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**Sweden: Study on the implementation of the Family
Reunification Directive 2003/86/EC**

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Sweden: Study on the implementation of the Family Reunification Directive 2003/86/EC

A. General questions

- Has the Directive been implemented in your country? If so, please add the references and the texts of relevant legislative and administrative measures and the dates they entered into force.

The Directive has been implemented into Swedish law by amendments of the Aliens Act (2005:716). The Aliens Act came into force on April 30, 2006, when it replaced the former Act (1989:529).¹ However, already before that date – on February 2 – the Government presented amendments of the coming Aliens Act implementing the Family Reunification Directive 2003/86/EC. Regarding the Directive the amendments were coming into force on May 1, 2006.²

- Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate.

There has not been almost any public debate in Sweden concerning the Directive.³ From the circulate for consideration by the parties concerned, there are some opinions to report. For instance, the Children's ombudsman was positive to the proposal to implement the Directive, but pointed out that even unaccompanied minors that have been granted resident permits referring to particular distressing circumstances, should have a right to family reunification.⁴

From a law faculty it was pointed out that the proposal meant that in Swedish law there would be three different systems for the granting of residence permits referring to family connections (for third country nationals in general, asylum seekers and EU citizens).⁵ Hence, it was argued that the regulations will be unclear and that a risk for unequal treatment and even reverse discrimination could occur.

Some critical voices raised objections against the possibility to revoke granted residence permits; the requirements for family ties were said to be too rigid, the requirements for maintenance were said not to be necessary and more. This kind of criticism – which was delivered from the left wing (the social democratic party not included) in the Riksdag – was based on the general standpoint that the EU not should interfere in these matters, at least not in the way the Directive represented.

¹ Government's proposition 2004/05:170 Ny instans- och processordning i utlännings- och medborgarskapsärenden. The Act is available (only in Swedish) at the Internet web link: [http://62.95.69.15/cgi-bin/thw?\\${APPL}=SFST&\\${BASE}=SFST&\\${THWIDS}=40.19/2034&\\${HTML}=sfst_dok&\\${TRIPSHOW}=format=THW&\\${THWURLSAVE}=26/2037](http://62.95.69.15/cgi-bin/thw?${APPL}=SFST&${BASE}=SFST&${THWIDS}=40.19/2034&${HTML}=sfst_dok&${TRIPSHOW}=format=THW&${THWURLSAVE}=26/2037)

² Government's proposition 2005/06:72 Genomförande av EG-direktivet om rätt till familjeåterförening samt vissa frågor om handläggning och DNA-analys vid familjeåterförening. Amendment of the Aliens Act (2005:716) introduced through SFS 2006:220 om ändring i utlänningslagen. See also the Riksdag's social insurance committee's report 2005/06:SfU8 and Official report SOU 2002:13 Vår anhöriginvandring.

³ A quick search on the Internet results in very few hits.

⁴ The Ombudsman argued that the proposal on that point was contrary to the UN Child Convention, article 2. See

⁵ Comments from the law faculty at Stockholm University (June 10, 2005).

- What have been the main changes in the national law or practice due to the Directive. Please indicate for each change whether it improved or deteriorated the legal status of third country nationals and their family members? Did it make the national rules more strict or more liberal?

The Aliens Act has been amended stipulating that a husband or wife respectively shall be granted a residence permit referring to a family relationship (before the regulation stipulated that a husband etc. *may* be granted such a permit), without any examination if the marriage or cohabitant relationship is serious and stable (the Aliens Act ch. 5 § 3).⁶

Further, an important amendment is that the former examination concerning if a marriage or cohabitant relationship with someone who is residing or have been granted a residence permit in Sweden is serious, no longer has to be made (see).⁷

A child's independent right to family reunification has been more explicitly expressed in the amended law. Further, there is a new regulation explicitly stipulating that a parent still staying in the country of origin must consent to the child's application for a residence permit in Sweden (the Aliens Act ch. 5 § 17).⁸

An application for residence permit should be rejected referring to polygamy, for instance for a married partner when the reference person already is married and is living together with that person in Sweden. A new regulation is in force stipulating that reason for a rejection (the Aliens Act ch. 5 § 17b). However, children's' residence permits could be granted even if the parents are in a polygamies relationship.

In Swedish law there was no particular provision stipulating that an application for a residence permit should be rejected referring to public order and security. However, referring to the Directive a new provision has been inserted saying that for members of the core family, it should be possible to reject an application if the applicant constitutes a threat to public order or security (Aliens Act ch. 5 § 17). However, in practice that is not a more restricted order.

- Are there already judgments of national courts applying or interpreting the Directive? If so on which issues?

In 2006 there was a case at the Supreme Migration Court (Case UM317-06, 2006-11-02) where the Court took the decision that pregnancy was an acceptable reason for a deviation from the provision (the Aliens Act ch. 5 § 18), that stipulates that an application for a residence permit must be made from abroad and, further, that the residence permit must be granted before the foreigner can enter Swedish territory. The regulation in ch. 5 § 18 primarily refers to the Directive, article 5(3).

B. Questions on specific provisions

⁶ Government's proposition 2005/06:72, p. 31.

