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Border Management and Migration Controls

Sweden – Country Report

Karin Borevi & Mudar Shakra

Uppsala University

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Any enquiries regarding this publication should be sent to us at: karin.borevi@sh.se

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About the project

RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms. More research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centers, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview-based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level because research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

Executive summary

From a comparative European perspective, Sweden is generally known as a country pursuing relatively liberal asylum policies. One distinguishing feature of Swedish immigration policy has been the principle that persons who are given asylum are immediately granted permanent residence (although the law allows exemptions from this under certain circumstances).

This report gives an overview of the Swedish legal and policy framework of border management and migration control – how it relates to EU regulations and policies; what key actors are involved in the implementation and what the key issues and challenges are in relation to this field. Together with other country reports from partners of the RESPOND project, it provides a basis for cross-country comparisons.

The report particularly documents policy changes which were introduced in Sweden as a direct result of the large increase of the arrival of asylum seekers during the autumn of 2015, which triggered the introduction of policy measures following two main strategies: (1) reintroduction and reinforcement of Sweden's territorial border controls and (2) limitations in the possibilities for asylum seekers to be granted residence.

The *first* strategy (i.e. revolving around territorial border controls) involved policy decisions on two different levels. First, in November 2015, the government decided to re-introduce border controls on the territorial border to Denmark (Government 2015b). Since this is an internal border within the Schengen zone this policy decision was based on the exemption provisions under the Schengen Borders Code, whereby a member state has the right to temporarily introduce internal border controls "to prevent a threat against public order or inner security in the country" (Article 25). Since November 2015, Sweden has continuously prolonged the temporary internal border controls (European Commission 2019).

Second, the government also took initiative to strengthen *the way* these border controls were executed, in the sense that the reintroduced border controls should be combined with comprehensive identity checks. This however required legislative changes to be taken on the national policy level. In December 2015, the government presented a three years temporary law proposal on "special measures in the event of serious danger to public order or internal security" which involved giving the government the right to order ID-controls to be implemented for all passengers trafficking certain border crossings (Government 2015c). The proposal was speedily prepared and processed, and on 4 January 2016, ID-controls of all passengers trafficking certain entries from Germany and Denmark were introduced (Government bill 2015/16:67). These comprehensive ID-controls were in force up until May 2017, when they were abolished (Government 2017).

Since May 2017 the temporary internal Schengen border controls have remained, however these are no longer combined with the comprehensive ID-controls. Simultaneously, as the government abolished the comprehensive ID-checks, it introduced an extended duty for the police to carry out sporadic border-checks at Sweden's territorial borders, as specified in a list of airports and harbours.

The *second* strategy (i.e. revolving around asylum seekers' possibilities to achieve residence in Sweden) involved the goal to adjust Swedish immigration law to "the minimum level" under EU law and international conventions, which was thought necessary to "temporarily limit the number of asylum seekers to Sweden and make more people seek asylum in other countries" (Government Bill 2015/16:174, p. 29). As a result – and contrary to what had since long been

the Swedish guiding principle – all persons given asylum in the country were to be granted only temporary (i.e. not permanent) residency. In the wake of the so called “refugee crisis” in 2015, a prominent narrative in the Swedish policy discourse is that restrictions in the possibilities to achieve residence is required to limit and control the immigration of asylum seekers to the country. In sum, the nexus *border/immigration control – residence permits* is a salient theme in the Swedish context, which will also be reflected in this report.

1. Introduction

The focus of this report is on national border and migration control policies targeting entry and stay within the Swedish territorial borders. The report also aims at giving an account of how the Swedish immigration policies and border management relate to EU regulations and policies.[1] Being an EU member state, Sweden is covered by EU regulations on border management.[2] Due to its geographical position, Sweden has no Schengen-external land borders therefore asylum seekers typically do not arrive to Sweden as an EU external border country. Rather small numbers of people apply for asylum at Sweden's external borders, e.g. on arrival at Arlanda international airport, while most people seeking asylum in Sweden have already passed the EU external borders on their journey. In other words, they have arrived in Sweden via other member states: either travelling by air within the Schengen area (where there is no personal id-control) or by bus, train or car via the *Öresund* bridge; or using ferry connections with Germany and Denmark (see Government Bill 2015/16:67).

This report aims at presenting the current policies and legal framework in Sweden regarding border management and some of the key developments in the area, particularly in the wake of the experience of record-level asylum immigration in 2015. The report further aims at giving an overview of which key actors are involved in the implementation of border management policies in Sweden and what their opinions/experiences are concerning core issues and challenges. The report is based on research conducted within the framework of the EU Horizon 2020 project RESPOND.

2. Methodology and material

The report is structured by guidelines that have been developed by Sabine Hess and Bernd Kasparek from the University of Göttingen and Lena Karamanidou from Glasgow Caledonian University. Building on a shared template, it allows comparative analysis across all participating countries.

Section 3 gives an overview of key developments in relation to political debates and policy changes on issues regarding immigration control and border management and also an account of arguments and narratives regarding border management and migration control in the Swedish policy debates. All country reports of the RESPOND project are instructed to cover the period 2011–2017. However, to give the reader an apprehension of key developments of immigration policies in the Swedish context, this chapter provides a brief account of developments from the 1980s up to present. The chapter is based on secondary

[1] As is explained in the RESPOND working paper "Border Management and Migration Control in the European Union" (Karamanidou and Kasparek 2018), the term *border management* refers to the EU's ensemble of legislation, policies, implementation practices, institutions and actors that are concerned with defining, conceptualising, and policing of the external border of the member states of the European Union, while the term *migration control* capture modes of control that might fall outside the scope of border management, especially as defined by the 2016 European Border and Coast Guard Directive.

[2] The external dimension pertaining to EU measures that involve the cooperation of non-member states (NMS) and is reflected in policies such as the *Global Approach on Migration and Mobility* and the *European Neighbourhood Policy* is not discussed in this report.

literature and on reviews of Swedish parliamentary documents from policy processes preceding key immigration policy decisions.

The main material for **section 4** – which aims at giving an account of the legal framework regulating border policy issues in Sweden and how these regulations relate to EU-law – is the Swedish Aliens Act, EU law and preparatory materials (such as investigations, government bills, parliamentary records) from the Swedish parliamentary policy processes preceding incorporation or adaptation of EU-directives or rules in the national Swedish legislation.

Section 5 aims at providing an overview of the implementation of various parts of Swedish border management and migration control. This overview also covers the main actors that are involved in the implementation and what their opinions/experiences are concerning core issues and challenges. This section is based upon three types of material: (1) public information provided by main actors (e.g. the Swedish Migration Agency; the Swedish Police, different NGOs etc.) via web pages, information brochures and similar documents; (2) interviews with core actors/stake holders who have been involved in various aspects of border management; (3) research literature. Regarding the interviews, seven individual interviews have been made: in December 2018 two interviews were carried out with one civil servant from the Swedish Migration Agency and one from the Swedish Police; in January 2019 one interview took place with an NGO activist (representing “Refugees Welcome”); in February 2019 two interviews were conducted with a lawyer specialized in Migration and Refugee law and with the same civil servant from the Swedish Migration Agency regarding different complementary questions; in March 2019 an interview was conducted with an NGO (Flyktinggruppernas Riksråd, FARR) representative specialised in Migration and Refugee law; on 24th April another interview was done with another civil servant from the Swedish Migration Agency’s Dublin section. Further, the report draws on data gathered at a focus group interview, which was arranged in November 2018 and where approximately 10 actors participated (including representative of NGOs involved in political mobilization and practical work in relation to reception, legal advice and return issues).

In the concluding **section 6**, we summarize the main themes and make policy reflections based on the findings presented in this report.

3. Key developments since 2011

3.1 Developments prior to 2015

From a comparative European perspective, Sweden is generally known as a country pursuing relatively liberal asylum policies. One distinguishing feature of Swedish immigration policy has been the principle that persons who are given asylum are immediately granted permanent residence (although the law allows exemptions from this under certain circumstances). This situation relates to an idea of welfare state inclusion which has dominated immigrant integration policies since the 1960s, according to which integration is seen to require that all citizens have equal and universal access to certain fundamental formal rights (Borevi 2014; 2017).

For a long time, immigration was characterized as a politically non-contentious issue in the Swedish context. In the late 1980s, immigration issues developed from being an inherently

non-politicized area, where decisions were adopted through consensus, to involve increasing degrees of party competition and polarization (e.g., Green-Pedersen and Krogstrup, 2008). Arguably, it is however only very recently that immigration issues in the Swedish context have reached similar levels of party-political polarization as witnessed in many other European countries over the past decades. This should be related to the fact that right wing populist parties, until 2010, were largely absent from the national political arena in Sweden (Green-Pedersen and Odmalm, 2008) and also that the Swedish Conservative Party has had no incentives to "play the immigration card" for strategic government coalition reasons, since their potential government partners have all been high profiled pro-immigration parties (Green-Pedersen and Krogstrup, 2008; cf. Bale, 2008). From the early 1990s, the Social Democratic Party and the Conservative Party, sometimes with the support of the Centre Party, cooperated in pursuing restrictive changes of immigration policy, whereas the other parties made up the "liberal" opposition (Borevi 2015; Johansson, 2005; Spång, 2008).[3]

In 2005, all parliamentary parties endorsed a bill which abolished direct political control over asylum decisions by instead creating migration courts. Simultaneously, the grounds for protection were extended; so that children's grounds for protection received increased weight and "grounds for protection" were more broadly defined, including also gender and sexual orientation (Johannesson 2017; Emilsson 2018). Civil society actors mobilized in favour of a general amnesty for asylum-seekers who had been rejected according to the old asylum procedure (i.e. before the 2005 changes). The demands expressed by the civil society actors in the so called "Easter Uprising" were rejected by the Social Democrats and the Conservative Party. However, in the 2005 autumn budget, the Green Party – in its role as support party to the Social Democratic minority government – succeeded in pressurizing the government to accept an amnesty. Following the amnesty, approximately 25,000 permanent residence permits were issued.

After 2006, when a right of center alliance government was formed, party tensions concerning immigration issues tended to exist mainly within the government. During the first term of office (2006–2010) immigration policy was not a salient issue – for instance, neither the increase in asylum-seekers from Iraq in 2006, nor the implementation of the EU qualification directive into Swedish law in 2010 (Government Bill 2009/10:31) triggered any substantial political debate in parliament or publicly (Emilsson 2018). However, the alliance government's second term of office (2010–2014) saw a significant politicization of immigration issues, which mainly relates to the fact that the populist radical right party, the Sweden Democrats, won parliamentary seats for the first time in the 2010 general elections. The other parliamentary parties adopted a strategy of isolation towards this party. In March 2011, the alliance government formed a framework agreement with the Green Party, explicitly aimed at hindering the Sweden Democrats from having any concrete influence over Swedish migration policy decisions. In the introductory paragraph of the agreement, it was expressed as a goal "that Sweden also in the future will remain a country open towards the surrounding world, and a free haven for those who are fleeing from persecution and oppression" (Government 2011). The agreement resulted in several policy decisions in a liberalizing direction, including the bill to extend both the humanitarian protection grounds for children (Government Bill 2013/14:216) and rights for

[3] In 1991–1994 an anti-immigration party – New Democracy – was represented in the parliament, something which contributed to the politicization of the immigration issue but also made the Social Democrats and the Conservatives less motivated to propose restrictions in relation to asylum migration, for fear of being associated with the anti-immigration party (Abiri 2000).

undocumented migrants (Government Bills 2012/13:58; 2012/13:109). The implementation of the agreement also involved efforts to implement return decisions of persons with no right to residence in Sweden and – in relation to this – measures intended to make the internal control of foreigners more effective under the so-called REVA-project (for more information about REVA, see section 5.3, this report).

The war in Syria and the people fleeing from it also affected Swedish immigration policies. As mentioned above, the general rule according to the Swedish Aliens Act is that a person who is granted the right to asylum should immediately receive permanent residency, although the law allows the granting of *temporary* residence permits, under certain circumstances. Given an increase in the numbers of asylum seekers arriving in Sweden, in 2012 (i.e., three years *before* the 2015 so called refugee crisis), the Swedish Migration Agency assessed that there was a need to deviate from the permanent residency principle and decided to only grant temporary (three years) residency to Syrian asylum seekers. However, only a year later (in September 2013), this decision was revoked, based on a new assessment that there was little hope that the war in Syria would end in the near future, and that all Syrian asylum seekers who came to Sweden should therefore be granted *permanent* residence. An analysis of the effects of the policy-changes following these Migration Agency decisions shows that there is evidence that the 2013 decision to go back to the normal (i.e. more generous) conditions had immediate effects in terms of increased numbers of Syrian asylum seekers arriving in Sweden (Andersson and Jutvik 2018; 2019) but they also find that the increase was a relatively short-term effect of the 2013 policy change; in the long run this reform had less importance for the number of asylum seekers coming to Sweden, something they explain with reference to one particular negative side effect of the reform, namely the very long waiting-times for asylum seekers to have their cases processed, due to constraints in the Swedish bureaucratic system. The study can be taken to illustrate that rules regarding the granting of residence status constitute a crucial part of a state's immigration control and border management policies, with a potentially important impact both on the numbers and the character of those immigrating to the country.

