



Council of the
European Union

070395/EU XXVI. GP
Eingelangt am 03/07/19

Brussels, 1 July 2019
(OR. en)

12319/03
DCL 1

CRIMORG 62

DECLASSIFICATION

of document: 12319/03 RRESTREINT UE/EU RESTRICTED

dated: 9 September 2003

new status: Public

Subject: EVALUATION REPORT ON THE THIRD ROUND OF MUTUAL
EVALUATIONS
"EXCHANGE OF INFORMATION AND INTELLIGENCE BETWEEN
EUROPOL AND THE MEMBER STATES AND AMONG THE MEMBER
STATES RESPECTIVELY"
REPORT ON SWEDEN

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



COUNCIL OF
THE EUROPEAN UNION

Brussels, 9 September 2003

12319/03

RESTREINT UE

CRIMORG 62

EVALUATION REPORT ON THE
THIRD ROUND OF MUTUAL EVALUATIONS
"EXCHANGE OF INFORMATION AND INTELLIGENCE BETWEEN EUROPOL AND
THE MEMBER STATES AND AMONG THE MEMBER STATES RESPECTIVELY"

REPORT ON SWEDEN

DECLASSIFIED

RESTREINT UE

TABLE OF CONTENTS

| | | |
|---------|---|----|
| 1. | INTRODUCTION | 3 |
| 2. | GENERAL INFORMATION AND STRUCTURES | 4 |
| 3. | INTERNAL ORGANISATION OF EXCHANGE OF INFORMATION | 13 |
| 4. | EXTERNAL EXCHANGE OF INFORMATION | 18 |
| 5. | EXCHANGE OF INFORMATION BETWEEN MEMBER STATES AND EUROPOL | 22 |
| 6. | EVALUATION MADE BY EXPERTS TEAMS | 27 |
| 7. | GENERAL CONCLUSIONS AND RECOMMENDATIONS OF THE EXPERTS TEAM.. | 42 |
| ANNEXES | | |
| | ANNEX A: Visiting programme | 47 |
| | ANNEX B: List of persons met | 48 |
| | ANNEX C: Swedish legal basis..... | 49 |
| | ANNEX D: List of abbreviations..... | 55 |

DECLASSIFIED

RESTREINT UE

1. INTRODUCTION

- 1.1. Following the adoption of the joint action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.
- 1.2. Following a proposal originating from the Swedish delegation and taken up by the Presidency to evaluate the supply of information and intelligence to Europol and the exchange of information and intelligence between Member States, the MDG adopted the proposal at its meeting on 3 and 4 June 2002.
- 1.3. At its meeting on 3 December 2002 the MDG approved the questionnaire on the third round of mutual evaluations on the topic "exchange of information and intelligence between Europol and the Member States and among the Member States respectively".
- 1.4. Following discussion at the MDG meeting on 9 January 2003, a list showing the order of Member States to be visited was agreed. Sweden is the first Member State to be evaluated during the third round of evaluations.
- 1.5. The questionnaires and the objectives of this evaluation are contained in document 11679/3/02 REV 3 CRIMORG 71.
- 1.6. The experts in charge of this evaluation were: Mr Preben Juel HANSEN (Denmark), Mr Klaus BALDERING (Germany) and Mr Antonio GAGLIARDO (Italy). Two observers, Mr Sönke SCHMIDT (Commission) and Mr Kalle PUHALAINEN (Europol), were also present together with the General Secretariat of the Council.
- 1.7. The evaluation team has prepared the following report with the assistance of the Council Secretariat, on the basis of the observations and conclusions of the experts in the team together with the Swedish authorities' answers to the questionnaire.

RESTREINT UE

1.8. The report first deals with the general information and structures (2), followed by the internal organisation of exchange of information (3) and the organisation of external exchange of information (4) and then deals more specifically with Europol (5). In the last chapter, the experts make a global and technical evaluation and then propose some recommendations to enhance cooperation and effectiveness in the exchange of information within Sweden and with other Member States and Europol.

2. GENERAL INFORMATION AND STRUCTURES¹

2.1. LEGAL BASIS

2.1.1. *The Secrecy Act (1980:100)*

Secrecy within the public sector, e.g. the police, is regulated by the Secrecy Act, see Annex C.

2.1.2. *International information exchange.*

Chapter 1, Section 3, states that information falling under the Act must not be disclosed to a foreign authority or an international organisation unless:

- such disclosure is regulated by law, or
- the information might be provided to a Swedish authority in a corresponding case and it is clear to the authority providing the information that it would be consistent with Swedish interests to provide the information to the foreign authority or the international organisation.

This implies that the provision of information or intelligence to Europol, other international organisations or foreign law enforcement authorities from the registers cited below is "regulated by law" and may be provided according to what is laid down by the acts in question. Information and intelligence from other sources, not kept in those registers, may be provided according to the second indent above.

¹ This part and chapters 3-5 of the report are largely based on the answers to the questionnaire.

RESTREINT UE

2.1.3. *The Register of Persons Convicted of Crime Act (1998:620)*

Information on convictions is held in the **Register of Criminal Records**. It contains Swedish convictions as well as foreign convictions that have been reported from a country that is a member of Interpol, that organisation as such or from Europol regarding a Swedish citizen or an individual permanently residing in Sweden. The information on a conviction can also have been reported from a State with which Sweden has an agreement.

2.1.4. *International information exchange.*

Pursuant to an international treaty to which Sweden is a party, information from the Register may be provided to a foreign authority or an international organisation (for instance Europol).

Information from this Register shall be provided to a court, police authority or public prosecutor's office in Denmark, Finland, Iceland or Norway if requested for the purpose of a criminal investigation.

Information may upon request be transmitted to a court, police authority or public prosecutor's office in a State that is a member of Interpol or to Interpol itself when required for the prevention, detection, investigation or prosecution of crime or for an aliens case.

In addition to the above mentioned criteria for providing information, the Government may issue regulations to the effect that information may be provided to a court, police authority or public prosecutor's office in a State other than those referred to above if needed for criminal investigations or an aliens case.

The Government may also issue regulations stipulating that information about a foreign national or an individual residing abroad may be handed over to an authority in cases other than those stated above. It may also issue regulations stipulating that the information that may be handed over to another State shall be limited.

RESTREINT UE

The National Police Board examines requests for information held in the Register of Criminal Records. The Government or an authority appointed by the Government may issue regulations stipulating that a (local) police authority may examine requests for information.

2.1.5. *The Register of Persons convicted of Crime Ordinance (1999:1134)*

This ordinance states that information may be provided to foreign authorities by virtue of the Criminal Record Act.

2.1.6. *Internal Police Regulation (FAP 458-1)*

According to this regulation a local police authority may provide information from the Register of Criminal Records directly to a local police authority in Denmark, Finland, Iceland or Norway. The National Police Board has issued this regulation by virtue of the Criminal Record Act and Criminal Record Ordinance respectively.

Summary of the possibilities for providing information held in the Register of Criminal Records to foreign authorities:

A local police authority may provide information directly to a local police authority in Denmark, Finland, Iceland or Norway.

The National Police Board, in practice the National Criminal Investigation Department (NCID), may provide information to Europol and other international organisations and authorities in other countries, including Denmark, Finland, Iceland and Norway.

RESTREINT UE

2.1.7. *The Register of Persons Suspected of Crime Act (1998:621)*

Information on persons suspected of crime is held in the *Register of Persons Suspected of Crime* to facilitate the work of law enforcement agencies in their work to prevent, reveal and investigate crime and coordinate investigations as well as providing information to public prosecutors.

International information exchange.

Pursuant to an international treaty to which Sweden is a party, , information from the Register may be provided to a foreign authority or an international organisation.

Information may upon request be provided to a court, police authority or a public prosecutor's office in a State that is a member of Interpol or to Interpol itself when required for the prevention, detection, investigation or prosecution of crime or for an alien's case.

The National Police Board examines requests for information held in the Suspects Register. The Government or an authority appointed by the Government may issue regulations stipulating that a (local) police authority may examine requests for information.

2.1.8. *The Register on Persons suspected of crime Ordinance (1999:1135)*

Pursuant to this ordinance, the National Police Board may regulate how the providing of information to foreign countries on suspects shall be handled.

Internal Police Regulation (FAP 457-1)

A local police authority may provide information from the Suspects Register directly to a police authority in Denmark, Finland, Iceland or Norway. The National Police Board has issued this regulation by virtue of the Suspects Register Act and the Suspects Register Ordinance respectively.

RESTREINT UE

Summary of the possibilities for providing information held in the Suspects Register to foreign authorities:

A local police authority may provide information directly to a local police authority in Denmark, Finland, Iceland or Norway.

The National Police Board, in practice the NCID, may provide information to Europol and other international organisations and authorities in other countries, including Denmark, Finland, Iceland and Norway.

2.1.9. The Police Record Act (1998:622)

The Police Record Act regulates the handling of personal data in police operations with a view to:

- preventing crime and other disturbances of public order and security,
- monitoring public order and security, preventing their disturbance, and intervening when such disturbance has occurred,
- carrying out investigations and inquiries in relation to crimes subject to public prosecution.

