

# Equality and Lifelong Learning: Facilitating Employment Transitions for Aging Workers in Sweden

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Technological advances can contribute to the productivity, economic growth and increased prosperity of society. The implementation of modern technology, however, often changes working tasks and methods, imposing new and often higher demands on employees.<sup>1</sup> Employees whose work is changing must, in their efforts to adapt to the new demands, be able to rely on support from their employer and society; labour market regulations as well as social insurance schemes and access to education. All of this affects job and employment security, hence the lack of support can inhibit the successful implementation of e.g., new technology.<sup>2</sup> In view of an aging population and the risk of a large maintenance burden on the part of the population currently active in the labour force, it is also in the society's interest that people have a longer working life.<sup>3</sup> From that perspective, there is a need for continuous learning throughout the individual's whole working life. This applies equally to employees who have lost their jobs, to employees who want to strengthen their skills within the framework of the individual's employment relationship and to people of working age who want, or find it necessary to change their occupation. From an equality perspective, older workers are often seen by employers as less flexible and enterprising and not being able to learn new skillsets. The latter can also be the result of the lack of support in learning. Research shows that discrimination due to age occurs in the Swedish labour market, which e.g., may involve not being offered skills development.<sup>4</sup> It is therefore necessary that there are good conditions for lifelong learning, especially for the part of the workforce that is considered as older.

The objective of this chapter is to briefly describe the rights to skills development that employees have under the current Swedish Employment Protection Act (SEPA), the proposal made within the 2020 Legislative Inquiry SOU 2020:30<sup>5</sup> regarding legal regulation of employees' skills development, and the proposed new study grant for transition (SGT) for adults with professional experience presented in the Ministry Report Ds 2021:18.<sup>6</sup> This chapter focuses

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<sup>1</sup> Acemoglu, D., Restrepo, P. (2019) *The Wrong Kind of AI? Artificial Intelligence and the Future of Labor Demand*, Working Paper 25282, NBER Working Paper Series, National Bureau of Economic Research; and OECD (2018) *Good Jobs for All in a Changing World: The OECD Job Strategy*.

<sup>2</sup> Abildgaard, J. S., Nielsen, K., & Sverke, M. (2018). Can Job Insecurity be Managed? Evaluating an Organizational-level Intervention Addressing the Negative Effects of Restructuring. *Work & Stress*, 2(2), 105-123.

<sup>3</sup> Ulander-Wänman, C., Swedish Collective Agreements and Employers Willingness to Hire and Retain Older Workers in Employment. *Nordic Journal of Working Life Studies* (2016) 61–79.

<sup>4</sup> Carlsson, M., Eriksson, S., *Bortvald på grund av ålder* [Opted Out Due to Age], Delegationen för senior arbetskraft, Rapport 11, S 2018:10; Ahmed, A., Andersson, L., & Hammarstedt M. (2012) Does Age Matter for Employability? A Field Experiment on Ageism in the Swedish Labour Market, *Applied Economics Letter*, 19; Diskrimineringsombudsmannen, (2011) *Åldersdiskriminering i svenskt arbetsliv – Om ålderskodningar och myter som skapar ojämlikhet* [Age Discrimination in Swedish Working Life - About Age Coding and Myths that Create Inequality].

<sup>5</sup> Legislative Inquiry The Swedish Government Official Report (SOU) 2020:30, *En moderniserad arbetsrätt* [A Modernized Labour Law].

<sup>6</sup> Swedish Ministry Publication Series (Ds) Report 2021:18 *Omställningsstudiestöd – för flexibilitet, omställningsförmåga och trygghet på arbetsmarknaden* [Study Grant for

on the content and legal construction of the proposed legislation and study grant for transition. The ambition of the new grant is that the support is to be appropriate with respect to its aims, provide legal certainty and be effective in achieving its aims. This chapter evaluates the proposed legislation on the basis of the same criteria.

## 1 Lifelong Learning in Sweden

Currently there is no statutory right to paid skills development for employees in Sweden in order to facilitate transitions in their working lives. This is despite a longstanding consensus among politicians, social partners, researchers and other labour market stakeholders on the need for lifelong learning opportunities for professionals.<sup>7</sup>

In this context, an important characteristic of the Swedish labour market model is that both law and collective agreements can regulate employment conditions, and collective agreements have sometimes been transposed into general legislation. The overall purpose of the labour law regulation on the part of the state is to balance the society's interest in high employment and a long working life for the workforce, the employers' interest in flexibility and access to good skills, as well as the employees' interest in employment and job security. A number of provisions in labour law are semi-discretionary. This makes it possible for the social partners, labour market parties, to reach collective agreements with provisions other than those as set out by the semi-discretionary law. Collective agreements are concluded between the social partners without government interference.

There have been different views on how a general system for skills development should be designed and financed over time, both among politicians and among the social partners. A proposed new provision in the Swedish Employment Protection Act (SEPA)<sup>8</sup> on employers' responsibility for skills development of employees was presented in the legislative inquiry SOU 2020:30 concerning a more modern labour law.<sup>9</sup> However, that legislative inquiry was criticized by both the government and the social partners. A breakthrough towards resolving the issue came in June 2021, when the government presented a proposal for a new study grant for transition (SGT) for adult students with previous professional experience, as set out specifically within the Ministry Report Ds 2021:18. This recent proposal is based on the results of negotiations

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Transition-for Flexibility, Transition Ability and Security in the Labour Market]. The Ministry Publication Series is abbreviated in this chapter by 'Ds'.

