

**REPORT**  
**on the Free Movement of Workers**  
**in Sweden in 2009-2010**

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## Introduction

This report deals with Sweden and the free movement of workers in the European Union (EU) during the year 2009 and until the beginning of April. The report focuses on the application of Council Regulation 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; former EC Treaty, Article 39).<sup>1</sup> Legal amendments in Swedish law, draft legislation and judicial practice will be in focus on certain areas embraced by the regulations.

The report also in particular deals with equal treatment and access to work, matters concerning family members in connection with workers from other Member States, the relationship between Regulation 1612/68 and Regulation 1408/71 concerning social security and more.<sup>2</sup> Further, EU enlargement issues will be dealt with and certain case law from the ECJ will be illuminated. Published literature, articles in periodicals etc. in 2009 and partially 2010 has been observed.<sup>3</sup>

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

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- 1 Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community. Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.
  - 2 Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.
  - 3 The following Swedish juridical periodicals have been examined systematically: Svensk Juristtidning (SvJT), Juridisk Tidskrift (JT), Svensk skattetidning, Skattenytt, Europarättslig Tidskrift (ERT), Riksdag och departement, Lag & avtal, Arbetsmarknad och arbetsliv and Förvaltningsrättslig tidskrift. In the periodicals listed recent case law from the European Court of Justice is regularly presented.

## Chapter I

### 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 was transposed into Swedish law by the introduction of ch. 3a concerning the right of residence in the Aliens Act.<sup>4</sup>

*Article 7 (3 a-d) of the Directive 2004/38/EC.* In accordance with the Aliens Ordinance ch. 3a § 1 a worker that ceases to work for different reason should legally still be considered as a worker. However, if the worker has become unemployed after not longer than one year of employment, the worker should not keep his status as a worker for more than six months, and if the worker has been temporary employed less than one year he or she will keep his or her residence right for six months, if he or she has been involuntarily unemployed and if he or she has registered as a job-seeker at the employment office.<sup>5</sup> Further, a worker that begins a vocational training will maintain the right to residence.

*Article 8(3a) of the Directive 2004/38/EC.* In order to register the Union citizenship for residence periods more than three months, a Member State may only require an identity card or passport and a confirmation of engagement from the employer or a certificate of employment. The regulation has been transformed into Swedish law by an amendment of the Aliens Ordinance ch. 3a § 8. Concerning workers, the requirement for the granting of a residence right is that the worker shows a passport or identity card and a document certifying that he or she has an employment in Sweden. Further, the Union citizen's duty to register at the Swedish Migration Board – if he or she has the intention to stay for more than three months – is regulated in the Aliens Act ch. 3a § 10.

*Article 14 (4 a-b) of Directive 2004/38/EC.* Under certain circumstances an expulsion measure may in no case be adopted against Union citizens or their family members if the citizen is for example a worker, or if the citizen is a job-seeker and he or she is continuing to seek employment and, further, if he or she has a genuine chance to be engaged. Following from Article 14(1) Union citizens and their family members should have a right of residence as long as they do not become an unreasonable burden on the social system of the host Member State.<sup>6</sup>

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

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

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

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

A foreigner that has a right of residence may be *expelled* from Sweden referring to public order or security (the Aliens Act ch. 8 § 7a).<sup>7</sup> If the foreigner has a permanent right of residence there must be particular reasons for such a decision, and if the foreigner has children in Sweden or has been staying in Sweden for the last ten years, he or she may be expelled only if the measure is absolutely necessary referring to public security.<sup>8</sup> (EU citizens cannot be expelled referring to the health criteria.<sup>9</sup>)

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

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

*Article 24(2) of Directive 2004/38/EC* concerning the right to equal treatment and the possibility for a Member State to make an exception from right to social assistance (including benefits referring to Article 14.4b of the Directive) during the first three months of stay. Concerning social assistance, a local authority should consider the need expressed by people staying the municipality independent of nationality. The term to "stay" in the local municipality is of vital importance in accordance with the Social services Act (2001:453). In principle, for periods of stay up to three months and not having residence in the local community, a person is entitled only to acute social assistance in emergency situations.<sup>10</sup> (See also Chapter VIII, section 1.)

In accordance with the Aliens Act ch. 8 §§ 1 and 2, in general an EU citizen could not be refused entry referring to insufficient means for staying in Sweden. In accordance with the Aliens Act ch. 8 § 2, an EU citizen who has not been qualified for a right of residence – which means that the stay is less than three months – could be refused entry (the term covers also the situation when the foreigner already is in Sweden) if he or she is an unreasonable burden on the social system.<sup>11</sup>

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 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 JOBSEEKERS

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]). (Concerning job-seekers and further details, see also above

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

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

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

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

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

Chapter I, section 2.) Further, a job seeker being a Union citizen is explicitly *not* embraced by the duty to register for staying more than three months in accordance with the Aliens Act ch. 3a § 10. The reason is that a 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.<sup>12</sup> (However, if the job seeker wants to enjoy benefits at the employment office, he or she must register at the office.)