The act deals among other things with criminal intelligence registers, the DNA-register, the Register on Fingerprints and Characteristics, the General Investigation/ Intelligence Register and the Security Service's register and special inquiries.

Criminal Intelligence Registers

The National Police Board or a local police authority may keep a criminal intelligence register with a view to:

- providing a basis for a decision to start special inquiries regarding serious criminal activities,
or
- facilitating the access to general data related to intelligence operations.

RESTREINT UE

Special inquiries

A special inquiry is defined as an inquiry within the framework of a criminal intelligence operation that implies the collection, processing and analysis of data with the view to providing a basis for a decision to initiate a preliminary investigation or special measures to prevent or detect crime.

International information exchange

Pursuant to an international treaty to which Sweden is a party, information may be provided to a foreign authority or an international organisation.

Furthermore, the Government may issue regulations stipulating that information may, upon request, be provided to a court, police authority or public prosecutor's office in a State that is a member of Interpol or to Interpol itself when required for the prevention, detection, investigation or prosecution of crime.

Information may also be provided pursuant to the Secrecy Act, Chapter 1, Section 3, (cf. 2.1.2) above.

2.1.10. The Police Record Ordinance (1999:81)

The Police Record Ordinance contains certain specifications concerning the Criminal Intelligence Register (KUR), Special Inquiries (SUR), the DNA-Register, and the General Investigation/Intelligence Register (ASP).

The General Investigation/Intelligence Register may hold information on persons suspected of certain (aggravated) crimes if the information is of particular importance for surveillance or investigation of the crime in question. An individual who does not fulfil the requirements for registration in the register may however be mentioned in free-text in the register.

RESTREINT UE

Information on suspicion of a crime as mentioned above may also be registered in cases where there is no individual suspected of the crime.

Information may be registered on vehicles, vessels, organisations (companies, associations or similar) that can be connected to the suspicion of crimes as mentioned above.

This is applicable at the planning phase as well as for a crime that has already been committed. Responsibility for handling the register lies with the local police authorities.

International information exchange

Information dealt with by the Police Record Act may, if consistent with Swedish interests, be provided to:

- a foreign intelligence or security service,
- a police authority or a prosecutor's office in a country that is a member of Interpol, if required for the prevention, detection, investigation or prosecution of crime.

The National Police Board may issue further regulations required for the implementation of the Police Record Act.

2.1.11. Internal Police Regulation (FAP 447-1)

This regulation issued by the National Police Board by virtue of the Police Record Act and Police Records Ordinance respectively, deals with the KUR and special inquiries. It is applicable to the KUR to be used by the NCID and the (local) police authorities. The (local) police authorities and the NCID keep the KUR.

RESTREINT UE

International information exchange

The NCID examines whether it is consistent with Swedish interests (cf. the Police Records Ordinance above) to provide information from the KUR or from special inquiries to:

- a foreign security or intelligence service,
- a police authority or public prosecutor's office in a State that is a member of Interpol.

Summary of the possibilities for providing information held by virtue of the Police Record Act to foreign authorities:

Pursuant to an international treaty to which Sweden is a party, the National Police Board may provide information to a foreign authority or international organisation (for instance Europol). In this case the information is provided without previous examination of Swedish interests.

If consistent with Swedish interests, the National Police Board may provide information to:

- a foreign intelligence or security service,
- a police authority or a public prosecutor's office in a State that is a member of Interpol if required for the prevention, detection, investigation or prosecution of crime.

The National Criminal Investigation Department (NCID) examines whether it is consistent with Swedish interests to provide information held in the National Criminal Intelligence Register (KUR) or within the framework of special inquiries to a foreign security or intelligence service, a police authority or a public prosecutor's office in a State that is a member of Interpol.

2.1.12. Customs

According to the Swedish Act on International Customs Cooperation (2000:1219) the Swedish customs service exchanges information with other countries and organisations (intelligence and other information about smuggling and customs offences).

RESTREINT UE

The exchange of information at EU level is governed by the Europol Convention, the Naples II Convention, the CIS Convention (Customs Information System) and Regulation (EC) No 515/97.

For the exchange of information on customs matters with countries and organisations outside the EU Sweden has ratified the international convention on mutual administrative assistance for the prevention, investigation and repression of customs offences (Nairobi Convention), and a number of bilateral agreements with other countries inside and outside Europe.

The scope that Swedish Customs has for exchanging information with other countries or international organisations is almost the same as for the Swedish Police.

Swedish Customs has a computerised system for intelligence purposes. This system is primarily for internal use but is also used to seek for and verify information about individuals or objects upon international request. Information from the system regarding criminal activities can also voluntarily be sent to countries concerned. The information is often sent, via Swedish Customs' liaison officers stationed abroad or by fax or otherwise. Swedish Customs' Intelligence and Analysis Department is divided into one central and five regional branches that share a common computerised diary system. In that way they can be kept up to date on what is going on nation-wide and who is handling what information.

2.2. STRUCTURES

2.2.1. *Channels used for the exchange of information:*

The Europol National Unit (ENU) of the National Criminal Intelligence Service's (NCIS's) International Liaison Office and /or the Europol Liaison Officers (ELOs) as well as the Info-Ex System.

Europol's Info-Ex system, the Interpol NCB, the Sirene Office or Liaison Officers.

RESTREINT UE

The choice of communication channel is made depending on the nature of the case in hand and the information that is to be exchanged. Usually Europol is used for intelligence exchange when it is a multilateral case, Interpol when it is a bilateral mutual assistance case and the Sirene channel when it is a matter within the framework of Schengen cooperation. The liaison officers at Europol and elsewhere support and facilitate the information exchange.

Swedish Customs uses first and foremost the customs liaison officer, for example at Europol, for the exchange of information and intelligence. In communicating with OLAF and other Member States the computerised Customs Information System is used. Recently, Customs acquired the possibility of communicating world-wide with other customs administrations and the World Customs Organisation via the Customs Enforcement Network, but fax is still the most commonly used instrument for exchanging information.

3. INTERNAL ORGANISATION OF EXCHANGE OF INFORMATION

The Police, the Customs and the Coast Guard have competence for the Europol mandated areas. These agencies are however independent civilian authorities cooperating within certain law enforcement areas.

3.1. THE POLICE

Sweden has one national police service competent for Europol mandated areas. The police service comprises the National Police Board, the National Laboratory of Forensic Science and 21 police authorities.

The National Police Board is the central administrative and supervisory authority of the police and the National Laboratory of Forensic Science. The National Police Board is also responsible for the development of new working methods, technical support, IT, training, budgetary matters etc regarding the police.

RESTREINT UE

The National Security Service and the National Criminal Investigation Department are the only two departments of the National Police Board having operational tasks.

The National Security Service is responsible for the protection of sensitive objects, counter-espionage, anti-terrorist activities and protection of the constitution. In the fight against threats to national security, regular police units often handle investigations and operational fieldwork, while the National Security Service provides intelligence, resources and methodological know-how.

The NCID provides investigation and criminal intelligence support in cases involving crimes with nation-wide or international ramifications. The NCIS within the NCID is responsible for the collection and dissemination of information at national level and to a great extent at international level.

The National Laboratory of Forensic Science performs laboratory analyses of samples or traces deriving from various types of crimes. The laboratory has expertise in most science disciplines and uses advanced technology to find and preserve traces and establish links between people, places and objects.

The 21 police authorities operate within the same geographical areas as the 21 counties. The police authorities are responsible for police work at a local level such as response to emergency calls, maintaining public order and security, crime investigations and crime prevention.

3.2. CUSTOMS

One of the tasks of Customs is to make sure that commodities such as narcotic drugs, arms, alcohol etc. are not illegally brought into or taken out of Sweden.

The combating of drug smuggling, large-scale smuggling of alcohol and tobacco products, as well as economic crime are fields of action that have been given high priority.

RESTREINT UE

The customs Service is divided into six customs regions, with 48 customs offices under the direction of the Head Office. The Head Office has overall responsibility for operations, strategic management, policy and setting of standards. The six regions have mainly operational tasks in the field of import and export clearance as well as border control.

The customs Service employs intelligence and analysis as an important supportive tool to fight crime. Information is gathered from passenger traffic as well as the flow of commercial goods.

The Customs Communication Centre has nation-wide coverage. Here, intelligence information is received, assessed and disseminated to the appropriate units. The Analysis Unit at Customs Headquarters is the national contact point for the exchange of intelligence, nationally and internationally. The Coast Guard has one liaison officer at this unit and one of the customs officers at the unit serves as liaison officer for the National Criminal Investigation Department. These officers are well informed on current situations and serve as support for improved exchange of information between authorities.

The customs Service also conducts independent investigations into smuggling in general, drug smuggling, and economic crime. Drug smuggling cases can be jointly investigated with the police.

3.3. THE COAST GUARD

The Coast Guard has overall responsibility for the control of external borders at sea. It carries out surveillance, supervision and control within a number of areas such as maritime border control and fisheries protection, monitoring of the environment and shipping, supervision of safety at sea and also customs checks at sea.