⁷ The amendment does not embrace a foreigner having the *intention* to get married etc. with someone in Sweden; compare ch. 5 § 3a.

⁸ Government's proposition 2005/06:72, p. 35.

Article 3(1)

- **How is the clause “who has reasonable prospects of obtaining the right of permanent residence” implemented in the national law?**

Article 3(1). There is no certain explicit provision in Swedish law concerning the sentence quoted from the Directive, article 3(1). However, already before there is a well established practice that if the foreigner’s intention is to stay in Sweden and he or she is judged to be granted a residence permit, the permit should be permanent.⁹

A reason for not granting a permanent residence permit is, for instance, that the foreigner’s way of life etc. could be questioned, or if the intention to marry or to live with someone that the applicant is referring to, is not considered to be serious or if the relationship is fictitious.

Article 3(3)

- **Will a third country national also having the nationality of your country be able to rely on the Directive?**
- **Are nationals of your country and their third country national family members entitled to the same treatment, to a more privileged treatment or to less favourable treatment as provided in the Directive? Please specify the differences.**

Article 3(3). According to Swedish law the same regulations concerning family reunification should apply to all persons having their residence in Sweden independent of citizenship (this follows from the Aliens Act 5 ch. 3 §). Explicitly a Swedish citizen or any other EU citizen as well as a stateless person could be a reference person.¹⁰

Hence, Swedish law is going beyond the requirements from the Directive and the entitlements are more favourable to union citizens as well as stateless persons compared with the Directive.¹¹

Article 4(1)

- **Has the right to family reunification of spouses and minor children been codified in national law? If so, please mention the relevant provisions of national law.**

Article 4(1). The right to family reunification in accordance with the Directive, article 4(1), is expressed in the Aliens Act in ch. 5 § 3.1 (spouse or wife or cohabitant¹²) and in § 3.2 and 2 (unmarried children and adopted children).

⁹ See Government’s proposition 1988/89:86, p. 146. Compare Wikrén & Sandesjö, Utlänningslagen, 7 edition, p. 64. In Government’s proposition 2005/06:72 on the implementation of the family reunification directive, the actual wording from the directive, article 3.1, was quoted, but no further comments were made beyond the statement that no amendments had to be made on the matter (p. 28 f.).

¹⁰ Government’s proposition 2005/06:72, p. 28.

¹¹ Before the Riksdag’s dealing with the new Aliens Act it was pointed out that the Directive’s article on the matter is a minimum provision. See Government’s proposition 2005/06:72, p. 28. Compare the former Aliens Act ch. 2 § 4.

¹² Who is a cohabitant (“sambo”) follows from § 1 of the Act (2003:376) on cohabitant (Sambolagen); two persons who are regularly living together as a couple are defined as cohabitators.

A registered partner should be treated as a husband or wife. An amendment has been made referring to the Directive meaning that a spouse etc. *shall* be granted a residence permit (the former wording was that a residence permit “may” be granted to a spouse etc.).¹³

Concerning the last sentence in article 4(1) and the possibility to examine if the child meets an existing condition for integration, there were no such provisions in the former Aliens Act, and the Riksdag’s decision referring to the Directive is that such a provision should not be introduced.¹⁴ (See also below, comment to article 7[2].)

Article 4(1) and 4(6) (children over 12 or 15 years)

- **Does the national law of your country provide special rules concerning the admission of children aged over 12 or 15 years?**
- **If children over 15 are prevented from applying for family reunification under what conditions are they entitled to reside considering the obligation for Member States second sentence of Article 4(6)?**
- **Is your country barred from using the exceptions in Article 4(1) last sentence and Article 4(6) by the standstill-clauses in those two provisions?**

Article 4(1) and 4(6). In short there are no certain regulations referring to these age limits, and the following comment is on general matters concerning children. A starting point is that a child is a person up to the age of 18 years.

Independent of citizenship and if the child is 18 years of age, a residence permit may be granted to an unmarried child, including an adopted child, of a reference person in accordance with the Aliens Act ch. 5 § 3.2 and 3. There is no requirement that the child must be dependent on the parent for its maintenance; compare the Directive, article 4.1c.

The standstill clauses in Article 4(1) last sentence and Article 4(6) mean that in order to impose the restrictions provided by the Directive, such restrictions should have been in the Member State’s national law already before the Directive was taken or an age limit (15 years) should apply. Since there were no such regulations by that time in Swedish law, and there are no 15 years age limit, Sweden is barred from the transposing of restrictions on these matters.

Article 4(3) (unmarried partners)

- **Has the provision on the admission of unmarried partners been implemented in national law? If so, under what conditions do they have a right to family reunification?**

Article 4(3). In accordance with Swedish law residence permit should be granted for both married couples as well as cohabitants on the same terms, independent of the parties’ citizenship (see Aliens Act ch. 5 § 3.1). Further, the regulation should embrace a person who is bound to the sponsor by a registered partnership, and this regulation is going beyond what is stipulated by the Directive.¹⁵

¹³ Government’s proposition 2005/06:72, p. 31 f.

¹⁴ Government’s proposition 2005/06:72, s. 35.