Concerning the Swedish political debate on immigration-related issues, the situation described previously – that the Sweden Democrats were active in making anti-migration proposals while the rest of the parliamentary parties mainly relied on an isolation strategy in relation to the Sweden Democrats – remained up until the general elections in 2014. During the election campaign in 2014, the Conservative Prime Minister Fredrik Reinfeldt, in a speech held in August, made a plea to the Swedish people to show patience for the expected increases in the inflow of refugees. He declared that Sweden's upcoming reception of refugees would imply strains on the public finances, hence why the party could not promise any new reforms in their budget. Referring to Sweden's experience of successful reception and integration of large numbers of refugees (the large influx of refugees fleeing wars in ex-Yugoslavia was particularly highlighted) the Prime Minister urged everyone to show compassion and to "open your hearts" [*öppna era hjärtan*] for the refugees (Dagens Nyheter 2014). The speech received great attention and was widely debated.[4] In the 2014 elections, the Conservative Party experienced a large decrease in voter support, and because of this failure, on the election night Fredrik Reinfeldt announced his resignation from the post as party leader. The voters' support for the Sweden Democrats more than doubled as compared to the 2010 election (from

[4] Later, the Conservative Party would explicitly deprecate the views that Reinfeldt expressed in this speech.

5,7 to 13 percent), and the party became the third largest in Sweden (after the Social Democrats and the Conservatives).

3.2 Changes in the wake of 2015 events

2015 stands out as a watershed in Sweden's immigration policy developments. During that year more than 163 000 asylum seekers arrived in Sweden, of which the main part (114 000 persons) lodged their applications during the autumn (September–December). This number of asylum applications was the highest per capita in comparison with other EU member states in 2015 (Commissioner for Human Rights, 2018 p 6). Of all asylum seekers, 35 000 were unaccompanied children, of which the largest number (26 000 persons) lodged their applications during the last four months of the year (September to December). (SOU 2017:12, p.16).[5] The inflow of asylum seekers to Sweden reached all-time high levels– outnumbering also the previous record immigration of refugees to Sweden from the ex-Yugoslavia in the 1990s - and caused an immense strain on various societal actors. A sense of crisis rapidly grew in the political debate. In September 2015 the Social Democratic prime minister Stefan Löfven expressed the hopeful and supportive words "my Europe does not build walls" (*mitt Europa bygger inte murar*), during a public manifestation in support of asylum seekers (Government 2015a). Less than two months later the government's message had transformed into expressing the need to take drastic efforts to restore control over a situation which was perceived to threaten both the Swedish asylum reception and the welfare state system. To provide temporary solutions to this situation, the government presented measures following two main strategies which will be detailed below; (1) reintroduction and reinforcement of Sweden's territorial border controls and (2) limitations in the possibilities for asylum seekers to be granted residence.

Border controls

As concerns border controls, on the 12th of November 2015 the government decided to temporarily re-introduce controls on Sweden's territorial border to Denmark (Government 2015b). Sweden (together with 21 other EU member states plus Norway, Iceland, Switzerland and Liechtenstein) is part of the Schengen area. This means that the Swedish–Danish border is an internal border within the Schengen zone, and that the decision in November 2015 to re-introduce border controls challenged the EU freedom of movement principle. Although asylum seekers are not formally allowed to move between the Schengen countries, the absence of border controls at the internal borders makes it easier for them to pass between countries within the Schengen zone.[6] Based on analyses from the Migration Agency, the Police Authority and Swedish Civil Contingencies Agency (MSB), the government declared that the record-large inflow of asylum seekers to Sweden had led to an emergency situation for core societal functions, hence why the reintroduction of border control at internal borders was necessary (Government 2015c). This decision was based on the exemption provisions under

[5] According to the OECD (2016) in 2014–2015 Sweden saw the largest per capita inflow of asylum-seekers ever recorded in an OECD country.

[6] All persons legally present in the Schengen zone can move about freely without having to show passports when crossing internal borders. This free movement-principle applies to those with residence permits and visas in a Schengen country and those who do not need visas. The travellers must be able to show their passport or an identity card.

the Schengen Borders Code (Article 25), whereby a member state has the right to temporarily introduce internal border controls "to prevent a threat against public order or inner security in the country". The control was introduced on the same day (12th of November) at 12.00 and initially it applied for ten days. The government announced that the Police Authority had the duty to decide where and how the border control was to be implemented. Thereafter, based on renewed assessments of the security situation, the temporary control has been continuously extended a large number of times.

The way the decisions to keep the temporary internal border control are justified has shifted somewhat over time. In the initial November 2015 decision to reintroduce the border control, the emphasis was on the strains that large numbers of asylum seekers caused to core societal functions (Government 2015b). From May 2016, the internal border controls were justified with reference to the Schengen Borders Code, article 29, whereby controls are legitimate given deficiencies at the EU external border. Hence, the government has referred to the inadequate controls at the EU external borders, where the supposed risk that potential terrorists enter the Schengen area is particularly highlighted (e.g. Government 2016b; 2017). The most recent decision to extend the temporary border control with another six months, taken by the government on 19 May 2019, was justified in the following way:

> The decision has been made in accordance with the EU common legislation and is based on the government's evaluation that there is continuously a severe threat against the public order and the internal security in Sweden. According to the National Intelligence Service there is also continuously an increased level of terrorist threat. There are still deficiencies in the controls of the external borders across the Schengen area, which means Sweden must keep the internal border controls. (Government 2019)

Furthermore, the government also noted that Sweden's actions were in line with other Schengen member states, such as Germany, Austria, Norway and Denmark "…these countries have also temporarily reintroduced internal border controls and have announced they will continue with these controls as long as a severe threat against public order and inner security remain" (Government 2019).

Shortly after the decision in November 2015 to reintroduce internal border controls (which has thereafter been continuously renewed, as explained above) the government declared there was need to combine these border controls with more comprehensive identity checks of all passengers travelling over certain border crossings. On 4th of December, the government presented a proposal referred to the Council on Legislation for consideration on "special measures in the event of serious danger to public order or internal security" which involved giving the government the right to order ID-controls to be implemented for all passengers trafficking certain internal border crossings (Government 2015c). The proposal was speedily prepared and presented to the parliament (Government bill 2015/16:67).

Acknowledging that the proposed measures implied obstacles for asylum seekers in need of protection, in the bill the government emphasized the other interests which nevertheless motivated more effective controls:

> To achieve a better control of the persons who are travelling into Sweden and to avoid the threat against the public order and internal security that large inflows of asylum seekers entail, there should be a possibility to combine the border controls with identity controls on buses, trains and passenger ships to Sweden from another state, even if such

a measure may lead to limitations in the possibility to apply for asylum. (Government bill 2015/16:67).

Border controls were said to be necessary to protect public order and internal security since ”the migration flows entail acute challenges regarding societal functionality, which is part of Sweden’s security”, but also because of the need to discourage presumptive asylum seekers from coming to Sweden (Government Bill 2015/16:67).

In the parliament the Left Party and the Centre Party rejected the proposal to introduce comprehensive identity checks, arguing that it would both undermine the human right to seek asylum and have far-reaching and negative economic consequences. The Conservative Party, the Liberals, the Christian Democrats and the Sweden Democrats were all in favor of the proposal. While the Sweden Democrats expressed satisfaction that the government had finally ‘come to their senses’ and argued that even more restrictive policies were needed, the Christian Democrats and the Liberal Party, although positive to the proposal, wanted to introduce certain amendments such as exemptions from the requirement to present ID-controls for children. Several parties also voiced concern regarding the policy decision process of the government proposal – referring to the harsh criticism expressed during the referral process both by the Council on Legislation (*Lagrådet*) and many of the consultative bodies (*remissinstanser*). One main objection was that the policy decision would give too much power to the government vis-à-vis parliament (Parliamentary Committee on Justice 2015/16:24; Pettersson 2018).

The government bill was adopted by parliament on 17 December. The new temporary law (21 December 2015–21 December 2018) gave the government the power to decide on the introduction of temporary identity-controls on all transport coming to Sweden from another state, such as trains, boats and buses, if there was a situation which was deemed to require such measures (SFS 2015:1073). A month later, on 4th January 2016, temporary ID-controls were introduced for certain entries from Germany and Denmark (see section 6 for more details about the implementation). The ID-checks remained a much-debated issue. The supporters emphasized arguments brought forward by the government, that this was a necessary measure to halt asylum immigration, while critical voices emphasized that the border controls hindered asylum seekers from having their claims to protection investigated, and/or that they caused delays in the daily cross-border commuter traffic across the Öresund Bridge (between Malmö and Copenhagen). These controls were in force up until May 2017, when the government decided to abolish them (see e.g. Government Bill 2017/18:1).[7] Simultaneously, an extended duty for the police to carry out sporadic border-checks at airports and harbours, specified in a list, was introduced. Hence, the comprehensive ID-checks of all persons trafficking certain borders-crossings was replaced with another type of strengthened border controls.

In sum, since May 2017, the temporary internal Schengen border controls have remained, however these are no longer combined with the comprehensive ID-controls which were in force in the period January 2016 to May 2017.

[7] The temporary law allowing such ID-controls expired in December 2018.

Limitations in the possibilities to be granted residence

On 24th of November 2015 the government announced its intention to present a temporary law proposal to the parliament, entailing temporary limitations in the possibilities to be granted residence in Sweden. The explicit intention was to adjust the Swedish asylum laws to "the minimum level under EU law and international conventions" (Government Bill 2015/16:174). Sweden would thus, temporarily, deter from the guiding principle, explained above, that all persons given asylum in the country were granted permanent residency. The proposed migration law was to be limited to three years, during which all persons granted protection in Sweden were to be given only temporary residency (except for resettled quota refugees who continued to be granted permanent residence). This adjustment to "the minimum EU-levels" was expected to result in decreased inflows of asylum seekers to Sweden. The government deplored the negative consequences of this change in the law, for example in relation to the right to family reunification but justified it with reference to the emergency-situation, and the need to create some "breathing space" (*andrum*), both for the system of reception of asylum seekers and for the welfare state institutions in general (Borevi 2018). During the spring of 2016 a bill was speedily produced and processed, and finally adopted by parliament in June 2016 (Government Bill 2015/16:174). The date of the government's announcement to propose the law changes, 24 November 2015, became crucial since it decided whether an asylum application was to be decided with reference to the "old" or the "new" law. All applications lodged after this date were evaluated in accordance with the new temporary law, which meant drastically less favourable conditions, not least in relation to family reunification rights.

As already mentioned, the Social Democrats and the Green Party minority government (2014–2018) was the one to initiate the proposal to introduce temporary adjustments of the Swedish asylum policies to meet the "EU minimum standards". This proposal was a particularly big sacrifice for the pro-immigration profiled Green Party. Although this party was the keenest on stating that the goal was to return to the previous (i.e. ordinary) legislation as quickly as possible, the 2016 law was justified as a *temporary* solution also by the Social Democrats. The Left Party and the Centre Party voted against the law-change, while the Liberal Party and the Christian Democrats agreed that the changes were necessary, but were critical of some components of the restrictions, particularly the significantly decreased possibilities for family reunification. The Sweden Democrats welcomed the law-change and urged it to be permanent as well as proposing more comprehensive restrictions. Similar to the Sweden Democrats, the Conservatives also argued that the temporary law on migration policies must become permanent (Borevi 2018; Emilsson 2018; Wirman 2016).

The purpose with the temporary law-changes was to limit the number of asylum seekers. It is however a debatable issue whether the measures have had the intended effect. A report issued by the Red Cross, for instance, concluded that there is nothing to suggest that the law-changes introduced in 2016 has had the intended effect of reducing the number of asylum-seekers arriving in Sweden (Beskow, 2018).

In January 2019, after record-long negotiations over the formation of the government (following the general elections held in September 2018), the two-party coalition government (Social Democrats and the Green Party) finally managed to form a government with the support of the Centre Party and the Liberals. For the government to secure the support from the Centre Party and the Liberals they had to make a number of concessions, summarized in the so called "January deal". The January deal included several immigration policy related issues, among them a liberalization of the strictest parts of the family reunification rights. It

was also decided to prolong the temporary law, which would otherwise expire in July 2019, by another two years. The government has announced that it intends to appoint a parliamentary commission on the future of Swedish migration policies.

