



## Summary:

# An effective labour immigration system?

## Summary and recommendations

In December 2008 new rules were introduced for labour immigration from countries outside the EU/EES and Switzerland (third country). The purpose was to make it easier for employers to hire labour from outside Europe and thereby offset labour shortages and maintain labour supply. Favourable conditions for labour immigration would enable Sweden to compete for international labour. The most important change was the removal of official assessment of whether there was a skills shortage in the domestic market. It was considered that a skills shortage could be rectified more effectively if employers themselves were allowed to determine when recruitment from a third country was necessary.

The reform was evaluated by the OECD already two years after implementation. The conclusions included that the system was straightforward, fast and cheap for employers, that half of the labour immigrants came to occupations other than shortage occupations, and that the labour immigrants' conditions needed to be monitored. The system has been subsequently developed, both to manage growing waiting periods for permits and to prevent misuse in the form of employers offering sham employment or winning competitive advantages by exploiting labour immigrants. Both employers and employees have now had time to learn the new regulations. In view of this, the Swedish National Audit Office sees a need to audit whether the system is effective and functions as intended.

### *Purpose of the audit, audit questions and implementation*

The purpose of the audit is to follow up how the labour immigration system has been used after the 2008 reform and examine the labour immigration the reform has so far led to, given the motives that prompted the reform.

*The audit is based on the following questions:*

1. How many and which labour immigrants have come to Sweden, and to which jobs and employers?
2. a) Is undesired use or misuse of the system prevented to a satisfactory extent?  
b) Have the tightened controls had the desired effect?
3. Are employers given favourable conditions for employing labour from a third country?
4. Do conditions exist to achieve a permit authorisation procedure that can promptly and effectively manage permit applications while at the same time minimising undesired use and exploitation of the system?

The audit is based on analysis of register data from the period 2009–2015, and interviews with officials at various levels in the Swedish Migration Agency in 2015. The audit is also based on policy documents and files in permit applications at the Swedish Migration Agency. Other parties concerned have been interviewed: Representatives of other agencies and labour market organisations, as well as company representatives.

## **Audit findings**

The Swedish National Audit Office's audit of the labour immigration system shows that labour immigrants constitute a considerable element of a small number of occupations and industries. Moreover, employers' potential for recruiting labour in a third country is not sufficient, since the processing times for several types of application are unreasonably long.

The long processing times are partly the result of extension of the controls intended to prevent misuse of the system. The audit also gives reason to believe that these controls have brought an increasing degree of compliance with the system's conditions, while problems continue, both as regards labour offers not intended to lead to work and wages that are below the maintenance requirement. This applies in particular to industries where low-skilled occupational groups predominate. In the opinion of the Swedish National Audit Office it should be possible both to reduce the time the control measures take and to improve the controls. The sub-surveys on which the conclusions are based are summarised below.

### *The labour immigration system provides a significant inflow of labour to the Swedish labour market*

Since 2012 the level of labour immigration has been relatively stable, with the exception of berry-pickers, whose numbers have varied more. Approximately 20 000 labour

immigrants have valid permits to work in Sweden, except in the summer, when seasonal work increases the numbers. About 70 per cent of labour immigrants are concentrated to ten occupations. In several occupational groups and industries labour immigrants make up a considerable percentage of the labour force. For example, in 2014 they constituted about 5 per cent of the employees in the *Computer Programming* and *Restaurant Activities* branches of industry.

Thus the system is used by a not insignificant percentage of all employers in Sweden. About 2.5 per cent of Swedish employers have recruited, or attempted to recruit, a labour immigrant since the reform. Large companies are overrepresented. Few of the employers using the labour immigration system do so to solve quantitatively significant labour shortages. Rather, it is isolated recruitments that are typical.

