1 Introduction

The concept of family may appear easy to grasp and generally understood. The family as an institute appears to have global significance and meaning. However, even though the meaning of the concept is drawn from both time and space, it may also be interpreted differently within a given society. In article 16 in “the Universal Declaration of Human Rights,” the family is stressed as the natural and fundamental basis for society and this is repeated in several other international instruments. Article 16 thus indicates that the family concept is a commonly understood one which includes certain specific standards. Today, however, various concepts of family are used in different contexts; the legal concept of family, which among other things is the basis for the private legal duty to financially support, the statistical concept of family which follows national regulations on what a family is and the psychological concept of family which is the widest of the three. The psychological concept of family means, among other things, that a child can be a part of more than one family – it can be a part of the father’s family at the same time that it is a part of the mother’s. Accordingly, there is no uniform family concept. When the family is used as a concept in legislation, it has not been given clear boundaries. The concepts household and household fellowship are sometimes used; however, these also not especially well defined, either. The consequence of this is that a household can contain persons who are not part of the same family and the persons in a family do not necessarily share the same household. The most prominent problem has concerned the requirements for when to equivalent a man and a woman who live together to a married couple. In Sweden, the answer to this question has normally been that their

1 This article is a part of a project for which I have been granted financial support by the National Social Insurance Board.

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relationship must be qualified in a certain way. This has been achieved by having or having had children together. In cases where they do not have or have had children together, a difference can be noted in the legal application in that it has often been possible to receive social benefits by merely living together, while the legislator has been more cautious in making persons who live together equivalent to married couples as far as their internal obligations are concerned. Also, there is no family legal obligation to provide for a person one merely lives with. However, the Swedish Supreme Administrative Court has established that a person’s need of financial support cannot be determined without assessing the financial state of the person he or she lives with – and this is the case from the first day they move in together. Accordingly, this means that there is an “indirect” obligation for persons who live together to support each other financially.

However, the concept of family has recently been given a meaning within the European Union as the institutions have assumed a more active role in the development of the family law and family policy of the European Union. As a result, the European Court of Justice has in several cases defined what a family member is in a social rights context. One must keep in mind, however, that the origin of the definitions was due to a wish to promote and facilitate the mobility of migrating workers which made it necessary to expand the rights to take up residence abroad as well as other valuable social rights for family members who came along.

However, the definitions have been criticized as being based on the traditional, legally married, financially functioning nuclear family. Another problem is the conflict between the advances that the European Union has made on the family area and the fundamental principles of human rights that have become more important within the European Union lately. In the Western society, however, this no longer mirrors the actual reality. The nuclear family, with the heterosexual couple as a basis, does no longer have a monopoly as the only possible family norm, even though it still constitutes the central family project in our Swedish culture. As marriages so often end in divorces, it is now reasonable to describe an up-break from the nuclear family and the creation of a new family or a new form of family as a fundamental element in the social pattern in today’s society.

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6 Cf. to Bejstam, p. 147.
7 RÅ 1995 ref 48. See also RÅ 1985:2:1, where the couple had lived together for two years, however.
9 Stalford, p. 410, with further references.
10 Stalford, p. 410.
In this article, I compare what family a child is regarded as belonging to in matters of financial support in Sweden, Norway, Finland, England and Australia with the factors that decide this. In this comparison, the outlook on our own system of national registration is the focus of interest as it so often, in spite of its being a technical system, is of importance to the Swedish solution to the problem.

2 Competition between Potential Recipients of Financial Support

2.1 Sweden

2.1.1 Parental Insurance in connection to Child Birth or Adoption

The Swedish parental allowance is normally based on the principle of loss of income. Parents are entitled, in a certain way, to reimbursements for loss of income in connection to child birth/adoption and care of the small child.12

Parental allowance is gender neutral. This means that either of the parents, with joint custody, is entitled to receive parental allowance for half of the possible time. However, a parent can refrain from his or her right to all but 60 days with amounts that correspond to that parent’s sickness benefits.13

Accordingly, this right to half of the days is valid whether the parents do or do not live together and no matter to what extent the child lives with one of the parents only or how extensive the access to the other parents is. However, due to natural causes, only the mother who is entitled to receive parental allowance before the child is born while it, after the time of the birth, is the parent who is mainly responsible for the care of the child that is entitled to parental allowance.14

Accordingly, where the child lives is of no importance in this instance but the right to paid leave automatically follows the custody as such. Thus, this means that a parent can decide for himself/herself to save “his/her” days in order to use them when the child is older.15

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12 For a closer investigation of parental allowance, see Ryrsedt, Eva, Familjerätt och stöd till barnfamiljer, in JT 2004-05, häfte 3, pp. 598-634.

13 Chapter 4, section 3, General Insurance Act (Lag (1962:381) om allmän försäkring).

14 Chapter 4, section 4-5, General Insurance Act.

15 Chapter 4, section 4-5, General Insurance Act.
2.1.2 Child benefit

Child benefit and thereafter extended child benefit followed by studying benefits can be paid out, at the longest, until the first six months of the calendar year that the child turns 20.\textsuperscript{16} A so-called “supplement for several children” can be paid out to big families.\textsuperscript{17} The children in the family do not have to share the same parents.\textsuperscript{18} If a parent has sole custody of a child, the custodian is also entitled to receive the child benefit alone. If the parents have joint custody of the child, the mother is entitled to receive the child benefit, unless the parents have announced that the father is to receive the child benefit instead. This was originally motivated by the fact that generally the mother was the parent who was immediately responsible for the child and therefore was the best person to determine its needs. This would guarantee that the child benefit was used in the best way to ensure what was best for the child. There would thus be a better chance that the child really benefited from the allowance and that it caused the standard raising effect it was intended to. In addition, there were practical reasons: it was stated that, in general, the mother had better possibilities than the father to personally sign for the amount.\textsuperscript{19}