4. Legal Framework

The overview of the legal framework is organized into four groups/sub-sections: (1) Pre-entry controls which covers readmission agreements, measures relating to preventing unauthorised third country nationals; smuggling/trafficking initiatives; visa requirements; (2) 'At the border' controls which is pertaining to Visa and Schengen regimes, Integrated Border management, surveillance at sea and land borders; smart borders, information databases (EURODAC, SIS, VIS etc); (3) Internal control regime – which revolves around regulations on stay and residence; detention; apprehension measures relating to surveying, locating, detaining and deporting unauthorised/undocumented migrants; measures around facilitation/ policies regarding access of migrants to welfare, education, healthcare etc. and (4) Return: return and readmission of unauthorised migrants including detention for the purpose of return.

It may be noted that many of the policies mentioned above are *transversal*: they are normally associated with one of the three dimensions, but their implementation often involves more than one. For example, return procedures are initiated by member states at the border and inland and involve third countries, as they must cooperate with MS authorities.

4.1 Pre-entry controls

The aim of this section is to outline what legal arrangements regarding pre-entry controls are in place in the Swedish context. Since Sweden is a member of the EU, such arrangements are prescribed by EU law. In the following, four sub -categories of pre-entry controls are presented: (1) visa regulations; (2) carrier sanction legislation; (3) advance passenger information and (4) liaison officers. Relevant regulations according to EU law are indicated in the grey boxes. Following subsequently are the relevant rules and regulations found in the Swedish national legislations in relation to each sub-category.

4.1.1 Visas

Key EU legal instruments:

Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)

Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

The Swedish visa regulations have been subject to several changes, in recent times, mostly due to an increased influence from EU legal acts and legislation.

As stated in RESPOND's first country report on Sweden (Shakra *et al*, 2018, p 40), historically Sweden started requesting visas from foreign nationals during the Second World War (Wikrén and Sandesjö, 2006 p. 67). After the end of the war this process was reversed, and an increasing number of foreign nationals did not require visas to enter the country. However, this development was halted in 1976 when Turkish citizens, who previously did not need visas, were required to apply before entering the country (Wikrén and Sandesjö, 2006 p. 67).

A visa gives an individual the right to enter and reside in Sweden during a fixed period, it may also be a so-called transit visa, giving the right to enter to travel onwards through Sweden. Visa policies give the state an instrument to control the entry of foreigners into the territory. In Sweden visa requirements have been justified as a way to control and limit immigration from certain countries as well as for national security reasons. In the Swedish context the issuance of visas has at times also been used to make certain political statements, e.g. in the case of South Africa. (Wikrén and Sandesjö 2017 p. 99)

Currently, there are two ways of obtaining visas to enter Sweden, either via the Schengen regulations or through national legislation.

Visas based on the EU visa Code

In Swedish law the main bulk of regulations regarding visas are found in the Visa Code established by regulation (EC 810/2009) of the European Parliament and of the Council on 13 July 2009 establishing a Community Code on Visas*.*

This is also directly referenced in the Chapter 3, Section 1 of the Swedish Aliens Act, where it is stated that the regulations for a Schengen Visa are to be found in the above-mentioned Visa Code. This section is therefore in reality merely information on and a reference to the common EU legislation on the matter.

Before this direct referral to the Code, the Swedish Aliens Act from 2001 contained more extensive articles on visa regulations that directly corresponded to the Schengen Convention's regulations on a uniform visa system (Wikrén and Sandesjö 2017 p. 133). However, with the introduction of the EU Visa Code, which is an EU regulation, the legal landscape somewhat changed. This is because the conditions for the issuing of visas are regulated in full detail in the Visa Codex, therefore there is no margin of appreciation or otherwise room for any additional or complementary regulations in national law on this matter.

Visas with national scope

Outside the scope of the EU, there is also a possibility for the Swedish authorities to issue a national visa. As mentioned in the legal text of the Aliens Act (Ch. 3 Section 4), this only applies if there are certain specific reasons. The national visa is only valid for the territory of Sweden and can only be issued for a minimum period of three months and a maximum period of one year otherwise this competence to issue a visa laid down in the EU legislation. Article 25 of the EU Visa Code regulates the issuance of visas with the national scope and stipulates that this visa is only valid up to three months during a six months period.

This clause permits an individual country to diverge from the general requirements to issue these types of visas in the rare cases of inter alia humanitarian reasons, national interests or on reasons based on international obligations (Government Bill 2010/11:121).

The reason why this regulation only covers visas that are longer than three months but shorter than one year is found in article 18 of the Schengen Convention that clearly specifies that visas for longer periods should be national visas issued by one of the member states in accordance with their national or European Union legislation and not have a validity longer than one year. The requirements for issuing national visas are therefore within the individual countries' own competency as long as there is no overriding EU legislation on the matter.

When the article regarding visa extension exceeding three months was introduced in Swedish law it was said that there had to be "specific reasons" (*särskilda skäl*) to issue such a visa, and to exemplify what the legislator had in mind, cases where persons wished to stay longer than three months to visit close relatives or to conduct business were mentioned (Government Bill 2004/05:170 p.272 ff). In the legislative history it was further noted that, since the nationally issued visas were not part of the general EU Visa Code, there was no obligation to inform other Schengen member states that such a visa had been issued.

The jurisdiction of the humanitarian visa issuance to allow those in need of protection for third country nationals to legally and safely enter and lodge an asylum application at the EU territory is a relevant topic here. The Court of Justice of the European Union (CJEU) on 7 March 2017 gave a preliminary ruling (PPU X and X v. Belgium) concerning the application for visas with limited territorial validity made on humanitarian grounds on the basis of Article 25 of the visa code. In this ruling, which aims to interpret Article 25 (1) (a), the CJEU states:

"an application for international protection and, thereafter, to staying in the visa issuing member state for more than 90 days in a 180-day period, does not fall within the scope of the EU Visa Code but, as European Union law currently stands, solely within that of national law."

The Swedish Migration Agency is the issuing authority both when it comes to visas falling under the EU Visa Code and the national visas discussed above. In addition, the Government Offices of Sweden also has the mandate to issue visas, although this mandate is limited to the national visas (Ch3 section 5). According to article 4.4 of the EU visa code, the EU member state can require the involvement of authorities, other than the consulate as it is designated in article 4.1, in the examination of and decision on the visa application.

4.1.2 Carrier sanctions legislation

Key EU legal instruments:

Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (carrier sanctions)

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data

The introduction of the 2001/51/EC directive into Swedish national legislation was prepared by an internal Government office working committee. In the committee report it was made clear that regulations concerning both return travel and sanctions were required to fulfil the Schengen requirements and the directive concerning carrier sanctions (Ds 2001: 74, p. 97). The government bill, presented in January 2004 (Government Bill 2003/04: 50), noted that

Sweden was obliged to implement sanctions, but held that it was not necessary to require carriers to implement any sophisticated analysis of travel documents, except only to discover obviously false or forged documents. It was also emphasized that after this legislative change, it was the Swedish authorities who were responsible for the assessment of a person's right to enter Sweden and for assessing reasons given by those seeking asylum. Hence, the conclusion was that the consequences of increased carrier responsibilities would not differ much from the existing situation, although the government also admitted that sanctions might lead to carriers implementing more detailed checks than previously (Government Bill 2003/04:50). The new legislation entered into effect on 1 July 2004. This means that, according to the Swedish Aliens Act Chapter 9, Section 3, "a carrier must check that a foreigner that the carrier is transporting to Sweden directly from a state that is not covered by the Schengen Convention is in possession of a passport and the permits required to enter the country. Unless this is rendered unnecessary by the controls carried out under the first paragraph, the carrier must also check that the alien has funds to pay for the journey home".

Sweden communicated different transposition measures in order to transpose the EU Council Directive 2004/82/EC into the different National Swedish legislations before the deadline on 05 September 2006 (European Union 2019).[8]

The possibility for sanctions under the current directive is linked to the actual transmission of the data that the carriers has submitted, not to the authenticity of the data itself (Wikrén and Sandesjö 2017 p. 134).

4.1.3 Advance passenger information/ Passenger Name information

Key EU legal instruments:

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data

Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

The general obligations of carriers are regulated in the Swedish Aliens Act, mainly in chapter 9. These articles have been formulated to fulfil the obligations in the European council's directive 2004/82/EC, which was transposed into the Aliens Act via a government bill (Government Bill 2005/06:129, p 35). This bill explains the main aims of the council directive, which is to improve border controls and combat illegal immigration by requiring carriers to transmit passenger information to the relevant competent national authorities. According to the Swedish Aliens Act, Chapter 9, section 3 a, at the request of a police authority, a carrier transporting passengers to Sweden by air directly from a state that does not belong to the European Union and that has not entered into an agreement on cooperation under the Schengen Convention with States that are Parties to the Convention, must transmit information about the arriving passengers as soon as check-in has been completed. The information referred to in the first paragraph consists of (1) number and type of travel

[8] Lag (SFS 2006:444) om passagerarregister; lag (SFS 2005:445) om ändring I sekretesslagen (SFS 1980:100); lag (SFS 2006:) om ändring i polisdatalagen (1998:622); lag (SFS 2006: 447) om ändring i utlänningslagen (2005:716); lag (SFS 2006:857) om ändring i sekretesslagen (SFS 1980:100).

document used; (2) nationality; (3) full name; (4) date of birth; (5) the border crossing point of entry; (6) code of transport; (7) departure and arrival time of the transportation; (8) the total number of passengers carried on the transport and (9) initial point of embarkation.

Article 2 of the Council Directive 2004/82/EG defines the carrier as any natural or legal person whose occupation is to provide passenger transport by air. The definition of carrier in the Swedish government bill (Government Bill 2005/06:129) has a wider notion, covering both the owner of the aircraft as well as the person using the aircraft in the owner's place. This paragraph corresponds to article 3.2 in the Council Directive 2004/82/EG.

In April 2016, after the inter-institutional negotiations for the adoption of EU legislation (so called Trilogue negotiations), the European Council accepted the EU directive (2016/681) on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, which was to be implemented by the member states by 25 May 2018. Sweden expressed a positive opinion in relation to the directive and welcomed its implementation. In the EU expert committee, appointed by the Commission to work with coordination and cooperation of member states' national implementation of the directive, Sweden is represented by the Swedish Police Authority. A government-appointed investigation prepared the adoption of the EU directive in the national legislation (SOU 2017:57), which resulted in a new law on passenger name record (PNR) as part of crime prevention measures (Government Bill 2017/18:234; Parliamentary Committee of Justice 2017/18:39).

4.1.4 Immigration liaison officers

Key EU legal instruments:

Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network

Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

The Swedish Migration Agency has joined the European Union Return Liaison Officers network (EURLO). Within this project there are, firstly, common EU return liaison officers (EURLOs) posted on various places and secondly EURLOs who can go on specific and shorter missions to various countries. Since May 2016, Sweden has one Swedish EURLO in the Embassy of Rabat and, since the autumn of 2016, also one in Kabul. Via this network, Sweden also has access to the other EU member states' liaison officers in other countries, and Swedish EURLOs may also be contacted by other countries for assistance. Apart from the Swedish posts in Rabat and Kabul, the Migration Board has another three return liaison officers at the Embassies in Amman, Nairobi and Tbilisi. These have been introduced as a

result of the government's efforts to strengthen Sweden's work on return migration (SOU 2017:14, p. 95).

4.2 'At the Border' Controls

This section concerns measures regarding admission and entry of third country nationals to the Swedish territory. The Schengen agreement involves EU member states plus Iceland, Norway, Switzerland and Liechtenstein. Sweden has been a Schengen member since 2001. The aim of the Schengen Convention is to enhance the free movement of EU citizens within the member states. Simultaneously, control at the external borders – towards states which are not part of the agreement - has been intensified. Sweden only has territorial borders towards other Schengen countries, which means that the national territorial borders are simultaneously EU internal borders.

Key EU legislation
Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II) Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' Facilitators package (EU legislation on smuggling) Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence 2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent facilitation

The introduction of controls of the Swedish national territorial borders was put on the agenda as a direct result of the large inflow of asylum seekers in the autumn 2015. The introduction of border controls is regulated in articles 25 and 26 in the EU regulation on the Schengen Borders Code. These articles allow member states in exceptional cases to implement immediate reintroduction of EU-internal border controls if the public order or inner security requires an urgent measure to be taken. As described in section 3, on 12 November 2015 the

government decided to reintroduce such border controls (Government decision 2015-11-12). The control was introduced the same day at 12.00 and initially it applied for ten days. The government announced that the Police Authority had the duty to decide where and how the border control was to be implemented (Government 2015; SOU 2017:12, p. 298–299). Subsequently, the government has regularly renewed the decision to implement internal border control. Each decision has been based on renewed evaluations of the current security situation (e.g. Government 2015c; 2016; European Commission 2019).