<sup>7</sup> See for example, Ulander-Wänman, C., *Hållbart Arbetsliv genom Kompetensutveckling i Samverkan (HAKS)*, [Sustainable Workinglife during Skills Development in Cooperation], Arena Idé 2019; Legislative Inquiry SOU 2018:24 *Tid för utveckling* [Time for Development]; SACO (2017b) *Vägar till ny kunskap* [Paths to New Knowledge]; Svenskt Näringsliv "Förhandling om trygghet och omställning på arbetsmarknaden, Stockholm 2017-12-19 [Negotiations about Security and Transition on the Labour Market]; and TCO Rapport *Vidareutbildning, varför och för vad*, 2020 [TCO Report, Further Education, Why and for What?] TCO 2020.

<sup>8</sup> Law (1982:80) The Swedish Employment Protection Act is abbreviated here as SEPA.

<sup>9</sup> The Swedish Government Official Reports (SOU), 2020:30 *A Modernized Labour Law*.

between the social partners, the Confederation of Swedish Enterprise, representing business interests and Council for Negotiation and Cooperation (PTK), representing 25 member trade unions and their interests. These negotiations resulted in two different agreements: an Agreement on Principles and a Main Agreement.

## **2 The Process Leading to the Legislative Proposal**

The regulation of the Swedish labour market is a politically sensitive issue that was key to the successful formation of a government in the last parliamentary election. The Swedish Social Democratic Party returned to power with a weak parliamentary majority and needed support from other political parties to be able to appoint a prime minister and remain in power. This was made possible by the “January Agreement” in January 2019 in which the Swedish Social Democratic Party, the Centre Party, the Liberals, and the Green Party agreed on 73 political standpoints and related courses of action. Before the parties to the Agreement on Principles and the Main Agreement, the Confederation of Swedish Enterprise and PTK, presented their proposal as to changing the regulation of the labour market, the coalition government in power had itself internally agreed to reform existing labour market regulations.

In relation to employment law regulations, the January Agreement stated, among other things, that opportunities for transitions on the labour market should be strengthened and that the employers’ access to labour with the relevant skills should be improved. Labour law needed to be modernized and adapted to the current labour market while maintaining a basic balance between the social partners. Changes in labour law regulations should provide both flexibility for companies and protection for individual employees. SEPA would be amended to include more and clearer exceptions from the order of selection in the event of dismissal due to shortage of work. The anticipated outcomes of changes in the law would be lower employer costs in the event of terminations, especially for smaller companies, and retention of protection against arbitrariness.

The January Agreement further stated that the legislative committee appointed to work towards a modernization of labour law should include proposals for strengthening the employer’s responsibility both for skills development and employees’ adaptability. The legislative inquiry should also include proposals for improving the balance between employees with different employment conditions. A central part of the political agreement was that if the social partners agreed on a reform of SEPA which provides increased flexibility, the government would submit a proposal in line with this to the Swedish Parliament. If the social partners could not reach an acceptable agreement the proposals in the legislative inquiry should be implemented.<sup>10</sup>

Negotiations between the social partners, represented by the Confederation of Swedish Enterprise, PTK and LO, paralleled the work of the inquiry. The Committee drafting the legislative inquiry SOU 2020:30 presented its proposals

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<sup>10</sup> Utkast till sakpolitisk överenskommelse mellan Socialdemokraterna, Centerpartiet, Liberalerna och Miljöpartiet, [Draft Factual Political Agreement between the Social Democrats, the Center Party, the Liberals and the Green Party].

for new legislation in June 2020.<sup>11</sup> These received critique from the government, since the agreed-upon balance between the social partners was not maintained in the proposal. The parties presented the content of the agreements for the government in December 2020. The parties' agreements consisted partly of an Agreement on Principles, partly of a collective agreement-regulated Main Agreement on security, transition and employment protection issues. Two trade unions for blue collar workers, IF Metall and The Swedish Municipal Workers' Union have also joined these two agreements, however the umbrella organization, to which they belong, the Swedish Trade Union Confederation (LO) has not. The agreements specify how these parties wish to reform the Swedish labour market. Some of the proposals that the parties agreed to in the Agreement on Principles included reforming the SEPA and introducing a new public study grant for adults with work experience. For employees who are not covered by collective agreements, the parties' proposal means that a basic public transition and skills development grant and a new transition organization must be introduced. Employers who already finance such support through collective agreements would receive financial compensation for those costs from the state. These efforts were considered by the parties to complement each other as parts that together establish a whole. A prerequisite for the parties to implementing the Main Agreement is that the state fulfil the conditions specified by the parties in the Agreement on Principles.

When the social partners themselves agreed on how they wanted to modernize the labour law regulation, the government decided to set the recommendations in the legislative inquiry SOU 2020:30 aside, and instead proceed with the proposals that the social partners in the private sector had agreed on in the Agreement on Principles. Three different inquiries were initiated with the aim to submit proposals on how the content of the social partners' Agreement on Principles should be implemented into law in line with what the parties had agreed on.<sup>12</sup> The inquiry's assignments included making recommendations concerning 1) the introduction of a new public study grant, 2) the implementation of changes in SEPA and related issues 3) the implementation of a public transition and skills development support and a new transition organization.

The results of the investigations, in the form of proposed legislation were presented, as previously stated, in June 2021 and were distributed to experts and stakeholders for their official comments until the 15<sup>th</sup> of September. The legislative work continues thereafter and new legislation is expected to enter into force at the end of the first half of 2022. It includes changes in SEPA,

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<sup>11</sup> Legislative Inquiry SOU 2020:30 *A Modernized Labour Law*.