If the child lives permanently with just one of its parents, and this has been duly reported, that parent is entitled to receive the benefit.\textsuperscript{20} The allowance is paid to the parent that the child actually lives with. Even for a child who lives alternatively with both its parents, one of the parents has to be regarded as the one that the child lives permanently with, which means that the national registration is normally decisive.\textsuperscript{21} When the child becomes of age, this means that the child itself receives the allowance.\textsuperscript{22} When the General Child Benefit Act and the Extended Child Benefit Act\textsuperscript{23} are combined so that a supplement for several children is paid out even though there is no child that is entitled to child benefit but only to extended child benefit and the children are of age, the supplement for several children will be paid out to that or those parent(s) that the children are permanently living with. If two persons are potential

\textsuperscript{16} Sections 1-2, General Child Benefit Act (Lagen (1947:529) om allmänna barnbidrag), section 1, Extended Child Benefit Act (Lagen (1986:378) om förlängt barnbidrag).

\textsuperscript{17} Section 2 a, General Child Benefit Act.

\textsuperscript{18} RFV rekommenderar 1998:8, Allmänna råd; Allmänt barnbidrag, flerbarnstillägg och förlängt barnbidrag, p. 24f.

\textsuperscript{19} Prop. 1947:220, p. 91.

\textsuperscript{20} Section 4, General Child Benefit Act. A decision has been made to adjust section 4 in the Child Benefit Act, as two persons of the same gender can now, after adoption, be parents to a child. Act concerning Change in the General Child Benefit Act (Lag (2002:606) om ändring i lagen (1947:529) om allmänna barnbidrag).

\textsuperscript{21} RFV rekommenderar 1998:8, p. 20f.

\textsuperscript{22} RFV rekommenderar 1998:8, p. 25f.

\textsuperscript{23} Section 2 b, General Child Benefit Act, section 1, Extended Child Benefit Act.
recipients of the supplement for several children, it is paid out to the woman, unless the man and the woman announce jointly that the man is to receive the allowance.  

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The regulation regarding the child benefit recipient thus takes its starting point with the mother, which has a historical explanation. However, if the child lives with only one of its parents, or alternatively with both, the child’s residency will decide the family belonging in regard to the child benefit. In most cases, this will mean that the child’s national registration will be decisive and this in spite of the fact that there may be no material difference in the child’s living arrangement with its parents.

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2.1.3 Child Support – provided by the other Parent or by the State

That parents have to financially maintain their children is established in the Children and Parents Code. However, the obligation to financially maintain is not absolute but instead depends on the child’s individual needs and the parent’s individual financial capacity. The maintenance obligation may also apply to a step parent, but only subsidiary, however. In the case that the parent under the obligation to maintain the child does not do so, or if his/her financial capacity is not sufficient, a public system for child support is brought into play. This support is thus a guarantee that children of single parents will receive certain financial support. As a main principle, the parent that the child does not live with is to repay the amount that the government has paid out. However, when the repayment duty is established, consideration is given to the maintenance burden of the one who has to repay and to his/her income in a specifically stated manner.

The public child support is thus paid out to separated parents; it does not matter if the parent that the child permanently lives with is single or has a new family, however. If the child lives permanently with just one of its parents

24 Section 4 a, General Child Benefit Act.
25 There is a suggestion, however, that it should be possible to divide the child benefit in certain cases, Återrapportering av regeringsuppdraget avseende könsneutralt barnbidrag (S2004/5213/SF).
26 Chapter 7, section 1, para. 1, Children and Parents Code (Föräldrabalken 1949:381).
27 Chapter 7, section 1, para. 1, Children and Parents Code.
28 Chapter 7, section 5, Children and Parents Code.
and is registered there as well, this parent – the so-called resident parent\textsuperscript{32} – receives the support\textsuperscript{33}. However, a child may also be entitled to public child support if its parents do not live together but the child lives alternately\textsuperscript{34} with both of them.\textsuperscript{35} Half of the support amount is then paid out to each of the parents. From each respective amount, half of a fictitious repayment duty, that is based on the income of the parent that receives the public child support, is subtracted.\textsuperscript{36} In a case of alternative residency, there is no repayment duty.\textsuperscript{37}

This support system is also based on the national registration. However, as alternative residency may also constitute a basis for financial support, the national registration does not have the same decisive importance as it otherwise would have had.

### 2.1.4 Accommodation Allowance

Accommodation allowance can either be paid out to cover expenses for housing where the applicant lives and is nationally registered or as a special allowance for children who live there.\textsuperscript{38} Different types of families with children are therefore entitled to either both types of support or to merely the accommodation-bound allowance. A child is regarded as a part of the family if the parent has custody of the child and it lives permanently with the said parent.\textsuperscript{39} If separated parents have joint custody of a child, the child is regarded as belonging to the family that it is nationally registered with.\textsuperscript{40}

Thus, the national registration decides here as well to what family a child is to be regarded as belonging, and thereby who will be the recipient of the special allowance for children who live at home, even though other circumstances can be of importance. Accordingly, in a case where the child has alternate residencies, the child cannot be regarded as belonging to more than one family and it may be hard to decide to what family the child has the strongest...