Concerning the recital 9 of *Directive 2004/38/EC*, a job seeker is embraced by the general right to stay in Sweden for a period not exceeding three months without any requests for formalities beyond the duty to have a passport or a valid identity card.

Furthermore, the right to stay is going beyond the three months rule in accordance with the recital and in the light of the judicial practice from the European Court of Justice, and in the Government's proposition presented in 2006 there was an explicit reference to Case C-292/89 *Antonissen*.<sup>13</sup> 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. has "a real chance to get a job" in accordance with the Aliens Act ch. 3a § 3[2].<sup>14</sup>

A job seeker (as well as workers, self-employees and family members of those categories) who has not been qualified for a right of residence – which means that the stay is less than three months – cannot be refused entry (the term covers also the situation when the foreigner already is in Sweden) if he or she is not an unreasonable burden on the social system (the Aliens Act ch. 8 § 2).<sup>15</sup>

### 3. OTHER ISSUES OF CONCERN

The Swedish employment agency pays a certain grant for commuting (pendlingsstöd) to a person that cannot find a work on their domicile. However, this grant is only paid if the job seeker finds a work in Sweden, and this order was questioned by the Commission in 2009. After that a public investigation was appointed in 2009 and the result from the investigation was presented in April 2010.<sup>16</sup> A starting point for the proposal presented by the investigation is that the grant and a certain moving allowance (flyttningsbidrag) should be paid even if the job is in another Member State, and if the job seeker has been registered at an employment office for six months and is prepared to accept jobs offered by the office. The amended regulation is suggested to come into force at January 1, 2011.

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

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

14 See Government's proposition 2005/06:77, p. 110, and Socialstyrelsen (the National Board of Health and Welfare), *EG-rätten och Socialtjänsten – en vägledning*, Stockholm 2008, p. 59.

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

16 Official report SOU 2010:26 Flyttningsbidrag och unionsrätten.

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Concerning identity cards, a new Swedish identity card for persons registered in Sweden has been available from June 1, 2009.<sup>17</sup> According to the Swedish tax authority around 30.000 ID cards had been issued in December 2009.<sup>18</sup>

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17 Riksdag & Departement, no. 32/08. Compare Official report SOU 2007:100 Id-kort för folkbokförda i Sverige. The intention was that by introducing such an identity card to facilitate for persons belonging to the target group to open a bank account in a Swedish bank.

18 Riksdag & Departement (2009-12-07).

## Chapter II Members of the Worker's Family

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

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

“an alien who accompanies an EEA national to Sweden or joins an EEA national in Sweden and who is

- the spouse or cohabiting partner of the EEA national,
- a direct descendent of the EEA national or of his or her spouse or cohabiting partner, if the descendent is dependent on either of them for means of support or is under 21 years of age or
- a direct ascendant of the EEA national or of his or her spouse or cohabiting partner, if the relative is dependent on either of them for means of support.”<sup>19</sup>

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

Concerning workers and their family members and the issue of *reverse discrimination*, the matter has not been brought up in the Swedish debate.

### 2. ENTRY AND RESIDENCE RIGHTS

Concerning entry, from 2006 family members of an EU citizen that are not EU citizens themselves must show a passport since Directive 2004/38 does not stipulate that a family member that is a third-country national is entitled to enter a Member State only by showing an identity card.<sup>20</sup> A motive for the Swedish amendment was said to be the risk that false identity documents could be used when entering Sweden.<sup>21</sup>

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

In accordance with the Aliens Act ch. 3a § 1, family members of an EU citizen have a right to stay in Sweden for more than three months without a residence permit.<sup>22</sup> 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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19 The categories “spouse or cohabiting partner” includes registered partner. This follows from ch. 3 § 1 in the Act (1994:117) on registered partnership and an amendment made in 2005. The term “registered partner” means a married partner as well as a cohabitant (which is not a requirement from the Directive); see Government’s proposition 2005/06:77, pp. 71 and 183.

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

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

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

Concerning *judicial practice*, in 2009 the Migration Court of Appeal in *Case MIG 2009:11* took the decision that – referring to the Aliens Act Ch. 3a – a third-country national that gone into marriage with the only intention to bypass the effect from regulations concerning entry, board and lodging, should not be granted a right to residence.

In 2009 the Migration Court of Appeal in *Case MIG 2009:22* 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. Further, if this right is recognized also the parent being a third-country national and the factual guardian, should have a right to residence.

The 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.<sup>23</sup>

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, job seekers must have a health insurance (ch. 3a § 3.3).

If the family member of an EU citizen that has a right to residence is a third-country national, the family member should apply for a *residence card* within three months (the Aliens Act ch. 3a § 10 [in line with Directive 2004/38/EC]).<sup>24</sup> The residence card should be issued by the Swedish Migration Board. However, the regulation on residence card should not apply to citizens or family members if the citizen is Norwegian, Finnish or Danish or EU citizens that are job seekers.<sup>25</sup>

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.<sup>26</sup>

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”).<sup>27</sup> 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.<sup>28</sup>

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

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

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

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

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

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

### **3. 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.

### **4. THE SITUATION OF FAMILY MEMBERS OF JOB SEEKERS**

If a family member to a job seeker is a EU citizen, he or she has an independent right to be a job seeker and to accept an offer to work. If the family member is a third country national, he or she should in principle apply for a work permit, and such a permit could be granted for a limited period.

