 2012 a regional seminar concerning cross-border work between Denmark and Sweden, held in, and organized by the Danish and Swedish members of the Free movement of workers network in the EU. Several practical problem as well as legal problems regarding the co-ordination of social benefits when persons live in one Member States and work in a neighbouring Member State were dealt with by legal experts from Sweden and Denmark. From the European Commission Mr. Jackie Morin, Head of Unit, Free movement of workers and coordination of social security schemes, DG Employment, Social Affairs and Inclusion, was an active participant.

The year before, in September 2011, the Öresundskomiteen had arranged a conference in Stockholm, ‘Tillväxt och utveckling i ett gränslöst Nordiskt perspektiv’, dealing with obstacles to cross-border work.140

Each year the Institute for Social Private Law at Stockholm University arranges seminars on EU law, and the seminars often deals with EU and the labour market.141 For instance, in March, 2011, there was a seminar concerning EU law and workers from third-countries. In October the same year there was a seminar ‘Latest news from Brussels – what’s on the Commission’s labour law agenda?’

EU & arbetsrätt is a well informed newsletter issued 4 times per year.142 The letter deals with EU labour law and also pays attention to regulations etc. concerning the free movement of workers.

Government’s Communication 2011/12:105 Berättelse om verksamheten i Europeiska unionen under 2011. The communication is a general annual account for Sweden and in particular the positions taken by the Government in EU on different matters.

Ingmanson, S., Förbudet mot åldersdiskriminering i EU-domstolens praxis, Europearrättslig Tidskrift (2011), p. 229-246. The article presents an account for the case law from the EUCJ concerning age discrimination.


139 Otherwise, concerning procedural matters it is the Migration Board that deals with applications for right of residence etc. Appeals against decisions taken by the Migration Board should in the first phase be dealt with in a Migration Court, and the Migration Court of Appeal is the final legal instance for appeal.
141 Current seminars are announced at http://www.juridicum.su.se/social_civilratt/current_seminars.htm.
142 http://arbetsratt.juridicum.su.se/euarb/11-1/ (The newsletter is available free on internet).
Lag & avtal is a periodical specialised in labour law and presents articles and comments also in EU law and the impact on Swedish labour law.

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

Svensk Juristtidning (SvJT), no. 4/2011. A thematic issue from the periodical concerning EU law and the impact on Sweden. Many different aspects are illuminated. One of the contributions is regarding labour law and touches upon the posting of workers.143

6. COMMENTS ON CASES FROM THE COURT OF JUSTICE OF THE EUROPEAN UNION

C-325/09 Dias. A Member State should issue a certain proof on the right of residence for more than three months for by example workers that are Union citizens in accordance with Article 7 of Directive 2004/38/EC and Regulation 1612/68. The corresponding regulations in Swedish law is found in the Aliens Ordinance 2005:715, ch. 3a §§ 7–11 (see also the Aliens Act ch. 3a §§ 6–9).

Concerning the calculation of the period that should be the base for the requested five year period (the Aliens Act ch. 3a § 6) as well as temporary stays outside Sweden (§ 8) Dias has been observed; see Case MIG 2010:8 (residence right and stay period calculation) and MIG 2010:14 (permanent residence right after five years stay). (Compare above Chapter II, point 2 on entry and residence rights).

C-43/09 Zambrano with C-434/09 McCarthy. In Zambrano minor children's right in their capacity of being union citizens dependent of the parents were examined referring to article 20 of the TFEU.144 The parents had been staying in Belgium after their applications for asylum in that Member State had been rejected. The case therefore refers to a so called ‘internal situation’ and there is no cross-border perspective to consider.

In Sweden, an EU citizen's child should have a residence right, even if the EU citizen leaves Sweden or dies (the Aliens Ordinance ch. 3a § 2, amended in 2011 through Ordinance F 2011:408). The same right should apply to the person that is taking care of the child. Further the residence right should remain until the child's studies are finished.

In accordance with Case MIG 2007:56; if a child that is an EU citizen has an independent right of residence, also the parent that is a third-country national being the factual caretaker should have a right to stay in Sweden.

In Case MIG 2011:17 – relevant in the light of McCarthy and dealt with earlier in the report – the primary person/EU citizen was both a citizen in Poland and in Sweden and 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 also referred to Metock.)145

Concerning the term ‘dependent’ in Swedish law, see also the Migration Court Case MIG 2009:37 referring to Case C-1/05 Jia.

In Case MIG 2009:22; the Court's examination concerning parents' or caretakers' residence rights should embrace the minor's own residence right, and if the child has a residence rights should embrace the minor's own residence right, and if the child has a residence

144 The circumstances in Zambrano should be noted; the children were born in Belgium and in accordance with Belgian law, the children automatically became Belgian citizens at birth. The family had been staying in that Member State for eleven years and the children were in school.
145 Regarding the matters dealt with in the case, see also Cases MIG 2008:30 and MIG 2009:11.
right also the factual caretaker/parent that is a third country national should have a right to stay in Sweden.

C-256/11 Dereci. EU law and the Union citizenship should not prevent a Member State from refusing a third-country national to reside on its territory, where this person wishes to reside with a member of his family who is a citizen of the Union of which he has nationality, provided that the refusal means a denial of the rights connected to the citizen’s Union citizenship. In Dereci the citizens had not used their right to free movement and their situation was not embraced by Directive 2004/38. Further, compared with the situation in Zambrano, Dereci and the others should not have to leave the Union and, following that, they were not excluded from the core of their Union citizens’ rights.

C-145/09 Tsakouridis. Here the EUCJ deals with the right to enhanced protection and the concept of ‘imperative grounds of public security’ for justifying the expulsion of a Greek national and Union citizen born in Germany, who had resided for more than ten years in a Member State other than that of which he possesses the nationality. The decision on expulsion was taken after he had been sentenced to imprisonment of more than five years for dealing in narcotics as part of an organized group.

As stated above in Chapter I, point 1 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 expelled only if the measure is absolutely necessary referring to public security. However, a crucial issue is the criminal activities, if it is grave etc., to which the citizen has been found guilty.

C-379/09 Casteels. Mr. Casteels had since 1974 been working for British Airways in Belgium, France and Germany and in the case the EUCJ dealt with pension benefits regulated in law and collective agreement. When he was moving from Belgium to Germany he should have the right to the same working conditions as other employees in Germany with the exception for certain pension rights that followed from a collective agreement. The Court declared that the free movement of worker regulations also embrace collective agreements. Further, when moving to Germany he was put in a worse situation compared with if he had continued to work in Belgium for the same employer. An EU citizen's right to move and work in other Member States should be facilitated and restrictions on the right to exercise fundamental right for EU citizens should be banned even if they are not discriminatory.

In Sweden there are regulations in collective agreements concerning pension rights. The situation the Court dealt with was special. Mr. Casteels had been working for the same employer in different countries, and the reporter is not aware of a similar situation as was present in Casteels.

146 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).
Internet web links (2012, June 15)
(Acts, authorities, statistics and more.)

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; 2009-07-17.)

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 Institutet):
http://www.immi.se/lagar/ (in Swedish)