On 1 March 2018 section 16 in chapter 1 was amended in the Swedish Aliens Act through a government bill (Government Bill 2017/18:35). Essentially, this section refers to EU law as the applicable one and states: "Provisions on border crossing are contained in Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the border crossing of persons (Schengen Borders Code)". According to article 22 of this regulation, internal borders may be crossed at any point without border checks being carried out, irrespective of the nationality of the persons crossing the border. In the Swedish Aliens Act in different chapters, for example in chapter 2, section 8, the requirement for a passport (as it is stipulated in Ch. 4, section 1) for entry does not apply to a foreigner who is a citizen of a Schengen state if he or she travels or has travelled into Sweden directly from a Schengen state. In addition, the Aliens Act (Ch. 2, section 8) does not require a passport for a stay from a citizen of Denmark, Finland, Iceland or Norway, nor to a foreigner who is a citizen of another Schengen state if he or she has travelled into Sweden directly from a Schengen state.

As a Schengen country, Sweden has access to the Schengen Information System (SIS) and the Visa Information System (VIS) databases. The databases are used by the police, who are responsible for conducting the border controls, and by the Migration Agency. The VIS shows applications for all kinds of visas to any European country and includes fingerprint data. In addition to this, Sweden uses another two databases for fingerprints: (1) EURODAC, which is a platform for all Dublin-countries, including Iceland, Norway and Switzerland and (2) a Swedish national database produced by the Swedish Migration Agency (Datainspektionen 2019).

Since the Schengen Borders Code is a regulation, it is applicable to the member states without incorporation or transformation to national legislation. A change in the Schengen Code was presented by the Commission in December 2015 and adopted in March 2017. The change intended to better meet the increasing terrorist threats in Europe. Through this amendment of the Schengen Code, member states are required, at the EU-external borders, to implement systematic checks against relevant databases of *all* persons, i.e. also those who are covered by the freedom of movement according to EU law (see e.g. SOU 2017:103, p. 44).

According to the Swedish Aliens Act (Ch. 9, section 8) the Swedish Migration Agency or the police may take photos of a foreigner if the foreigner has turned 14. Furthermore, the police may take fingerprints if the foreigner cannot prove his or her identity when arriving in Sweden, if he or she wants to make an asylum application or if there are reasons for detention.[9] Another aspect of the Swedish border control concerns implementation of the directive 2002/90/EC in

[9] This used to be one of the police authority's sole responsibilities until the Swedish Migration Agency became the authority in charge of asylum related cases. The action of photographing and taking the fingerprints for detention grounds was introduced in the 1980 Swedish Aliens Act in 1986 (Wikrén and Sandesjö 2017 p 547).

Sweden by a governmental bill (2003/4:35). This directive defines the facilitation of unauthorized entry, transit and residence and requires that Member States apply appropriate penalties against those who attempt, instigate or commit the infringement of assisting irregular migration procedures. According to the Swedish Aliens Act (Ch. 20, section 1, 2 and 4) a fine can be imposed for those staying in the country without the necessary documents or means. A person who intentionally stays in Sweden without temporary or permanent residency shall be also sentenced to imprisonment (up to a year) or a fine. This does not apply to refugees or those in need of subsidiary protection. The same punishment may apply if a person crosses the border in an unauthorised way.

Sweden's control in connection with entry and exit is regulated in the Aliens Act Sweden, Chapter 9 (Controls and coercive measures), which will be explained in the next sections.

4.2.1 Border surveillance

Key EU legislation:

Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur)

Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

Key international and EU legislation

United nations Convention on the law of the sea

International Convention for the Safety of Life at Sea (SOLAS)

International Convention on Maritime Search and Rescue (SAR)

Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

According to the regulation (EU) 2016/1624 on the European Border and Coast Guard (mentioned above) member states' national authorities with responsibility for border management are required to establish national strategies for integrated border management (IBM strategy). The Swedish national strategy for integrated border management was established by the Police, the Migration Agency, the Maritime Search and Rescue (*Kustbevakningen*), Maritime Services (*Sjöfartsverket*), Swedish Customs (*Tullverket*) and Swedish Security Service (*Säkerhetspolisen*) (Government Office 2016, *Nationell strategi för integrerad gränsförvaltning*).

4.3 Internal controls

Internal controls may be exercised by member states *within their national territory*. Such control is allowed (although not required) by EU law. In Sweden, this is called internal control of foreigners (*inre utlänningskontroll*).

1	**Asylum Seekers**
2	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
3	Council Directive 2001/55 EG on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences.
4	Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
5	Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
6	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection
7	Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection
8	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person
9	**Irregular migrants**
10	Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals
11	Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence
12	2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence
13	The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

14 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)
15 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
16 Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)
17 Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II)

Internal controls of foreigners (*inre utlänningskontroll*) and enforcement measurements when a foreigner enters or resides in Sweden are mainly regulated in chapter 9 of the Swedish Aliens Act.

The Swedish Aliens Act (Cha. 9, section 9), states that "it is the duty of an alien staying in Sweden, when requested to do so by a police officer, to present a passport or other documents showing that he or she has the right to remain in Sweden". In the legislative history it is emphasized that this section does not mean that the foreign resident in Sweden is obliged to carry around a passport when residing in Sweden (Government Bill 1988/89:86 p172). The Aliens Act (Ch. 9, section.9) also states that:

> It is also the duty of the foreigner, when summoned by the Swedish Migration Agency or the police authority, to visit the Migration Agency or the authority and provide information about his or her stay in this country. If the foreigner does not do so he or she may be brought in by the police authority. If, in view of a foreigner's personal circumstances or for some other reason, it can be assumed that the alien will not obey the summons, he or she may be brought in without prior summons. The Swedish Coast Guard shall assist in police control activities in conjunction with shipping. If controls are exercised by the Swedish Coast Guard, the passport or other documents must be presented to the Swedish Coast Guard official. These above-mentioned checks may only be undertaken if there is good *reason to assume* that the foreigner lacks the right to remain in the country or there is otherwise *special cause for checking.*

According to the above-mentioned government bill (1988/89:86 p.173) a person's behaviour or intercourse may sometimes give reason to undertake control measures. Furthermore, the police is permitted to summon a foreigner who has not yet been granted a residence permit to make inquiries about the grounds of his/her application.

Sweden has introduced several legislative measures, as a part of its internal control policy, to counter the illegal employment of third country nationals who do not have the right to stay in Sweden. In July 2013, the government bill (2012/13:125) to implement the European Parliament and Council of 18 June 2009 directive (2009/52/EC) providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals entered into force. According to this legislative change, criminal liability was introduced for employers who hire third country nationals who are not entitled to stay in Sweden (Government bill 2012/13:125 p 1).

In 2017, the government declared that internal control of foreigners was an essential part of the efforts to manage migration and proposed to give the Police Authority an extended mandate to conduct unannounced inspections at workplaces to check that employers did not

have employees with no right to stay or work in Sweden (Government Bill 2017/18:176). Such workplace inspections should, however, be limited to industries and businesses activities where the police authority assessed there was a particular risk that employees without residence permits and work permits were to be found. The government also proposed to increase the fines for employers with foreign employees without residence and work permits (Government Bill 2017/18:176). The Swedish parliament approved the bill, and the changes which came into force in July 2018 (SFS 2018:739) in the Swedish Aliens Act (Ch. 9, sections 14, 15 and 16) read as follows:

> The police authority may carry out an inspection to check whether an employer has a foreigner employed who
>
> - is not entitled to stay in Sweden, or
>
> - has the right to stay here but does not have a prescribed work permit.
>
> Inspections may only be carried out in sectors of activity identified as risk sectors in accordance with Article 14 of Directive 2009/52 / EC of the European Parliament and of the Council of 18 June 2009 on minimum standards for sanctions and measures against employers of illegally staying third-country nationals. An inspection may be carried out at workplaces and in premises where the employer conducts business activities and without prior notification to the employer. The inspection must be carried out in such a way that business is not unnecessarily obstructed.
>
> An employer is obliged to provide access to the workplaces and premises where the business activity is being conducted and to provide the documents and provide the other information needed for the control.

4.4 Return

Key EU legislation

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 - on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007 / 2004 and Council Decision 2005/ 267/ EC

Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders

(Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994

Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air

Issues concerning “return” or “individual removal orders of third country nationals from the territory of the national territory” (as it is formulated in the 2004 EU council decision, mentioned in the box above) are regulated in the Swedish Aliens Act in several chapters and paragraphs, but particularly in chapter 8, under what is called refusal of entry or expulsion. Here, several legal grounds for the expulsion and issuance of the deportation order are introduced in detail. Some of these grounds were in place before the Swedish membership of the EU and the Schengen area, while others have been inserted thereafter. Accordingly, in relation to legal grounds for return, the Swedish Aliens Acts distinguishes between several categories such as EEA citizens or family members of an EEA-citizen and non-EEA citizen and their family members.

The different aspects of enforcement of deportation, expulsion and return are regulated in the Swedish Aliens Act, mainly in its chapters 9, 10, 11 and 12. Chapter 10 together with a few sections in chapter 9 complement each other when it comes to legal grounds for measurements of enforcement as explained in the sub-section above, and further below. The conditions for enforcement, supervision and detention of a foreigner are regulated under chapters 10 and 11. Enforcement of refusal-of-entry and expulsion orders and the impediments to this enforcement are regulated in Chapter 12 of the Aliens Act.

The various migration regulations, including the Swedish Aliens Act (2005:716), have been modified on several occasions to adjust to EU law. The European Parliament and Council directive 2008/115 / EC of 16 December 2008 on common standards and procedures for returning third-country nationals who are staying illegally in the Member States is one example. As a response to the 2008 EU return directive, in the beginning of 2009 the Swedish government appointed a commission of inquiry on detention (*Förvarsutredningen*) instructed to investigate how to integrate the new directive into the Swedish Aliens Act. In the final report (SOU 2009:60) changes were proposed to harmonize national legislation with the return directive. These changes were approved by parliament and entered into force in May 2012. In a government bill 2016 (2016/17:61), a follow-up on the application of the return directive and its harmonization with Swedish legislation was presented together with some suggested changes. Parliament approved the changes which entered into force on 1 March 2017.

The Swedish Aliens Act contains different regulations to enable the responsible authorities to take different steps to ensure that a foreigner, who has no right to stay in Sweden, departs. Expulsion or coercive departure can be deployed as a last resort (EMN 2017a, p 7), if voluntary departure is not possible. The Swedish Aliens Act formulates a guidance for handling matters related to detention (Ch.1, section 8) as follows: “The law must be applied so that a foreigner's freedom is not limited more than is necessary in each individual case”. The legal grounds to place a foreigner in detention or under supervision have been developed over several decades in the legislative and judicial system in Sweden. The Swedish Aliens Act distinguishes between adults and children in relation to detention and supervision matters. Chapter 10, section 1 contains the following provisions about the legal grounds for detention of a person who is 18 years or older:

1. If the foreigner's identity is unclear upon arrival in Sweden or when he or she subsequently applies for a residence permit and he or she cannot show it likely that the identity he or she states is true, and
2. If the foreigner's right to enter or stay in Sweden cannot be assessed anyway.

According to the same section, a foreigner who has turned 18 may also be detained for criminality related grounds or because of the likelihood of absconding if the following conditions apply:

1. It is necessary for an investigation into the foreigner's right to stay in Sweden to be conducted
2. It is likely that the foreigner will be rejected or expelled under other provisions of the Swedish Aliens Act (Chapter 8)
3. It is a matter of preparing or carrying out the execution of a rejection or expulsion order.

These legal grounds in the above-mentioned section (Ch.10, section 1) existed partly in the 1989 Swedish Aliens Act and were developed and updated in light of the EU return directive into the currently applicable formulations. According to this provision in chapter 10 the preparation and execution of an expulsion decision after the rejection of the asylum application as grounds for detention as well as the likelihood of rejection and expulsion in accordance with the Swedish Aliens Act (chapter 8) cannot be established unless there is a risk that the foreigner would commit criminal actions in Sweden; avoid leaving Sweden or cause obstacles to the expulsion process. The intention behind this change was to adjust the text and assessment according to article 15 in the EU Return directive (Wikrén and Sandesjö 2017, p. 565). The case law in the Swedish judicial system has, in several cases, also played a role in clarifying the application of this detention provision in the Swedish Aliens Act in light of the EU Return directive. In 2015, the Swedish Migration Court of Appeal ruled (MIG 2015:5) that the detention provision is not applicable when the case is related to detention according to the Dublin Regulation. The Court of Appeal in this case (MIG 2015:5) states that the Dublin Regulation requires a risk of a significant degree that the foreigner will try to avoid deportation or expulsion. Hence, this court ruling implies that the Dublin Regulation formulates a more demanding requirement than the Swedish Aliens Act when it comes to the conditions which must exist for detention to be legally valid (cha 10, section 1).

Chapter 10, section 2 of the Swedish Aliens Act contains provisions about the legal grounds of detention of a foreigner who is under 18 years, and read as follows:

A child may be detained if

1. It is likely that the child will be refused entry by the police authority or rejected with immediate enforcement by the Migration Agency or if it is a question of preparing or implementing the enforcement of such a decision,
2. The risk is obvious that the child will otherwise stay away and thereby jeopardize an enforcement that should not be delayed, and
3. It is not sufficient for the child to be under supervision in accordance the Aliens Act (ch 10, art. 7).