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\textsuperscript{32} When the child lives with one or two especially appointed custodians, they may also be entitled to maintenance, section 3, para 3, Public Child Support Act.

\textsuperscript{33} Section 3, Public Child Support Act.

\textsuperscript{34} It can be difficult to draw the line between alternate residency and when the child lives with only one of the parents, but has extensive access to the other parent. See RFV Vägledning 2001:9; Underhållsstöd, p. 32.

\textsuperscript{35} Section 3, para 2, Public Child Support Act.

\textsuperscript{36} Section 8, para. 3, Public Child Support Act.

\textsuperscript{37} Section 21, para. 2, Public Child Support Act.

\textsuperscript{38} Sections 1 and 14, Accommodation Allowance Act (lagen (1993:737) om bostadsbidrag).

\textsuperscript{39} Section 10, para.1, Accommodation Allowance Act.

\textsuperscript{40} Section 11, Accommodation Allowance Act.
ties. In such a case, the address in the national registration will normally be decisive.

2.2 Norway

2.2.1 Paid Parental Leave

Also in Norway the right to paid leave, which lasts for approximately one year in connection with child birth is, as a main rule, based on the principle of loss of income.\(^\text{41}\) Aside from a few weeks (four weeks for the father and nine weeks for the mother), the period of time is not directed to either of the parents. However, in order to be entitled to the reimbursement, the parent in question has to actually take care of the child.\(^\text{42}\) There is, however, an important difference between the mother and the father in the way that they have to qualify themselves for the reimbursement. If the mother is qualified for paid parental leave, her right is not affected if the father does not qualify or even if he stays at home with the child at the same time as the mother.\(^\text{43}\) In certain circumstances, the mother may even be entitled to the father’s four destined weeks.\(^\text{44}\) However, a father cannot use any other parental leave than his “own” four weeks if the mother stays at home at the same time. A prerequisite for his right to use the paid leave is thus that she e.g. works – and he can never gain access to “her” nine weeks. What is more – if the mother is not qualified for reimbursement, the father loses the right to “his” weeks.\(^\text{45}\) This is based on the opinion that as long as he is the only one entitled to reimbursement, he does not need a special quota.\(^\text{46}\)

As far as the right to paid parental leave is concerned, the child’s residency is of no importance, other than the fact that the parent who claims that he/she is entitled to the reimbursement has to take care of the child. In spite of this, a difference is made between mom and dad and it is shown in the regulation regarding qualification time.

\(^\text{41}\) If the mother has not qualified for parental allowance she may, and in certain cases so can the father, receive a set amount, a so-called engangsstonad. For this, see section 14-12, National Insurance Act (Lov 1997-02-28 nr 19 om folketrygd). Cf. also to, http://odin.dep.no/bfd/global/sok/bn.html?soke=j&sokeord=engangsstonad, 2005-06-17. All dates in the form: YYYY-MM-DD.


\(^\text{43}\) Section 14-9 e contrario, National Insurance Act.

\(^\text{44}\) Section 14-10, National Insurance Act.


\(^\text{46}\) Ot.prp. nr 52 (1999-2000) Om lov om endringer i lov 28 februar 1997 nr. 19 om folketrygd (selvstendig opptjeningsrett til fødsels- og adopsjonspenger for fedre mv.), section 8.5.
2.2.2 Child benefit (Barnetrygd)

In Norway, child benefit is paid out to children under 18.\textsuperscript{47} If the parents live together, the allowance is normally paid out to the mother. However the father can receive the payment, if the parents agree on it. Accordingly, when the parents live together, the mother is the one who wins every conflict.\textsuperscript{48} When the parents do not live together, it is the parent that the child lives with (bu fast) that is entitled to the allowance.\textsuperscript{49} When deciding with whom the child should be regarded as living, the national registration makes for an important circumstance.\textsuperscript{50} However when the parents do not live together, they can divide the allowance between the two of them, if they have agreed on alternate residency (delt bosted) and if one of them demands that the allowance is divided.\textsuperscript{51} If there is no alternate residency, but the “access parent” still has vast access to the child, it has not been considered desirable to allow the parent a possibility to demand a division of the allowance. It is stressed in the travaux préparatoire that the access parent will instead benefit from the child support regulation. As the child benefits from the child benefit, this reduces the financial demands on the support-paying parent, and it is considered that this parent therefore has been sufficiently benefited, too. A division of the allowance would have meant that the duty to pay child support was increased instead.\textsuperscript{52}

The mother has an advantage here as well, as she is normally the recipient of the child benefit if the parents live together. Otherwise, it is the parent that the child lives with who is entitled to the allowance. At the decision, the national registration is normally be decisive. In cases of alternate residency, the allowance can be divided, however, if either of the parents insists on it.

2.2.3 Child Support – as Contribution from the other Parent or as advanced Child Support (Bidragsforskott)

Also in Norway, the parent that does not live with the child is to pay child support (fostringstillskott eller barnebidrag).\textsuperscript{53} The child support is set with a

\textsuperscript{47} There is also a right to a certain income-based studying benefit (grunnstipend) while a person is enrolled in certain basic education. Cf. to \url{http://www.lanekassen.no/templates/Page____5506.aspx}, 2005-06-17.

\textsuperscript{48} Section 12, Child Benefit Act (Lov 2002-03-08-4 om barnetrygd. Ot.prp.nr 57 2000/2002 11.3).

\textsuperscript{49} Section 2, para. 1, Child Benefit Act.

\textsuperscript{50} \url{http://rundskriv.trygdeetaten.no}, 2005-06-15, Lov om barnetrygd – Hovednr 33 Kap 2 – Vilkår for barnetrygd.