¹⁵ Government’s proposition 2005/06:72, p. 32. It follows from the Act (1994:1117) on registered partnership, ch. 3 § 1, that registered partners should be treated on the same terms as a husband and wife.

The Aliens Act has been amended stipulating that a husband or wife respectively *shall* be granted a residence permit (before the regulation stipulated that a husband etc. *may* be granted such a permit).¹⁶

Further, the previous regulation saying that a husband and wife that have not been staying together should be subject to an examination if the relationship is serious. From now on a residence permit should be granted without such an examination (the Aliens Act ch. 5 § 3.1).¹⁷

Further, the same should apply to a cohabitant to a person having a permanent residence permit (the Aliens Act ch. 5 § 3a.1). The regulation also embraces a person who is bound to the sponsor by a registered partnership. An explicit precondition is that the relationship is considered to be serious and no particular reasons tell against this.

However, a husband and wife that have not been living together abroad should be granted a one year residence permit at the first decision (in practice the Migration Board's decision will be a residence permit for two years), and the same should apply to the other categories mentioned. That means that persons having the intention to live together should have the same right to a one year residence permit at the first decision (Aliens Act ch. 5 § 8 referring to §§ 3.1 and 3a).¹⁸ An explicit precondition is that the relationship is considered to be serious and that particular reasons do not tell against the granting of a residence permit.

Article 4(5) (minimum age spouse)

- **Does the national law require a minimum age for the admission of spouses that is higher than 18 years? If so what is the minimum age?**

Article 4(5). In accordance with the Directive, article 4(5) it is possible for the Member State to introduce a minimum age up to 21 years for the reference person as well as his or her spouse. However, in Swedish law there is no minimum age beyond 18 years.

In accordance with Swedish judicial practice a marriage or cohabitant relationship between minors under the age of 18 years should not be accepted.¹⁹ However, for a person less than 18 years a permission to marry could be granted by the County administrative board. A precondition is that there are particular circumstances to refer to, for instance if the parties have children.

Concerning registered partnerships, such a relationship may not be registered if any of the parties is under the age of 18 years.

Further, a marriage that has been entered abroad under foreign law should not be recognised in Sweden if any of the parties is a Swede or had his/her domicile in Sweden, and if there would have been obstacles in Swedish law or if the marriage follows from compulsion.²⁰

¹⁶ Government's proposition 2005/06:72, p. 31.

¹⁷ An exception is, for instance, if the relationship is polygamic. Government's proposition 2005/06:72, p. 31.

¹⁸ Government's proposition 2005/06:72, p. 32.

¹⁹ Compare Government's proposition 1983/84:144, p. 75.

²⁰ Government's proposition 2005/06:72, p. 38.

Article 5(2) (documents and fees)

- **What kind of documentary evidence has to be presented with a family reunification application?**
- **Does the applicant have to pay any fees and, if so, what is the (total) amount of those fees?**

Article 5(2). A written proof of the relationship where an application for a residence permit refers to should be presented in accordance with the Directive. Concerning this practice, no special amendments have been made in Swedish law in order to implement article 5(2).²¹

In general the authorities' dealing with a matter are regulated in the Administrative Act (1986:223; reprinted in SFS 2003:246). The administrative procedure is further regulated in ch. 13 of the Aliens Act, but most of those provisions are concerning oral dealing.

In Swedish law the *principal of officially* (officialprincipen) means that a State authority has a duty to investigate a matter in line with the matter's nature. This principle also embraces the Migration Board and usually this duty also means that the authority requests a passport or other identification documents.

The investigation also deals with the requirements that the foreigner should not constitute a threat to public order and safety (compare the Aliens Act ch. 5 § 17a.3). In order to control this matter the authority in charge, for instance, requests extracts from certain public registers.

Further, in the Migration Board's Aliens handbook there are practical guidelines for the dealing with residence permits and more, and there are also wordings concerning written proofs. For instance, a certificate of matrimonial eligibility ("äktenskapsbevis") should be original, even if such a certificate is not an unconditional requirement.

Concerning the *fee* that must be paid when the application for a residence permit is handed in, there is information on the Migration Board's website.²² The fee should be paid independent of if the application is made at the Migration Board or at a Swedish authority abroad. For an application on family reunification the fee is 55 Euro (500 SEK) for an adult and 27.50 Euro (250 SEK) for a child (below the age 18 years). The same fees should apply if the application is for a prolongation of a residence permit already granted. (See the Aliens Ordinance ch. 8 § 5.) If the foreigner's application is rejected the money will not be refunded.

However, there are some categories that do not have to pay fees when an application is made. Firstly, it is asylum seekers in Sweden and secondly, the exception embraces a husband, wife or cohabitant and children below the age of 18 years to a foreigner that has been granted a residence permit referring to the provisions concerning foreigners "in need of protection" (see ch. 4 § 2 and ch. 5 § 3.4) or in "particular distressing circumstances" (ch. 5 § 6).

Article 5(3) (place of application)

- **May an application be submitted when the family members are already residing in the Member State?**

²¹ Compare Government's proposition 2005/06:72, p. 52 f.

²² <http://www.migrationsverket.se> (November 17, 2006).