<sup>12</sup> Uppdragsbeskrivning om genomförande av principöverenskommelse om ett nytt och parallellt offentligt studiestöd, utbildningsdepartementet, U2021/00138; Uppdragsbeskrivning om genomförande av principöverenskommelsen om anställningsskydd och tillhörande frågor, Arbetsmarknadsdepartementet, A2021/00044; Uppdragsbeskrivning om genomförande av principöverenskommelsen och grundläggande omställnings- och kompetensstöd, Arbetsmarknadsdepartementet, A2021/00045 [Assignment Description on Implementation of Agreement in Principle on a New and Parallel Public Student Grant, Ministry of Education, U2021 / 00138; Assignment Description of the Implementation of the Agreement in Principle on Employment Protection and Related Issues, Ministry of Labour, A2021 / 00044; and Assignment Description of the Implementation of the Agreement in Principle and Basic Adjustment and Competence Support, Ministry of Labour, A2021/00045.

establishment of a new transition organization with the task of offering skills and transition support for workers not covered by collective agreements and a new law about study grant support for transition.

The need for labour law legislative reform that Sweden faces today departs from previous legislative processes. What is new in this process is that the social partners in the private sector have clearly taken over from the government and the Parliament the power to determine the content and design of the new legislation.

### **3 Employers' Current Responsibility for Employees' Skills Development**

Historically, Swedish employers have been considered to have a responsibility to provide relevant education to employees.<sup>13</sup> Even today, it is considered that employers in principle have a responsibility to provide skills development for their employees.<sup>14</sup> However, employers have no statutory obligation to provide new skills for the employees. According to case law, the duty to provide skills development for employees has several limitations. Employers do not have an obligation to support skills development of more employees than the employer needs in the business.<sup>15</sup> Nor do employers have any duty to provide skills development so that an employee meets the basic requirements for a position.<sup>16</sup>

Where qualification requirements are changed, there is a tangible risk that employers choose to offer skills development primarily to younger employees, since they have an assumed longer working life compared to older employees. The employer thus anticipates benefiting more from investments in younger employees.

Employers also have no responsibility to provide longer training efforts or skills development in the form of retraining employees.<sup>17</sup> An employee cannot request tasks that require a professional experience that the employee does not have.<sup>18</sup> It is also clear, from the case law, that an employee does not have priority for an employment that requires special qualifications if the employee does not already have such qualifications.<sup>19</sup> Nor can employers be obligated to provide skills development in order for the employee to be able to pursue a career with the employer. Employers may be forced to accept certain costs and inconveniences in order to make it possible for an employee, who has a longer

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<sup>13</sup> Judgments on this by the Swedish Labour Court (AD) include AD 2011 no. 5; Ds 2002:56 393.

<sup>14</sup> AD 1999 no. 36; AD 2005 no. 75; AD 2010 no. 34; and Ministry Report Ds 2002:56 392.

<sup>15</sup> AD 1993 no. 197.

<sup>16</sup> AD 2005 no. 75; AD 1999 no. 36; and AD 2010 no. 34.

<sup>17</sup> AD 2006 no. 68; AD 2006 no. 110; and AD 2015 no. 69.

<sup>18</sup> AD 1996 no. 42; AD 1998 no. 94; AD 2002 no. 75; and AD 2005 no. 75.

<sup>19</sup> AD 1980 no. 168; AD 1984 no. 19; AD 1992 no. 14 and AD 2008 no. 46.

length of service, to achieve a position that has been changed for business-related reasons.<sup>20</sup>

An employer's obligation to try to transfer an employee to another position is not contingent upon the employee mastering the new tasks completely from day one. Nevertheless, training periods that cover at least six months and up to one year are considered to be above what can generally be considered a reasonable training period.<sup>21</sup> When an employer concludes that an employee has insufficient qualifications to fulfill his or her work responsibilities in the existing position and therefore risks dismissal, the employer has a certain responsibility to take supportive measures in an attempt to avoid dismissal of the employee. These measures include mainly providing the employee with introductions and instructions at work as well as support obtainable through the employer's representatives or employee's coworkers. There are no duties under current law that oblige employers to provide more comprehensive competence development measures to strengthen the employee's ability to manage his or her position.<sup>22</sup>

#### 4 Proposal for Competence Development in SOU 2020:30

The state inquiry that led to legislative inquiry SOU 2020:30 conducted in parallel with the social partners' negotiations, included in its mandate submitting proposals for a clearer regulation of employees' rights to skills development. In the same way that the Confederation of Swedish Enterprise and PTK, in principle, were bound in their negotiations to what was stated in the January Agreement, the state inquiry also had directives included as a result of that political agreement. Further, the government required the inquiry to work in such a way that its resulting proposals would be budget neutral, in other words would not involve any increased costs for society.<sup>23</sup> The negotiating parties, in contrast, did not need to take such a factor into account. Finally, the directives for the inquiry also required that any proposals should be based on the Swedish Model for labour regulation thus had to maintain the autonomy of the social partners and a balance of power among the partners.

With regard to employees' skills development, it was proposed that a new legal rule should be introduced into SEPA, imposing a duty on Swedish employers to offer employees skills development to a reasonable extent within the framework of the employment. A condition for the employer's obligation would be that the employee had at least six months' total employment with the employer.<sup>24</sup> This meant that the employer's duty could cover both permanent and temporary employees who fulfilled the condition of employment.