It is more common among business leaders who themselves are from a foreign background to offer employment to labour immigrants. This may indicate that access to an international network of contacts and familiarity with maintaining contacts outside the country are important for employers' possibilities of recruiting from third countries. If the company does not have this, it may be an obstacle. It seems to be a greater obstacle to small companies (with fewer resources) than to large companies.

#### **Labour immigration is greatest in skilled shortage occupations but not insignificant in low-skilled surplus occupations**

The Swedish NAO has audited the extent to which labour immigration goes to shortage occupations and surplus occupations, based on the Swedish Public Employment Service's assessment, and what educational requirements normally apply to the occupational groups that come to Sweden.

The largest individual occupational group is berry-pickers. A quarter of all permits in total have been issued to them. Excluding berry-pickers, more highly skilled occupational groups, coming to work where there is a shortage of skills in Sweden, constitute the majority of labour immigrants. About 60 per cent of permits granted refer to shortage occupations and more than half of them refer to occupations regarded as highly skilled (excluding berry-pickers). About 20 per cent go to surplus occupations, mainly to low-skilled occupations or mid-skilled service occupations. The audit shows that the trend of increasing inflow of labour to low-skilled surplus occupations that existed in the first years of the reform was broken in 2012. The percentage has subsequently been relatively constant.

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### **Permit periods for high-skilled workers are growing and extension is most common among them**

The system is used both for recruitment to shorter contracts and for recruitment that leads to more permanent establishment. Earlier studies have described highly skilled labour immigrants as coming on short-term permits and the low-skilled coming for longer stays. The Swedish NAO's audit shows that the highly skilled workers' permit durations have grown in recent years and that highly skilled people apply for and are granted permit extensions more often than other workers. In addition, highly qualified workers often have several consecutive permits.

It is true that a large proportion of the labour immigrants that come to low-skilled surplus occupations arrive with the maximum permit period, but the work does not then result in an extension. This means that employment conditions in this group are checked less often, as this is done when extending the permit. These are people who work in industries where it is common for wages to fall short of the maintenance requirement or for labour immigrants not to be given work, and where in addition refusals are most common when previous conditions are checked.

Around 25 per cent of labour immigrants who were granted work permits from December 2008 up to and including December 2011 (and thus able to qualify for a permanent residence permit through working for 4 years within the timeframe of the investigation) received permanent residence permits in Sweden. The work permits included both high-skilled and low-skilled occupations.

### **Many labour immigrants come with relatives**

An estimated 40 per cent of labour immigrants come with relatives, and many of them come with children. Just over a third of adult relatives work, often part time. A third of the relatives who work have high-skilled jobs. More than half of the relatives who were granted their work permit in 2011 or before, and who thus could qualify for a permanent residence permit during the period we investigated, also received a permanent residence permit.

### **A small number of labour immigrants change track**

The labour immigration system is designed to allow a track change, i.e. that asylum seekers who have worked while waiting for a decision can apply for a work permit if their asylum application is refused. Since very few asylum seekers work, there are few who can make use of this possibility at all. But a high proportion of those who *have* worked while waiting for an asylum decision then apply for a work permit after their application has been refused. About 6 per cent of labour immigrants registered as

resident since 2009 have changed track in the other direction: they have arrived as labour immigrants, but thereafter applied for and been granted asylum as in need of protection.

*Better compliance with central permit conditions, but at the same time problems remain*

The Riksdag has stated that the labour immigration system must be designed to minimise the risk of abuse in the form of sham employment contracts, for example, and prevent irresponsible employers from dishonestly obtaining competitive advantages with the help of the system. The Swedish NAO has audited whether labour immigrants get work and whether the maintenance requirement of SEK 13 000 per month is met. In addition, the Swedish NAO has looked at what type of employer can be linked to workers who do not obtain registered employment or whose monthly pay is less than the maintenance requirement.