A child may also be detained if

1. It is a question of preparing or carrying out the execution of a decision on rejection in other cases than according to section 1 or a decision on expulsion according to Chapter 8 sections6 or 10 or Chapter 8 a sections 1 or 5, and
2. In the case of a previous attempt to execute the decision, it has not proved sufficient for the child to be supervised in accordance with the provisions of section 7, second paragraph.

The most recent change of the wording of this paragraph in the Swedish Aliens Act was implemented in October 2017 (SFS 2017:906) when "rejected by the police authority" was added to the previous formulation, and the police authority's decision was given equal immediate enforcement power as the decision by the Migration Agency in relation to the child rejection, detention and expulsion. The changes in this paragraph and other paragraphs in the Aliens Act were proposed in the government's bill (2016/17:191) which aimed to clarify the role of the police authority and security police in the Aliens Act and their possibilities to use coercive measurements in the enforcement of rejection and expulsion decisions. According to this bill (2016/17:191, page 32) this child detention paragraph was altered with a government's bill (2011/12:60 page 92) to adjust to the EU 2008 return directive without mentioning the police authority's immediate rejection decision and enforcement which existed anyway in the Aliens Act (Ch. 12, para 2, sub-para 2) which fell outside the implementation area.

A child is defined in the Aliens Act (Ch. 1, section 2) as a person who is under 18 years of age. According to the Swedish Aliens Act (Ch. 10, section 3) separation of the child from his or her both custodians (*vårdnadshavare*) by keeping the child or the custodians in detention should not happen. In addition, a child who has no custodian in Sweden may only be detained if there are special reasons. The possibility to detain the child for special reasons can constitute protection for the child in order to avoid a situation where the child can end up with somebody who may have other intentions than to look after the child's best interest (bet.1992/93:SfU3 page 20) (Wikrén and Sandesjö 2017 p.571). A child should not be kept in detention for longer than 72 hours or, if there are special reasons, an additional 72 hours (Ch. 10, section 5).

The Swedish Aliens Act (Ch. 11) also stipulates how a foreigner is going to be treated when kept in detention.

According to chapter 11 section 1 of the Aliens Act, a foreigner who is kept in detention should be treated humanely and his or her dignity should be respected. The foreigner must be informed about the rights and obligations he or she has as detainee and about the rules which apply in the detention facilities. The regulations concerning how a foreigner should be treated in detention existed already before the 2005 changes in the Swedish Aliens Act and had been adjusted to meet the requirements of the UNHCR guideline on detention (1997/97:147,18§), but the current wording of this paragraph has been formulated in relation to the EU return directive (Wikrén and Sandesjö 2017 p 593).

The Swedish Aliens Act stipulates another action or step towards ensuring the foreigner's departure when a foreigner does not have the right to stay or visit Sweden. This step or action is to have the foreigner under supervision, which is defined in the Swedish Aliens Act (Ch. 10, section 8) as follows:

> Supervision means that the foreigner is obliged to register at the police authority or at the Migration Agency at certain times. In a decision on supervision, it must be stated

in which place the obligation to report must be fulfilled. The foreigner may also be required to surrender his or her passport or other identification document.[10]

There is a lack of detention places in Sweden therefore the Swedish Migration Agency is working on improving the efficiency of supervision mechanism (EMN 2017a, p. 7).

The executive process of the rejection and then expulsion enforcement according to the Swedish Aliens Act starts first and foremost with taking into consideration the commitments towards refugee law and international human rights law, particularly the principle of non-refoulement. The UN 1989 Convention against Torture and the European Convention of Human rights, particularly article 3, have been the main grounds in formulating the rules of this enforcement in the 1989 and 2005 Swedish Aliens Acts (Wikrén and Sandesjö 2017 p 593). The Swedish Aliens Act refers to these commitments in different chapters including chapter 12 which is titled ”Impediments to enforcing rejection and expulsion”. The first paragraph of this chapter states:

Rejection and expulsion of a foreigner can never be enforced to a country if there is reasonable reason to assume that

- the foreigner there would be in danger of being punished with death or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, or

- the foreigner is not protected in that country against being sent on to a country where the foreigner would be in such danger.

The Aliens Act distinguishes, again, between adults and children when it comes to the enforcement of the rejection and expulsion decisions and the proper reception and care for an unaccompanied child. The Aliens Act (Ch. 12, Para 3a) stipulates clear conditions to enforce rejection and expulsion decisions. In the case of unaccompanied minors this enforcement can only be executed with the conditions of ensuring a proper reception by a family member, a designated guardian or a well-suited reception unit capable of providing adequate help to the minor in the country of return.

The 1989 Swedish Aliens Act did not include such rule in this respect (Wikrén and Sandesjö 2017 p 593). This section was proposed by the government (Government Bill 2016/12:60 page 45) to meet the article 10.2 in the EU return directive which permits the removing of an unaccompanied minor from the territory of a Member State if the authority of this member state is satisfied that the unaccompanied minor can be received by a member of his or her family, a nominated guardian or the existence of adequate reception facilities in the state of return.

As the current Swedish Aliens Act was established long before the introduction of the EU law, it contains a number of regulations which are not part of EU-law, therefore at times there are differences between national and EU-law regulations. One example is in the case of impediments to enforcement and cancellation (*verkställighetshinder*) (Government Bill 2016/17:17 p. 76). According to chapter 12 section 18 in the Aliens Act the Swedish Migration Agency may consider granting a residency permit although an enforcement of a refusal-of-entry or expulsion order has become final and non-appealable, if new circumstances have

[10] This step did exist before the 2005 Aliens Act but there were differences. For example, the previous sections in the 1989 Aliens Act provided the space to impose certain conditions for instance to limit the foreigner’s movement within certain areas or certain municipalities (Wikrén and Sandesjö 2017 p 576).

come to light. The grounds for these possibilities to grant a residency permit by the Migration Agency are as follows:

1. If there is an impediment to this enforcement in relation to the application of non-refoulement principle, refugee law and international humanitarian law commitments of Sweden (under Ch. 12, section 1, 2 or 3)
2. If there is reason to assume that the intended country of return will not be willing to accept the foreigner or;
3. If there are medical or other special grounds why the order should not be enforced.

It is only after the introduction of the temporary law (2016:752) that the granted residency permits in these circumstances have become temporary. Before this law there was a possibility to grant a permanent residency permit in these circumstances if the return decision was not possible to be enforced over time.

According to the same paragraph, children should receive a more lenient assessment. This means that children, in certain aspects, do not need to live up to the same conditions as are required for adults, to be granted a residence permit (in accordance with Ch. 12 section 18, sub-section 1, point 3). Hence, if the above-mentioned new circumstances occur in a case for a child, it is possible that there is reason to re-assess or even grant a residence permit, after the final rejection decision comes into force. These circumstances should not have the same seriousness and weight as required to reassess or even grant a residence permit to adult persons.

Granting a residency permit according to section 18 in chapter 12 has its foundation in Swedish national law, not in EU law, since the application of the EU return directive does not set any requirement in this respect as it is stipulated in this section (Government Bill 2016/17:17 page 76).

The application of Dublin Regulation (2013/604) and transfer of a third-country national or a stateless person to the responsible member state is an inherent part of return and deportation cases. The Dublin Regulation (2013/604) was immediately applicable in Sweden without incorporation and transformation completely into the Swedish Aliens Act. However, the Swedish Aliens Act has had different articles altered on several occasions in order to adjust and implement on the Dublin regulation. The last change entered into force in July 2017 (SFS 2017:523) to implement the article 27.2 of the Dublin regulation. The Swedish Aliens Act (Ch. 5. Section 1 c) applies article 33.1 of the EU directive (2013/32/EU) on common procedures for granting and withdrawing international protection, and according to this article Sweden (as any other member state) is permitted to reject an asylum application for someone who is to be transferred to another Member State under the Dublin Regulation. However, the Swedish Aliens Act (Ch.12 section 9 a) stipulates that the foreigner has a right to request permission to stay, in the form of an inhibition of the transfer decision by the Migration Agency or Police authority during the appeal period. The transfer decision cannot be executed until the Swedish Migration Court of Appeal rules on the request for the stay. Furthermore, when the Migration Agency re-examines the rejection decision the stay decision will also be examined (Ch.12, section 10).

5. Implementation

This section aims at providing an overview of which key actors are involved in implementing border and migration control policies in Sweden and what their main roles are. Furthermore, based on our interviews and other relevant material, the purpose is to present some of the key issues concerning the implementation process and opinions of the different actors involved in this policy implementation. The text is structured along the same four dimensions of border management and migration control as described under section 4 (legal framework) – (1) pre-entry controls; (2) at the border controls; (3) internal controls and (4) return.

5.1 Pre-entry

Pre-entry controls revolve around entry permits and other arrangements that states pursue as a way of controlling migration *before* migrants reach the territorial borders of a country. It may involve measures to prevent unauthorised migration from third countries, including combatting smuggling activities, and implementation of visa policies. As explained in section 4, in relation to visa regulations, the Swedish Migration Agency (*Migrationsverket*) and the Government Offices of Sweden (*Regeringskansliet*) are the issuing authorities. One key actor here is also Sweden's embassies and consulates, (which are simultaneously autonomous units *and* subordinated to the Swedish Foreign Ministry) which deal with many immigration control issues, including processing applications on residence or work permits, and the issuing of visas and passports. Sweden has approximately 110 embassies and consulates around the world.

***Table 1*. Visa cases received and decided by the Swedish Migration Board 2016-2018**

	2016			2017			2018		
	Women	**Men**	**Total**	**Women**	**Men**	**Total**	**Women**	**Men**	**Total**
Received visa cases	631	772	1403	882	1134	2016	857	1007	1864
Decided visa cases	719	922	1641	895	1155	2050	865	987	1852
Of which were approved	*325*	*408*	*733*	*507*	*656*	*1163*	*522*	*557*	*1079*
Of which were rejected	*68*	*105*	*173*	*60*	*86*	*146*	*91*	*114*	*205*

Source: Swedish Migration Agency 2018a p 107

Table 2. **Visa cases received and decided by the Swedish Embassies and Consulates 2016-2018**

	2016			2017			2018		
	Women	**Men**	**Total**	**Women**	**Men**	**Total**	**Women**	**Men**	**Total**
Received visa cases	115441	111572	227013	127137	122212	249349	126786	126511	253297
Decided visa cases	114889	110970	225859	125963	121035	246998	126566	126148	252714
Of which were approved	*102693*	*98637*	*201330*	*113168*	*107280*	*220448*	*110464*	*108304*	*218768*
Of which were rejected	*11126*	*11050*	*22176*	*11940*	*12664*	*24604*	*13943*	*15661*	*29604*

Source: Swedish Migration Agency, 2018a, p 107

The application of the granting of visas has constantly been subjected to development and guidance on the national as well as on the EU-level. The European Commission published a handbook for the processing of visa applications and the modification of issued visas based on the Commission decision c (2010) 1620. The Swedish Migration Court of Appeal has also played a role in guiding this application by handing down precedents in different cases on different occasions. The Swedish Migration Court of Appeal in Stockholm ruled for instance in a recent case (MIG 2017:5) on how the extension of an ongoing visit can be interpreted with respect to the assessment of the applicant's intention to leave the country. In this case a foreigner, who was applying for a Schengen visa, had on a previous occasion been granted a visa with the support of the rules of the Swedish Aliens Act and applied for an extension for his ongoing visit. According to this ruling that fact does not in itself mean that there are reasonable doubts regarding the foreigner's intention to leave the territory of the Member States before the expiry of the visa applied for. Another earlier relevant ruling by the Swedish Migration Court of Appeal (MIG 2014:19) clarifying and interpreting the EU Visa Codex and the European Commission's handbook took place in 2014. In this case the Migration Court of Appeal affirmed that a reliable sponsorship commitment, which includes both travel and subsistence expenses, can be sufficient for a person applying for a uniform Schengen visa to be considered to have sufficient funds for his or her subsistence, both during the planned stay and for the return journey.