In assessing what would be a reasonable extent, consideration is to be given to whether there is an activity-related need, such as technical/digital

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<sup>20</sup> AD 1983 no. 51.

<sup>21</sup> AD 1993 no. 197; and AD 1994 no. 73.

<sup>22</sup> Ulander-Wänman, C., Bristande arbetsprestationer och arbetstagares rätt till kompetensutveckling, [Lack of Work Performance and Employees' Rights to Skills Development] *Juridisk Tidskrift*, häfte no. 3 2017–18.

<sup>23</sup> Dir 2019:17 4.

<sup>24</sup> Legislative Inquiry SOU 2020:30 458–459.

development or other changes in the employee's tasks or in the business. Skills development should be linked to the employee's basic education or experience.

Such legislation would probably be disadvantageous for older employees with a long length of service with the same employer, since their education may be obsolete and they would lack experience of new technical methods the employer may want to implement. Particular emphasis would be placed on whether the employer's obligations would be too burdensome for small employers and whether the employee had previously contributed to skills development within the framework of hers/his employment with the employer.<sup>25</sup>

The inquiry's proposal states that not all employees can always invoke a right to skills development, even if the conditions for reasonableness are met. This means that even with regard to in-service training or company-specific training, the inquiry's proposal did not mean that employers were required to provide knowledge development to more employees than the employer considered necessary.<sup>26</sup> The proposal gives employers an explicit obligation to inform trade unions that have members in their workplace, of the employer's guidelines for skills development. Employers also have an obligation to describe in writing, at the request of the employee, the competence development initiatives that the employee has received.<sup>27</sup> The right to bring an action for damages because the employer has not, to a reasonable extent, offered skills development was proposed to be brought only after the employee's employment had been terminated due to a shortage of work. The damages would be capped at a maximum of three months' salary for employees who had at least five years' total employment with the employer.<sup>28</sup>

## **5 The Government's Proposal for the Establishment of Study Grants for Transition (SGT)**

The state inquiry that led to the Ministry Report Ds 2021:18 was appointed, as introduced previously, with the aim to propose a statutory law reform establishing a new public study grant. The inquiry ultimately proposed that a new parallel public support – study grants for transition (SGT) – should be introduced in line with what the Confederation of Swedish Enterprise and PTK had agreed on in the Agreement on Principles.<sup>29</sup> The objective of the SGTs would provide opportunities for adults to finance their own skills development in order to strengthen their future position in the labour market, considering the needs of the labour market.<sup>30</sup> This means under the proposed new regulation, permanent employees, temporary employees, self-employed as well as unemployed, who meet the conditions for the support all would have the opportunity to receive SGT. This is, in my opinion, in addition to other benefits

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<sup>25</sup> Ibid., at 463–465.

<sup>26</sup> Ibid., at 661.

<sup>27</sup> Ibid., at 663.

<sup>28</sup> Ibid., at 682.

<sup>29</sup> Ministry Report Ds 2021:18 12.

<sup>30</sup> Ibid., at 14.

of the system, beneficial from an equality standpoint. Not only younger people or those in the work force with higher existing income would receive the possibility to engage in lifelong learning, securing better income and a longer working life. The new SGT system strengthens all professionals' opportunities for life-long learning, which is particularly important for older workers who may need to supplement their knowledge after several years in working life.

Workplace-specific training and skills development are, however, the employer's responsibility and SGTs should not be used to fund such training.<sup>31</sup> This clarifies the employer's responsibility for the employees' skills development and, in contrast to current law and the legislative inquiry SOU 2020:30, does not imply any limitation in relation to the number of employees with the new skills that employers consider necessary.

The SGT system is intended to make it possible to begin an education when a person wishes or needs skills development or readjustment. Individual's working lives are thus expected to be extended. The new system is planned for a limited period and focuses on the individual's development of skills or needs for transition. A person who has a more extensive or a significant basic educational need should instead study with the support of regular, existing Swedish study grants or study start support.<sup>32</sup> An individual who receives SGT is expected to refrain from employment during the study period.<sup>33</sup> The SGT will not, unlike other study grants, be decided on the basis of actual income.<sup>34</sup> The compensation that can be obtained does not constitute a right for the individuals who meet the condition for the support, but is limited by whether there are funds available. The inquiry proposes that the financing of SGT shall be gradually increased. The allocated funds shall be divided into two pots, the size of which shall reflect the proportion of employed in the public and private sectors, respectively. The addition of funds is planned to start in 2023. From 2026, the system shall be fully developed and its total expected cost is estimated to be between 6 and 9 billion SEK per year.<sup>35</sup> The provisions for the new SGT system are proposed to enter into force on 30 June 2022.<sup>36</sup>

### **5.1 What Does the SGT System Contain?**

One component of the SGT system is grants and the other part is a voluntary loan. The grants are to be taxed and pensionable.<sup>37</sup> A SGT may be used in connection with educational activities that include at least one week of full-time study.<sup>38</sup> Support may be received for both full-time and part-time studies. Part-

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<sup>31</sup> Ibid., at 92.

<sup>32</sup> Ibid., at 99.

<sup>33</sup> Ibid., at 16.

<sup>34</sup> Ibid., at 170.

<sup>35</sup> Ibid., at 18 and 269.

<sup>36</sup> Ibid., at 20.

<sup>37</sup> Ibid., at 93.