## Chapter III

### Access to Employment: a) Private sector and b) Public sector

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

#### A) ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

##### *a.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.

##### *a.2. Language requirements*

In the *private sector* language requirements are not regulated by law. However, in practice language can be used as a requirement for access or promotion by a private employer on condition that the requirement do not interfere with Swedish discrimination law or Community law. (See also Chapter VI, section 2, concerning sport.)

#### B) 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 (§ 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 (see also section b.1 below). Beyond that the equal treatment principle is founded on Regulation 1612/68 and EC law should apply for instance concerning nationality and discrimination. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

### ***b.1. Nationality condition for access to positions in the public sector***

Decisions on employment matters in the public sector should be ruled by objectivity and should be taken on impartial grounds and individuals must be treated equally.<sup>29</sup> However, when the employment is in the exercising authority there is a restriction on the right to equal treatment regarding employment in the public sector in accordance with the TFEU, Article 45.4 (former Article 39.4 of the EC Treaty).<sup>30</sup>

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

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

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

A consequence of the demand for Swedish citizenship for certain positions is that foreigners are excluded from particular employments in the public sector, for instance the position as head of authority that is directly under the Riksdag and positions at the Government offices directly under the Government. However, a position as a judge within the judicial system is not exclusively reserved for Swedish citizens, since it is possible for an experienced lawyer to obtain a position as a judge.<sup>31</sup>

There are also demands for Swedish citizenship, for instance concerning employments as law clerks at the district courts (tingsrätter).<sup>32</sup> 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.<sup>33</sup>

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

29 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.

30 See Nyström, *EU och arbetsrätten*, Stockholm 2002, p. 162 ff.

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

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

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

- The Riksdag (for instance positions as head of offices in the Riksdag, the Riksdag's accountants etc.).
- The courts (for instance prosecutors etc. with some exceptions).
- The police force (most positions as policemen and leading positions).
- The military force.
- The enforcement service (many positions).
- Other (leading positions in the Electricity security board; Elsäkerhetsverket).<sup>34</sup>

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

## ***b.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 a position as a teacher in schools the requirement for a certain proof of competence will be issued only if the applicant has “the knowledge in Swedish language that is necessary”.<sup>35</sup> However, the regulation should only apply when the applicant has another mother language than Swedish, Danish, Faeroese, Icelandic or Norwegian.

Concerning the regulation of professions, another example is the veterinary profession, which in Sweden is generally regulated in the Act (1994:844) on the competence for exercising the veterinary profession. In the Ordinance (1994:845) on the competence for exercising the veterinary profession 1 §, it is stipulated that a foreign veterinary has to complete his education concerning Swedish law and the Swedish language on a basic level.

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

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

However, 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.<sup>36</sup>

### ***b.3. Recognition of professional experience for access to the public sector***

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

(Several of the regulated professions can be exercised both in the private and public sector, e.g. doctors. However, the same professional qualification requirements and the same rules of recognition apply.)

### ***b.4. Other aspects of access to employment***

Nothing to comment on concerning Sweden and points allocated for a certain diploma in recruitment procedure.

Concerning *watchmen* (väktare), at March 16, 2009, a Government proposition was presented concerning watchmen and the transposition of Directive 2005/36/EC.<sup>37</sup> An amendment was made in the Act (1974:191) on security companies (lagen om bevakningsföretag) and was coming into force at June 1, 2009.<sup>38</sup> The amendment establishes a procedure for the authorization of security companies established in the EU and the recognition of the staff employed by these companies. For such persons a notification should be made in advance to the county administrative board in order to get the qualifications recognised.

At February 12, 2009, a Government proposition was presented with the aim to transpose Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.<sup>39</sup> Hence, an auditing company from another Member State should be recognized in Sweden if the company has been recognized in another Member State. In order to be recognized in Sweden an auditor settled in another Member State should have an exam for auditing issued by another Member State.

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36 Compare SOSFS 2007:23 [M] Socialstyrelsens föreskrifter om erkännande av yrkeskvalifikationer inom hälso- och sjukvården, issued by the National Board of Health and Welfare in December 2007, but came into force in January 2008. The SOSFS mentioned is available at <http://www.socialstyrelsen.se/sosfs/2007-23> (2010-04-12).

37 Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ( OJ L 255, 30.9.2005 ); for amendment, see *Official Journal L 271, 16/10/2007 P. 0018 - 0019*.