**Most labour immigrants work, but sham offers occur**

Most labour immigrants work. More than 90 per cent of labour immigrants registered as resident with valid permits in 2014 were in registered paid employment. Only a couple of per cent had changed employer. Of the tenth of labour immigrants registered as resident who were not in registered employment in 2014, three percentage points had permits to work in high-skilled occupations where posting of workers is common – this applies above all to IT occupations and engineers. Two percentage points had permits in occupations with lower skills requirements, without any sign of paid employment in Swedish registers.

Almost half of those with no earned income during the applicable permit period in 2014, 4 percentage points, had changed track and been granted asylum. Most of them had not worked at all during the permit period. This indicates that it is common for labour immigrants who change track to asylum seeker not to have a seriously meant job offer as a basis for their work permits. On the premise that there are also a number of asylum seekers without serious job offers who have been refused or are still waiting for an asylum decision, an estimated one out of twenty permits to labour immigrants registered as resident are based on a sham job offer; either an offer that the worker believes will lead to employment, or an offer where both parties have an understanding that this is not the case.

A third of labour immigrants (excluding berry-pickers) have not registered themselves as resident, usually because their permit period is too short for them to be *allowed* to register as resident. They are more difficult to monitor, since their incomes are not in Statistics Sweden's register. The Swedish NAO notes, however, that almost 80 per cent of cases

can be linked to company groups or employers outside Sweden: employers who can post workers. Apart from this group there is an additional 7 per cent of cases concerning occupations of a purely seasonal nature in gardens and forests. These are groups that may be expected to be found among people not registered as residents, based on how labour immigration is presented in research and other earlier studies. About 5 per cent of those not registered as residents are found in occupational groups with lower skills requirements.

#### **The maintenance requirement is more often met but there are problems in some occupational groups**

Just under a tenth of the labour immigrants registered as resident whose incomes can be followed in Statistics Sweden's register did not meet the earnings requirement of at least SEK 13 000 per month. This group has decreased steadily, and more than halved since 2009.

However, problems continue to be great in several occupational groups. In 2012-2014 – after these sectors started to be particularly carefully controlled – there were still more than 20 per cent of beauty treatment staff, cleaners, butchers, bakers, shop staff and paper deliverers whose pay was less than the maintenance requirement.

#### **Difficult to assess whether pay is satisfactory**

Labour immigrants' wages should not just meet the maintenance requirement. The conditions should also be at collective agreement level or, when the work is not covered by a collective agreement, follow practice in the occupation or industry. The Swedish NAO has not had data that shows whether the workplaces have a collective agreement. Even when the work is covered by a collective agreement it is not entirely simple to determine what constitutes wages in line with a collective agreement, other than by careful case by case examination. The implication of the legal requirements applicable to workplaces without a collective agreement is unclear. Nor has the Migration Agency made any clear interpretation of what the requirement entails. Hence it is also difficult for the case officers at the Migration Agency to know when the requirement has been met. In addition, the actual monthly payment is often remuneration for part-time work. For these reasons it has not been possible to draw any conclusions as to whether labour immigrants' wages are satisfactory on the basis of collective agreements and Swedish practice.

**A small number of employers systematically pay a large number of labour immigrants too little, a large number pay one labour immigrant too little**

In 2014 about 10 per cent of the labour immigrants registered as resident had wages that fell short of the maintenance requirement, and approximately the same number had no registered wage at all. The employers who can be linked to labour immigrants with wages below the maintenance requirement, or who have no registered earnings at all, constituted just under 30 per cent of the employers (excluding foreign companies and company groups who could conceivably post workers, since data on their wages is uncertain). This reflects the fact that wages below the maintenance requirement or the lack of income to a great extent are individual instances spread among many employers. The Swedish NAO has also seen signs that employers misuse the system more systematically, but these employers are few.

The proportion of employers paying too little or not at all has decreased, mainly between 2012 and 2013. The employers who can be linked to non-payment of wages or wages below the maintenance requirement can often be found in industries that are subject to the Migration Agency's special controls.