<sup>38</sup> Ibid., at 15.

time studies must be 20, 40, 50, 60 or 75% of full-time and the support is proposed to be provided on weekly basis.<sup>39</sup> The SGT support covers a maximum of 44 weeks with full support and a maximum of 220 weeks of studies pursued at a 20 % of full-time basis. It is possible to attend several study courses over a longer period than 44 weeks and apply for support for a limited number of weeks for each. The SGT support is, as stated, a parallel study support and separate from other study funds and study start support. This means that the number of weeks in which SGT support is utilized do not add up with weeks in other systems. A person who begins an education that is longer than 44 weeks full-time must be able to finance the remaining study weeks and it is possible to finance further studies with the regular student financial aid system.<sup>40</sup> Re-qualification for the right to study support should be possible after 15 years from the time the individual has consumed the first 110 study days, at which time the individual qualifies for an additional 110 study days.<sup>41</sup>

A starting point for the size of the support is that it must partly compensate for the loss of income for an employee or self-employed person during the transition from work to studies. The ambition is that the grants shall cover 80 % of the reduced earned income up to a maximum of 4.5 of the income base amount per year. The grant is to be adapted to the extent of studies and gainful employment. For 2021 the grants have a maximum limit of SEK 20,458 per month.<sup>42</sup> The size of the support is to be calculated based on the studying person's annual income in the decision on the sickness benefit qualifying income. Sickness benefit qualifying income is the annual income an insured can be assumed to receive as an employee or other worker. The annual income is determined at the time when the application for study aid is submitted.

In addition, individuals will have the right to supplement the SGT with student loans, pursuant to loan rules modeled on the current public student financial aid system. The same rules and age limits for repayment and depreciation that apply to other study loans shall be applied for loans within the SGT system.<sup>43</sup> The proposed legislation (§3) recommends that such loans shall only be granted for weeks covered by the SGT. It is proposed that the loan part of the SGT at most shall correspond to the equivalent level of loan available under the current student financial aid system. The size of the loan shall be adjusted so that the sum of loans and other financial support shall not exceed previous net income from work after tax.<sup>44</sup>

SGT can be provided up to and including the calendar year during which an individual becomes 62 years old, with restrictions to a maximum of 10 weeks from the calendar year in which he or she turns 61 years old. The age limit will be increased by one year from 2026. It is especially important that older workers are given the opportunity to receive SGT when the retirement age is increased. For SGT related loans, an application must be submitted no later than the

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<sup>39</sup> Ibid., at 147–148.

<sup>40</sup> Ibid., at 150–152.

<sup>41</sup> Ibid., at 89.

<sup>42</sup> Ibid., at 154.

<sup>43</sup> Ibid., at 209.

<sup>44</sup> Ibid., at 16.

calendar year in which the person is 60 years old. The total SGT and the readjustment loan shall thus be available for 44 weeks up to and including the calendar year in which a person is 60 years old.<sup>45</sup>

## 5.2 What is Required to Gain Access to SGT?

To gain access to the support, the applicant must be a Swedish citizen or be resident in Sweden with a permanent residence permit and have settled in the country for purposes other than undergoing education.<sup>46</sup> Those who are in custody according to the Prison Act do not have access to student support.<sup>47</sup> It is assumed that the person receiving the support refrains from work during the same time and to the percentage of the full-time studies conducted with SGT.

The SGT is focused on those who have a current established position in the labour market. The system, thus requires both an *established condition* in the labour market and a *topicality condition*. The establishment condition means that to be eligible for this support, the individual must have worked in Sweden an average of 16 hours per week per calendar month for at least eight years, during a frame time of 14 years, calculated from the year the employee turned 19 years of age. This is stated in §8 of the legislative proposal. Work must have been the main occupation during the qualifying period. Parental leave, military service and sick leave are equated with work during employment for up to a maximum of 24 months.

The topicality condition shall ensure that the applicants have worked in relative proximity in relation to the application. In order to be granted the support, it is therefore required that the individual has been employed (or equivalent) on average at least 16 hours/week during a calendar month during at least 12 of the last 24 months or during qualifying periods has had a certain minimum income from employment. Employment shall be proven with income verification.<sup>48</sup>

It can be understood from §17 of the legislative proposal that it must be shown that the studies are likely to strengthen the individual's future position on the labour market, considering the needs of the labour market, in order to receive the grant. In assessing whether the student's position will be strengthened, the person's previous education, knowledge and experience from working life shall be considered. The education shall either aim to strengthen the individual's position in the area he or she has worked previously or to strengthen the person's competence in other areas in order to be able to apply for new positions. A requirement for the support is that it shall be assessed in relation to the needs of the labour market and actualized in cases where the individual wishes to strengthen his/her competence in other areas than where he/she already works or has worked previously.

Such assessment shall be based on the reasonable likelihood that the education will enable the person to apply for such positions and increase the

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<sup>45</sup> Ibid., at 110–111.

<sup>46</sup> Ibid., at 109.

<sup>47</sup> Ibid., at 24.