\textsuperscript{51} Section 2, para. 3 Child Benefit Act. Ot.prp. nr 57 2000/2001 7.2.3.

\textsuperscript{52} Cf. to Ot.prp. 57 2000/2001 7.2.3.

\textsuperscript{53} Section 67, Children and Parents Act (Lov 1981-04-08-7 om barn og foreldere).
starting point in the expenses for the child and calculated relatively to the income of the parents. In the calculation, consideration is also given to the extent of the access that the child has to the support-paying parent. There are specific regulations regarding alternate residency. There is no regulated duty to financially support step children. The so-called extended child benefit (utvidet barnetrygd) offers single parents financial support. This support ceases if the parent remarries, or in certain cases if he/she in some way becomes a part of new family. In my opinion, this means that the step parent is supposed to pay for some of the expenses for the child. There is public system in Norway that guarantees children a lowest amount of money, advance of child support (bidragsforskott). Normally, it is the parent who actually takes care of the child that is the recipient of this allowance. A child may be entitled to advance of child support both in a situation where the parent that is liable to pay child support does not do so and when the parent does not have enough money to pay the entire child support. However, advance of child support is based on income in Norway and is reduced at a fairly low income.

In Norway, the decision of who is to be the recipient of child support or advance of child support is thus based on who actually takes care of the child. The actual care is normally given by the parent that the child lives with.

2.2.4 Accommodation Allowance (bostøtte)

In Norway, accommodation allowance can be paid out to persons with low incomes and an important criterion is whether there are children under 18 years of age in the family. The size of the allowance depends on the number


55 Section 71, Children and Parents Act and section 8, Decree concerning the Deciding and Changing of Child Support.

56 For this, see chapter 9, section 3, Child Benefit Act.

57 Section 1, Act regarding Advance of Child Support (Lov 1989-02-17-2 om bidragsforskott).

58 Section 6 Act regarding Advance of Child Support.

59 Section 3, para. 1 and 3, Act regarding Advance of Child Support.

60 Section 3, Decree on the Enforcement of the Regulations regarding the Income-Based Advance (Forskrift 2003-02-06-125 om gjennomføringen av bestemmelsene om inntektsprøving av forskott).

61 Section 1, Decree concerning Accommodation Allowance from the Norwegian State House Bank (Forskrift 2004-12-22-1755 om bostøtte fra den norske stats husbank).

62 Section 2, Decree concerning Accommodation Allowance from the Norwegian State House Bank.
of children in the household.\textsuperscript{63} Where the child is registered as living in the national register (folkeregistret) is decisive.\textsuperscript{64}

In the Norwegian system, children can be the deciding factor when it comes to accommodation allowances and it is thus very important to what family a child is regarded as belonging. In this case, the national registration is decisive.

2.3 Finland

2.3.1 Paid Parental Leave

Reimbursement is paid out as maternity allowance for a total of 105 week days, paternity allowance for a total of 18 week days and parental allowance for a total of 158 week days. Accordingly, the total amount of time is approximately nine months.\textsuperscript{65} The reimbursement is based on income, but can also be paid out as a basic, set amount if the applicant does not have an income.\textsuperscript{66} The parental allowance is gender neutral with equal rights for both parents.\textsuperscript{67} Paternal and parental allowance require, however, that the father is either married to the mother and that he does not live separated from her, or that the parents live together and are joint custodians.\textsuperscript{68}

2.3.2 Child benefit

Child benefit is paid out until the child has turned 17 and it is calculated so that a supplement for several children is paid out.\textsuperscript{69} Single parents also receive a supplement.\textsuperscript{70} Either of the parents can be recipients of the allowance, as can another custodian, or in certain cases the child after it has turned 15.\textsuperscript{71}

\begin{footnotes}
\textsuperscript{63} For calculations, see www.husbanken.no 2005-06-17 Ekstern retningslinje HB 9.B.4.3 02.05 16.03.2005.
\textsuperscript{68} http://www.fpa.fi/in/internet/liite.nsf/alias/br2_05/$File/br2_05.pdf?OpenElement 2005-06-16 p. 10 and section 21, Act regarding Health Insurance.
\textsuperscript{69} Sections 1 and 7, 2 para., Child Benefit Act (Barnbidragslag 21.8.1992/796).
\textsuperscript{70} Section 7, 3 para., Child Benefit Act.
\end{footnotes}
child benefit cannot be divided, however, and is paid out to the person that has been reported as the recipient or as the custodian of the child under the condition that this person takes care of the child. When it is not clear who the correct recipient of the allowance is, the allowance is paid out to the person who is the main care-giver of the child. This is usually the parent with whom the child resides. It is often the national registration that controls the address the child is supposed to reside at.

2.3.3 Child Support and Public Child Support

The parents’ respective responsibility to financially support their child is the starting point in Finland as well. The obligation is calculated with a starting point in the child’s needs as well as the parents’ financial capacity and is paid out as child support if the child and parents do not live together. There is also a public financial support (underhållsstöd). This means that the child is entitled to a basic level of support even if the parent who is liable to pay child support cannot pay all of or part of it, or if he/she is able to pay but does not do so. However the parent who is liable to pay child support has a repayment duty to the state. As there is an option to a higher child benefit for parents who are sole providers, single parents can receive financial support. This support ceases when the parent remarries or moves in with someone to form a marital-like relationship. This, in its part, means that the step parent is expected to share some of the obligation to financially support the child.