As one of the three Swedish authorities responsible for border control, the Coast Guard conducts checks at sea regarding individuals entering or leaving Swedish territory. Checks at sea are mostly conducted on pleasure boats or fishing vessels but also on merchant vessels. Passenger lists - and crew lists for merchant shipping - are checked primarily in the Schengen Information System (SIS).

RESTREINT UE

The Coast Guard is divided into four regions. Analytical work is conducted at a national level as well as collection and dissemination of information. Information and intelligence is exchanged with the intelligence units of the police.

One Customs and one Coast Guard officer are seconded to the NCID to facilitate cooperation and the exchange of information and intelligence between the police and the other two forces.

3.4. CHOICE OF COMMUNICATION CHANNEL

Decisions are taken on a case by case basis as to the choice of communication channel. An incoming message is normally answered via the same channel as it was originally received.

Europol is normally used when the Europol criteria for information exchange are met or the case is expected to develop in that direction. The role of the ELOs is becoming more and more important; not only do they serve as the connection to ENU but they also employ direct contacts with local police authorities.

Interpol is used mostly outside the European Union or in matters concerning bilateral mutual assistance.

As a general approach, the channel that is used from the outset should be used to handle supplementary requests. For example, a request for a house search should be forwarded via Sirene if it has been initiated by a SIS hit regarding an arrested person or a stolen car. On the other hand, a request for a controlled delivery is made through Europol if there is an ongoing intelligence operation with Europol and other Member States.

RESTREINT UE

The National Police Board develops, maintains and administrates the computerised registers on behalf of the police as well as other law enforcement, judicial and administrative authorities. The National Police Board also manages a national e-mail system and other police internal IT services. The Customs and the Coast Guard have their own IT support not connected to the police computer systems, apart from the exceptions mentioned below. Swedish Customs does not currently have access to other authorities' computerised information systems for intelligence, nor does it have authority to register information in the Suspects Register (Act 1998:621). Swedish Customs also has direct access to the Register of Criminal Records (Act 1998:620).

The Council for information support to the judicial system which is a council or board set up for co-operation and co-ordination regarding the registers kept for supporting the law enforcement authorities, for instance the registers referred to in the document. It comprises representatives from all law enforcement and judicial authorities.

To preserve the integrity of the information contained in them, the police computer systems have either firewalls or physical separation between different systems. Authenticity checks (access card and personal password) allow individually designed access to certain files or systems according to what is needed to perform a particular job. All entries automated files or systems are recorded and can be traced to individual users. Regarding data protection and security, Swedish Customs uses the same methods as the police, such as firewalls, stand-alone PCs, access cards etc.

Local police authorities, tax authorities, customs authorities, public prosecutors' offices, prison administration authorities, the Swedish Migration Board, the courts, the County Administrations and the National Road Administration have direct access to the Register of Criminal Records and the Suspects Register, limited to the extent they may obtain information from these registers.

The police computer system can only be connected to external systems through firewalls configured according to special regulations. The same security features regarding access, authenticity checks and tracing as described above also apply to external users.

RESTREINT UE

A new computer system (SHS/Distribution and Collection System) is means for secure communication, also known as government e-link, that makes secure communications between authorities possible. The (local) police authorities and the public prosecutors' offices are already connected, and other law enforcement and judicial authorities may be connected as soon as they wish it. Firewalls, encryption and a PKI (Personal Key Identification) structure guarantee a high level of security.

The ENU has access to most of the relevant Customs computer systems.

4. EXTERNAL EXCHANGE OF INFORMATION

4.1. DATA EXCHANGE PROCESS

As far as intelligence is concerned, Finland, Denmark but also Germany and The Netherlands are the most important partners within the European Union; Norway, Poland and the Baltic countries are the most important outside the European Union. The gathering and exchange of intelligence with partners abroad are related to ongoing investigations or criminal intelligence operations as law enforcement responses to various criminal activities having an impact on Sweden.

Sweden has up-to-date legislation that offers rather a wide range of possibilities for providing information and intelligence to other countries and international organisations like Europol. That legislation as such does not - as far as Sweden is aware - constitute any problem with regard to the international exchange of information and intelligence.

However, certain national data protection rules restrict the possibilities for the International Liaison Office of the NCIS to run different computerised workflow systems on the same database. To a certain extent that state of affairs hampers really efficient coordination regarding international cooperation. The National Police Board has tried to clarify the legal situation, but without any clear response. Nevertheless, the NCIS is in the process of exploring the legal and practical scope for developing a more efficient computerised workflow system.

RESTREINT UE

First of all it should be mentioned that experience in using the Info-Ex system and the ELOs when communicating with Europol or other Member States has been quite positive, in terms of both response time and the quality of information and intelligence provided.

A number of impediments can be encountered by Swedish authorities in practice regarding the possibilities for gathering certain types of information and intelligence at national level in Member States and the ability to share it internationally. One part of the problem seems to be that in some Member States the police are entitled to decide on how to process information and disseminate it. In other Member States a public prosecutor or even a court decision is required to obtain the same type of information. Another matter of concern is that local law enforcement authorities, instead of using agreed channels for international cooperation, make direct contact with foreign partners, by-passing established national contact points or liaison officers.

It appears as a general conclusion that:

- during the investigation phase it is mostly possible to obtain the required information or intelligence but too often it takes too long to share it with the requesting law enforcement body in another Member State,
- during the pre-investigation or intelligence phase there are problems both in terms of obtaining the information or intelligence and as regards sharing it in due time,
- concurrent national investigations in two or more countries (formal or informal joint operations) seem to permit a more efficient obtaining of information and intelligence at national level and a sharing of it within the scope of the joint operation; however, when there is an intelligence operation or a crime investigation running in the requesting country but not in the requested country, judicial requests or other legal requirements often involve undue delays or even render it impossible to provide the information or intelligence.

RESTREINT UE

The underlying problems seem to be that:

- legal and practical constraints at national level make it difficult or sometimes even impossible to provide information and intelligence in due time to law enforcement bodies in other Member States,
- national rules, conditions and structures for gathering information and intelligence and sharing it internationally vary,
- there are very few rules and even fewer obligations at European Union level for the transmission of information and intelligence between law enforcement bodies in Member States.

It is a fact that ready access to information and intelligence is crucial to enable the police to detect, prevent and investigate any crime or criminal activity, be that at national or international level. This evaluation exercise might lead to the conclusion that the removal of undue constraints on gathering information and intelligence at national level and transmitting it at international level will be required to achieve really efficient detection, prevention and investigation of crime or criminal activities within an area within which criminals can move freely. The interests of efficient policing must, however, be weighed against the risk of infringing fundamental rights and freedoms, such as the right to respect for private life.

In general, the customs Service does not report any problems over the timely exchange of information. There are of course reported cases of the collection of information taking time, but generally the use of bilateral agreements on mutual assistance in customs matters (which concern e.g. information on suspected persons, searches and seizures) does provide the information needed within reasonable time.

RESTREINT UE

4.2. INFORMATION OWNERSHIP

As to the question of "information ownership", Article 3 of the Act on International Police Cooperation (2000:343) states that where a Swedish authority has received information or evidence from another country to be used for criminal intelligence activities or for a criminal investigation and where there is a treaty¹ with the other country containing rules enabling that country to issue conditions limiting the use of the material (i.e. information or evidence) Swedish authorities will have to comply with such conditions irrespective of what is stated elsewhere in Swedish law or statutes. The same applies to treaties with international organisations. The Act on Mutual Legal Assistance in Criminal Matters (2000:562) contains a clause to the same effect as does the forthcoming Act on joint investigation teams. Corresponding regulations exist for customs Service.

This means that Swedish authorities will have to comply with conditions on the use of information received from another country or international organisation where the conditions set are based on a treaty to which Sweden and the other country or international organisation is a party. Should there be a need to use the material for purposes other than those for which it was provided, Swedish authorities may request permission to use it for additional purposes. As a general rule Sweden does not put restrictions on the use of information or intelligence provided to another country.

The return answers to the questionnaire stated that unilaterally-issued conditions restricting the use of information provided would not be legally binding for Swedish authorities. This might pose a problem for the exchange of information and intelligence between Swedish authorities and law enforcement bodies in other Member States if the exchange takes place outside the scope of the Europol or Schengen Conventions or joint investigation teams. During the visit this statement was however contested by the ministry which after has explained that it did not reflect the actual legal situation. In any case no practical problems have been reported to the national police board because of that.

¹ The Europol and the Schengen Conventions and the framework decision on joint investigation teams are examples of such treaties.

RESTREINT UE

5. EXCHANGE OF INFORMATION BETWEEN MEMBER STATES AND EUROPOL

5.1. DEFINITION OF INFORMATION AND INTELLIGENCE

Structured intelligence is recorded in the KUR. When a local police authority considers that information or intelligence has a national or an international interest, a copy of the intelligence report is sent to the ENU. The ENU distributes the information to the competent unit of the NCIS, which decides whether the information should be forwarded to Europol, at present via the Info-Ex system. Pending the relaunch of a project to modify the KUR as a source for evaluating which type of information is to be sent to Europol, that process is at present handled manually. The initial evaluation will nevertheless have to be made at local level, supported by a modified KUR or not.