Article 5(3). In principle a residence permit is requested for entering Sweden (Aliens Act ch. 2 § 4). A third country national's application for a residence permit should be made – and the permit must also be granted – before the foreigner enters Swedish territory (ch. 5 § 18).²³

In the Aliens Act ch. 5 § 18 there are derogations from the principle mentioned above. Hence, a residence permit may be applied for when the foreigner is in Sweden, if the foreigner could be granted residence permit as a refugee or otherwise in need of protection, or if there are particular distressing circumstances (see ch. 5 § 6), or if the application means a prolongation of a permit previously granted, or if the foreigner has a strong connection to a person residing in Sweden (ch. 5 §§ 1–7) and if it is not reasonable to request that the foreigner makes the application from abroad, or if there are otherwise particular reasons.²⁴

Further, an application for a prolongation of a time-limit residence permit may be applied for when the foreigner already is staying in Sweden (the Aliens Act ch. 5 § 19).

Article 5(4) (length of the procedure)

- Is there any time-limit for the decision on the application by the administration?

Article 5(4). Regarding the time-limit for taking the decision there is no clear specification in law. In the Government's proposition a coming amendment was announced meaning that a regulation in accordance with the Directive (nine months) should be inserted in the Aliens Ordinance.²⁵

The Migration Board's internal steering documents set up a *goal* that applications should be dealt with within a six months period. However, this goal is not a binding regulation and could not be compared with a fixed time-limit.

The time-limits in practice are continuously reported at the Migration Board's web site.²⁶ For instance, in November 16, 2006, 78 percent of the applications handed in at a Swedish embassy or consulate concerning family reunification, referring to a recently established relationship, were dealt with within 12 months.

Article 5(5) (interest of the child)

- How is the provision that Member States "shall have due regard to the best interests of minor children" implemented in national law?

Article 5(5). In the Aliens Act – the general section, ch. 1 § 10 – there is a regulation stipulating that in cases dealing with a child, considerations must be made in particular regarding what is the best considering the child's health and development or otherwise.²⁷

²³ Regarding the Directive, article 5.3, the public investigation that was presented in 2005 noticed that Swedish law was in correspondence with the directive, and that the derogations were within the framework of the Directive. See SOU 2005:15 Familjeåterförening och fri rörlighet för tredjelandsmedborgare, p. 243.

²⁴ Compare the Supreme Migration Court, Case UM317-06, 2006-11-02. (The judgement was not available in full text at November 24, 2006.)

²⁵ Government's proposition 2005/06:72, p. 56 f.

²⁶ <http://www.migrationsverket.se> (November 17, 2006).

²⁷ The original text in ch. 1 § 10 in Swedish is "I fall som rör ett barn skall särskilt beaktas vad hänsynen till barnets hälsa och utveckling samt barnets bästa i övrigt kräver"; compare the Government's proposition 2005/06:72, p. 59.

When a child is affected in matters concerning residence permits, the child should be listened to if it is not considered inappropriate (ch. 1 § 11). If there is reason to revoke a foreigner's residence permit and a child is involved, the child's need to be in contact with the foreigner should be considered (ch. 7 § 4; concerning expulsion referring to criminal activities, compare ch. 8 § 11.2).

Concerning a child, for whom custody is shared between both parents, the other party sharing custody should have given his or her consent before the family reunification with the other parent staying in Sweden.²⁸

In accordance with Swedish law an application for granting a child residence permit shall not be refused referring to a polygamic relationship (compare the Directive, article 4.4). (But, concerning adults in polygamic relationships, an application for a residence permit should be rejected, if the applicant or the reference person already is married and is living together with that person in Sweden; see the Aliens Act ch. 5 §§ 17a.3 and 17b.)

Further, family reunification could be refused if the reunification follows from a marriage between minors under the age of 18 years (see also comment on article 4.5).²⁹ Another motive to restrict residence permit for children referring to a marriage is to prevent compulsive marriages.³⁰

Even if Swedish law do not approve polygamic relationships that does not mean that a *child* born in a polygamic relationship should be refused a residence permit.³¹

Article 6 (public policy exception)

- **How has the public policy and public security exception been implemented and defined in the national law?**
- **What are the similarities and differences compared to the definitions of the same notions in the context of free movement of EU citizens?**

Article 6. In Swedish law there was earlier no particular provision stipulating that an application for a residence permit should be rejected referring to public order and security. However, referring to the Directive a new provision has been inserted saying that for members of the core family, it should be possible to reject an application if the applying family member constitutes a threat to public order or security (Aliens Act ch. 5 §§ 17 and 17a.3).³² The Migration Board should consider if the foreigner has committed crime or showed criminal behaviour in connection with other neglectful behaviour.

Concerning "public health" the Government did not find any reason to put a proposal before the Riksdag.³³

²⁸ Government's proposition 2005/06:72, p. 35.

²⁹ A marriage when one or both of the parties is a minor (under 18 years) must be approved by the County administrative board; see the Marriage Code 2 ch. 1 §. See Government's proposition 2005/06:72, p. 38.

³⁰ See Government's proposition 2005/06:72, p. 38.