38 Government's proposition 2008/09:157 Genomförande av EG-direktivet om erkännande av yrkeskvalifikationer för väktare.

39 Government's proposition 2008/09:135 Revisionsutskott m.m. – genomförande av 2006 års revisorsdirektiv, transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

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In 2009 a decision was taken to introduce certain qualification requirements for work as hospital orderly for animals (djursjukvårdare), and the amendment was coming into force at January 1, 2010.<sup>40</sup>

Finally, in December 2009 a public investigation presented a proposal to introduce amendments in law concerning the transposition of Directive 2007/59/EC on the certification of train drivers (lokförardirektivet).<sup>41</sup>

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

41 Official report Ds 2009:54 Lag- och förordningsförändringar för att genomföra Europaparlamentets och rådets direktiv 2007/59/EG. (Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community. *Official Journal L 315, 03/12/2007 P. 0051 – 0078.*)

## 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*

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

The right to equal treatment for employment in *the public sector* should be secured through the regulations referred to above (see Chapter III, section a.2.b and b.1). Beyond that the equal treatment principle is founded on Regulation 1612/68 and EC law should apply for instance concerning nationality and discrimination. Further, there is discrimination law which means that the employer should treat for instance applicants for different positions equally independent of sex, disability, ethnic background etc.

#### 2. *Social and Tax Advantages*

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

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

Concerning the right to social assistance, in principal the Social Services Act makes no difference between Swedish nationals and nationals from other Member States.<sup>42</sup> The decisive 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 ECJ form the background to a former governmental proposal on new rules concerning tax deductions and tax exemptions for payments to pensions funds established in other Member States.<sup>43</sup>

From the ECJ case law follows that a system for life assurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into with pension institutions established in one Member State, whereas no

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<sup>42</sup> The Social services Act (2001:453), ch. 4 § 1.

<sup>43</sup>The ECJ cases referred to is Case C-150/04 *Commission v Denmark* and Case C-522/04 *Commission v. Belgium*.

such tax relief is granted for payments made under contracts entered into with pension institutions established in other Member States contravene the former EC Treaty, Articles 39, 43, 49 and 50 (now corresponding Articles 45, 49, 56 and 57 of the TFEU).<sup>44</sup>

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

Basically the Regulation 1612/68 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to 1612/68, for instance housing allowance, implies that the worker is residing in Sweden.<sup>45</sup>

The benefits that should be granted to a person based on residence and work respectively are listed in the Social Security Act ch. 3.<sup>46</sup> In principle, a social benefit that is not covered by Regulation 1408/71 and residence should be granted to a worker etc. referring to Regulation 1612/68, Article 7.2, and the principle of equal treatment, even if the worker is not settled in Sweden (for instance if he or she is a cross-boarder commuter working in Sweden but living in another Member State).<sup>47</sup>

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).<sup>48</sup> 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.<sup>49</sup>

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

45 In 2009 there was an article commenting on Case C-352/06: Sigander, *Funderingar kring ett rättsfall i EU-domstolen – Mål C-352/06*, Brigitte Bosmann *:/ Bundesagentur für Arbeit – Familienkassa Aachen*, in *Förvaltningsrättslig tidskrift*, no. 3/2009.

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

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

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

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

## 2.2. *Specific issue: the situation of jobseekers*

Concerning Cases C-22/08 and C-23/08 *Vatsouras* and *Koupatantze*, the crucial matter is if the applicants were considered to be entitled to benefits reserved for workers.<sup>50</sup> So far the cases have not been commented on in the Swedish debate, but very probably Court's decision will influence the practice at the authorities in charge for the matters. Until there is administrative or legal practice going in another direction, the reporter cannot find there is a risk for incongruence between the EUJ case law and Swedish law on the matter.

Referring to Case C-138/02 *Collins* and the right to social assistance, the crucial matter is if a person should be considered as a job seeker, and a criterion on the matter is that a person is registered as a job seeker at an employment office and, further, that he or she has "a real chance to get a job".<sup>51</sup>

In Case C-258/04 *Ioannidis* the ECJ ruled that it was contrary to the former EC Treaty, Article 39 (now Article 45 of the TFEU), for a Member State to refuse to grant a tide over allowance ("arbetslöshetsunderstöd" in Swedish) to a national of another Member State seeking his first employment, and who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.<sup>52</sup>

Concerning *Ioannidis* Swedish law regarding unemployment benefits was sharpened up in 2007, when the so called "study provision" (*studerandevillkoret*) was taken away. Hence, a former student is not entitled to unemployment benefit and this should apply independent on nationality.

(Cases *Vatsouras* and *Collins* are also in short dealt with below in Chapter IX.)

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

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

52 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.

## **Chapter V**

### **Other Obstacles to Free Movement**

An obstacle to the free movement of workers and the possibility to get a job in Sweden could be dependent of a foreigner shows insufficient knowledge in the Swedish language. In order to stimulate new immigrants' learning in Swedish language, an experimental activity was introduced in a number of local municipalities in October 2009.<sup>53</sup> A certain economical bonus should be granted those who fulfil the studies in Swedish in time. The primary target group is refugees, asylum seekers and their relatives, but the measure could also be suitable for other groups such as workers, including job seekers and family members from other Member States.

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

## Chapter VI

### Specific Issues

#### 1. FRONTIER WORKERS

In Scandinavia there is a long tradition of free movement of workers, and the Nordic countries have developed a far going co-operation establishing an open Nordic labour market including frontier work.<sup>54</sup> Today the Nordic labour market – established in 1954 – is regulatory dominated by Community law.