Article 3 of the police records Act (1998:622) classifies intelligence operations as *"a police activity, not being a preliminary investigation according to Chapter 23 of the Code of Judicial Procedure, that constitutes the collection, processing and analysis of information with a view to establishing whether a criminal act has been committed or might be committed"*.

Furthermore the same Article defines criminal intelligence operations as *"any other intelligence activity than the one carried out by the Security Service"*.

Section three of the same Article states that a "special inquiry" is *"an inquiry within the framework of a criminal intelligence operation that implies the collection, processing and analysis of data with a view to providing a basis for a decision to initiate a preliminary investigation or special measures to prevent or detect crime"*.

An official National Police Board report (1994:5) entitled "Criminal intelligence; basics, application and definitions", defines intelligence as *"information that has been collected, processed and analysed with a view to establishing a basis for a decision to take action"*. In other words, intelligence is to be understood as the product of the collection, processing and analysis of information in order to establish a basis for a decision to take action.

RESTREINT UE

§2 of the Act on the processing of personal data in the fight against customs fraud (2001:85) contains the following definitions, among others:

intelligence activity: customs activity that constitutes the collection, processing and analysis of information with a view to establishing whether a criminal act has been committed or might be committed, not being a preliminary investigation according to Chapter 23 of the Code of Judicial Procedure or according to the Act on Penalties for Smuggling (2000:1225).

special inquiry: an inquiry within the framework of a criminal intelligence operation that implies the collection, processing and analysis of data with a view to providing a basis for a decision to initiate a preliminary investigation or special measures to prevent or detect crime.

The National Police Board is in the process of developing a model for different sensitivity levels to be used by the police authorities, although it has not yet been officially decided on.

There are in principle no limitations with regard to classification criteria when forwarding information or intelligence to Europol. However, information received from Europol classified as Europol 1 or higher is classified in Sweden as "restricted" pursuant to the Secrecy Act. Handling Codes are used when processing information to Europol or other Member State via the Info-Ex system.

Regarding the categories "harming essential national interests" and "state security", for which there may be an exception from the obligation to hand over intelligence, it is the responsibility of the Security Police to decide whether to pass on information to Europol. In such a case, the ENU is not the recipient of this kind of information.

The ENU rarely receives information that falls under the category "jeopardising the success of a current investigation or the safety of individuals". This type of information is normally not passed on by the local police authorities to the ENU. Consequently, the ENU very seldom has to take decisions on whether to pass on such information to Europol. Would that be the case, the matter is considered in a "Europol favourable manner".

RESTREINT UE

The point in time at which information is forwarded to Europol varies depending on the investigation in hand. There are however no legal obstacles, particular conditions or rules laid down in that respect. It is a mere matter of continuing professional evaluations as to when information is going to be passed on to Europol.

5.2. EUROPOL NATIONAL UNIT

The ENU is a part of the NCIS. The NCIS coordinates in an integrated fashion all communications via Europol, Interpol, Schengen/Sirene, PTN (Nordic Police and Customs Cooperation), the Baltic Sea Task Force and other types of bilateral cooperation. It comprises a total staff of 65, both police and administrative personnel, dealing partly with Europol matters. Two police officers are allocated specifically to liaise with Europol.

International Liaison Office staff have access to the computer files they need depending on their tasks. Europol Network clients are installed at the NCIS, in the office of the Customs Liaison Officer seconded to the National Criminal Investigation Department and at the Security Service (Terrorism). In that way both the Security Service and the Customs Service have access to the information exchange between the ENU and Europol.

International cooperation within the framework of Europol is continuously promoted at national level in seminars, regular meetings and conferences. The target groups vary from regular detectives, heads of local criminal intelligence units, chiefs of police as well as members (politicians) of the local police boards. The marketing at national level of Europol's services is considered very important and various opportunities are continuously explored to do more in that respect.

The ENU may approach directly the local police authorities, courts or public prosecutors' offices. ENU staff have access to most of the national registers, including the KUR, and may also provide or request further information, intelligence or assistance in police matters. The ENU also has access to some Customs files.

RESTREINT UE

Liaison officers from the Customs Service and the Coast Guard are seconded to the National Criminal Investigation Department (NCID). There are however no police liaison officers seconded to the Customs Service or the Coast Guard.

5.3. USE OF INFORMATION AND EUROPOL ANALYSIS CAPABILITY

Sweden will most likely not feed an AWF in which it has no operational interest, which is also a matter of resource management. If there are no resources allocated to collect the information which corresponds directly to the operational interest, there will be no information to pass on to an AWF. It is necessary to be actively involved in an AWF to actually be able to know what type of information would be of interest for the file. If however the analytical results of an AWF were to contain information affecting Sweden, even though that was not initially expected, Sweden would of course be interested in accessing that information.

Sweden participates in most of the AWFs and has initiated some of them. Sweden would however not consider all AWFs as necessary for its law enforcement agencies. The reason is that some of the AWFs are focussed on certain types of crime not affecting Sweden at all or on a minor scale, or there is a specific geographical focus that does not include Sweden.

5.4. PERCEPTION OF EUROPOL VALUE

Sweden has long taken the view that Europol has an important role in work to combat serious cross-border crime affecting the European Union. Sweden has always been appreciative of Europol and will take an active part in its further development.

Sweden has on several occasions noted the added value of Europol's services. In cases where information is collected and analysed in AWFs or MSOPES by Europol it is obvious that the common cross-border approach is very effective and gives a new dimension to the fight against crime. Examples can be found in various areas of organised crime, such as drugs trafficking, illegal immigration, child pornography on the Internet etc.

RESTREINT UE

The quality of the actual information exchanged with Europol improves steadily over time. Consequently the use of the Europol channel has become more efficient. Quality in the context of information exchange is however not only a matter of quality of the information as such but also a matter of choosing the right channel depending on what kind of information or actions are requested. Improving information quality and picking the best channel for different purposes is also an ongoing learning process that will lead to further improvements in terms of quality.

Within PTN cooperation, the Nordic countries have common liaison officers posted in several countries within Europe as well as in third States. Sweden is a member of the Baltic Sea Cooperation within which Europol is taking part in some meetings and actions.

All NCID staff, including the Europol National Unit staff, have been trained in criminal intelligence work and international police cooperation at the "Criminal Intelligence School". The training is carried out by the National Criminal Investigation Department and the Police Academy and is available also to the local police authorities.

All Swedish local police and customs authorities have been offered the chance of participating in awareness seminars at Europol organised together with United Kingdom, Ireland and Finland. A total of 23 police and 9 customs officers, mostly heads of local criminal intelligence units, have participated in the seminars.

DECLASSIFIED

RESTREINT UE

6. EVALUATION MADE BY EXPERTS TEAM

6.1. INTRODUCTION

Sweden is greatly involved in the exchange of information at international level. It is evident that Sweden has continued to create the legislative and technical tools needed for the various agencies concerned, and its European partners, to fulfil their obligations to strengthen cooperation between the various players responsible for the fight against crime. Sweden has continued to benefit from its long experience of international cooperation gained through Nordic police cooperation. Since 1982 the Nordic States have shared a system of cooperation based on agreements with police chiefs in the various countries. These agreements are generally based on direct contacts between the police and judicial authorities, without direct involvement by the central authorities. This very direct form of cooperation, which has proved itself, is an approach which can probably not be reproduced for cooperation between 25 States in a fight against ever more globalised crime.

However, the Nordic model shows that Sweden has a flexible and direct approach to the international exchange of information, which could certainly be beneficial in exchanges of intelligence. Sweden has also clearly demonstrated its willingness to become more involved in cooperation with Europol, as shown by its participation in several AWF systems, and as the increase in the number of requests to the European Police Office bears witness.

However, some aspects of the internal organisation of the law enforcement agencies, the perceived lack of a coordinated policy as regards the exchange of information, and a lack of a thorough study of the role and utilisation of the various existing channels for the exchange of information would nevertheless seem to prevent Sweden from using the existing tools to their full effect. The comments below attempt to highlight the main points which might enable Sweden to improve its efficiency further in this area.

RESTREINT UE

6.2. GENERAL COMMENTS AND STRUCTURES

6.2.1. An effort has been made to bring together registers that previously were kept at local or regional level into national registers. This has in general increased efficiency in the exchange of information.

6.2.2. The Ministry of Justice has arranged one informal meeting on the issue of international exchanges. The Ministry of Justice has recognised the lack of integration of international police co-operation, including exchange of information, within the national police work. The Ministry has therefore elaborated a plan on this topic as a guidance for its future work and priorities in this field. Sweden has expressed a desire to be even more active in this area in the future and to organise more meetings with the services concerned. The legal basis in Sweden seems to have the requisite flexibility needed for an efficient exchange of information. It became clear during the visit that international exchange of information mostly works well at police level but seems to be more difficult or even impossible, in particular when other Member States require judicial requests for providing rather straightforward but nevertheless crucial information needed rapidly in an ongoing investigation or intelligence operation

DECLASSIFIED

RESTREINT UE

6.2.3. During the visit to the Ministry of Justice, it became clear that there was no centrally defined policy for the exchange of information, and that there was little or no coordination between the different authorities responsible for these matters in the Police, the Customs and the Coast Guard. It seems to the evaluation team that this lack of commonly-set goals led to the fact that the Ministries were unable to control development - if any - in the information flows. A part of the difficulties that Sweden has in this respect seems to stem from the fact that the Ministries by tradition are very small (whereas national agencies are very large in terms of staffing) and that three different Ministries are involved (Justice, Defence and Finance). The specific agency responsible for fighting against financial crime, the Financial Intelligence Unit, is part of the NCIS and do not pose a problem when it comes to information exchange and the Economic Crimes Bureau under the Office of the Prosecutor-General has access to the KUR-system and liase with the Police when required.