³¹ Government's proposition 2005/06:72, p. 40.

³² Government's proposition 2005/06:72, p. 42 f. Compare Government's proposition 1996/97:25, p. 111.

³³ Government's proposition 2005/06:72, p. 43.

Article 7(1)(a) and (c)(income and housing)

- **How is the income requirement specified in the national law?**
- **What is the level of net monthly income required (in euros)?**
- **Is there a housing requirement in force, and if so, what is the minimum surface of the accommodation (in square meters)?**

Article 7(1)(a) and (c). Referring to family reunification there is no income or housing requirement in Swedish law.³⁴

Article 7(2) (integration measures)

- **Are family members required to comply with integration measures? If so, do they have to comply before or after admission and what are they actually required to do (follow a course, pass a test, etc.)**
- **Are there any positive or negative sanctions (privileges, subsidies, fines, residence rights or other) attached to the integration measures?**
- **Does the national law distinguish between the concepts ‘integration conditions’ and ‘integration measures’ (compare Article 4(1) last indent and 7(2))?**

Article 7(2). In Sweden there are no provisions requiring family members to comply with integration measures. When implementing the Directive, the Riksdag confirmed the Government’s position that such a requirement should not be introduced into Swedish law.³⁵

However, foreigners are offered courses in Swedish language and concerning Swedish society and more.

Article 8 (waiting period)

- **Is there any waiting period before the family reunification application can be filed?**

Article 8. In Swedish law there is no requirement that the reference person should have stayed in the country for a certain period before he or she is entitled to family reunification, and the Riksdag decided not to set up such a requirement referring to the Directive.³⁶

Article 9(2) (privileges for refugees)

- **Which privileges granted by the Articles 10–12 are in the national law limited to family relationship that predate the entry of the refugees?**
- **Do other protected persons than Convention refugees benefit from the provisions of Chapter V of this Directive?**

Article 9(2). A permanent residence permit may be granted to a refugee’s and more (see below) husband/wife or cohabitant and unmarried children, if the person has been regularly living with the reference person abroad; concerning categories, compare the Aliens Act ch. 5 §§ 3 and 3a.

³⁴ Official report SOU 2002:13, p. 222.

³⁵ Government’s proposition 2005/06:72, p. 44.

³⁶ Government’s proposition 2005/06:72, p. 41.

If the husband/wife or cohabitant has not been constantly living with the reference person abroad, the foreigner has a right to a residence permit referring to ch. 5 § 3a. But in accordance with ch. 5 § 8 a time-limit residence permit should be imposed. The same regulation should apply if the parties have the intention to live together in Sweden without having done that abroad.

For parents applying for residence permit in Sweden referring to a connection to an unmarried child already staying in Sweden, the Aliens Act ch. 5 § 3.4 should apply. A requirement is presumed that the parent(s) and the child should have been living in the same household already in the country of origin and that there was a particular dependent relationship between the parents and the child.³⁷

However, a residence permit may be granted also otherwise if there are particular reasons therefore, and if the foreigner has a particular connection to Sweden (Aliens Act ch. 5 § 3a section 2.3).

Besides refugees, also foreigners otherwise in need of protection (the Aliens Act ch. 5 § 1) or foreigners having the right to residence permit referring to particular distressing circumstances (the Aliens Act ch. 5 § 6), are embraced by the right to family reunification.³⁸

Article 10(3) (family members of unaccompanied minors)

- **Are the parents, legal guardians or other family members of a refugee who is an unaccompanied minor, entitled to a residence permit under national law?**

Article 10(3). Concerning the right to family reunification for parents to an unaccompanied refugee child (including a child referring to particular distressing circumstances), a certain provision has been inserted in the Aliens Act referring to the Directive (Aliens Act ch. 5 § 3.4). The residence permit should be granted for at least one year (§ 3.4 last sentence). From the Government's proposition approved by the Riksdag it follows that the *child's* right to family reunification is "unconditional".³⁹

Further, from the provision mentioned it follows that also the *parent* has a right to residence permit referring to the unaccompanied child. This right does not embrace any other grown-up person that might have replaced a parent.⁴⁰ However, such a person could be granted a residence permit referring to ch. 5 § 3a.2 or 3 (as a relative to a refugee or a person otherwise in need of protection or a person who in any other way has a particular connection to Sweden).⁴¹

Article 11 (lack of documents)

- **Which rules on alternatives to official documents in case of lack of official documents proving the family relationship are provided for in the national law?**

³⁷ Government's proposition 2005/06:72, p. 45.

³⁸ Government's proposition 2005/06:72, p. 46.

³⁹ Government's proposition 2005/06:72, p. 85.

⁴⁰ Government's proposition 2005/06:72, p. 85.

⁴¹ Government's proposition 2005/06:72, p. 86.

Article 11. There are no regulations in law concerning the investigation of the relationship between a foreigner that has applied for a residence permit and the reference person. However, as mentioned above (see comment on the Directive, article 5[2]), State authorities in Sweden are bound to the *principle of officially*, which means that the authority in charge has a duty to investigate a matter in line with the matter's nature.