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.<sup>55</sup> In the year 2004 around 71,000 persons had income from work in another Nordic country, and among these workers 36,582 individuals were characterized as commuting workers (new figures are announced to be presented in 2010, but still these figures have not been available). The most significant development today is relying on the Öresund bridge between Malmö and Copenhagen.

In 2006 most of the frontier workers were commuting from Sweden to Denmark and from Sweden to Norway. Further, it is more usual that men are working commuters compared with women, and many are young people.<sup>56</sup>

The labour market in the Malmö-Copenhagen region embraces in the main the Danish Copenhagen area and the Malmö area in Sweden and in the region around 10,000 persons are regularly commuting between Sweden and Denmark as frontier workers. Ninety percent of those frontier workers are living in the Skåne province and are commuting to Copenhagen.<sup>57</sup> The national employment offices in both countries provide information about employments and information concerning taxes, social security, double settling and more.

Many factors have an impact on migration and commuting between the Nordic countries. For instance taxes, social entitlements and unemployment benefits. Concerning taxes, in 2003, the Danish and Swedish Governments signed an agreement on certain tax matters and more. The agreement facilitated commuting between the two Member States between 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

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54 Concerning development of the common Nordic labour market and labour mobility in Scandinavia, see Nordiska ministerrådet (the Nordic Council of Ministers), *The Common Nordic Labour Market at 50*. Rapport TemaNord 2008:506. Copenhagen 2008. See also Kruse, *Den gemensamma nordiska arbetsmarknaden och EU*, Köpenhamn 1997.

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

56 Nordiska ministerrådet (the Nordic Council of Ministers), *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.

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

other country (concerning pension insurances paid in another Member State, see also Chapter IV, section 2).

In accordance with the above mentioned agreement between the Danish and Swedish Governments concerning compensation for tax decline – when people, for instance, work in Denmark but are settled in Sweden – the state where the work is performed should pay an amount for levelling out tax income between Sweden and Denmark.<sup>58</sup>

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.<sup>59</sup>

The IAF has published a report on problems concerning the co-ordination of national regulations, different conceptualisation of cross-border problems in neighbouring countries, and the need for more knowledge regarding benefits, national regulations etc. both at national local employment offices as well as among the frontier workers themselves.<sup>60</sup>

A forum to focus on boarder obstacles between the Nordic countries is established by the Nordic Council of Ministers. The development of co-operation between the neighbour states has also enjoyed financial support from the EU. According to information from the Government Sweden will be granted 232 million Euro for developing projects within the framework of the European territorial collaboration during the period 2007–2013.<sup>61</sup>

In 2009 the Government took the decision to counteract border obstacles in the Nordkalotten area by granting founding to a project in order to stimulate free movement of workers and cooperation at Nordkalotten between the Nordic countries.<sup>62</sup>

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

In 2008 a Government proposition introducing a child-care allowance was presented before the Riksdag and a new Act on local governmental child-care allowance was introduced.<sup>63</sup> In order to be entitled to the allowance from the local government, the child should be between 1 and 3 years of age, and both the child and one of the parents must be a registered resident of the municipality (§ 3).

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

59 The IAF website [http://www.iaf.se/iaftemplates/Page.aspx?id=955#Arbetar i ett och bor i ett annat land](http://www.iaf.se/iaftemplates/Page.aspx?id=955#Arbetar_i_ett_och_bor_i_ett_annat_land) (April 8, 2010). Referring to IAE, the term frontier worker means a worker that is working in one country but lives in another country and returns back home at least once a week.

60 IAF, *Gränsarbetare i Norden. En redovisning och analys av hur tillämpningen av regelverket för arbetslöshetsförsäkringen fungerar avseende personer som är bosatta i Sverige och arbetar i ett annat nordiskt land*. Rapport 2008:8 (2008-08-27, Dnr 2008/1452MO). In April 2010 the Official report Ds 2010:14 De nyanlända och arbetslöshetsförsäkringen will be available (still not available in April 19).

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

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

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

The local governmental child-care allowance should be embraced both by Regulation 1612/68 and 1408/71.<sup>64</sup> In principle this means that a Swedish child-care allowance will be co-ordinated with the corresponding benefits in other Member States.

The new allowances should be introduced on the local level by municipalities, and the Swedish Social insurance office and the Swedish Association of Local Authorities and Regions (SKL), representing the local municipalities and county councils, have concluded an agreement on the matter and further regulations concerning the coordination of the new allowance with other family benefits have been developed.<sup>65</sup>

(Otherwise concerning social benefits and residence clauses, see Chapter VIII Miscellaneous.)

## 2. SPORTSMEN/SPORTSWOMEN

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

Rules on the composition of teams of professional players have been adopted by the sporting associations for basketball, ice-hockey, football and volleyball.<sup>66</sup> From the statutes it follows that no restrictions as regards the number of players from other Member States exist. Hence, an unlimited number of players from other Member States could be on the players list in teams playing on top-level. However, the number of players from third countries can be restricted.