2.3.4 Accommodation Allowance

Accommodation allowance is meant for persons with low incomes. The accommodation allowance is paid out to the household as such and the size of the household determines the size of the allowance, which means that the number of children that are regarded as belonging to the family is of importance. Who permanently shares the same house is decisive, as these

72 Section 6, Child Benefit Act.

73 According to interview. Cf. Förmånsanvisningar 1 Barnbidrag 4.1.1. rätt till barnbidrag.

74 Chapter 1, sections 1-2 and chapter 2, section 4, Child Support Act (Lag om underhåll för barn) 5.9.1975/704.

75 Chapter 1, sections 1-2 and chapter 2, section 5, Public Child Support Act, (Lag om underhållstrygghet 7.8.1998/671).

76 Chapter 5, section 15, Public Child Support Act.

77 Section 7, para 3, Child Benefit Act.


79 Chapter 3, section 5, Accommodation Allowance Act (Lag om bostadsbidrag 4.6.1975/408).
are regarded as belonging to the same household. Again the national registration is decisive as to where the child is supposed to reside and thus what household he or she is regarded to belong to.

2.4 England

2.4.1 Paid Parental Leave

The right to reimbursement in connection to childbirth is based on the principle of loss of income, which is based on a qualification time, in England as well. The time that one is entitled to stay home with pay in connection to a child’s birth is normally six months – and that time is given to the mother. However, as of April 2003, a certain parental leave is also given to the father. This is only paid out for two weeks, however.

In England, the right to paid parental leave is mainly meant for, and given to, the mother. Accordingly, where the child lives is of no actual importance.

2.4.2 Child benefit

In England, child benefit can be paid out at the longest until the child turns 19. The person who is responsible for the child a certain week is the one who is entitled to receive the allowance. The allowance can only be paid out to one person at a time and can accordingly not be officially divided. The allowance is always to be paid out to the person who mainly takes care of the child or to the person who is financially responsible for it. The person who is considered the parent responsible for the child is the one that the child lives

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80 Chapter 1, section 1, Accommodation Allowance Act.

81 According to interview, Cf. Förmånsanvisningar 3 Allmänt Bostadsbidrag 1.1.1 Hushåll.

82 However, for a person who is not qualified for paid leave, there is also a possibility to receive a so-called incapacity benefit – a benefit that is based on national insurance. http://www.dti.gov.uk/er/individual/matrights-pl958.pdf, 2005-06-17, p. 39.


86 Section 141 SSCBA 1992.

with or, if this cannot be decided, the parent who financially contributes to the child’s upbringing with an amount of money that exceeds the child benefit.\textsuperscript{88} If the parents do not live together, the priority is decided by the Secretary of State.\textsuperscript{89} It is mostly the mother who receives the child benefit,\textsuperscript{90} since the child usually lives with her.

The English registration of persons who live on a certain address\textsuperscript{91} is of no importance to the various benefits that may be paid out to families with children. As far as the child benefit is concerned, who is responsible for the child determines who will be the recipient. The system is fairly flexible as a change is the responsibility also changes who receives the allowance. Who receives the child benefit will be a deciding factor when it comes to other types of financial support. This means that the decision who is to be the recipient of the child benefit will also decide to what family a child is regarded as belonging.

2.4.3 Child Support

In England, a parent who does not live with its child pays child support.\textsuperscript{92} Also in cases where the child lives with its parents alternatively, even where the residency is divided entirely equally, child support can be paid out and it is then the parent who is entitled to child benefit that will also be the recipient of the child support.\textsuperscript{93} The child support is set as a percentage of the income of the support-obliged parent with regard given to other children that he or she may have a support duty towards.\textsuperscript{94} In addition, child support reductions can be made when the support-obliged parent has had the child staying with him/her.\textsuperscript{95} There does not appear to be any public system in England that steps in if a parent cannot pay child support.\textsuperscript{96} Apparently, considerable weight is attached to the parent’s support obligation, something which is evident not only in the existence of the Child Support Agency which can help

\textsuperscript{88} Section 143 (1) SSCBA.

\textsuperscript{89} Cf. sections 5 and 6, Child Support Act 1991 (CSA 1991).

\textsuperscript{90} Ryrstedt, Eva, Familjerätt och stöd till barnfamiljer, in JT 2004-05, häfte 3, pp. 598-634.

\textsuperscript{91} National registration.

\textsuperscript{92} Section 1(1-2) CSA 1991.

\textsuperscript{93} Cf. SI 2001/155, The Child Support (Maintenance Calculations and Special Cases) Regulations 2000 reg 1(2), 8(2).

\textsuperscript{94} Section 1-10C, part 1, sch 1 CSA 1991 as amended by Child Support, Pensions and Social Security Act 2000. (CSA 1991 as amended).

\textsuperscript{95} Section 7, part 1, sch 1 CSA 1991 as amended.

administer the child support, but also in the vast consequences that await a parent that fails to pay child support.

There is thus no public system that is meant to step in if a maintenance-obliged parent fails to pay, while at the same time considerable weight is attached to the parent’s obligation to financially support his/her child. Maintenance is furthermore paid out in cases of alternate residency also. What decides who is to receive maintenance is who is entitled to receive child benefit.

2.4.4 Housing Benefits

In England, housing benefits can be paid out to persons with low incomes. The basis for the calculation furthermore includes such things as family composition. It is thus important for the calculation here too if children are regarded as belonging to the family. The child is regarded as belonging to the family where it normally lives. If a child has alternate residencies, the parent that is the recipient of the child benefit will also, under the condition that some additional requirements are fulfilled as well, be able to receive housing benefits.