6.2.4. The police have set up an appropriate NCIS model in which all the different channels used for exchanging information are situated not only in the same department but also in the very same location, with offices beside each other. But there seems to be no policy and no regulations or instructions on how information should be delivered to NCIS from the regions and the local districts. For instance, during the visit it became apparent that the regional police in Stockholm were not aware of the flow of information exchanged between Europol and local police divisions. Thus information may be forwarded to Europol via the NCIS without the intelligence service of the regional district being informed, although it was the regional district that should analyse the information.

RESTREINT UE

- 6.2.5 Internally, the customs service is well organised: firstly, it has a national information system and a system called SPADI which enables it to have access to a whole range of technical files, including a suspects file and a criminal records file, as well as the AFIS system (Anti-Fraud Information System). However, sharing information with police forces does pose problems: it appeared during the visit that a draft law would no longer allow the customs to have direct access to a new police database called KUR. The reasons given for this state of affairs did not seem convincing to the evaluators. Customs headquarters coordinates useful information collated at regional level. It also participates regularly in meetings with police chiefs and those in charge of the coastguard. The customs service considers that some of the difficulties in cooperating with the police probably stem from the lack of a common policy between the various regional police services.
- 6.2.6 The coastguard has been separate from the customs service since 1988 and now works as an independent agency. Recently a circular was adopted, enabling the customs service and the police to have access to data collated by the coastguard. It should be noted that the coastguard is establishing its own database which the police and customs service cannot consult except by prior written request. The reasons for this restriction were unclear to the evaluators.
- 6.2.7 More generally, in all the institutions studied, the evaluation mission observed a widespread lack of awareness of the quantity and quality of information exchanged, both in international exchanges in general and with Europol in particular. The establishment of comparable statistical monitoring could be useful at national level for the ministries concerned for instance as a management tool to assess resource needs. Finally, the evaluation team noted that the Swedish Intelligence model including the KUR system was not yet finalised and operational, although this had been a priority mentioned in the second evaluation round.

RESTREINT UE

6.2.8 Sweden also seems to need a clear training project, in particular related to intelligence-led enforcement and strategic analysis, organisation and management and document handling. Such a project should also be offered to prosecutors, as concerns the value added to use Europol and co-operate on external information requests. Given the gaps identified in many organisational areas, there seems to be a case for going beyond training needs analysis and to make a review of the entire training system.

6.2.9 Finally, is it difficult for the evaluators to accept that customs and coast guard, as they are law enforcement authorities with their own law enforcement competencies, should in principle have restricted access to police registers and vice versa. The reality is that crime makes no distinction as to differences of competence between different agencies. The organised crime of today would one day engage in murder (a police competence), the next day in defrauding the financial interests of the Community (a customs competence) and the next day in smuggling human beings (a coast guard competence). Therefore, to restrict the access of these law enforcement agencies to (parts of) registers, seems to represent an outmoded way of looking at crime today and not using modern technologies to fight today's crime. Legitimate data protection concerns should instead be addressed through validation and access procedures and stringent confidentiality levels, combined with efficient internal and external control, before and after.

The evaluation team have been informed during the visit that The Swedish Government recently appointed a Government commission to evaluate the consequences of Swedish accession to the Schengen cooperation. Within the framework of this analysis, cooperation and information exchange between law enforcement authorities will also be reviewed. The final report is due at 1 June 2004.

6.3. INTERNAL ORGANISATION OF THE EXCHANGE OF INFORMATION

6.3.1 The National Police Board is independent central governmental agency. It falls under the responsibility of the Ministry of Justice. The Government gives general guidelines and directions to the authorities through various tools of governance, such as Ordinances and Regulations, but is constitutionally prohibited from interfering in individual cases dealt with by the competent authorities.

The Ministry is aware of the police's information deficit as regards Europol activities, and has instructed a management committee to follow up on this issue. The Ministry has not instructed a management committee to follow up on the issue of the police's information deficit as regards Europol activities. As said above, the Ministry has elaborated a plan to follow up on issues related to the integration of international police co-operation, including exchange of information, within the national police work. The plan contains – among other things – a future commission to the National Police Board to evaluate this and other related topics.

From the point of view of interinstitutional coordination, a lack of cooperation and insufficient and unclear monitoring has been observed by the evaluation team. Although perhaps not in line with Swedish tradition as regards management of independent agencies, the lack of supervision of specialised agencies shows the urgent need to set up macro management and control structures so as to make work more efficient.

However the Ministry feels that Europol's failure to establish the EIS has not encouraged the Member States to feel that they have obligations towards the European Police Office. The Ministry also recognises that it is not able to assess in detail the quantitative and qualitative production of information exchanged at international level. It is clear that there is a very urgent need to examine the information flows between the national, regional and local authorities.

RESTREINT UE

It could be an advantage for both the NCIS and the Stockholm Police, if it were possible, to merge the work done in these two departments regarding information exchange in such a way that personnel from Stockholm could work on the premises of NCIS together with colleagues from the NCIS.

Sweden was asked about progress in speed and quality in handling information through the different channels. It was stated that there was no instrument available to control the speed and quality of information exchange through the different channels.

6.3.2 The police authorities are working on a new IT project, which should facilitate the exchange of information from Sweden to Europol, and are also working on a manual to rationalise the exchange of information and promote the habit of forwarding information to Europol and/or to the other Member States. This work should enable Sweden to connect itself more easily with Europol's EIS system when it is established. The evaluation team also noted that the KUR system had not yet been finalised and that national IT tools still had to be adapted.

In general there seemed to be many communication difficulties between those responsible for the NCIS, the Stockholm regional police and the local police centres. This situation arises mainly from the fact that the Stockholm police do not seem to have systematic coordination arrangements with the local police authorities.

6.3.3 During the evaluation it was also noted that the reorganisation of the intelligence services between the 21 police regions had not been implemented and that in particular the recommendation appearing in the second evaluation round, that there should be more active cooperation between the police services, had not been carried out either.

6.3.4 Customs said that they currently had access to ASP but that when the KUR was fully implemented they would no longer have access to KUR. The Ministry of Justice (MOJ) said however that customs would have access to the parts of KUR that contained the same information as ASP currently does. This contradictory information could not be clarified, but the evaluators trust that the access of the customs to KUR will not be unnecessarily restricted.

RESTREINT UE

As concerns bilateral private / public information exchange, the police has no structured relations but customs has well developed information exchange on issues of joint concern, on the basis of Memoranda of Understanding (they exist in two versions, adapted to the specific situation).

6.3.5 The coastguard has direct access to the Schengen Information System but for all the other national files the coastguard can only have access to the databases if it makes a specific request. This system functions reasonably satisfactorily, but coastguard chiefs wonder whether this method can continue given the growth in international exchanges. Since the coastguard does not have its own intelligence service, an officer in each administrative zone provides a contact point and interface with the police and customs service. The coastguard would very much like to have access to the various existing databases, particularly to criminal records. It would also like to see the creation of a national or even a European database facilitating maritime surveillance, including the creation of a database of crewmembers. This database could for example be used by Europol to establish an evaluation of the threat in this sector of activities, particularly as regards suspicious changes in crew membership.

It appears that the customs and coastguard have their own IT support which is not connected to the police computer systems. As previously stated, one reason for this may be that the three law enforcement agencies are responsible to three different Ministries (Justice, Finance and Defence). The apparent drawbacks of this system, which is not uncommon in Europe, were also evident during the evaluation in which it transpired that there was a lack of political guidance, even of a national strategy, on how to handle the crucial issue of exchange of law enforcement information. It seemed to the evaluation team that the scarce resources of the Ministries had not been pooled and that the various agencies therefore lacked the political impetus necessary to make the exchange of information – and in particular the international exchange of information – a sufficiently high political priority to be able to address the complex issues with a sufficient degree of resolution.

RESTREINT UE

6.4 EXTERNAL EXCHANGE OF INFORMATION

6.4.1 For multilateral cases Europol is apparently used more, whereas for bilateral cases Interpol is favoured. A change in the channel for information while processing the same data is an empirical decision, which is essentially under the responsibility of the Europol liaison officer.

6.4.2 The Europol liaison officer may have direct contacts with national local services, in the interests of rapidity and effectiveness. The Swedish authorities believe that the role of the liaison officer should not be limited to simply acting as a "letter box". However, he remains obliged to send any information thus forwarded to the national unit. Despite this concern for effectiveness, there was no information concerning figures either for the response time for questions forwarded or for the time taken to pass on information.