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

Especially concerning football, the regulations on certain matters taken by the Swedish Football Association have been in force since 2008.<sup>67</sup> Concerning international transfer of players there is a reference to the FIFA regulations meaning that the FIFA regulations on the matters should always apply (the Swedish Football Association's competition statutes § 20.1).

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

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

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

66 See ch. 3 § 4 of the Swedish Basketball Associations' Competition statutes <http://www.basket.se/files/%7BCD68A21C-76BE-435C-852C-F8BD664BCA2C%7D.pdf>; ch. 4 § 3 of the Swedish Hockey Associations' Competition statutes [http://www.swehockey.se/ImageVault/Images/id\\_2648/ImageVaultHandler.aspx](http://www.swehockey.se/ImageVault/Images/id_2648/ImageVaultHandler.aspx); the Swedish Football Associations' Competition statutes [http://svenskfotboll.se/ImageVault/Images/id\\_38710/ImageVaultHandler.aspx](http://svenskfotboll.se/ImageVault/Images/id_38710/ImageVaultHandler.aspx) and Representation statutes [http://svenskfotboll.se/ImageVault/Images/id\\_38711/ImageVaultHandler.aspx](http://svenskfotboll.se/ImageVault/Images/id_38711/ImageVaultHandler.aspx) and § 140 of the Swedish Volleyball Associations' Competition statutes <http://www.volleyboll.se/t3.aspx?p=713659>.

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

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

According to representatives of the above mentioned sporting associations a professional player, at the termination of the contract, is free to go to another club even if no transfer fee is paid by the transferring club.<sup>68</sup> However, as regards young football players the Swedish Football Association has decided to observe UEFA's recommendations "Investing in the Local Training of Players". The aim of the UEFA recommendations is to secure the development and training of young players in football clubs "in order to safeguard the future of our sport".

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

Concerning language and sport, the Swedish top football club *Brommapojkarna* has attracted attention since the club applies a language policy, meaning that all players should talk Swedish on the on the football ground as well as in the changing-room.<sup>69</sup> The decision – taking by the club's board – is motivated referring to that it should be important for the team that all players speak the same language.

Regarding discrimination, the club claims that the players have different ethnic backgrounds and that many are immigrants to Sweden. Further, the club argues, almost all of the club's players are home grown talent (17 of the 23 first team players in March 2010) from its youth set up, and for them the Swedish language is not a problem.

### 3. THE MARITIME SECTOR

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

The *pay and wage level* concerning seamen is regulated in collective agreements on the Swedish labour market.<sup>70</sup> There are no provisions in the collective agreements on the mari-

68 See also §§ 135 of the Swedish Volleyball Associations' Competition statutes, ch. 3 §§ 7 and 8 of the Swedish Basketball Associations' Competition statutes, ch. 4 §§ 6 and 7 of the Swedish Hockey Associations' Competition.

69 Article in Swedish [Svenska - ett krav hos Brommapojkarna](http://www.fotbolldirekt.se/svenska-ett-krav-hos-brommapojkarna), <http://www.fotbolldirekt.se/svenska-ett-krav-hos-brommapojkarna> and article in English <http://www.thelocal.se/article.php?ID=25452&print=true>

70 The collective agreement *Storsjöavtalet* between SEKO (Facket för service och kommunikation) and SARF (Sjöfartens Arbetsgivareförbund) with general terms on wage- and employment conditions for seamen 2008–2010, 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 *ferry's* 2008–2010, and the collective agreement *Allmänna anställningsvillkor* (2007–2010) för personal i skärgårdstrafik between SEKO (Facket för service och kommunikation) and ALMEGA Tjänsteföretagen – Turism och sjöfart, with general terms on wage- and employment conditions for seamen on boats in *archi-*

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).<sup>71</sup>

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).<sup>72</sup> 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, this regulation – § 21 in the collective agreement – could probably contravene foreign contractors to get a contract with a Swedish shipowner, a contract meaning that the foreign contractor should not provide labour on other terms than what follows from the Swedish collective agreement. Hence, this clause could possibly be questioned from EC law and the competition rules, and further the regulation could constitute a practical obstacle on the free movement of services. However, if the foreign contractor concludes a collective agreement with the Swedish trade union SEKO the obstacle would disappear and at the same time the contractor’s employees would enjoy full equal treatment.

#### 4. RESEARCHERS/ARTISTS

In 2008 an amendment was made concerning foreign *researchers* and their family members coming to Sweden from third countries. 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. The residence permit should be granted for at least one year or shorter if the assignment is for a shorter period than one year. (Amendment of the Aliens Ordinance ch. 4 § 7a.<sup>73</sup>) The amendment has been made transposing Directive

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*pelago traffic*. The Agreement on temporary employees (TAP) i.e. the General Agreement between SEA and SEKO for temporary employees on ships for which an agreement on application has been signed (this agreement is translated into English). These Collective agreements are available in Swedish at [http://www.sjofolk.se/ssf/index.php?option=com\\_content&view=article&id=21&Itemid=9](http://www.sjofolk.se/ssf/index.php?option=com_content&view=article&id=21&Itemid=9) (April 9, 2010).