One issue, which has been discussed in Sweden in relation to the refugee crisis 2015, is the possibility for pre-entry measures, such as the issuing of entry permits for asylum seekers, to avoid the dangerous journeys putting asylum seekers' lives at risk. In 2016, the government appointed a commission of inquiry (led by the Green Party MP and immigration policy spokesperson Maria Ferm) instructed to analyze the conditions for creating legal routes for asylum seekers to the EU "for example by introducing the possibility of issuing visas or some other form of entry permit for people intending to seek asylum in the EU" (dir. 2016:8). In the inquiry report (SOU 2017: 103) it was noted that under the current regulatory framework of the EU Visa Code, there was no possibility of issuing Schengen visas for the purpose of enabling people to enter the EU and other Schengen countries to apply for asylum, since a premise of the EU Visa Code is that a visa cannot be granted "if there is a reasonable doubt regarding

the applicant's intentions to leave the Schengen area after the expiry of the visa period". The inquiry also established that the EU Visa Code's rules could not be applied to grant visas to persons who wanted to seek asylum, and that (for the time being) this area was therefore covered by the exclusive competence of the Member States. However, the Inquiry suggested the following possibility as a way forward, to attain a situation where entry permits could be issued for asylum seekers: "According to the Court of Justice of the European Union, this could be regulated in legal instruments developed pursuant to Article 79(2)(a) of the Treaty on the Functioning of the European Union (TFEU). Given that the common visa policy has objectives other than making it easier for asylum seekers, support for a legal instrument on this issue should also be contained in the article that regulates the common asylum policy, namely Article 78 of the TFEU. In the Inquiry's view, support for a legal instrument on entry permits to seek asylum is contained in both Article 78 and Article 79(2)(a) of the TFEU" (SOU 2017:103, p. 21).

5.2 'At the border'

Implementation of "at the border"-controls concerns admission and control of immigrants at Sweden's territorial borders. In Sweden, there is no single authority with border control as its main responsibility. Instead, the responsibility is shared between different authorities - the Customs Service, the Police, the Coast Guard and the Migration Agency. The Swedish Coast Guard is cooperating within the Baltic Sea Region Border Control Cooperation (where Russia is also participating) to share information and implement common actions. The Swedish Coast Guard has also synchronized air patrols with Finland, Denmark and Germany. Policemen and Custom officials from Sweden cooperate with their counterparts in the other Nordic countries on issues concerning organized criminality (European Council 2018).

The control of persons travelling over the Danish-Swedish border is mainly implemented by the police. For instance, those travelling by car over the Öresund bridge are controlled at the pay-station at Lernacken in Sweden; passengers travelling with the Öresund train are checked at the border control at Hyllie Station (passengers who get off the train at this station are checked on the platform while the checking of passengers who continue travelling to Malmö is pursued in the train while it is standing at the station). For those travelling by ferry between Helsingör and Helsingborg and with buses over the Öresund bridge the police carries out the checks in connection with arrival in Sweden (oresunddirekt 2019).One debated issue in relation to the above described strengthened border controls has concerned the implications for asylum seekers to access protection, but also the effects for industry and the economy in the Oresund region have been a salient issue. There has, for instance, been substantial criticism and irritation from commuters between Malmö and Copenhagen, who have been hindered or delayed in their daily journeys to their workplaces.

The re-introduction of border controls at the internal EU-borders in 2015 can be characterized as a path-breaking political decision, which is reflected in several of our interviews. The representative from the police for instance emphasized that this was a new situation, not only for Sweden, but also more generally in the EU:

> On the EU level there are discussions about a "Schengen cooperation 2.0". Looking back at the first border codex from 2006, it was in totally different situation as compared with where we stand today, 10 years later. Many of us did not expect these 'crisis

> paragraphs' would ever be used – that was mostly seen as an exit in case of total crisis. But the whole of Europe was taken by surprise in the summer of 2015, and also Sweden, and it was at that time we started reading these paragraphs somewhat more carefully. (Interview, Police)

Another salient issue in relation to implementation of border controls relates to the actual *ability* of responsible authorities to pursue effective border controls. The EU makes regular evaluation reports to safeguard that member states apply the Schengen regulations according to the regulation (1053/2013), and in 2018 Sweden received harsh criticism in one such evaluation report. The report was particularly critical towards the lack of enough coordination between different actors involved in border control; the lack of a national system for quality control or supervision and the fact that there was no defined decision chain between border police actors operating on the national, regional and local levels (e.g. Dagens Nyheter 2019). The European Council issued several recommendations and required Sweden to formulate an action plan to remedy the situation (European Council 2018). The critical Schengen report triggered some domestic political debate. The report was submitted in late summer 2018 but was kept confidential during the autumn. Some of the critical points however leaked to the media, and there were accusations that the government had deliberately kept silent about the report during the election campaign (Expressen 2018; Edwards 2018). In February 2019, most of the report was made public, and the severe criticism was reported and discussed in the media. There were also voices from representatives of key actors agreeing to the critique. In a newspaper interview, for example, the manager in command of the national section of the border police stated that "...we have arrived at a situation where it is painfully obvious what big shortcomings we are facing" (Dagens Nyheter 2019). The Swedish government has reported it has started the work to remedy the problems highlighted in the report (Government 2018a).

As explained in section 4, the Police has a right to decide about expulsion (*avvisning)* in relation to persons who do not have the right to reside in the country and who do *not* apply for asylum – such decisions are taken approximately for 1000 persons per year. But as soon as a person is applying for asylum, he or she is forwarded to the Migration Agency. According to our interview with the expert at the Police, there is a very generous interpretation of what "applying for asylum" implies (there is for instance no need for the person to utter the word "asylum") meaning that if the Border Police experience the slightest uncertainty the person is forwarded to the Migration Agency for further inquiry.

The Migration Agency's assessment of immigrants' applications and the right to reside in the country is one crucial part of immigration control and border management implementation, and the nexus immigration control – residence permits have also been particularly focused upon in Sweden in the wake of the 2015 so called "refugee crisis". The process of issuing residence permits involves a number of decisions and considerations. One issue we came across in our research interviews concerns the management of family reunification applications, where the sponsor is a Swedish resident with refugee status or subsidiary protection status. For a person seeking asylum, assessments of credibility and proof, including identification assessment during the refugee status determination (RSD) process is subjected to more lenient legal requirements and regulations compared to other types of legal matters. For instance, the benefit of the doubt principle[11] is applicable in the RSD process with the

[11] The UNHCR Handbook states (para 203): "After the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements. […] It is hardly

support of both international and domestic Swedish law and regulations. According to the Swedish Migration Agency's legal guideline in 2013, the requirements for evidence in relation to an asylum case mainly consists of the applicant's story plus supporting evidence such as documents, testimonies and information about the country of origin (Swedish Migration Agency 2013). On the contrary, in relation to family reunification cases a different set of rules are applicable where the Swedish Migration Agency normally demands that the applicants should prove their identity, by showing a valid passport or ID card, issued in a regular way by the home country's competent authorities.

A challenging situation may arise in relation to those family reunification applicants who are also persons with a need of protection. For them, the more lenient approach which applies in the RSD process is not applicable and they are required to provide a regular ID card or issued passport. Hence, these requirements are stipulated without taking into consideration the war and security conditions which, for instance, might have forced them to flee without carrying their identification documents with them, or even the documents proving their family relations. In several of the RESPOND research team's micro interviews it was found out that in many cases the family members, who are applying to reunite e.g. with their spouse in Sweden, can be de facto refugees or even recognized as refugees by the UNHCR or by the authorities in the country of habitual residency. However, these family members are not treated as refugees or beneficiaries of subsidiary protection status. Therefore, the benefit of the doubt principle, for instance, does not apply when they apply for residency in Sweden, and the requirements concerning identification assessment are stricter than for an asylum seeker, when they cannot provide an ID card or passport because of different reasons related to the refugee claim.[12]

The situation highlighted above was also given attention by the commissioner of human rights of the European Council, Nils Muiznieks, in his report following his visit to Sweden in October 2017 (Commissioner for Human Rights, 2018). In this report Muiznieks stated:

> Several interlocutors of the Commissioner have also drawn attention to several practical obstacles to family reunification, in addition to the legal impediments, such as a strict ID/passport requirement to prove identity, difficulties in reaching a Swedish embassy or consulate to participate in an interview, and long processing times, with a 21-month waiting period on average (Commissioner for Human Rights 2018)

Different questions in relation to this matter were discussed and answered during our interview with the Swedish Migration Agency's representative in December 2018. For instance, the Swedish Migration Agency requests to register the marriage of a Swedish resident with refugee status or subsidiary protection status at the Swedish Tax Authority in order to start the family reunification application. The Swedish Tax Authority applies regular rules for the marriage registration in all cases, without taking into consideration the special hardships for refugees to get a passport or ID card. For example, the Tax authority has a policy not to accept the official documents including the marriage certificates issued by the Syrian authority after 2012. When the RESPOND research team asked about the reason behind this policy, which

possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt."

[12] This is true unless they are part of the refugee Quota to Sweden and part of the UNHCR resettlement program.

put the family members of the refugee and beneficiaries of subsidiary protection in very vulnerable positions trying to obtain it and sometime risking their life, the answer was as follows:

> Thus, the problem is that there is a small double standard within the Migration Agency unfortunately within the asylum world, you are seeking protection, so there is no requirement for a passport, but the requirement is that it is likely you have a correct identity. Then one (The Migration Agency) is usually much harder when it comes to the assessment of the passport.

Another relevant observation in relation to family reunification issues was given in our interview with a Swedish migration and human rights lawyer (15 February 2019). The lawyer explained how the strict financial support requirements introduced in the temporary law (SFS 2016:752) restricted the possibility for family reunification to the beneficiary of subsidiary protection status who had received a 13 months residence permit. This situation compelled several of them to go through the route of an irregular job contract:

> As a lawyer today, we speak about the asylum seeker case, but we also speak about the work permit […] the thing that we hear quite a lot is that people pay their own taxes to the tax authority [*Skatteverket*]. The tax should be paid by the employers. They (employers) do pay them and they get that back in cash (from the refugees). So they pay basically the same amount as if they have come with a smuggler as an asylum seeker. Instead they pay that in to the system in Sweden for four years until they get their permanent residency. We should not forget that Sweden is one of the hardest countries to find a job in because you need to speak Swedish fluently and of course there is basically no job. So, they try to create a job...

The observation of this lawyer confirms what the UN commissioner in the above-mentioned report mentioned, where he also stated that “moreover, restricting legal routes to come to Europe only leads people desperate to be with their families to find alternative, irregular and dangerous options, such as being smuggled by sea.” The Commissioner stressed that for refugees “delaying the enjoyment of their right to family reunion also denies effective protection to family members in camps and conflict zones” (Commissioner for Human Rights, 2018).

5.3 Internal controls

As explained in section 4, the Aliens Act allows the police to control foreigners residing on Swedish territory, if there are legitimate reasons for this. In order for the Police to introduce such a control it is required that there is either a “well-founded reason” or “special reason” for checks. In our interview the representative from the police explained that the first case (to have a well-founded reason for control) may be “that you have got information that there is a small group of people who are exploited by an employer and who work without work permission, maybe that someone wants to report irregularities at this workplace, that people

go around on the roofs without fall-protection equipment etc."[13] The other case (to have a special reason for control) may be:

> …if you set up a traffic control, and you control a truck and when you check the license of the driver, you notice there's a passenger who is jumping out and runs into the woods beside the motorway and then perhaps you want to check who this person is. In this instance, you don't know whether the person is suspected of any crime, just that he seems to be sceptical to the police in general. In such a case the traffic control may lead to there being a special reason to know who this person is.

Internal control of foreigners is intimately connected to return processes, discussed in the subsection below. Hence, the authorities have the general responsibility to implement decisions on return for persons who, for instance, have received a denial on their application for asylum. In the RESPOND team's discussions with different NGO representatives, it was mentioned that attempts have been made, to reach an agreement with the police to keep certain localities as "safe zones" or "sanctuary areas" in order for persons with no right to residence to get various sorts of help. According to our interview with the police representative, no such agreements about safe zones exist, but there are internal policy directives to avoid going into schools to apprehend people to enforce an expulsion decision:

> This also has as one implication that if you want to enforce a decision for a family with children in school-age then we are forced to come to them very early in the morning because you want to have them together… of course you may not separate the children from both the parents, that is stated in the law, but in order for the family to be kept together perhaps you have to come to this address very early in the morning… In the internal policy directives, it is said that we should avoid coming between 9 pm and 6 am, even though this is not regulated in legislation.

One event which has attracted a lot attention, and sometimes surfaced also in the current debates on internal control of foreigners in Sweden, is an endeavor carried out by the Police in 2012–2013 known as REVA. The abbreviation REVA stood for Legal Certainty and Effective Enforcement (*Rättssäkerhet och Effektivt Verkställighetsarbete*) and intended to boost the effectiveness of enforcement of deportations. The REVA project was controversial and attracted a lot of critical media attention where the police was accused of pursuing ethnic or racial profiling, only stopping "foreign looking people" to check their residence status (e.g. Sveriges Radio 2013; The Local 2013). The alleged ethnic profiling of the REVA project has also been highlighted in a number of scholarly contributions (e.g. Schierup and Ålund 2011; Galis andSummerton 2018; Wassen 2018; Barker 2017).

In 2013, two Social Democratic European Parliament Members submitted a written question to the Commissioner[14] where they held that "it seemed likely" that the checks within the REVA project were based on people's skin color and appearance; "the Swedish media have reported [about] cancer sufferers without a residence permit who do not dare to take the underground to go to hospital for fear of being caught in one of these checks". The MPs wanted to know

[13] As mentioned in section 4, following a law-change in 2016 (Government Bill 2017/18:176), the police got extended possibilities to execute inspections at workplaces to control if there are foreigners without residence permits and work permits among the employees.