***Not always favourable conditions for employers wishing to employ from a third country***

The permit process must be predictable, understandable and prompt. This is important for employers who need to recruit from a third country, but also for the job applicants. The Swedish NAO considers, however, that employers in several respects are not provided with favourable conditions for employing labour from a third country.

**Some processing times are unreasonably long**

The differences in processing times for work permits have increased in recent years. The differences between different case categories seems greater than is warranted by the different types of cases. For some case categories the processing times are unreasonably long.

The differences have increased as a consequence of differentiation of processing into several special tracks, based on the different types of cases. In 2011 a certification system for employers was introduced, where experience had shown that the need for control and supplementary material was small. In 2012 a system of special control in some industries was introduced, where the Migration Agency's experience was that the needs for control were greater and compliance was lower.

The processing times for cases linked to certified companies have mainly been short. However, the Swedish NAO noted increasing time differences between cases in the

certification system and cases in the same industry outside the certification system (in this case the IT industry), which were not obviously justified.

The processing times are long in the industries where special controls are carried out. For example in the period 2012–2015 the median processing time for granting a permit in the cleaning industry was five months, i.e. for cases where the supporting documentation was satisfactory and the conditions met. In addition, both processing times in general and differences between different case categories have increased. Even though this may be explained by reprioritisation at the Migration Agency due to increased refugee immigration in autumn 2015, the consequences are problematical for the employers and employees who have to wait for permits. Above all it is processing of extension applications that are taking longer.

The Swedish NAO does not consider that it is a problem to organise processing into different tracks. The differentiation may improve conditions for effective processing. But in all case categories the parts of the processing that the Migration Agency itself can influence must be prompt. The increase is largely due to cases being left longer pending processing. These waiting times are increasing more outside the certification system. The Swedish NAO considers that the division has led to the prioritisation of larger companies, for example in the IT industry, ahead of small companies in the same industry.

#### **Changed interpretation of regulations may lead to unpredictability**

The regulations have been applied in different ways, over time but also between case officers. Amended application of the regulations over time cannot always be avoided. It is necessary for the decisions of the Migration Court of Appeal to influence the control process. It may be warranted for both the Government and the Migration Agency to develop their view of necessary requirements. The requirements of the appropriation directions for stricter controls seem not only to have led to more thorough investigations by the Migration Agency, based on the regulatory requirements, but also to stricter interpretation of the requirements as such by the Migration Agency. These changes, in particular when there is tightening of requirements imposed on working conditions in previous permit periods, lead to uncertainty for the users of the system.

It is an important challenge for the Migration Agency to clarify for employers, employees and their representatives the requirements that apply when new case law is added and new considerations made. The Migration Agency has also developed the communication channels through which employers and employees receive information on the requirements made. But there are still central requirements in the legislation that have a wide margin of interpretation and which play a part in decisions to grant or refuse

permits. This applies in particular to the requirement that labour immigrants' wages must follow collective agreements or industry practice. The problem here is not unclear information but rules that are difficult to interpret. The Swedish NAO believes that clarification is needed of how the Migration Agency should apply the rules so that equal treatment and predictability can be guaranteed.

#### **The system is designed for employers with their own international network**

The labour immigration system is designed for employers who have already identified workers from a third country that they wish to employ. The Swedish NAO notes that the employers that recruit from a third country to a great extent are people who can be assumed to have access to international networks. Outside the circle of employers who have a company group affiliation, or whose company management have a foreign background, international recruitment is more unusual. This applies in particular to smaller companies. In light of this, it is not surprising that the forecasts that existed of how the reform would increase labour immigration were not realised.

#### *The authorisation and control system has weaknesses*

The Swedish NAO has audited how the controls function and what takes time in the processing. An important purpose was to ascertain the extent to which the time taken is due to control measures necessary to respect the system conditions and the extent to which processing takes time for other reasons.