Sweden has not set standards for the quality of information. This is regarded as a good idea, but setting quality standards has to be considered in view of the fact that information in terms of hard facts like criminal convictions etc. do not need any further evaluation and that intelligence indeed is the product of evaluation and analysis. Hence, setting up quality standards would risk delaying the exchange of information without any clear added value.

Sweden does not favour harmonisation in the form of a standard choice of information channel, preferring to provide its services with an adaptable and practical system allowing for greater flexibility. Although the evaluators appreciate that this may be a valid policy choice it would seem - at least in the long run - to be liable to create distortions and random, ad hoc solutions rather than to be conducive to a coherent and comprehensive policy.

RESTREINT UE

6.4.3 In the customs service, regional departments are authorised to contact the Europol liaison officer directly. It is then for the liaison officer, on his own responsibility, to decide whether or not to inform customs headquarters. On the other hand, if the regions believe that a case should go through the central customs headquarters, the latter studies which international channel is most appropriate to use to disseminate the information. In general, the customs service gives priority to bilateral relations, because of their long tradition of international cooperation. To do so the customs service uses the CIS, SPADI – a file that allows access to 23 different files such as criminal records – and AFIS/CIS. This system is mainly used as a tool to provide assistance, but also to exchange information. If many countries are concerned with one case, more systematic use tends to be made of Europol, particularly by the use of AWFs wherever possible. The customs service has also stressed the development of exchange of information through the WCO and the new computerised transit system which is a tool for customs to speed up and ensure proper monitoring of the transit system to guard against fraud by using advanced computer systems and electronic data processing to replace the traditional paper documents.

6.4.4 Internally, the coastguard seems to have the easiest exchanges with the police regions and with the customs service, whose organisation is more centralised as regards the exchange of intelligence. The evaluation team has the impression because of indirect access to police files, choices about all the areas of international cooperation are systematically made by police chiefs, and not by those in charge of the coastguard; this remark is certainly true for Europol.

RESTREINT UE

6.4.5 The expert team has observed a lack of guidelines, recommendations or criteria for choosing communication channels - the choice is made by the individual officer without any influence or guidance from policies set by the government or a national agency. This seems difficult to reconcile with policy statements by the Government to prioritise certain documents for certain channels. Also, there is a need for checking further data exchange between Europol and CIS, SIS and OLAF: as long as these systems are not effectively networked, the choice of channel might impact negatively on the effectiveness of the investigation, and would also continue to tempt users to use parallel channels for the same issue (as apparently happened in the case of Sweden); in particular, there seems from a national perspective to be a lack of clarity as regards distribution of work between OLAF and Europol (for example in the areas of fraud and swindling) which needs to be addressed at an internal level.

6.5 EUROPOL

6.5.1 The failure to establish the Europol Information System has seriously discouraged the Member States and their competent authorities, which feel that Europol has not met their expectations and that the absence of this operational tool prevents them from cooperating effectively with Europol. Also, the constant postponement of this project and the fact that Europol did not keep its promises on the subject has greatly undermined the authorities' confidence in Europol's operational capabilities. For Sweden, the absence of the EIS means that it is much more difficult for Europol to play its role as an intelligence service. Sweden considers that, when the system has been established, national legislation should be no impediment to feeding information into the future database.

6.5.2 In the absence of this tool the Swedish authorities consider that, for the immediate future, participation in AWF and MSOPES remains the best form of cooperation with Europol. As regards the establishment of joint investigation teams, Sweden has declared that it can participate without any further legislative or technical constraints.

RESTREINT UE

6.5.3 The Stockholm regional police complains of a lack of information as regards the skills and activities of Europol. They have little information on the services that Europol can provide, and regret not knowing Europol staff individually. Regional police chiefs also regret having little information on the national experts who might be able to participate in AWFs.

The Swedish authorities seem to have a willingness to use Europol more and more and they are also doing so in practice. The ELOs are functioning very well and increasing use is made of AWFs. However, the fact that AWFs exist seems to be known only at national level and the information seems not to be passed to regional or local level. Sweden could make more effort to ensure that such information is passed on regularly to other levels. Nevertheless the authorities recognise a lack in the use of Europol's strategic products and analytical capabilities.

6.5.4 The Stockholm regional police also believe that seminars on the European police institution are insufficiently developed. The dissemination of Europol publications seems to remain at a confidential level without being spread widely to operational police departments.

6.5.5 Exchanges of information with the other Member States through the Swedish liaison officers at Europol are clearly increasing. The added value of Europol is reflected mainly in the activity of liaison officers in bilateral or multilateral information exchanges.

DECLASSIFIED

RESTREINT UE

6.5.6 Regarding the exchange of information, a great deal is sent to Europol but, as Europol itself underlines, little information is systematically used by the Member States.

Globally, there are few obstacles to forwarding all the information desired to Europol. On the other hand, there are too many constraints imposed by each of the Member States for there to be a true exchange within a reasonable time-frame. The following list of information was handed over at the visit of the National Police Board, which regards it as necessary to be able to exchange at international level within time-frames meeting operational requirements, i.e. true operational co-operation, and then add the complete list provided as follows:

Register of persons convicted of crime

Register of persons suspected of (concrete) crime

Register of persons suspected of criminal activities
(criminal intelligence register)

Photographs register

Fingerprints register

DNA register

Identification register (register of distinguishing marks or register of dental records)

Modus operandi register

Other registers that describe crimes committed or types of crime

Register of unusual or suspicious (money) transactions

Register of stolen vehicles or stolen goods

Firearms tracing register

Officially documented questioning of suspects, witnesses, plaintiffs, experts etc.

Search of premises

Telephone tapping (including so-called surplus information)

Room bugging

Telecom monitoring

Crime scene investigations

Medico-legal investigations

RESTREINT UE

Observations or observation reports

Photographs

Film or video recordings

Questioning or other record of conversations with persons who co-operate with crime-fighting authorities

Statements provided by under-cover agents

Other compilations that contain appraised or non-appraised information on crime or criminal activities

Operational analyses

Driving licences register

Passports register

Register of national identity cards

Firearms register

Customs authorities' register of import and export of goods

Decisions, permits, fingerprints etc. concerning foreign nationals

Income and wealth information

Accommodation and address information

Ownership of real property

Company board of directors, operations, share capital etc.

Vehicle data and vehicle owner (cars)

Vessel data and owner of vessel or boat

Data concerning aircraft and owner of aircraft.

Holders of telephone, mobile phone, fax or telex subscriptions, ex-directory and listed respectively.

RESTREINT UE

Telecom traffic and localisation data, i.e. history of calls to or from a certain telephone number, or where a particular mobile telephone has been located at a certain point in time.

Subscription and traffic information regarding electronic communication, i.e. holders of e-mail addresses, web-sites etc and how, when and between which persons electronic messages move/have moved, e.g. via the Internet.

Transport companies' passenger and freight lists.

Information held by banks, financial institutions and insurance companies on balances, transactions, holding of credit cards or insurance policies.

Registered debts such as taxes, maintenance, fines, debts to individual guarantors etc.

It has to be underlined that the list above was handed over informally at the national police board and does not yet represent an official Swedish position. The issues are currently discussed at ministerial level.

6.5.7 The national unit is responsible for re-transmitting information. Its basic aim is to respond to the various requests as quickly as possible, which is why the choice of information channel is usually made on a case-by-case basis to enable the most appropriate departments to deal with requests.

6.5.8 The customs service would like more systematic access to Europol's services. The customs service has recently addressed an official request to the police authorities to have a more permanent link with the Europol National Unit. The customs service also believes that it is not for the Member States to ensure liaison between Europol and OLAF because of the frequent competition between those two institutions in certain investigations. The customs service expressed a wish that an agreement could rapidly be concluded between Europol and OLAF to clarify the situation. In the meantime, in disputed cases Swedish customs systematically sends the same information to Europol and to OLAF.

RESTREINT UE

6.5.9 For the coastguard, a request for access to Europol has to go through the coastguard officer at the NCIS, who requests authorisation from the police officer in charge. Whether a request is made at regional level or at the NCIS in Stockholm, requests for international cooperation always go through the police service.

6.5.10 Awareness about Europol must be increased and more generally Europol should, in agreement with the Member States, set up service standards in order to measure and show if there were some Member States which were less cooperative than others. This tool should also be used more generally to explore possible lack of quality in speed and content between the Member States in order to eliminate the reasons for this lack of speed and quality.

7. GENERAL CONCLUSIONS AND RECOMMENDATIONS OF THE EXPERTS TEAM

7.1 First of all it should be highlighted that Sweden has been extremely open in both the written answers and during the interviews, even when it came to difficult and sensitive questions. The evaluation team would like to make a number of recommendations following these observations, findings and discussions with the Swedish authorities. As mentioned in the introduction, Sweden is perfectly aware of the role and increasing importance of the exchange of information between the various competent authorities at international level, and particularly at European level.

7.2 The team also observed considerable efforts to pool the contents of certain files which were previously held at local or regional level. However, it appeared very clearly to the evaluation team that international cooperation and the exchange of information did not follow a clearly defined policy at national level. For example, there is no institutional arrangement at national ministerial level to discuss the problems of the exchange of information between law enforcement agencies at national and international level. These informal contacts exist only in the framework of the reform plan. However the Swedish authorities are planning closer cooperation, for example to draw up a threat assessment in close cooperation with the customs and police.