[14] The Commissioner happened to also be a Social Democrat from Sweden, Margot Wallström. Wallström is currently (2019) the Foreign Minister in Sweden.

“whether the Commissioner considered it possible for these checks to be carried out without being directly or indirectly based on people´s appearance, language or name”, and whether the REVA project “was compatible with EC law and other relevant legislation” (European Parliament 2013). In her response the Commissioner noted that “insofar as such controls are carried out on a non-discriminatory basis (such as checking the ID of persons jumping ticket barriers in public transport), the EU non-discrimination rules are not infringed”, but added:

> Should controls systematically be carried out only of persons with a certain appearance, this would however be discriminatory. As far as EU free-movement rules are concerned, the Commission cannot conclude that these would have been breached either. The Swedish authorities have furthermore confirmed that the control measures referred to are no longer carried out. (European Parliament 2013)

In our interview, the expert from the police repudiated the accusation of ethnic profiling during the REVA project:

> This is one way to fulfil our commitment in this area. Then, of course, this should be done in accordance with the regulations. It should never be the case that you check everyone with black hair or that sort of thing, of course. And this is not what happened within REVA either. Then there were controversies in the media about this… a lot revolved around misconceptions… which media also backed away from. There were actually those who noticed that, ‘*Expressen* and *Aftonbladet,* now you have got this wrong’… So, a lot of this critique was really underserved. (Interview, Police)

5.4 Return

The Swedish Migration Agency (*Migrationsverket*) is the authority with responsibility to implement decisions on the return of a foreigner who has no legal ground to reside in Sweden, but the condition is that the person complies with the decision and returns voluntarily. In other words, the Migration Agency has no mandate to use physical force and coercion. The Police is the sole authority allowed to use physical coercion if there are legal grounds that make this legitimate. However, the Migration Agency is responsible for hosting the detention facilities (*förvar*) where persons who are waiting for enforcement of a decision to be expelled from the country are accommodated.

The Prison and Probation Service (*Kriminalvården*) is also involved in the enforcement of the return related decisions. The Police can mandate and refer the enforcement decisions to the Prison and Probation Service to execute the return related decisions taken by the Swedish Migration Agency. For instance, police and/or staff from the Prison and Probation Service can accompany the foreigner during the execution of the return decision to the plane or even all the way to the country of return. However, the police authority is still the responsible entity even when the Prison and Probation service is mandated to execute the return decisions. The main mission of the Prison and Probation Service is usually to plan, book and carry out execution trips on behalf of the police (Polisen 2019). Table 3 shows the number of completed detention stays for detained persons in the period 2016–2018.

Table 3. **Number of completed detention stays for detained persons 2016-2018**

		2016		2017		2018	
		Number detained	Average length of stay	Number detained	Average length of stay	Number detained	Average length of stay
	Girls	41	2,7	24	1,4	7	10,1
Children	Boys	50	4,6	29	4,2	6	3,2
	Total	91	3,7	53	2,9	13	6,9
	Men	393	12,2	469	12,5	358	19,0
Adult	Women	3092	21,6	3727	23,3	3445	30,0
	Total	3485	20,7	4196	22,3	3803	29,2
Total		3576	20,4	4249	22,1	3816	29,1

Source: Swedish Migration Agency 2018a, p 86

Since 1999, the Migration Agency has had the responsibility for the enforcement of decisions that a person should be expelled from the country (*verkställigheter*). In the preparatory works it was said that there will always be persons who will not conform to the authorities' decisions and the legislators did not want to give the Migration Agency the mandate to exercise violence:

> Briefly, this meant that the Police authority was needed in this work. Therefore, the Police is involved in the implementation of the decisions taken by the Migration Agency, since the Police has the authority/mandate and ability to search after people and the right and ability to use physical violence to make people do certain things (interview representative from the Police authority).

According to the Aliens Act (chapter 12) there are two situations where the Migration Agency can delegate the implementation of a decision of expulsion to the Police: (1) if the person has absconded (*avviker*) or (2) if the Migration Agency assess that physical violence is needed to implement the decision to expel the person. The Police is also the responsible authority when a person who is convicted is expelled, as a consequence of a prison sentence, by a general court (in such cases the Migration Agency is not involved at all).

According to the Swedish Migration yearly report for 2018, in January 2018 the Swedish Ministry of Justice had made the estimation that, by the end of 2018, 10,000 persons would have returned voluntarily to their country of origin. However, it turned out that this figure was only 8,700 persons. The Migration Agency explained this outcome with the high numbers of applicants from Iraq and Afghanistan and that the number of cases decided by "the Dublin procedure" and "the Accelerated procedure" were lower than they had been in 2017 (Swedish Migration Agency 2018a, p 86).

According to the European Migration Network (EMN) country report on Sweden (EMN 2017a) the impact of the changes implemented in Sweden as a direct result of the EU Return directive has been rather limited. The explanation for this is that the Swedish legislative system, already before the 2008 introduction of the EU Return directive, had implemented several of the measurements which were later covered by the directive. For instance, the requirement that member states have an entry ban and a systematic issuance of return decisions with a period of voluntary departure which are mentioned in the EU directive, had already been introduced

in Sweden before 2008. What changed in 2012 was the possibility to extend the duration of the period of voluntary departure. In March 2017 statutory changes made it possible to extend a period that had expired.

***Table 4*. Return cases that the Swedish Migration Agency received in the period 2016–2018**

	2016			2017			2018		
	Women	**Men**	**Total**	**Women**	**Men**	**Total**	**Women**	**Men**	**Total**
Normal procedure	4 522	10 578	15100	4515	12 244	16795	3759	13480	17239
Of whom were unaccompanied minors	*67*	*527*	*594*	*51*	*463*	*514*	*61*	*615*	*676*
Accelerated procedure	521	1035	1556	534	913	1447	328	694	1022
Of whom were unaccompanied minors	*2*	*22*	*24*	*5*	*17*	*22*	*1*	*14*	*15*
Dublin procedure	3465	6484	9949	841	1891	2732	591	1369	1960
Of whom were unaccompanied minors	*28*	*84*	*112*	*5*	*36*	*41*	*2*	*11*	*13*
Permit procedure	355	552	907	665	1008	1673	916	1501	2417
Of whom were unaccompanied minors	*2*	*6*	*8*	*6*	*5*	*11*	*3*	*10*	*13*

Source: Swedish Migration Agency 2018a, p 87.

The Swedish Migration Agency has created different channels or tracks within the enforcement process, aimed at speeding up the decision processes, including “accelerated procedure” (rejection with immediate enforcement) and “Dublin procedure”, which are both faster than the normal procedure. Table 4 shows the number of return cases, divided in the different types of procedures in the period 2016 to 2018. The table also highlights how many cases in each type concerned unaccompanied minors (Swedish Migration Agency 2018a,p 87).

Enforcement impediment

The return of foreigners who have no legal ground to reside in Sweden, is a political priority particularly after the 2015 so called refugee crisis and the terror attack in Stockholm in 2017 (EMN 2017a). This, however, does not mean that a person who has received a return decision may not in the end achieve the right to stay in the country. Expulsion decisions must not be contrary to Sweden’s commitments according to international law, particularly with respect to the principle of non-refoulement. As explained in section 4, if new circumstances appear then a return decision may be revoked. This is possible even if the return decision has reached the phase when it is formally final and non-appealable. Table 5 shows the number of enforcement impediment cases during the time period 2016–2018, and table 6 shows the numbers of

permits which have been granted after an enforcement impediment during the same time period.

***Table 5*. Enforcement impediment cases (Verkställighetshinder)**

	2016			2017			2018		
	Women	**Men**	**Total**	**Women**	**Men**	**Total**	**Women**	**Men**	**Total**
Received cases	3291	5195	8486	3366	6911	10277	4089	9165	13254
Examined cases	3061	860	7921	3079	5805	8884	4189	9550	13739
Acceptance percentage	10%	10%	10%	7%	8%	8%	7%	6%	7%
Open cases at the end of the year	800	1312	2112	1125	2489	3614	1061	2222	3283

Source: Swedish Migration Agency 2018a, p 67

***Table 6*. Granted permits after enforcement impediments 2016-2018**

	2016			2017			2018		
	Women	**Men**	**Total**	**Women**	**Men**	**Total**	**Women**	**Men**	**Total**
Asylum ground	118	209	327	49	120	169	74	141	215
The intended country of return is not willing to take the foreigner	6	20	26	30	38	68	11	32	43
Medical hindrances or other special grounds	186	261	447	140	308	448	223	428	651
Total	310	490	800	219	466	685	308	601	909

Source: Swedish Migration Agency, 2018a, p 67

Resettlement Support

The Swedish Migration Agency has a policy to encourage the voluntary return of foreigners who do not have the right to reside in Sweden. The resettlement support involves financial support for re-establishment in the home country. The aim of this economic support is to assist the returnees in reintegrating in the society and labour market of their home country and also to get legal advice if needed. This economic support is confined to foreigners coming from the following countries: Afghanistan, Central African Republic, Democratic Republic of Congo, Ivory Coast, Eritrea, Iraq, Yemen, Liberia, Libya, Mali, Sierra Leone, Somalia, Palestine, Sudan, South Sudan, Syria and Chad (Swedish Migration Agency 2017a). The conditions for an applicant to be eligible for resettlement support, as listed in the Swedish Migration Agency website (Migrationsverket, 2017 b), are that:

- his or her application for asylum has been rejected or if the applicant has withdrawn his or her application for asylum in Sweden
- the applicant intends to return voluntarily to a country where the conditions for them to establish themselves are limited due to severe conflicts
- it is likely that the applicant will be allowed to live in the country to which he or she intends to return
- the applicant is in Sweden when he or she applies for support.

Sweden is a partner in a program called ERRIN (European Return and Reintegration Network) which includes several European countries. This program aims to provide the asylum seekers whose asylum application was rejected, to return voluntarily to their home countries. This program is made to provide the returnees with different types of basic support such as legal advice, medical care and time-limited residency in the home country (Swedish Migration Agency 2017c).

Adult asylum seekers are not entitled any more to the daily compensation or access to asylum housing after the rejection of their asylum applications has become final and they have received the return or expulsion order. This does not apply in the case of adult asylum seekers who are accompanied with children under 18. This has been a part of the Swedish strategy to encourage voluntary return (EMN 2017a). The Migration Agency can take a decision to put the asylum seeker under supervision or in detention facilities if it determines that the asylum seeker is going to avoid complying with the return or expulsion order, as explained above in the fourth section. Furthermore, the asylum seeker can risk being issued with a re-entry ban if he or she refuses to return voluntarily.

Dublin Return order

As explained in chapter 4, the application of Dublin Regulation (2013/604) and transference of a third-country national or a stateless person to the responsible member state is an inherent part of return and deportation cases. In table 7, the numbers of received and determined Dublin cases in Sweden are detailed.

Table 7. **Dublin cases 2016-2018**

	2016			2017			2018		
	Women	Men	Total	Women	Men	Total	Women	Men	Total
Received cases	1695	3308	5003	998	2388	3386	1098	2229	3327
Determined cases	3447	6454	9901	831	1859	2690	586	1343	1929
Open cases	331	593	924	220	446	666	511	740	1251

Source: Sweden Migration Agency 2018a p 63

The RESPOND research team learned during several micro level interviews with refugees and asylum seekers mainly from Afghanistan that there is a large number of rejected asylum seekers from Sweden who were granted refugee status in other EU member states. As a result, the interviewees informed the RESPOND research team about their intention to move

and try to seek asylum in another EU member state. Their intention was to move in case they got the final rejection from the Swedish Migration Court of Appeal after they had heard of the possibility to be granted asylum somewhere else. Those who moved from Sweden to France and Germany or other EU member states after they had exhausted all appeal stages were trying to avoid the return and expulsion orders by seeking asylum there. Some of them moved from one EU member state to another and they were eventually granted asylum after their asylum claim had been rejected in more than one EU member state including Sweden. According to the interviewee's information France is accepting most of the asylum seekers and here the Dublin regulation in many cases was not applied. The RESPOND research team conducted an interview with a Swedish migration lawyer who was asked about the different applications of the Dublin regulation in different EU countries, and this was her answer:

> Interviewer: It came to our knowledge for example, some cases where, as you said, they were rejected here in Sweden, but they moved to Germany, for example, and they were recognized as refugees. Do you think this is just rumours?
>
> Respondent: Yeah, I know, I've heard about this as well. And that's why I'm saying it's very difficult because when I have a client, I give them the advice, I cannot really give them the hundred percent advice, because they tell me like, I have a rejection or a refusal. So, can I go to Germany? And I say, well, by law, you cannot, because there is the Dublin Regulation which will be applied on you. You need to be here, in Sweden, Sweden is responsible for you. But I know there are cases that have been accepted, or in Italy, so I always say like, the decision is yours, but the risk is this. And if you're lucky, you might get this. So, it's not rumors but I think in this chaos that happened between 2015 and until now, things differ.