Hence, if a relationship is the base for a right to a family reunification, it is obvious that an investigation in order to make clear the relationship should be done. What kind of measures that should be taken depends on the information that the foreigner can present. For instance, if there are clear formal written proofs of the relationship a further investigation is not considered as necessary.

In practice there is an emphasis on measures completing the written, formal proofs on relationship. In the public investigation that was presented before the Government worked out the proposition, there is an account for different aspects of the investigation on relationship between grown-ups.⁴² The focus is very much on cases where the relationship is based on a marriage or a cohabitant relationship.

Hence, there are thorough investigations when the Migration Board carries out interviews with the parties. Rather detailed questions are asked concerning the acquaintance, what the parties know about each other, future plans and more. The aim is to find out if the relationship is serious. (Beyond that there is – as indicated above – also formal documentation, and even other measures are taken, for instance extracts are made from registers concerning committed crimes, verdicts of guilty etc.)

A shift on focus was advocated by the investigation presented in 2002.⁴³ It was claimed that more attention should be paid to the reference person's ability to provide for relatives etc. that have applied for family reunification than to the family connection.

Emphasis on the ability to provide should primarily apply to so called "fast connections" ("snabba anknytningar"), since such connections may be characterised by the parties not having lived together and recently established relationship.⁴⁴ Further, a temporary residence permit will be granted normally for two years at the first decision, when the relationship is a "fast connection".⁴⁵

The Migration Board is in charge of the investigation, but Swedish authorities in other countries are often engaged as well.⁴⁶

In the Aliens Act a possibility to use DNA analysis in order to give proof of the biological relationship was introduced on July 1, 2006 (ch. 13 § 15).⁴⁷ In matters concerning applications for residence permit referring to a family connection it is possible for the applicant – as well as for the reference person – to ask for such a an analysis.

⁴² See Official report SOU 2002:13, pp. 182 ff.

⁴³ Official report SOU 2002:13, pp. 184 and 187.

⁴⁴ A definition on the term "fast connections" is found in the Government's proposition 2005/06:72, p. 31.

⁴⁵ The Aliens Act ch. 5 § 16. Government's proposition 2005/06:72, p. 47. Concerning the "two years" practice, see Government's proposition 2005/06:72, p. 49.

⁴⁶ Official report SOU 2002:13, p. 191.

⁴⁷ Government's proposition 2005/06:72, p. 67 ff. See also Official report SOU 2002:13, p. 211.

A precondition for the right to DNA analysis is that the ordinary investigation of family ties is not sufficient for the granting of a residence permit, and that it is not obvious that the claimed relationship is present (§ 15).

The DNA analysis method should primarily be reserved for cases dealing with family reunification between minors and parents. However, also in other certain cases a DNA analysis should be offered, for instance when an older father wants to be reunified with a grown-up child staying in Sweden.

The DNA analysis is voluntary and there must be a written consent. The foreigner must also be informed of the aim of the test (§ 15). Further, the costs associated with the test should be paid by the State.

In the Aliens Act ch. 13 there are provisions on oral dealing before a decision on expulsion could be taken by the Migration Board. Hence, the measure should be taken at the end of the procedure, when an application for residence permit has been rejected and the question has been raised if the foreigner should be expelled.

Article 12 (exemption from requirements)

- **From which requirements for family reunification, mentioned in Article 7 or Article 8, are refugees or their family members explicitly exempted by national law?**

Article 12. In Swedish law there are no such requirements as those mentioned in the Directive, articles 7 and 8 (for instance on housing, wage income, integration measures etc.).

Article 13(1) (visa facilitation)

- **How has the obligation to grant third country family members “every facility for obtaining the required visas” been implemented in national law?**

Article 13(1). Concerning the visa facilitation in accordance with the Directive, article 13(1), officials at the Migration Board claim that there are administrative instructions to Swedish authorities abroad dealing with visas and that such matter should be dealt with as fast as possible.

Article 14 (equal treatment)

- **How has the right of admitted family members to “access to employment and self-employment in the same way as the sponsor” been implemented in national law?**

- **Did your country make use of the exception to that equal treatment allowed under Article 14(2) of the Directive?**

Article 14. In accordance with the Aliens Act ch. 2 § 8, a foreigner that has been granted a permanent residence permit does not need a work permit for the access to employment on the labour market etc. There is no time-limit introduced meaning that the authorities cannot postpone a decision referring to an examination of the situation on the labour market.

The temporary permit is also, as stated above, used when there is reason to make a so called postponed examination of the right to have a residence permit (“uppskjuten invandringssprövning”).

In accordance with ch. 6 § 3, a work permit may be granted to a foreigner having a temporary residence permit, if not the reason for the residence permit tells against such a decision. However, if the temporary residence permit is granted referring to family reunification, a work permit is automatically granted for the period. Hence, a family member will have the same entitlements as the reference person concerning access to the labour market.⁴⁸

There is no exception in Swedish law to the equal treatment principle referring to article 14(2). In principle, discrimination law concerning labour market, education, social welfare also embrace foreigners having residence permits referring to family reunification.