<sup>48</sup> Ibid., at 13.

chance the person will secure work in the new area after the education is completed. If the education is intended for a profession where there is already significant competition for work or over-establishment, the applicant will not normally receive study support. Exceptions can be granted if the applicant has a basic education in or is established in work in that area. Special justifications are however required for such exceptions. This can occur in an individual case if it is probable that the education will lead to a new position or an increased employability for the individual.<sup>49</sup> Postgraduate students have limited opportunities to receive SGT. Applicants with this educational background are proposed to be able to receive SGT for education which, together with the individual's research competence, provides the labour market with competence in a work area where there is a need for labour or if there are special reasons.<sup>50</sup>

Requirements are set for study results under the SGT and SGT may be provided to an individual who has conducted his or her studies at a normal pace.<sup>51</sup> A normal study pace is that the student shall meet 75 % of the study commitments for which the study support has been provided. The SGT is paid out only when it is proven that the student is conducting studies for which the grant is intended.<sup>52</sup> Within one month after the commencement of studies, the student shall certify the study activity. If the deadline is exceeded, the funds can be returned to the SGT system and allocated to someone else. The inquiry proposes that both the student and the education provider will need to certify that studies are conducted in accordance with the decision on SGT support and the support will be then be paid out monthly in arrears.<sup>53</sup>

### **5.3 Which Educations are Eligible for Support?**

The SGT support can be allowed for educations provided in Sweden and entitled to regular study grants. The individual can also receive readjustment study support for educations financed by transition organizations, if the education provider is a physical or legal person. Support shall only be provided for the part of the study period that is covered by the syllabus or equivalent for the education.<sup>54</sup> If the applicant intends to study part-time, it must comprise at least two weeks for studies of 50-75 % full time, at least three weeks for studies of 40 % full-time and at least five weeks for studies of 20 % full-time.<sup>55</sup> The length of the education shall not exceed 80 full-time weeks for those who are at most 39 years old. This restriction is considered to reduce the risk of a person deliberately waiting to start a longer education program while waiting to receive SGT support. For those who have reached the age of 40, there is no such limitation in the length of the education supported by the SGT system. The

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<sup>49</sup> Ibid., at 385.

<sup>50</sup> Ibid., at 145.

<sup>51</sup> Ibid., at 26.

<sup>52</sup> Ibid., at 187.

<sup>53</sup> Ibid., at 189–191.

<sup>54</sup> Ibid., at 134.

<sup>55</sup> Ibid., at 135–136 and 151.

reason for this is that a person who has reached the age of 40 should have been in the working life long enough to need a new, longer education.<sup>56</sup>

There are also other restrictions for the SGT study support. Competence needs for a specific employer in order for the employee to be able to perform his or her regular work tasks, do not entitle the employee to the support. Educations that the applicant already has completed with a final grade, or diploma also do not qualify for SGT study support, nor do studies conducted abroad, or self-educations.<sup>57</sup> Support may, however, be granted for validation implemented within a course or an education program.<sup>58</sup>

#### **5.4 How Should the SGT Be Administered?**

The SGT is a state study grant and thus proposed to be administered and decided by the Central Student Aid Board (CSN), which also handles other state-funded student grants. CSN is proposed to have a coordinating role for the SGT study support. The requirements for SGT support shall, as far as possible, comply with the rules for other study grants.<sup>59</sup> According to §30 of the legislative proposal, the registered transition organizations shall have the opportunity to comment on whether a particular education is deemed to strengthen the individual's future position in the labour market, considering the needs of the labour market, in cases where the applicant has a connection to a transition organization. In its opinion, the transition organization shall state *how* the education applied for, will strengthen the individual's position in the labour market.<sup>60</sup> CSN shall pay special attention to such statement in their decision on SGT, the transition organization's statements are thus in practice expected to governing the CSN's decision.<sup>61</sup> It can be questioned whether the transition organization has such great knowledge of the entire labour market that they can make relevant assessments in areas other than those for which they are responsible.

It is proposed that the SGT study grant can be applied for twice per calendar year, once in the spring and once in the autumn. Grants are provided in the order the applications are received by CSN. A person who has previously been granted support for a certain education and continues that education has priority for continued study support. It is clarified, in the investigation, that different social benefits cannot be paid out for the same period in such a way that a person is compensated for more than one full-time benefit. An individual thus cannot have compensation from two different sources for the same activity and at the same time. According to the inquiry, anyone who has not actively participated in the studies for which the support has been granted, should lose the right to support and become liable for repayment. CSN is proposed to have a controlling function, ensuring oversight that the student receiving a grant, actively conducts

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<sup>56</sup> Ibid., at 138–140.

<sup>57</sup> Ibid., at 14.

<sup>58</sup> Ibid., at 136.

<sup>59</sup> Ibid., at 198.

<sup>60</sup> Ibid., at 223.

<sup>61</sup> Ibid., at 222.

studies. The checks must be carried out with a higher frequency than for those receiving the more common forms of student aids, in order to adjust and assure that the new system is not misused or overused. The study activity control should be based partly on the student's own obligation to provide information, partly on reports from the education provider to CSN. According to the inquiry, students who have not fulfilled their commitments regarding loans and repayments in accordance with current study grants should not be granted SGT.<sup>62</sup> A decision by CSN can be appealed to the National Board of Appeal for Student Aid. According to the proposal, decisions on repayment of student loans shall be reviewed by the administrative court system.<sup>63</sup>

## 6 Concluding Remarks

Several problems identified in the Swedish labour market necessitate better transition opportunities for people of working age. These problems are that Sweden has unemployment even if an acute need for staff exists in certain sectors and occupations, the number of sick-listed people is high, certain groups of people of active working age are having difficulty establishing themselves in the labour market, older employees need to keep working longer while facing discrimination in the form of ageism, and companies are experiencing difficulties hiring employees with required skills in connection with shifts in needed competence.<sup>64</sup> Global competition, technical advances, and new ideas about how companies should be organised are affecting individual workplaces, as are the labour supply, professional qualification requirements and, in turn, the means available to employees and the unemployed to find or keep a job. The need for transition in labour market will be facilitated if the workforce has the competence needed to face new conditions in working life.