Another interview was conducted with the representative of a Swedish NGO called FARR and his explanation to this case was as follows:

> Interviewer: ...but the implementation is hugely different from one country to another, which creates this internal movement within EU. So, what do you know about that?
>
> Respondent: I've been in contact with French organizations, French lawyers, and this case I talked to you about, he went through the French system initially and it was decided that he would have his case considered in France. However, that decision was appealed and on appeal the judge decided that his was still a Dublin case. Contrary to established French practice in the highest court, the judge believed that despite France not employing the principle of internal flight in relation to Afghanistan (as Sweden does) it was not a breach of Article 33 of the Refugee Convention on the obligation of non-refoulement to send this applicant to Sweden as he could submit a subsequent application there. In such a case it was Sweden's responsibility to respect the non-refoulement principle in relation to Afghanistan.
>
> The official French practice established at the highest asylum court states that there is a risk of refoulement to Afghanistan if applicants are sent to countries that claim there is an internal flight alternative. That's why they say that sending people back to a country where they use the internal flight would mean that French responsibility would be there for sending this person back, basically, to Afghanistan. So, it's the respect for the non-refoulment principle, that forms the basis of current French practice, but it is unevenly applied…

5.5 Civil society actors' involvement in the Swedish border management

Civil society actors play, in various ways, an important role both as channels for political influence and mobilization; as partners cooperating with state actors in various ways and in acting independently from the state. In relation to the 2015 large influx of asylum seekers to Sweden there was a substantial mobilization of existing NGOs as well as newly created social networks and movements (e.g. SOU 2017:12; MUCF 2016; Turunen and Weinryb 2017; Weinryb 2015). Civil society actors thus played key roles, directly or indirectly, also in implementing activities revolving around border management. Volunteers were meeting the refugees on train platforms and other border sites and, given the chaotic situation particularly during the initial phase of autumn 2015, civil society actors can even be said to some extent to have *taken over* the duties of the official authorities. Peterson (2017, p. 6-7) argues that "the situation provided the opportunity structure for non-state actors' human assistance to ameliorate the rather helpless state of the refugees after passing the Swedish border – the construction of an inclusive welcoming site *temporarily replaced and/or amended state bordering practices* (our emphasis)".

Both old and newly established NGOs and networks are also working to help persons whose asylum applications have been rejected and who are obliged to return to the country of origin. In our interviews with representatives from two such initiatives and networks, Stoppa utvisningarna av afghanska ungdomar ["Stop the deportations of Afghani youths"] and Stöttepelaren ["the Mainstay"] various examples of these activities were mentioned. Civil society actors act to offer personal judicial help to have individual cases re-examined and/or to achieve enforcement impediment [*verkställighetshinder*]; to arrange demonstrations and protest actions when forced expulsions are implemented and to fundraise in order to give some financial help to persons who are expelled.

In our interviews, representatives from NGOs express concern and disappointment in relation to the policy changes and how the authorities are handling these issues in the following way:

> The volunteers are worn down and deeply disappointed on our society. The trust is getting lost. Instead of making use of the power which exists in the civil society, the politicians are tearing it down.

In the interviews, concerns are also expressed regarding the future policy development in Sweden and the EU. They see a risk that the planned changes in the CEAS might lead to restricted possibilities in the future for Sweden to pursue migration policies which diverge from the EU norms in a more generous/liberal direction.[15] The dominant image among many NGOs working to protect the rights of asylum seekers is that these changes are likely to restrict the possibility for Sweden to pursue migration policies that deviate from the EU standpoint.

There is cooperation between different civil society actors, but to a varying degree. For instance, the representative from Refugees Welcome Stockholm (RWS) stated that the cooperation with other civil society actors and NGOs was rather limited, which was mainly due

[15] CEAS is the acronym for current work on developing an EU common legislative framework, "Common European Asylum System" (CEAS) and consist of the seven instruments: Temporary Protection Directive, Asylum Procedures Directive, Dublin III Regulation, EURODAC Regulation, Qualification Directive and Reception Conditions Directive. In its current state, only two of the seven instruments are EU Regulations (the Dublin III Regulation and the EURODAC Regulation respectively), the rest being EU Directives that are non-binding for the member states (EASO 2016).

to the limited time- and financial resources of an organisation run with donations and voluntary work. However, prior to that the temporary law on limitations in the possibilities to be granted residence was introduced 2016, RWS participated in the "People's campaign for the right to asylum" (*Folkkampanj för asylrätt*) together with the "Swedish Network of Refugee Support Groups" (FARR) among other organisations.

Apart from offering various types of support, such as supportive and motivational conversations in order to prevent suicide and support people who are at risk, Refugees Welcome Stockholm (as well as the other NGOs we have been interviewing) report that they offer legal advice for asylum seekers. All work, including the legal counselling, is carried out every week on a voluntary basis. [16]

6. Concluding discussion and policy reflections

The goal of this report has been to give an overview of the Swedish migration control policies and border management – what legal framework apply; how it relates to EU regulations and policies; what key actors are involved in the implementation and what the key issues and challenges are in relation to this field. Together with other country reports from partners of the RESPOND project, it provides a basis for cross-country comparisons.

The report particularly documents policy changes which were introduced in Sweden as a direct result of the large increase of the arrival of asylum seekers during the autumn of 2015, which triggered the introduction of policy measures along two main lines: (1) reintroduction and reinforcement of Sweden's territorial border controls and (2) limitations in the possibilities for asylum seekers to be granted residence.

The *first* strategy involved re-introduction of border controls on the territorial border to Denmark which is also an internal border within the Schengen zone. This policy decision was based on the exemption provisions under the Schengen Borders Code, whereby a member state has the right to temporarily introduce internal border controls "to prevent a threat against public order or inner security in the country". January 2016 saw the introduction of temporary ID-controls of all passengers travelling with trains and ferries between Denmark and Sweden, following a speedily processed temporary law-change to legitimate such controls (agreed by the parliament in December 2015). These ID-controls remained in force up until May 2017, when they were abolished and replaced by extended sporadic border checks at Sweden's territorial borders, as specified in a list of airports and harbours.

The *second* strategy involved the goal to adjust Swedish immigration law to "the minimum level" under EU law and international conventions, which was thought necessary to "temporarily limit the number of asylum seekers to Sweden and make more people seek

[16] It could be noted that civil society actors may also represent citizens who are critical towards immigration. In neighbouring Finland, a social movement called Soldiers of Odin was established in the fall 2015 as self-proclaimed patriots patrolling the streets and border towns to protect native Finns from immigrants, with members stating they wanted "to serve as eyes and ears for the police" (Rosendahl and Forsell 2016). This movement also spread to Sweden in 2016, however it has had very little influence (Palmkvist 2017; Leman and Vargara 2017).

asylum in other countries" (Government Bill 2015/16:174, p. 29). As a result – and contrary to what had since long been the Swedish guiding principle – all persons given asylum in the country were to be granted only temporary (i.e. not permanent) residency.

One area where the attempt at temporarily bringing the Swedish law to the EU "minimum level" had a particularly large impact concerned family reunification. The introduction of the 2016 restrictions meant that persons granted subsidiary protection status received a temporary residence permit (13 months) with very limited chances to get the right to reunite with their close family members.[17] National laws in most EU member states (including Sweden prior to the 2016 changes) allow beneficiaries of subsidiary protection to apply for family reunification under the same conditions as refugees. However, the Swedish law-changes, introduced in June 2016, followed a stricter interpretation of the EU Family Reunification Directive, suspending family reunification of beneficiaries of subsidiary protection. This change placed Sweden as one of the EU member states with the toughest rules in relation to family reunification rights for persons with subsidiary protection status (EMN 2017b, p. 20). However, following the so called "January deal", formulated in January 2019 by the Social-Democratic and Green Party government and their support parties the Centre Party and the Liberals, an agreement has been reached to liberalize the strictest parts of the family reunification amendments introduced in 2016.

As described in this report, the explicit goal stated by the politicians when introducing measures to restrict the possibilities to achieve residency was to limit the number of asylum seekers coming to Sweden. In other words, restricted provisions for people granted protection in Sweden was one important tool, intended to indirectly pursue border management and immigration control. However, one issue which merits more investigation and analysis concerns the relationship between policy goals and outcomes. Have the measures had the intended effect? What is the causal relationship between the introduction of stricter policy measures and the numbers of asylum seekers arriving in Sweden? It lies beyond this report to answer these questions, but it should be highlighted that this is a debatable issue, and that policy decisions are based on meagre empirical evidence of the relevant causal relationships. In relation to this issue, our interviews with asylum seekers and refugees from Syria have also illustrated that there are many reasons why Syrians or other asylum seekers chose Sweden during 2015. Indeed, the interviewees report that the Swedish policies regarding naturalization and the principle of permanent residency were important, which are liberal from a comparative European perspective. But as was the Swedish reputation regarding welfare system, protection for children, respect for human rights and strong and generous health care. In addition, many Syrians had connections and bonds to family members and ethnic and religious communities in Sweden (already before 2015), which built an important part of their motivation to seek asylum in Sweden, also after the introduction of the restrictive changes with the temporary law.

Three findings in this report can finally be highlighted, which arguably calls for further analysis and policy discussion.

First, we find different examples that persons granted temporary protection generally find themselves in a vulnerable position. One situation that is documented in our study, is that individuals many times feel compelled to enter irregular job contracts, to achieve a work

[17] Persons granted protection as Convention refugees received a 3 years temporary residence permit, with possibility to be reunited with close family members (given that the family reunification application was lodged within 3 months after the person was granted protection as refugee).

permit, with the hope of eventually acquiring a permanent residency. In our interviews, it is reported that persons with a temporary residence take money from their own pockets to fund the obligatory employer's fees to the Tax Authorities, as an effort to make the work contract comply with the rules of the Swedish labour market social security system (despite these being fees that the employer is obliged to pay for). This is an example of exploitation which may be compared with asylum seekers paying money to smugglers, in the hope of reaching their destination.

Second, another finding in our study is that Sweden applies a strict ID/passport requirement, which tend to cause practical obstacles to family reunification, particularly when the applicant is a person in need of protection. For instance, the public competent authorities (The Swedish Tax Authority and the Swedish Migration Agency) apply regular rules for all marriage registration, consequently it does not take into account the special hardships that refugees may have to get a passport or ID card. This situation, which has also been highlighted by the commissioner of human rights of the European Council, relates to an ongoing discussion about how Sweden should live up to refugee rights principles in family reunification cases. The vulnerable position of the family member applicant, who is simultaneously de facto a person in need of protection, is here a clear example case to be taken into consideration for improvement or actions.

Third, the report provides examples of member states that sometimes make different judgements of the security situation in the country from which the asylum seekers are fleeing, prompting challenges for the interpretation and implementation of the Dublin convention. In our interviews with refugees and asylum seekers it was reported that many asylum seekers mainly from Afghanistan, who had had their asylum applications rejected in Sweden, were later granted refugee status in another EU member state, something which was also confirmed in interviews with NGO representatives.

Recommendations

- The idea which has become dominant in the policy discourse in Sweden post-2015 – that restricted provisions for people granted protection in Sweden is an effective policy tool to pursue border management and immigration control - should be critically scrutinized and challenged.
- Policy changes are needed to counteract exploitation of persons in search of a secure residence permit. This holds true e.g. for people who feel compelled to enter irregular job contracts to achieve a work permit with the hope of eventually acquiring a permanent residency.
- The Migration agency's processing of family reunification applications needs to be improved to make sure that Sweden lives up to refugee rights principles in family reunification cases. This is necessary e.g. in cases where strict ID/passport requirements are applied on applicants who are de facto a person in need of protection.
- At the EU level, this report shows the need to find a common ground for interpretation and implementation of the Dublin convention.

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List of interviews

Only the types of actors/ and names of organizations are displayed.

#1. Civil servant from the Swedish Migration Agency in Uppsala on two occasions
#2. Civil servant from the Swedish Migration Agency in Stockholm
#3. Civil servant from the Swedish Police Department in Stockholm
#4. Migration and Human rights Lawyer from Stockholm
#5. Non-Profit Organization's representative and migration expert (Flyktinggruppernas riksråd (FARR))
#6. Non-Profit Organization's activist (Welcome Refugees)
#7. FOCUS group Interview with persons who have been involved in different relevant actions and/or studies since 2015, including:

1. Activist and founder of the initiative "Stoppa utvisningarna av afghanska ungdomar!" [Stop the deportations of Afghani youth].
2. Chairperson of a support project and association to assist the unaccompanied minors in Sweden "Project Stöttepelaren"
3. Three representatives from "Delegationen för migrationsstudier (Delmi)" [The Migration Studies Delegation]
4. Migration and Human Rights Lawyer
5. Legal representative from Swedish Red Cross