Article 15 (autonomous residence permit)

- **After how many years are spouses, unmarried partners and children entitled to an autonomous residence permit under national law? What other conditions are they required to fulfil in order to obtain such a permit?**
- **Under what conditions can an autonomous residence permit be obtained before the period of time normally required under national law?**

Article 15. In principle a residence permit referring to a connection will be granted as a permanent residence permit independent of the reference person’s residence permit. If the foreigner’s intention is to settle in Sweden a permanent residence permit should be granted if there is no other reason for not doing so.⁴⁹

The State authority’s possibility to “choose” between a permanent residence permit and a time-limit residence permit at the first decision is depending on whether the parties have or have not been living together before. The latter relationship is characterised as a “fast connection”.⁵⁰ If the “fast connection” is considered to be serious and stable and the relationship is continuing, a continued residence permit should be granted (the Aliens Act ch. 5 § 16).

However, there are circumstances when a continued residence permit should be granted even if the basic relationship between the reference person and the foreigner has ceased (ch. 5 § 16). That is (1) if the foreigner has a particular connection to Sweden, or (2) the relationship has ceased because the foreigner or the foreigner’s child has been subject to violence or insulting behaviour in the relationship or (3) if there are other strong reasons for granting the foreigner a continued residence permit.⁵¹ Further, referring to these “particular reasons” a residence permit may be granted even before a two-year-period.

Article 16(1)(a) (resources)

- **Is the income of family members taken into account for the calculation of the sufficient resources at the time of the renewal of the permit?**

⁴⁸ Government’s proposition 2005/06:72, p. 51.

⁴⁹ Compare Government’s proposition 1983/83:144, p. 86 ff.

⁵⁰ Government’s proposition 2005/06:72, p. 47.

⁵¹ Government’s proposition 2005/06:72, p. 47.

Article 16(1)(a). In Swedish law there is no income requirement. Hence, there is no need to calculate if there are sufficient resources.

Article 16(1)(b) (real family relationship)

- **Does the national law allow for refusal or withdrawal of a residence permit on the ground that the family member does no longer live in a real marital or family relationship? If so, which criteria have to be fulfilled under national law? Is the ground applicable to the relationship between parents and minor children?**

Article 16(1)(b). In principal, if the reference person and the husband or wife etc. no longer is living together, the basic requirement for the husband's etc. residence permit no longer is present.

In accordance with the Aliens Act ch. 5 § 16, a continued residence permit (including a permanent permit) may only be granted if the relationship founding the base for family reunification still exists when the decision is taken. This explicit regulation should apply to time-limit residence permits referring to ch. 5 § 8 (concerning parties having the intention to live together in Sweden etc.).

This also follows implicitly from the Aliens Act ch. 3 § 5 and also cohabitants are embraced by the regulation.⁵² Further, this regulation also embraces husbands or wives or cohabitants that no longer have the intention to live together.⁵³

In accordance with the Aliens Act ch. 5 § 16, a foreigner having a time-limit residence permit (see § 8) referring to family reunification, should be granted a prolonged permit only if the relationship still exists.

However, disregarding that provision there are circumstances when a continued residence permit should be granted, even if the basic relationship between the reference person and the foreigner has ceased (ch. 5 § 16). That is – and on this point I am repeating myself (compare my comment on article 15) – (1) if the foreigner has a particular connection to Sweden, or (2) the relationship has ceased because the foreigner or the foreigner's child has been subject to violence or insulting behaviour in the relationship or (3) if there are other strong reasons for granting the foreigner a continued residence permit.⁵⁴ Further, referring to these “particular reasons” a residence permit may be granted even before a two-year-period. (The same comment is made above in connection with my comment on article 15.)

As stated above a child having a residence permit has an independent right to family reunification and, hence, a parent could be granted a residence permit referring to the connection with the child (see the Aliens Act ch. 3 § 3).

Before a decision to withdraw a residence permit for such a person also the foreigner's relation with the child and the foreigner's connection to Swedish society should be considered (compare the Aliens Act ch. 5 § 3a, concerning reasons for the granting of a residence permit). (Further, see comments below to article 17.)

⁵² Government's proposition 2005/06:72, p. 88.

⁵³ Government's proposition 2005/06:72, p. 88.

⁵⁴ Government's proposition 2005/06:72, p. 47.

Article 16(4) (marriage of convenience)

- **Does the national law contain provisions on fraud or on marriages or partnerships of conveniences? If so are the definitions, checks and practices in conformity with Article 16(4)?**

Article 16(4). Swedish law explicitly defines the prerequisites for the granting of residence permits to family members (see the Aliens Act ch. 5 and comments above). Hence, it follows, that false information, false documents concerning family ties and fraud otherwise could not be the base for the granting of a valid residence permit (ch. 5 § 17a).

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.⁵⁵ The starting point should be that the information presented concerning a marriage etc. is correct. However, if the Migration Board suspects that a marriage could be a pro forma marriage, a deeper examination should be carried out.

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

In the Government's proposition that was approved by the Riksdag, referring to article 17, it is 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..."⁵⁶ (The wording exactly follows the text in article 17.)