71 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.

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

73 Government’s proposition 2007/08:74 Genomförande av EG-direktivet om ett särskilt förfarande för tredjelandsmedborgares inresa och vistelse i forskningssyfte.

2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

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

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

On April 16, 2009, a Government proposition concerning taxes to be imposed on artists and athletes/sportsmen was taken by the Riksdag.<sup>74</sup> A foreign athlete/sportsman could make a request for paying taxes in accordance with the Act (1999:1229) on income tax in Sweden. On the other hand he or she will have the right to tax reductions for expenses related to the activity.

The amendment means an adaptation to EC law and the practice developed by the ECJ referred to (for instance case C-527/06 *Renneberg* and more). The amendment has been in force since January 1, 2010. Concerning discrimination against artists as regards wage and working conditions; according to representatives for the Artists Union in Sweden, there are no cases where artists from other Member States have been discriminated against.

## 5. Access to study grants

Nationals from other Member States with the status of Community workers or self-employees and members of their families should enjoy equal treatment as regards student grants and study loans in accordance with the Study loan Act (1999:1395) ch. 1 § 4.<sup>75</sup> 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).<sup>76</sup>

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

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

75 Ingmanson, Migrerande studenter: välfärdsturister eller framtidsbyggare?, *Europarättslig Tidskrift (ERT)*, 2007, p. 241–274.

76 Concerning these matters, see also information provided by the State authority in charge: CSN (Centrala studiestödsnämnden; The Central study benefit commission [not officially translated]), see [CSN Fact sheet: Swedish student aid for non-Swedish nationals for studies abroad](http://service.csn.se/CSNOrder/GemensammaFiler/Blanketter/4201B.pdf), available at <http://service.csn.se/CSNOrder/GemensammaFiler/Blanketter/4201B.pdf> (April 12, 2010).

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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.

## 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.<sup>77</sup> In 2004 the Swedish Riksdag did not approve the former Government's suggestion to introduce – for the first two years after the affiliation of the new Member States – certain transition rules for citizens from these States (except for Malta and Cyprus).<sup>78</sup>

*Free movement of services and the Enlargement.* Concerning the free movement of workers the priority in the Swedish debate has been on the free movement of services derived from the TFEU, Article 56 (former Article 49 of the EC Treaty). The very extensive debate in Sweden in 2005–2008 and still in 2009 has focused on the free movement of services and the posted workers' wages.<sup>79</sup>

A starting point for the debate was a case before the Labour Court in 2004 (Labour Court Cases AD 2004 no. 111 and 2005 no. 49). In *Case C-341/05 Laval* the ECJ – referring to the conflict between a contractor from Latvia and Swedish trade unions – took the decision that Swedish law on the matter, giving national trade unions the right to industrial action in order to establish a collective agreement to apply in Sweden, even if the foreign employer already is bound by a collective agreement concluded in another Member State, was contrary to EC law.<sup>80</sup>

In an official report the so called Laval committee in December 2008 presented suggestions for amendments of Swedish law referring to the Laval case.<sup>81</sup> The report was subject to an extensive debate in Sweden concerning the Swedish industrial relations model and the impact from EU law on the matter.

Later on the Government presented a proposition that was approved by the Riksdag at March 24, 2010.<sup>82</sup> The meaning is that Swedish law on the right to take action against foreign employers posting workers to Sweden will be adapted to EU law and the amendments will be in force at April 15. However, critics claim that the new restrictions on the right to take industrial action still show some shortcomings considering EU law and, further, that the amendments are contrary to the judicial practice from the European Court.<sup>83</sup>

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

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

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

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

81 Official report SOU 2008:123 Förslag med anledning av Lavaldomen. For an extensive summary in English, see the report, pp. 41–87.

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

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

## **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.<sup>84</sup> Hence, no transitional restrictions on the free movement of workers have been made concerning Bulgaria and Romania.

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

## Chapter VIII

### Miscellaneous

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

Basically the Regulation 1612/68 embraces workers and their family members, and the right to equal treatment regarding social benefits referring to 1612/68, for instance housing allowance, implies that the worker also 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.<sup>85</sup> (From January 1, 2011, a new Social Security Act, SFS 2010:211, with a corresponding list will come into force.<sup>86</sup>)

In principle, a social benefit that is not covered by Regulation 1408/71 and residence should be granted to a worker etc. referring to Regulation 1612/68, Article 7.2, and the principle of equal treatment, even if the worker is not settled in Sweden (for instance if he or she is a cross-border commuter working in Sweden but living in another Member State).<sup>87</sup>

The State authority in charge of the application of Regulation 1408/71 is the Swedish Social Insurance Agency (Försäkringskassan; concerning unemployment benefits, see Chapter VI Specific Issues, section 1). 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.<sup>88</sup>

In order to have the right to the following social benefits a person must have his or her *residence* in Sweden (the Social Security Act ch. 3 § 1):<sup>89</sup>

- Health care (sjukvård).
- Parent's allowance, basic level (föräldrapenning på lägstanivå och grundnivå).
- Sickness benefit and activity benefit as guarantee benefit (sjuk- och aktivitetsersättning).
- Rehabilitation (referring to the Act 1962:381 on public insurance ch. 22).