In the same way as with the other English benefits that have been addressed here, the child benefit will decide the matter of which family a child is regarded as belonging to and thereby who is entitled to housing benefits.

2.4.5 Tax Reduction

The two forms of tax relief that exist in England – child tax credit and working tax credit – do admittedly depend on the fact that the recipient has an income, but they are paid out as an allowance. In order to be entitled to child tax credit at all, a person has to be responsible for at least one child or live with someone who is responsible for a child who is less than 16 years old. Once again, it is therefore of interest where a child is regarded as living. The child is only regarded as a member of a family of it lives there normally. If the child lives alternately with its parents, the matter regarding who should


receive the tax credit will be determined by who receives the child benefit for the child in question.\textsuperscript{103} The occurrence of children will be of importance to the size of the working tax credit, but it also depends on how much the person works. A person who works for more than 30 hours a week benefits from this tax credit compared to a person who works between 16 and 30 hours.\textsuperscript{104}

The above-mentioned system of financial support through tax relief is based on the fact that the recipient has an income. Consideration is to be given to the size of the income as well as the number of children, which is why the system helps evening out persons’ incomes over their lifetime.\textsuperscript{105}

This system also relies on the child benefit when it comes to which family the child is to be regarded as belonging, which means that the decision relies on the decision that the Secretary of the State has made.\textsuperscript{106} His decision depends, in its turn, on who is the main care-giver of the child and who is financially responsible for the child.\textsuperscript{107}

\section{2.5 \hspace{.1cm} Australia\textsuperscript{108}}

\subsection*{2.5.1 Reimbursement in Connection to Child Birth}

There is no reimbursement for lost income in connection to child birth/adoption in Australia. Instead, a fixed sum is paid out – so-called maternity payment.\textsuperscript{109} The payment is based on the fact that the child’s parent is principally entitled to a family tax benefit, even if the calculation for this benefit would show that it does not apply. Even though the benefit is called maternity payment, it can in certain cases be paid out either to the father or to someone else who is responsible for the child.\textsuperscript{110} As a main rule, the benefit is paid out to one person. However, if two or more individuals could be entitled

\begin{thebibliography}{9}
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\item[106] Cf. section 6 CSA 1991.
\item[107] For this, see section 2.4.2 in this article.
\item[108] The family legal regulation as well as the benefits regulation that are treated below are national and are therefore, in principle, valid in all of Australia. In Western Australia, however, there are certain exceptions as far as children born out of wedlock are concerned, http://www.familycourt.gov.au/presence/connect/www/home/about/for_legal_studies_students/student_resource_family_law, 2005-06-06.
\item[109] A New Tax system (Family Assistance) Act 1999, Division 2, sec 66.
\item[110] A New Tax system (Family Assistance) Act 1999, Division 2, section 36.
\end{thebibliography}
to maternity payment for the same child, the Secretary (the Secretary to the Commonwealth Department of Family and Community Services – i.e. the highest deciding government official) will decide which individual that should be regarded as the one entitled to the payment. If the Secretary deems it reasonable that two or more persons are entitled to the payment, he has to decide what percentage of the payment each of them is entitled to. However, there can be no such payment division between two persons in a relationship.

In Australia, there is accordingly no reimbursement for loss of income, only maternity payment. However, in spite of its name, the benefit can be paid out to the father or to someone else who takes care of the child. Who is responsible for the child is therefore decisive. The child’s residence will normally be of importance in the decision.

### 2.5.2 Tax Reduction for Families with Children

In Australia, there are no contributions paid out in such a way that we would call them child benefit. However, there are various types of financial support to such families. One of them is the Family Tax Benefit, another is the Child Care Benefit.

The Family Tax Benefit means a tax reduction for families with children. It is divided into two parts. One part – part A – can apply no matter if the family consists of one or two parents. This part can also be granted other custodians than the parents, e.g. grandparents or foster parents that take care of the child. This part is tied to income, however. Part B can also apply to families with two adults, as long as they only have one main income. Single parents (i.e. who live without a partner) are always entitled to this part of the deduction, to the fullest extent.

There are statutory criteria laid down for when a child is to be considered a so-called FTB (Family Tax Benefit) child, i.e. a child that can entitle the parents to the tax reduction in question. The children may be no older than 24 years. The statutory criteria are of various natures and can depend on e.g. age. The criteria may e.g. be that the custodian has the legal responsibility (solely or with someone else) for the child’s daily care, well-being and development, or that the child is covered by a family law order or registered parenting plan. It is the Secretary that decides how much time the child is to be

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111 A New Tax System (Family Assistance)(Administration) Act 1999, section 3(1).
112 A New Tax system (Family Assistance) Act 1999, Division 2, section 37 och 66.
115 A New Tax system (Family Assistance) Act 1999, sec 22.
regarded as spending with each parent. The Secretary can also delegate this task to officials who work in accordance to family assistance law, i.e. at the Family Assistant Office – FAO. Another requirement is that the child spends 10% or more of the time with the parent. If a child meets all of the FTB requirements aside from spending 10% of the time with the parent, its quality as a FTB child in regard to that parent is still abolished. It is the Secretary that decides when a child spends so little time with a parent that the child should no longer be regarded as a FTB child.

It is the Secretary that decides the distribution, calculated as a percentage, between the parents if the child can be regarded as a FTB child to both. Unless the parents can agree on another order, the distribution depends on how much the child lives with each parent according to a family law order or a registered parenting plan.