It could also be mentioned that in the Aliens Act ch. 7, there are also more general provisions specifying the circumstances for withdrawal of residence permits, work permits and more. In accordance with ch. 7 § 1, a residence permit, work permit etc. may be revoked, if the foreigner consciously has presented incorrect information or consciously has concealed circumstances relevant for the decision to grant the residence permit.

Article 17 (relevant considerations)

- **How has this clause, requiring that certain specific elements are to be taken into consideration in the decision making on residence permits and removal orders, been implemented in the national law?**

⁵⁵ Government's proposition 2005/06:72, p. 39 f. Concerning the practical examination if a pro forma marriage or other relationship is serious, see also Official report SOU 2002:13, pp. 151 ff.

⁵⁶ Government's proposition 2005/06:72, p. 50.

Article 17. From the Aliens Act ch. 7 § 4 it explicitly follows that, when judging if a residence permit should be withdrawn, the foreigner's connection to Swedish society should be considered and if there are other reasons against a revocation of the residence permit.

Further, taking such a decision the authority should in particular consider the foreigner's (1) living circumstances, (2) children in Sweden and their need to have contact with the foreigner, (3) family relationships otherwise and (4) the foreigner's stay period in Sweden.⁵⁷ (See also comments above concerning article 16[1][b].)

Article 18 (judicial review)

- **Are the sponsor and his family members entitled to have a negative decision reviewed by a court or independent tribunal? If so, please specify the relevant provisions in the national law and the scope of the judicial review (full review, review on legality or marginal control only)?**

Article 18. A decision regarding a residence permit should always be communicated in written form. This follows from the Aliens Act ch. 13 § 10 (compare the Directive, article 5.4).

The Migration Board is in charge of the investigation of the application for residence permit referring to family reunification matters, and the Board is the first instance to take a decision.

In accordance with the Aliens Act ch. 14 § 3 the Board's decision could be appealed against at a Migration court, if the decision deals with a rejection of an application for residence permit and more.⁵⁸

The Migration court's decision could be appealed against to the Supreme migration court in accordance with the Aliens Act ch.16 § 9.

C. Final questions

What are in your view the main strengths and weaknesses of the Directive?

In the amended Aliens Act the former requirement that a marriage or cohabitant relationship should be serious and stable for the granting of a permanent residence permit has been taken away (see the Aliens Act ch. 5 § 3.1). Hence, a residence permit should be granted without any examination on if the marriage or cohabitant relationship is serious and stable.

However, the requirement for a serious relationship is still present when a residence permit is applied for referring to an *intention* to get marry etc. (the Aliens Act ch. 5 § 3a.1).

⁵⁷ The comments on the matter made in the Government's proposition, and approved by the Riksdag, explicitly refers to the Directive, see Government's proposition 2005/06:72, p. 88.

⁵⁸ However, this order should not apply to a decision on refusal to enter Sweden. Such a decision should be appealed against to the Police authority in first instance. Further, there are certain regulation concerning security matters to be dealt with by the Security police, and an appeal against such a decision should be directed to the Government. See also the Government's proposition 2005/06:72, p. 61.

A positive aspect of the amendment is that it is often difficult to examine if a relationship is serious and this leads to a risk for arbitrary treatment. On the other hand, if there are no restrictions considering these matters the law is more open to undue advantages.

Finally, I agree with the position taken by the Stockholm law faculty. The amended system on family reunification means that there are three different systems for the granting of residence permits referring to family connections (compare my answer concerning general questions above). Hence, there is a risk that the regulations will be unclear and that unequal treatment and even reverse discrimination could occur.

Please add any other interesting information on the Directive or its implementation in your country that might be relevant for our study.

Please send us copies of the relevant laws and regulations, of any legal or other publications on the Directive or of judgments of national courts applying or interpreting the Directive, if possible in electronic form.

We prefer texts in English, French, German, Spanish or Dutch. We do appreciate (unofficial) translations, and we will do our best to understand texts in other languages.

D. Table

This table refers only to mandatory provisions of the Directive. Please choose for each article one of the four alternative labels:

correct transposition/ no transposition/ violation of the Directive/ unclear.

If you choose the label “violation” or “unclear”, please add a footnote with a short explanation.

ARTICLES OF THE DIRECTIVE	OPINION ABOUT TRANSPOSITION
5 (5)	Correct transposition
10 (3) (a)	Correct transposition
11	Unclear ⁵⁹
13 (1)	Unclear ⁶⁰
14 (1)	Correct transposition
15	Correct transposition
16 (1) (b)	Correct transposition
17	Correct transposition
18	Correct transposition

⁵⁹ There are no explicit provisions in law, but considering the practice the Directive’s requirements are fulfilled.

⁶⁰ There are no explicit provisions in law.

Reference list

Government's proposition 1988/89:86 Förslag till ny utlänningslag m.m.

Government's proposition 2005/06:72 Genomförande av EG-direktivet om rätt till familjeåterförening samt vissa frågor om handläggning och DNA-analys vid familjeåterförening.

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

Official report SOU 2002:13 Vår anhöriginvandring.

the Riksdag's social insurance committee's report 2005/06:SfU8.

Wikrén & Sandesjö, Utlänningslagen, 7 edition, Stockholm 2002 (reprinted 2005).