RESTREINT UE

7.3 Finally Sweden has expressed its determination to increase its international cooperation, particularly through Europol, by stressing the need to improve the quality and rapidity of the information transmitted. Following their visits, the experts would like to make the following recommendations:

7.4 For Sweden

7.4.1 As rapidly as possible, implement the recommendations made in the second evaluation round, particularly by finalising and bringing into full operation the Swedish intelligence model including the KUR system, allowing access to this system to the customs authorities and the coastguard.

7.4.2 Take regulatory measures to promote access by the various law enforcement agencies to the various existing criminal record files, particularly when the KUR system is established, while respecting legitimate rules on data protection. At least allow "Intelligence Officers" from different law enforcement agencies who are involved in fighting international serious crime to have access (online) to relevant "Intelligence Databases", e.g. through changes of legislation if necessary.

7.4.3 Establish a group, coordinated by the relevant ministerial department level, to draw up a national threat assessment at regular intervals.

7.4.4 Define a consistent overall telecommunications policy, to protect the exchange of information better and to facilitate interoperability between the various law enforcement agencies involved.

7.4.5 Create a policy and quality programme to become part of a Swedish Intelligence Model with clearly agreed working methods and not just wait for EIS, which is one of several Europol facilities.

RESTREINT UE

- 7.4.6 Consider the establishment of more precise rules or at least guidelines, providing officials in charge of international exchanges of information and intelligence with a manual making it easier for them to choose the most appropriate channel for exchanges. This strategy should avoid the transmission of identical requests for information to different agencies (e.g. Interpol, Europol, OLAF etc). In this respect the organisation of the customs headquarters could be used as a model in determining the choice of the most appropriate channel for information.
- 7.4.7 A policy for use of channels and priority to the Europol channel within its mandate should be set up, followed by clear guidelines. There is an urgent need to have an agreement between the NCIS and the Stockholm Police district on how to handle information.
- 7.4.8 The policy and quality programme should have the ability to respond to ad hoc requests for information through INFO-EX, give support to live investigations or operations and provide intelligence.
- 7.4.9 Cooperation and formalised meetings in the different regions between Customs and Police from all districts in the regions should be scheduled in order to enhance a more informal discussion between the parties about common responsibilities.
- 7.4.10 Customs should play a more active role in the analysis of certain areas of transnational organised crime, as already recommended during the second evaluation round on drug trafficking in 2001.
- 7.4.11 Develop more active cooperation between regional police forces and particularly with the regional intelligence service in Stockholm (merging of systems in order to avoid duplication of efforts.)
- 7.4.12 Develop a system making it possible to check the information passing through the NCIS in both directions.

RESTREINT UE

- 7.4.13 Increase the amount of information provided to the various services on the role and functions of Europol. To do this, there is a need to increase personal contact between national staff and Europol officials via the national unit. Promote a better distribution to regional and local level of documents and information notes produced by Europol.
- 7.4.14 Raise the awareness of Europol's capabilities.
- 7.4.15 Use the budgetary control powers of the Government to enhance the attention of the Swedish police regarding Europol cooperation, specifically exchange of information with Europol. The Ministry should also examine whether its staffing is sufficient to adequately fulfil its budgeting and regulatory powers.
- 7.4.16 It would also be desirable for the Coastguard to be involved in information exchanges with Europol in certain areas of the Europol mandate, e.g. drug trafficking, immigration networks and trafficking in human beings, given the Coastguard's specific capabilities for monitoring migration flows and coastal surveillance throughout national territory. The idea of studying the possibility of creating a European centre for maritime surveillance in the Baltic Sea could be further explored among Member States concerned.

7.5 For Europol:

- 7.5.1 Draw up a precise and comprehensive specification for the EIS project, giving Member States a clear indication of the time frame. Europol must now make precise commitments on the EIS project both technically and as regards timing (as scheduled several times for operational use since 2001) or any other alternative solution as soon as possible. Otherwise it risks losing a great deal of its credibility with its partners.
- 7.5.2 Establish a list of information – both in the pre-investigation and investigation phases – for which exchange between Member States should be simplified, so as to accelerate effective exchanges of information in both directions.

RESTREINT UE

7.5.3 Define a more active policy towards the Member States, to propose practical initiatives to improve knowledge of Europol's tools which are available to national law enforcement agencies.

7.5.4 Encourage the development of the participation of the Member States in AWFs.

7.6 For the Member States:

7.6.1 As far as possible, promote direct contacts between the Europol liaison officer and the operational services in the Member States, while ensuring that the Europol Convention is respected as regards informing the Europol National Unit.

7.6.2 All Member States should respect the sending countries' choice of channel; it is the only way to increase the use of Europol, and the only way to avoid duplication of work.

7.6.3 As far as possible, intensify cooperation by means of the opening of AWFs, ensuring that information is fed into these databases effectively.

7.6.4 The AWF should be based on a feasibility study and a commitment from concerned Member States. Before entering an AWF the Member State should ensure that possible basic hindrances such as legal obstacles, data protection and ownership of information (relationship between police and judicial authorities) are solved. Examine possibilities for receiving letters rogatory in on-going cases in the Europol framework, for instance during controlled deliveries.

7.6.5 Despite providing information to Europol for the work within the AWF, Member States should be aware of the obligation to provide information on their own initiative as foreseen in Article 4.4.1 (cf. the Europol Convention).

7.6.6 The National Unit together with the ELOs should give awareness presentations based on successful investigations (according to the decision of the Europol Management Board, ELOs should organise awareness seminars in their home countries at least twice a year).

RESTREINT UE

ANNEX A

VISITING PROGRAMME

Monday 19 May 2003

- 08.45 Departure from Freys Hotel.
- 09.00 – 11.45 The Swedish National Police Board *meeting* with representatives of:
- The Swedish National Police Board
 - The National Criminal Investigation Department in the presence of Liaison Officers from the Customs and the Coast Guard
- 12.00 – 13.00 *Lunch* hosted by the National Criminal Investigation Department
- 13.15 – 14.15 *Visit* to the International Police Liaison Office in the presence of Liaison Officers from the Customs and the Coast Guard
- 14.30-16.30 *Visit* to the Stockholm County Police, Regional Criminal Intelligence Service
- 17.00 The Ministry of Justice *meeting* with representatives of:
- The Ministry of Justice
- 19.30 *Dinner* hosted by the State Secretary Ministry of Justice at Restaurant Gondolen

Tuesday 20 May 2003

- 09.45 Departure from Freys Hotel
- 10.00 – 11.30 The Swedish Customs Head Office *meeting* with representatives of:
- The Swedish Customs
- 12.00 – 13.30 *Lunch* hosted by the Swedish Customs
- 14.00 – 15.30 The Swedish Coast Guard *meeting* with representatives of:
- The Swedish Coast Guard
- 16.00 The Ministry of Justice *summing up* with representatives of:
- The Ministry of Justice
 - The Criminal Investigation Department
 - The Customs
 - The Coast Guard
-

LIST OF PERSONS MET

- **Ministry of Justice (Justitiedepartementet)**
 - Dan Eliasson, State Secretary (Statssekreterare)
 - Peter Strömberg, Director-General for International Affairs (Internationell Chefsförhandlare)
 - Agneta Essen, Director (Ämnesråd)
 - Elenor Groth, Deputy Director (Kansliråd)
 - Anna-Carin Svensson, Special Adviser (Ämnessakkunnig)
 - Henrik Sjölander, Desk Officer
 - Lars Werkström Director

- **The Swedish National Police Board (Rikspolisstyrelsen)**
 - Sten Heckscher, National Police Commissioner (Rikspolischef)
 - Lars-Gunnar Johnsson, Acting Head of the International Police Affairs Division
 - Aimée Jillger, Legal Adviser, Division for Legal Affairs (Verksjurist)
 - Stig Sandin Deputy Chief Information Security Officer
 - Camilla Annerstedt, EU co-ordinator
 - Christer Wurhell (Interpol)

- **The National Criminal Investigation Department (Rikskriminalpolisen)**
 - Magnus Törner, Deputy Head, National Criminal Intelligence Service
 - Kenneth Mandergrehn, Head of International Liaison Office
 - Christer Wurnell, Deputy Head, National Liaison Office
 - Benny Wahlbäck, Head of Europol Office
 - Per-Uno Johansson, Head of Sirene Office
 - Kjell-Åke Larsson, Liaison Officer Europol

- **Stockholm County Police, Regional Criminal Intelligence Service (Polismyndigheten i Stockholms län, Länskriminalpolisen)**
 - Johnny Beverhjem, Head of Analysis Section
 - Anders Ahlgren, Analyst
 - Stig Löfgren, Analyst

- **The Swedish Customs Head Office (Tullverket)**
 - Göran Ekström, Deputy Director General
 - Eva-Lotta Hedin, Head of Department
 - Tore Rågnäs, Head of Intelligence and Analysis Division
 - Hans Johnsson, Head of Section
 - Fatima Hedberg, Legal Advisor
 - Lars Granström, Liaison Officer

- **The Swedish Coastguard (Kustbevakningen, KBV)**
 - Dan Thorell, Commodore (Sjöövervakningschef)
 - Henry Nilsson, Commander (Nationell Samordnare)

SWEDISH LEGAL BASE

The Secrecy Act (1980:100)

§1 This Act contains provisions on the duty to observe secrecy in public affairs and on prohibitions against making official documents available. In the latter respect, the provisions limit the right of access to official documents laid down in the Freedom of the Press Act. The provisions relate to prohibitions against disclosing information either verbally or by making an official document available, or in any other way (secrecy). The Act also contains other provisions about official documents.