The legislative proposal on SGT is an important tool for companies, public activities and the work force to be able to adapt to changes. In this case, employers' interest in skills supply and flexibility, employees' interests in job and employment security coincide with the society's interest in a high employment level and a longer working life for the workforce. The system can also contribute to breaking the pattern of age discrimination by empowering older professionals' possibilities to learning under economically reasonable conditions. The reform is thus well-motivated and appropriate.

Some parts of the legal content and design of the SGT seems however less satisfactory. One such part is the relationship between the employer's obligation to provide skills development for its employees and the opportunity for employees to use SGT to strengthen their security in the framework of existing employment. The labour law legislation in Sweden assigns the employer, by the managerial prerogative, the power to decide over its activities. The current

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<sup>62</sup> Ibid., at 18–20 and 200.

<sup>63</sup> Ibid., at 17.

<sup>64</sup> Government legislative bill prop. 2021/22 12, 17; Karlsson, N., Grönbäck, J., Joyce, P., *Kompetenspusslet*, [The Competence Puzzle] Ratio 2017; Legislative Inquiry SOU 2018:24, *Tid för utveckling*, [Time for Development] 64–65; and *Socialförsäkringen i siffror*, 58, [Social Insurance in Figures] Försäkringskassan 2021.

legislation, in this area, restricts this right in some respects in favor of the interest of employees and the society. There are, however, no legal rules that impose a responsibility on employers to develop the skills of their staff. However, such a proposal was made in the legislative inquiry SOU 2020:30.<sup>65</sup> The employer can, by the managerial prerogative make judgments if there is a need for further training of the employees. The employer also has the right to decide who will receive skills development, how many will receive it and which training efforts will be offered.

As identified previously the employer has no obligation to educate more employees than the employer deems necessary for the business. Technical development and other changes of the work content, make it possible for employers to change the basic general requirements for different positions. There is an obvious risk that some employees will be laid off because they do not have the opportunity to get skills development and therefore do not meet new basic requirements for positions with the employer. The new study grant for transition (SGT) is seen as part of the modernization of the labour law regulations, which also includes changes in SEPA. The security, for mainly, permanent employed employees with a long length of service will be weakened in the proposed new regulation in SEPA. The risk for older workers to be laid off will thus increase. It should be possible for older employees to use SGT in order to increase their skills and thus strengthen their position in employment, if the employee is not prioritized by the employer for skills development measures. It is important that individual employees do not “fall through the cracks”.

The suggested legislation regarding SEPA gives employers greater flexibility to decide on their staffing e.g., in a situation where a shortage of work occur. Research has shown that it is employees' skills that to a great extent, compared to a long period of employment, determine an employee's security in existing employment.<sup>66</sup> Ministry Report Ds 2021:18 states that SGT shall not be obtainable to meet the competence needs of a specific employer or for training efforts that it is reasonable for the employer to provide, in order for employees to be able to perform their ordinary tasks. Workplace-specific training and skills development are, according to the Ministry Report, the employer's responsibility.<sup>67</sup> The statement, unlike applicable law and the proposal in the legislative inquiry SOU 2020:30, has no limitations. It can be questioned whether this means that the employer has a legal responsibility to provide such skills development to *all workers* affected by new qualification requirements.

This would be a great intervention in the managerial prerogative that must be clearly expressed in the legislation process. The statement would make it possible to legally assess the employer's liability in this area. If the court considers, in some cases, it unreasonable for employers to take the responsibility for company-specific training for one employee, and such skills are necessary for the employee to be able to maintain job-security in the long term, the employee should have access to SGT. It gives the individual employee a greater

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<sup>65</sup> See Legislative Inquiry SOU 2020:30, §21a in the inquiry.

<sup>66</sup> Ulander-Wänman, C., Anställningsskydd och kvalifikationskrav i förändring? [Employment Protection and Qualification Requirements in Change?], *Arbetsmarknad & Arbetsliv* 2016 årgång 22, no. 3/4 höst/vintern 2016.

<sup>67</sup> Ministry Report Ds 2021 141.

opportunity to take responsibility for strengthening its position in the employment relationship. It is important that all employees, not just those who are prioritized by the employer, are given the opportunity to take responsibility for their job security. Otherwise employees who are not prioritized by the employer and also cannot be awarded SGT are still in a precarious situation.

The proposed legislation assigns CSN the right to decide in individual cases on approving or disapproving SGT after a registered transition organization<sup>68</sup> has submitted its opinion. In practice, the transition organization's opinions will be influential guidance for the CSN's decisions. An individual thus becomes dependent on the transition organization's assessment of whether training efforts are likely to strengthen the individual's position in the labour market, considering the needs of the labour market. There are several obvious problems with such an arrangement. The individual is probably the person who first realizes when his and her knowledge is insufficient or when he or she needs or desires a change in career. The society, employers and the individual are all benefitted if the individual is given opportunities to take measures to achieve job or employment security. The individual should thus have the decisive influence over the need for skills development.

There is a risk that transition organizations that work within a certain sector and with blue or white-collar employees are well aware of the need for skills supply in their own sector and industries and for their own employee groups, but lack insights about the needs of the labour market as a whole. Opinions may thus be built on assessments based on a limited area of responsibility and do not take sufficient account of needs in other sectors or industries. It can limit mobility between sectors and industries and between jobs attributed to workers or civil servants.