Accordingly, if the child lives spends less than 10% with one of the parents – and thus is no FTB child – the other parent will receive the entire deduction. However, as the deduction is also based on income, the outcome of an investigation of a parent’s right to the deduction, based on the child’s residency with that parent, may still be that the deduction is declined to that parent. In such a case, the other parent cannot take over the deduction.

What decides who is entitled to making the deduction, which can be divided, is how much time the child lives with each respective parent. The child’s residency, judged from a registered parenting plan or a family law order, thus dictates the deduction availability.

2.5.3 Contributions to Child Care – through Tax Deductions

Child care benefit is designed as a tax deduction where the size depends on income. Everybody is entitled to a minimum amount, regard to income,
There is a statutory hourly maximum on expenses that entitle to tax reduction. The tax deduction is either calculated as a product of the accumulated costs for the child care over the year in relation to the income, or directly as a part of the payment to the service provider. The parent can only apply for the minimum amount and then later, when the year is over and the expenses are known, add this information to the application.

In the regulation of this benefit, the definition of when a child is a so-called FTB child is referred to. This means that, here as well, a parent has to take care of the child for 10% of the time or more, in order for the child to be regarded as a FTB child to that parent. The deduction is also, aside from the minimum level, based on income. In addition, the deduction depends on actual expenses. A parent must have paid for the child care or be liable to pay for it, in order to be entitled to the benefit. If the child has alternate residencies, both parents can be entitled to the full deduction.

This deduction depends on the actual expenses for child care and therefore should not, in addition to the fact that both parents can be entitled to the deduction at alternate residency, lead to conflicts between the parents.

2.5.4 Parenting Payment

In Australia, low income families with children can be given a certain parenting payment. The payment is based on income and also depends on the composition of the family. A child has to be classified as a so-called parenting payment child, in order to entitle to this payment. The main criterion is that the adult takes care of the child and, normally, that the child has not turned 16. The child can only be a parenting payment child in relation to one person, which means that the payment cannot be divided. If the criteria for a child to be regarded as a parenting payment child are fulfilled in relation to

125 A New Tax system (Family Assistance) Act 1999, schedule 2, part 2, clause 4.
128 A New Tax system (Family Assistance) Act 1999, section 25 (1)(c).
129 A New Tax system (Family Assistance) Act 1999, schedule 2, part 1, clause 1.
more than one person, the Secretary has to appoint one of them, in a written
decision, as the entitled one.  

This payment can thus not be divided and the Secretary has to decide which
of the parents that is entitled to it. As it is the actual care of the child that
decides the matter, the child’s residency ought to be primarily decisive. Also
in cases of alternate residencies, the payment is limited to one of the parents.

2.5.5 Child Support

In Australia, the main part of the financial support system for the child
consists of the accumulated child support from the parents.

The decision of who is to pay and how much is made with the starting point in
the income and living expenses of each respective parent, if the parents have
custody of other children, how many children, how much time the child
spends with each respective parent. There is a very low minimum level that
all children are entitled to unless the parent in his/her turn has a very low
income or if there is a court order or an agreement between the parents that
child support should not be paid out. The time that the child spends with the
parent, which accordingly is one of the important circumstances that decide
how the child support is set, is decided based on e.g. information from the
parents and what is shown in a parenting plan or some other court order. The
calculation is made by the Child Support Agency – the CSA. However,

As in England, the responsibility for a child’s maintenance rests solely on the
parents and there is no public system. Aside from the starting point that the
calculation takes in the parents’ incomes, the decisive factor is the time that
the child spends with each parent. Aside from the parents’ own information, a
parenting plan or another court order will be decisive.

2.5.6 Rent Assistance

In Australia, rent assistance can only be paid out to those who rent from a
private owner of property. Accordingly, rent assistance cannot be paid out to

137 The agency administers alimony between parents and children.
someone who lives in a government-owned or own house,\footnote{Social Security Act 1991 section 1070 B and C.} with the exception of mobile and relocatable homes.\footnote{http://www.familyassist.gov.au/Internet/fao/fao1.nsf/content/historical_rates-ra.htm, 2005-04-12.}

Rent assistance is only paid out to those who are entitled to more than the basic level in the Family Tax Benefit Part A.\footnote{Social Security Act 1991 section 1070 D.} However, the rent must reach a rent threshold in order for the assistance to be paid out.\footnote{A New Tax system (Family Assistance) Act 1999, schedule 1, division 3, clause 14.} The renting assistance is thus only paid out to low income families with children.

The entitled family can consist of one or two adults.\footnote{Social Security Act 1991 section 1070 D.} This is the very factor that decides how high the threshold must be in order for the assistance to be paid out.\footnote{A New Tax system (Family Assistance) Act 1999, schedule 1, division 3, clause 14.} In addition, the amount of the assistance depends on the number of children in the family.\footnote{Social Security Act 1991 section 1070 D.} In order to include a child in this calculation, the child must have been classified as a so-called rent assistance child. For this, the child must be a FTB child. A basic requirement in order for a child to qualify as a FTB child is that the parent takes care of the child for more than 10\% of the time.\footnote{A New Tax system (Family Assistance) Act 1999, sec 25(1)(c).} The child must furthermore entitle to more than the basic level in the Family Tax Benefit system.\footnote{A New Tax system (Family Assistance) Act 1999, section 59(1).} Who is to be regarded as the relevant shared carer in the rent assistance system is interpreted in the light of 59(1) FAA.\footnote{http://www.facs.gov.au/faguide/guide/31130.htm, 2005-03-04.} This should mean that a parent whose child is a FTB child to both parents but where the parents do not live together is considered a relevant shared carer.\footnote{www.facs.gov.au/faguide/guide/31430.htm, 2005-05-06, A New Tax system (Family Assistance) Act 1999, schedule 1, clause 14 and 14A.} The concept full carer thus means the parent with whom the child lives for at least 90\% of the time. The rent assistance cannot be divided between the parents. Instead, both of the parents are entitled to rent assistance, under the condition that they both have shared care of their child/children.\footnote{http://www.facs.gov.au/faguide/guide/31130.htm, 2005-03-04.} However, the level of the assistance is based on whether the parent is a full carer or a shared carer.\footnote{www.facs.gov.au/faguide/guide/31430.htm, 2005-05-06, A New Tax system (Family Assistance) Act 1999, schedule 1, clause 14 and 14A.}
Rent assistance is not a benefit that can be divided between the parents, either, but parents who have shared care of their child can both be entitled to the assistance. The level of the rent assistance can be affected, however.