§3 Information lodged with a particular authority in respect of which secrecy shall apply according to this Act must not be disclosed to any other authority unless otherwise prescribed in this Act or in an Act or decree referred to in this Act.

What is said about authorities in the first paragraph of this section, in §5, in Chapters 13 and 14, or in special provisions of this Act on the transfer of secrecy between authorities also applies to the relation between different departments within the same authority, when they are to be regarded as independent of each other. Information which is secret pursuant to this Act must not be disclosed to a foreign authority or international organisation unless the information is communicated in accordance with special provisions in an Act or decree or unless the information might be provided to a Swedish authority in a corresponding case, and the authority holding the information deems it evidently compatible with Swedish interests that the information be communicated to the foreign authority or international organisation. Act (1982:1106).

The Police Record Act (1998:622)

Scope of the Act

RESTREINT UE

§1 In addition to the provisions of the Personal Data Act (1998:204), this Act applies to the processing of personal data during police activities to:

1. prevent crime and other disturbances of public order and security,
2. monitor public order and security, prevent their disturbance, and intervene when such disturbance has occurred,
3. carry out investigations and inquiries in relation to crimes subject to public prosecution.

This Act also applies to the processing of the information referred to in §25 and §26.

The Act does not apply to personal data processing undertaken by virtue of the Criminal Record Act (1998:620), the Suspects Register Act (1998:621) or the Act on the Schengen Information System (2000:344). Act (2000:349).

§7 Information may be communicated to a foreign authority or international organisation, if that communication is in accordance with an international agreement entered into by Sweden with the approval of Parliament. The Government may issue instructions that information may on request be communicated to the police or prosecuting authorities in a State which is a member of Interpol, where needed by that authority or organisation in order to prevent, detect, investigate or prosecute crime. Information may also be communicated in accordance with the third paragraph of §3 in Chapter 1 of the Secrecy Act (1980:100).

The Police Record Ordinance (1999:81)

§1 This ordinance provides supplementary regulations regarding such processing of personal data as is subject to the Police Record Act (1998:622).

§18 Information processed in accordance with the Police Record Act (1998:622) may, where this is compatible with Swedish interests, be communicated to:

1. foreign intelligence and security services
2. police or prosecuting authorities in a State which is a member of Interpol, where needed by that authority or organisation in order to prevent, detect, investigate or prosecute crime. Ordinance (2002:434).

RESTREINT UE

The Register of persons convicted of Crime Act (1998:620)

§1 Using automatic data processing, the National Police Board shall keep a register of criminal records. The National Police Board is the controller of personal data for the processing of personal data in the register.

§11 Information from the register may be communicated to a foreign authority or international organisation if that communication is in accordance with an international agreement entered into by Sweden with the approval of Parliament.

§12 Information from the register may be communicated to courts or to police or prosecuting authorities in Denmark, Finland, Iceland or Norway if requested for the investigation of a crime. On request, information may also be communicated to courts or to police or prosecuting authorities in a State which is a member of Interpol, or to Interpol itself, where the authority or organisation needs such information in order to prevent, detect, investigate or prosecute crime, or for an extradition request.

The Register of persons convicted of Crime Ordinance (1999:1134)

§1 In this ordinance, "register of criminal records" means the register kept by virtue of the Criminal Record Act (1998:620).

§24 Information may be communicated in accordance with §11 of the Criminal Record Act (1998:620) where such information is needed for the activities referred to in subparagraphs 1 to 3 of the first paragraph of §2 of that Act. Information may be communicated in other cases only where there are particular grounds to do so. Ordinance (2000:720).

RESTREINT UE

The Register of Persons suspected of Crime Act (1998:621)

Suspects Register

§1 Using automatic data processing, the National Police Board shall keep a register containing information about those who for good reason are suspected of crime (the suspects register). The National Police Board is the controller of personal data for the processing of personal data in the register.

§9 Information from the register may be communicated to a foreign authority or international organisation if that communication is in accordance with an international agreement entered into by Sweden with the approval of Parliament.

§10 On request information may also be communicated to courts or to police or prosecuting authorities in a State which is a member of Interpol, or to Interpol itself, where the authority or organisation needs such information in order to prevent, detect, investigate or prosecute crime, or for an extradition request.

The Register on Persons Suspected of Crime Ordinance (1999:1135)

§1 In this ordinance, "suspects register" means the register kept by virtue of the Suspects Register Act (1998:621).

§17 Following consultation with the central authorities concerned, the National Police Board may issue the necessary instructions for the implementation of this ordinance. The National Police Board may also issue instructions that information covered by §10(1) of the Suspects Register Act (1998:621) or by §3 or §4 of this Ordinance may be communicated by a police authority.

Internal regulations of the National Police Board regarding the provision of information from the Criminal Records Register (FAP 458-1).

RESTREINT UE

The National Police Board's instructions on a police authority's right to communicate information from the Criminal Records Register; decided on 11 July 2002.

The National Police Board directs as follows, by virtue of §38(2) of the Criminal Record Ordinance (1999:1134).

A police authority may decide whether to communicate information in accordance with §12(1) of the Criminal Record Act (1998:620) to a police authority in Denmark, Finland, Iceland or Norway.

This measure shall enter into force on 1 September 2002.

Internal regulations of the National Police Board regarding the provision of information from the Suspects Register (FAP 457-1)

The National Police Board's instructions on a police authority's right to communicate information from the Suspects Register; decided on 11 July 2002.

The National Police Board directs as follows, by virtue of §17(2) of the Suspects Register Ordinance (1999:1135).

A police authority may decide whether to communicate information in accordance with §10(1) of the Suspects Register Act (1998:620) to a police authority in Denmark, Finland, Iceland or Norway, where needed for that authority to investigate a crime.

This measure shall enter into force on 1 September 2002.

RESTREINT UE

Internal regulations of the National Police Board regarding the provision of information from the Criminal Intelligence Register, etc. (FAP 447-1).

Chapter 2: Scope

§1 The Criminal Intelligence Register is the national criminal intelligence register, for use by both the police authorities and the National Investigation Department.

The register is kept by the police authorities and the National Investigation Department.

§18 of the Police Record Act states that the authority which keeps the register is the controller of personal data for the processing of personal data in the register.

These provisions apply to the police authorities' and the National Investigation Department's use of the Criminal Intelligence Register. The provisions apply even when information which cannot be attributed to a particular individual is entered in the Criminal Intelligence Register.

The provisions also apply to the police authorities' and the National Investigation Department's use of special investigations.

Chapter 14: Communication of information from the criminal intelligence register and from special investigations

§1 The decision on whether it is compatible with Swedish interests to communicate information from the Criminal Intelligence Register and from special investigations to foreign intelligence and security services and to police or prosecuting authorities in a State which is a member of Interpol shall be made by the National Investigation Department.

This measure shall come into force on 1 April 2001.

RESTREINT UE

ANNEX D

LIST OF ABBREVIATIONS / GLOSSARY OF TERMS

| ACRONYM ABBREVIATION TERM | ENGLISH TRANSLATION OR EXPLANATION |
|---------------------------------|---|
| AFIS | Anti-Fraud Information System (Custom's System) |
| ASP | General Investigation/Intelligence Register |
| AWF | Analysis Work Files (Europol data records) |
| CIS | Customs Information System |
| CID | Criminal Intelligence Department |
| DNA | Criminal Intelligence Register |
| EIS | Europol Information System |
| ELO | Europol Liaison Officers |
| ENU | Europol National Unit |
| FAP | Internal Police Regulation |
| INFO EX | Computerised system of Europol containing particulars from the analysis files |
| KBV | Coast Guard |
| KUR | National Criminal Intelligence Register |
| MOJ | Ministry of Justice |
| MSOPES | Member States Operational Projects with Europol Support |
| NCB | National Central Bureau |
| NCID | National Criminal Investigation Department |
| NCIS | National Criminal Intelligence Service |
| OLAF | European Anti-Fraud Office |
| PKI | Personal Key Identification |
| PTN | Nordic Police and Customs Cooperation |
| SHS | Distribution and Collection System |

RESTREINT UE

| ACRONYM ABBREVIATION TERM | ENGLISH TRANSLATION OR EXPLANATION |
|---------------------------------|---|
| SIS | Schengen Information System |
| SPADI | Custom's databank (used for intelligence and strategic information) |
| SUR | Data file for special inquiries |
| WCO | World Customs Organisation |

DECLASSIFIED