Further, in accordance with the Social Security Act ch. 3 § 2, a person working in Sweden is also comprised by:

- Child allowance (barnbidrag).
- Prolonged child allowance (förlängt barnbidrag).
- Support for having a car (disabled people).
- Adoption allowance (bidrag vid adoption av utländska barn).

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

86 Government's proposition Socialförsäkringsbalk.

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

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

89 Government's proposition 2000/01:96 Sjukersättning och aktivitetsersättning i stället för förtidspension.

## SWEDEN

- Special additional pension benefit (to state pension), when taking care of a sick or disabled child (särskilt pensionstillägg vid vård av sjukt eller handikappat barn).
- Assistance allowance (assistansersättning).
- Housing allowance (bostadsbidrag).
- Housing supplementary allowance for pensioners (bostadstillägg för pensionärer).
- Maintenance benefits (underhållsstöd).
- Guarantee pension (statlig garantipension).
- Handicap allowance and care allowance (handikappersättning och vårdbidrag).
- State pension (including early retirement pension [förtidspension]), survivor's pension (afterlevandepension) and survivor's support to children (afterlevandestöd till barn). State pension is depending on how many years you have been living in Sweden.
- Allowance for elderly (älderförsörjningsstöd) more than 65 years of age.
- State dental care support (statligt tandvårdsstöd).

In order to be entitled to the following social entitlements in accordance with the Social Security Act, the requirement is that the person is *working* in Sweden (the Social Security Act ch. 3 § 4):

- Sickness benefit (sjukpenning).
- Maternity allowance (havandeskapspenning).
- Parents' allowance, on basic level or beyond the basic guarantee level (föräldrapenning).
- Temporary parents' allowance (tillfällig föräldrapenning; for instance if the child is sick).
- Income related sickness benefit and income related activity benefit (inkomstrelaterad sjukersättning och inkomstrelaterad aktivitetsersättning).
- Rehabilitation and rehabilitation benefit (for industrial injury) decided by the Social insurance office (ersättning vid rehabilitering för arbetsskada).

In accordance with the Social Security Act ch. 3 § 5, a person working in Sweden is also comprised by

- The industrial injury insurance (arbetsskadeförsäkring).
- Compensation for taking care of a member of the family (närståendevård).
- Income based old-age pension (inkomstgrundad ålderspension).

Survivor's pension and survivor's maintenance to children regarding income related survivor's pension and widow's pension with some exceptions (afterlevandepension och afterlevandestöd till barn i fråga om inkomstgrundad afterlevandepension och änkepension med vissa undantag).

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

Concerning *social assistance*, in 2008 the National Board of Health and Welfare, presented a report and guidelines for local authorities providing public social assistance. In accordance with the report, a worker that is an EU citizen should have fully right to equal

treatment as Swedish citizens regarding social assistance.<sup>90</sup> On the local level, if a person does not have his or her residence in a municipality, the person only has the right to basic assistance in acute situations, for instance this could mean assistance for travelling to the municipality where the person has his or her residence.<sup>91</sup> (See also Chapter I, section 1, concerning Article 24[2] of Directive 2004/38/EC.)

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

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

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

Nothing to report on beyond the laws and other regulations discussed above. (See also below concerning third-country nationals and the EU law preference principle; section 3.2.)

### ***3.1. Integration measures***

There are no integration measures in particular for EU nationals beyond the basic courses in Swedish etc. that also are offered to foreigners in general. Otherwise in 2009 the Government presented a proposition in order to facilitate the integration of recently arrived foreigners to Sweden.<sup>92</sup> However, the categories in focus for these measures were people who had been granted residence permit referring to for instance a need of protection, temporary protection etc.

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

In December 2008 new Swedish regulations came into force in order to facilitate labour immigration from third countries. In accordance with the Aliens Act, ch. 6 § 2, a work permit should be granted a third-country national that has been offered an employment by an employer.<sup>93</sup>

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 em-

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

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

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

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

ployment should not be worse than those who follow from collective agreements or otherwise what follows from the practice in the business.

The labour market examination previously made by the employment agency has been abolished. However, 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 EU preference principle. By example, the notice on employment made by the employment office will also be accessible at the Eures' internet portal.<sup>94</sup> 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).

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

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

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

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

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.

## **5. SEMINARS, REPORTS AND ARTICLES**

In 2009 and up to April 2010 there has been some public seminars arranged by the Institute for social civil law at Stockholm University. For instance, at February 10, 2010, a seminar was held concerning social security law at cross boarder activity.

Further, in 2009 and 2010 there has been a number of seminars meetings and discussions concerning Swedish labour law and the impact from the ECJ:s decisions in the *Laval* case.

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<sup>94</sup> Wikrén & Sandesjö, *Utlänningslagen med kommentarer*, 9th edition, Norstedts, Stockholm 2010.