

Summary

In the appropriation directions for 2021, the Government tasked the Swedish Higher Education Authority to review the legal conditions for the establishment of education and research activities in Sweden. The Swedish Higher Education Authority's review focuses on the opportunities for foreign operators to establish education and research activities in Sweden.

Special authorisation is not required to organise and provide education at higher education level in Sweden. In addition, the concepts of *university* and *college* are not protected in Swedish legislation. However, if a foreign higher education institution wishes to issue a qualification for which the Swedish Government has prescribed regulations, the higher education institution must apply to the Government for degree-awarding powers. The application is then considered according to the Act Concerning Authority to Award Certain Qualifications (1993:792). A foreign higher education institution may choose to form a legal person under Swedish legislation, for example, a Swedish limited liability company, in order to provide the education in that form of activity. The Swedish limited liability company can apply for degree-awarding powers on the same terms as other Swedish legal persons. However, an authorisation from the Riksdag is required in order to allow the Government to decide on granting degree-awarding powers to a foreign higher education institution or to any other foreign legal person.

The education provided in whole or in part by a foreign higher education institution's campus or branch in Sweden is not eligible for Swedish post secondary student aid unless the Government or an authority empowered for that purpose decides on it. The higher education institution can apply to the Government for the education to be eligible for post secondary student aid in accordance with Chapter 1, § 4 Student Aid Ordinance (2000:655). In order for the application to be approved, the education must meet certain quality requirements, among other things. Another condition is that budgetary resources have been assigned.

A foreign higher education institution that chooses to establish in Sweden will be able to charge its students tuition fees to the extent compatible with the home country's legislation. The foreign higher education institution is not bound by the provisions of the Swedish Higher Education Act (1992:1434) on free education.

It is conceivable that a foreign higher education institution, acting independently, chooses to establish education activities in Sweden without Swedish degree-awarding powers. No Swedish legal provisions for students will then be applicable to the students admitted to the

education. Instead, the regulations that the operator itself decides on for the education and the contractual terms that the students may have entered into with the operator shall apply. If a foreign higher education institution establishes education activities in Sweden in collaboration with a Swedish higher education institution, it will be critical to the rights of the students with regard to which of the higher education institutions it is that admits the students to the education, i.e. to which higher education institution the students formally belong.

A general authorisation is not required to establish and carry out research in Sweden. However, research on products that are harmful to health, on radiation or on living beings, for example, may require special authorisation for the activities. A foreign operator will also need approval in accordance with the Act (2003:460) Concerning the Ethical Review of Research Involving Humans if the operator is to carry out research that falls within the scope of the legislation.

A foreign operator that establishes research activities in Sweden will not be covered by the Act (2019:504) on Responsibility for Good Research Practice and the Examination of Research Misconduct. However, demarcation problems may arise if the establishment in Sweden takes place in collaboration with a Swedish higher education institution that is covered by the law. On the other hand, if the foreign operator was to provide education and was granted Swedish degree-awarding powers, the law shall apply to the operator. This means that the operator and its researchers will be covered by the law's responsibility for good research practice and the examination of research misconduct.

A foreign higher education institution that chooses to establish education activities in Sweden without Swedish degree-awarding powers will not be subject to the supervision of the Swedish Higher Education Authority. However, if the higher education institution applies for and is granted degree-awarding powers, the education will be subject to the supervision of the Swedish Higher Education Authority in the same way as other independent education providers with degree-awarding powers. The education may also be subject to the supervision of the Swedish Higher Education Authority if the Government decides that the education shall be eligible for student aid.

A foreign higher education institution that establishes education activities in Sweden without Swedish degree-awarding powers will not be obliged to participate in any follow-up or evaluation of the education. However, if the higher education institution applies for and is granted degree-awarding powers, the education will be subject to the Swedish Higher Education Authority's follow-ups and work on quality assurance. A foreign operator that establishes research activities in Sweden will not be obliged to participate in any quality evaluation of the research activities. However, if the operator applies for research grants or other funding for its research, the projects may be evaluated in accordance

with the conditions set by the research funder for the funding. In addition, research may be included in the statistical surveys carried out by Statistics Sweden (SCB). If the operator also provides education and is granted degree-awarding powers, information about the research may also be included in the Swedish Higher Education Authority's statistics on research.

A conceivable source of funding for a foreign higher education institution that provides education in Sweden may be tuition fees. Another alternative is so-called contracted courses. This means that a higher education institution from a country within the EEA may fund education provided in Sweden by selling it to state higher education institutions and independent education providers. However, if the education is provided by a higher education institution from a country outside the EEA, state higher education institutions in Sweden cannot purchase the education according to the conditions of the current appropriation directions. There is nothing to prevent a foreign higher education institution that establishes higher education activities in Sweden from applying to the Government for government grants for the education activities. However, there is no guarantee of government grants, even if the higher education institution is granted degree-awarding powers. The question of government grants is separate, and there is no immediate link between degree-awarding powers and government grants.

When it comes to research, a conceivable source of funding could be contract research for remuneration. Authorisation is not required to carry out contract research in Sweden. Another option is to fund research through external research funding from governmental or private research funders. However, a research operator applying for grants from a research funder must meet the conditions set by the research funder for the grants. Among other things, this applies to who can apply for grants or be an administrating organisation. As an example, the report presents the conditions set by the Swedish Research Council for approved administrating organisations.

A foreign operator planning to start education or research activities in Sweden must also take a position with regard to several other issues prior to establishment. Such a question is with regard to what form of activity should be used. One alternative could be to conduct the activities as a branch to the activities in the home country. Another alternative is to form a Swedish legal person to conduct the activities, such as a limited liability company.

Another question concerns the forms of activity that a Swedish higher education institution may use to collaborate with a foreign operator on the establishment of education and research activities in Sweden. Independent education providers, such as Chalmers University of Technology, have the opportunity to form a limited liability company or

foundation in order to collaborate with a foreign operator. For a state higher education institution to be able to participate in forming a limited liability company or foundation requires both the Riksdag's authorisation and a decision by the Government. A foreign operator that is considering establishing education or research activities in Sweden may also need to consider various aspects of migration law, such as if the target group for the education is, in whole or in part, incoming third country nationals. It is the Swedish Migration Agency that assesses whether the education is conducted at an educational establishment for higher education and whether the education can therefore be eligible for a residence permit.

Finally, the Swedish Higher Education Authority finds that there are no formal obstacles to prevent a foreign operator from providing higher education or establishing research activities in Sweden. At the same time, there are several central regulatory provisions and other conditions that a foreign operator must consider, in particular when it comes to establishing education activities. Positions taken within one area may have consequences in another area. The Swedish Higher Education Authority also finds that some areas that may be of importance to establishing education and research activities in Sweden may need particular investigation or in-depth analysis. The Swedish Higher Education Authority hopes that this report will be a basis for further Government considerations relating to the issue of establishing education and research activities in Sweden.