The transition organizations shall, according to the proposed legislation, in their opinions state *how* the education applied for, will strengthen the individual's position in the labour market. This will be a difficult task for the transition organization. It requires both a profound knowledge of the conditions in the entire labour market and insight into why and what knowledge and skills the individual needs especially when the applicant has a job. The criteria stated for having SGT support are generally specified. It will be difficult for individuals and employers to understand and be able to predict whether an individual's situation will give the right to support or not. There is also a risk of a lack of equal treatment for applicants for support, if different transition organizations make diverse interpretations of the circumstances that justify SGT. Conditions that do not give the right to SGT are, on the other hand, clearly stated in the proposed legislation. The opinions from the transition organizations will probably become standardized and leave too little room for the applicant's own assessments and wishes. If an applicant is to be able to influence the remark of the transition organization on the right to SGT, it presupposes that he/she is world-oriented, has good competence about the labour market and is able to argue for his/her opinion in the communication with the transition organization.

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<sup>68</sup> Sweden has transition organizations in all sectors of the labour market established by the social partners for employees covered by a collective agreement. The organizations support employees who risk dismissal or already are unemployed. Transition organizations offer transition and skills development measures in order to make it easier for the individual to obtain a new job.

Thus, it is likely that well-educated people will have greater chances to influence the transition organization's remarks. There is a risk that the applicant who has less resources in these respects will not be able to influence decisions of the transition organizations to the same extent. One possible consequence of this is that all applicants do not have equal opportunities to use SGT in a way that best strengthens their long-term position in the labour market.

A decisive factor for how effective the SGT support will be, is how the educational infrastructures will adapt to the business community's need for flexible and quality-assured educational efforts.<sup>69</sup> SGT is a generous system for the individual, but it provides skills development for a maximum of 44 weeks full time. This means, as I see it, that the efforts will mainly be actualized when the applicant wants to build on an education that the individual already has. It is socio-economically efficient if the workforce does not always have to complete long educational programs to obtain the required skills in the labour market, but can study part-time and specially adapted shorter courses. In order to be able to tailor educations to the needs of the labour market, close cooperation will be required between e.g., individual employers, industry representatives and the social partners to identify and concretize the need for new knowledge in the labour market.

This in turn requires cooperation between different actors with knowledge of the labour market and a coordinating mouthpiece that can communicate and inform educational institutions what education and skills competence measures that are lacking in the labour market.<sup>70</sup> A coordinating function (authority) will likely be needed, to act together with different stakeholders to identify and specify the need for new knowledge in the labour market. Currently, there is no actor with a function to take responsibility to systematically investigate educational needs on the labour market and how educational offerings match identified needs.<sup>71</sup> This will be particularly important when the SGT support system is launched. The educational institutions will also need economic incentives to develop short and flexible training efforts for specific skills development. It is also important to understand that some individuals may have more difficulty to acquire new knowledge, due to disabilities for example dyslexia. Even older workers who are unaccustomed with studies and feel uncertainty about their ability to complete the studies at a normal pace may need extra support. In order for everyone in the workforce to dare and be able to develop new skills with the support of SGTs, it is important that the financial conditions for educational providers enable adaptation of the learning efforts to the needs of different individuals.

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<sup>69</sup> Government bill prop. 2020/21:60 *Forskning, frihet, framtid – kunskap och innovation för Sverige*, [Research, Freedom, Future - Knowledge and Innovation for Sweden] 2020.

<sup>70</sup> See Ulander-Wänman, C., *En modern arbetsrätt, vägen framåt, Arbetsmarknad i förändring. En antologi om förbättrad omställning*, [A Modern Labour Law, the Way Forward. Labour Market in Change. An Anthology on Improved Transitions], 124–126, Fores 2020; and Ulander-Wänman, C., *Hållbart Arbetsliv genom Kompetensutveckling i Samverkan (HAKS)*, [Sustainable Working Life through Skills Development in Collaboration] 30–32.

<sup>71</sup> However, it can be noted that there is a high level of participation from working life within the Higher Vocational Education in Sweden, Lind, P., Westerberg A., *Yrkeshögskolan – vilka söker, vem tar examen och hur går det sedan?*, [Higher Vocational Education - Who is Applying, Who Graduates and How is it Going Then] IFAU 2015:12.

The development of courses, with a syllabus stating expected study outcomes linked to various teaching elements and examinations, is a demanding task. However, this is what is required for the education to be quality assured and able to be evaluated by an outside actor, such as a government agency.<sup>72</sup> If the course is only arranged on a few occasions, there is probably no financial incentive for the educational institution to invest resources in developing such a training effort. It may therefore be more economically advantageous to provide longer courses that give a higher and more reliable financial income because they last for and will be offered for several years. The state needs to review its funding allocation and create guidelines that promote new, in demand attractive courses of study at different levels for the workforce that make it possible to benefit from SGT. A function should also be assigned with the objective to evaluate the educations carried out within the SGT system in order to prevent individuals from spending his or her supported available education days on a course that does not meet quality requirements. The effectiveness of the proposed system may be achieved first when all these puzzle pieces are in place, and hopefully the opportunity to lifelong learning will result in less age discrimination by employers.

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<sup>72</sup> See also COM(2016) 383 final 2016/0180 (NLE) Proposal for a Council *Recommendation on the European Qualifications Framework for lifelong learning and repealing the Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning.*