3 Family Belonging and Financial Benefits

The concept of family thus has different meanings in different contexts. Closest at hand would be to use the legal family concept also in the contexts that have been addressed here, i.e. to what family a child is regarded as belonging when it comes to financial benefits. Such a starting point, may be that it is shallow, has also been assumed in the various countries that are studied in this article. However, this approach has not always been carried out fully, and instead practical considerations have been allowed to dominate, such as when Sweden in many cases allows the information on the child in the national registration to be a deciding factor and in reality lets this technical system decide who is to be the recipient of a certain benefit. One reason that this procedure causes problems is that the benefits often cannot be divided, and therefore the child’s family belonging has a large impact. One example of such a benefit is child benefit in Sweden and Norway, where the national registration thus decides who will be the recipient of the benefit. However, if the parents have agreed on alternate residency, the allowance can be divided in Norway, after an application procedure. However, this is probably of no actual importance, as alternate residency in itself presupposes consensus and it is only in this situation that the allowance can be divided. In England, however, child benefit cannot be divided. There, it is the Secretary of the State that decides which of the parents that will receive the allowance, and this decision is based on which of the parents that has the main responsibility for the child. The judgement is made on an entirely material basis. Australia has chosen a completely different system for benefits especially directed at families with children. There is no child benefit as we know it there. The tax reductions that families with children can be granted through the Family Tax Benefit and the Child Care Benefit are important components. The first-mentioned benefit can be distributed between the parents after a material investigation. The other benefit depends on actual expenses for child care and both parents to a child with alternate residencies can be granted this benefit. In addition to this, there is also a certain payment that cannot be divided that can be paid out to families with children, and here the Secretary has to decide, on a material basis, which of the parents that is to be entitled to the payment.

Also in regard to the right to accommodation allowance, national registration plays a big role in both Sweden and Norway as the child is normally regarded as belonging to the family where it is nationally registered. In England, the

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152 For this concept, see Lund-Andersen in Familjestöd, Familjebegrepp och underhållsskyldighet mot barn i de nordiska länderna; rapporter från det tionde nordiska familjerättsseminariet i Uppsala den 6-7 mars 1995, ed. Anders Agell, p. 57.
housing benefit is paid out to parent that receives the child benefit. Accordingly, it can be said that this decides the family belonging. In Australia, however, two parents who have shared care of their child can both receive rent assistance, even though the level of the assistance depends on whether the parent is a full or a shared carer.

The Swedish maintenance regulation bases its definition of a resident parent on the national registration. However, both parents can receive maintenance for a child who lives alternately with both of them. This possibility somewhat lessens the focus on the national registration, but it might also result in undesirable marginal effects as the allowance in this part is based on income. In Norway, the actual care for the child is decisive, i.e. normally where the child lives, while this type of public financial support to separated parents do not exist at all in England and Australia.

Sweden assumes a unique position in regard to the right to paid parental leave in connection to child birth and care for the young child. The distinctive characteristics are the length of the income-related time off and the complete equality between the mother and the father, no matter if they live together or not. In Australia, the so-called maternity payment is admittedly paid out to the person who takes care of the child, but the reimbursement is not as important as it is in Sweden. In the other countries, the mother has an advantage, which is especially emphasized in England, where the paid leave is mainly directed to the mother. However, it is only in Finland that the child’s residency is of any real importance. The Swedish point of view is thus contrasted by the more pragmatic view in the other countries, as a custodial parent in Sweden can keep his/her right to use his/her paid leave even if he/she does not live with the child.

It can be said in conclusion that where we in Sweden and Norway use the technical system that the national registration is as a basis for the family belonging in a social legal perspective – i.e. to receive financial benefits – England and Australia pay closer attention to the material circumstances and conditions. England admittedly builds its benefits system on who is the recipient of the child benefit. Whoever is the recipient of this, is thus also the person who receives benefits such as child maintenance and housing benefits. At the same time, however, the decision regarding who is to receive the child benefit is based on which parent that assumes the biggest responsibility for the child. The material circumstances are considered in Australia too, but in a more individual way. There, several benefits can be divided or be granted to more than one parent. In deciding who is to be the recipient or how a division is to be carried out, the occurrence of a parenting plan may be significant. To allow a technical system that is meant for population statistics to be the basis of social legal financial support appears less than appropriate. Even though a material decision would be preferable, so that the child’s actual residency directs the allowances and that the child’s needs therefore are more explicitly satisfied, it is not certain that a percentage distribution corresponds to what is best for the child. In designing the systems, it is important that the children benefit from the financial contributions, but possibly above all that the systems are designed so that they do not influence the parents’ considerations
regarding where the child is to live or how much a child is too see the parent that it does not live with.