In the opinion of the Swedish NAO the control system in some respects has gaps or provides poor conditions for effective control but the controls carried out seem to have had a preventive effect on the tendency to pay wages that fall below the maintenance requirement. However, it should be possible to retain or even increase the quality of control while reducing the time spent per case.

#### **Deficiencies in conditions for the Swedish Migration Agency's control**

The Swedish NAO finds that the pre-conditions do not always exist to enable controls by the Migration Agency, using the tools available, to meet requirements. The control of employers' economic circumstances mainly makes it possible to identify employers that do not really have a functioning business, while the audit shows that companies that pay less than the maintenance requirement often have about the same type of economic circumstances as companies that pay more than the maintenance requirement. In particular, control of the wage requirement when the workplace has no collective agreement has a poor chance of success, since there are no guidelines for how the requirement should be interpreted. The outlook is better when there is a collective agreement, as well as when the maintenance requirement is to be checked. On several

control points there is doubt due to the uncertain value of the documentation that can be requested; for example wage slips and preliminary performance reports.

Controls of employers' seriousness and the authenticity of the job offer assume that lack of seriousness can be linked to employers with obviously poor finances and limited business activities. In order to perform the controls, the Migration Agency's case officers need to be able to identify what is a functioning business on the basis of the company's financial accounting. In the opinion of the Swedish NAO there are signs that the level of expertise among the case officers is uneven as regards assessing the financial information that is requested, and it is not always evident that the information requested is used.

The Swedish NAO also notes that labour immigrants' actual percentage of full time worked is not checked for those of them working part time other than the stated percentage of full time hours forms the basis of calculating the full time wages when assessing the wage requirement.

#### **The quality of processing has improved, but the time taken has increased**

In its audit the Swedish NAO found that the quality of processing labour immigration cases has improved. Authorisation is now more systematic, which has for example resulted in clearer reasons for decisions.

The increase in processing times may, however, not only be explained by the addition of quality-enhancing case work. A large part of the Migration Agency's case work consists of requesting documents. The Migration Agency often finds it hard to obtain documentation; for example about previous wages when extension applications are to be considered. In the audit the Swedish NAO saw that documents are sometimes requested to complete an application, even if the existing information already includes data that under the rules means that the application must be rejected. There are also examples of the Migration Agency sending a large number of reminders requesting supplementary material to applicants that do not reply. A large part of the processing time consists of waiting for the next processing occasion. This often leads to the need for more supplementary material, with further delays as a result. A large part of the Migration Agency's processing work is devoted to cases from sectors where special controls are made.

#### **The Swedish NAO's recommendations**

The Swedish NAO's recommendations are based on three premises: fulfilment of the Riksdag's objectives for labour immigration, promptness and equal treatment

characterising agencies' handling of individual cases and prudent management of public resources while preserving public confidence in the State.

### *Recommendation to the Government*

- Ensure that the Migration Agency has the capacity to cut processing times without compromising necessary controls. In that context the Government should consider the proposal to give the Migration Agency direct access to certain register data held by the Swedish Tax Agency submitted by the Inquiry on Data concerning Aliens (ToR 2014:76).

### *Recommendations to the Swedish Migration Board*

- Specify how the requirement that labour immigrants' wages must correspond to collective agreements or practice for the occupation or in the industry is to be applied when the workplace has not signed a collective agreement, or has an agreement without specific figures.
- Ensure that post-controls are strategic and are given sufficient resources, so that first-time cases in industries where wages below the maintenance requirement are common are controlled to a reasonable extent.
- Take measures so that processing times are reduced and the difference in processing times between various case categories are limited to what is reasonable based on the work input required by the different categories.
- Develop the procedures that will guarantee that similar cases are handled consistently in terms of controls performed, and develop procedures that prevent redundant requests for supplementary material.
- Ensure necessary breadth in the casework organisation with regard to expertise in analysing financial information requested from companies, so that such information is used more consistently in the controls.