



Council of the  
European Union

101135/EU XXVII. GP  
Eingelangt am 20/05/22

Brussels, 20 May 2022  
(OR. en)

8438/1/22  
REV 1

COPEN 138  
DROIPEN 53  
EVAL 10  
JAI 530  
EUROJUST 42  
EJN 15  
CATS 20

**NOTE**

---

From: General Secretariat of the Council

To: Delegations

---

Subject: **EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL  
EVALUATIONS**  
**9th round of mutual evaluations on mutual recognition legal  
instruments in the field of deprivation or restriction of liberty -  
REPORT ON SWEDEN**

---

**EVALUATION REPORT ON THE  
NINTH ROUND OF MUTUAL EVALUATIONS**

**9th round of mutual evaluations on mutual recognition legal instruments in the  
field of deprivation or restriction of liberty**

**REPORT ON SWEDEN**

## Table of Contents

<b>1. EXECUTIVE SUMMARY</b>	7
<b>2. INTRODUCTION</b>	14
<b>3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)</b>	17
<b>3.1. Authorities competent for the European Arrest Warrant (EAW)</b>	17
3.1.1. <i>Central authority: the Ministry of Justice</i>	17
3.1.2. <i>Competent authority as issuing State: the prosecutor</i>	17
3.1.3. <i>Competent authorities as executing State</i>	20
<b>3.2. The principle of proportionality</b>	23
3.2.1. <i>As issuing State</i>	23
3.2.2. <i>As executing State</i>	25
<b>3.3. Exchange of information</b>	25
3.3.1. <i>Sweden as executing authority</i>	25
3.3.2. <i>Sweden as issuing authority</i>	27
<b>3.4. Grounds for refusal</b>	28
3.4.1. <i>Refusal in the event of a potential risk of violation of fundamental rights in relation to detention</i>	28
3.4.2. <i>Refusal in the event of judgment in absentia</i>	32
3.4.3. <i>Other grounds for refusal</i>	34
<b>3.5. Further challenges</b>	37
3.5.1. <i>Transit</i>	37
3.5.2. <i>CJEU case-law</i>	38
3.5.3. <i>Conditional surrender and acquittal</i>	39
3.5.4. <i>Speciality rule</i>	39
<b>3.6. Conclusions</b>	40
3.6.1. <i>General consideration</i>	40
3.6.2. <i>Sweden as issuing State</i>	41
3.6.3. <i>Sweden as executing State</i>	42
<b>4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION</b>	46

<b>4.1. Authorities competent for the recognition of the judgment and execution of the sentence .....</b>	<b>46</b>
4.1.1. Sweden as issuing State.....	46
4.1.2. Sweden as executing State.....	47
4.1.3. Principle of direct contact.....	47
<b>4.2. Documents required for recognising the judgment and executing the sentence .....</b>	<b>47</b>
4.2.1. As executing State .....	47
4.2.2. As issuing State .....	47
<b>4.3. Criteria to assess the facilitation of social rehabilitation.....</b>	<b>48</b>
4.3.1. Criteria to assess social rehabilitation .....	48
4.3.2. Exchange of information between the issuing State and executing State .....	48
4.3.3. Opinion and notification of the sentenced person .....	50
<b>4.4. Adaptation of the sentence.....</b>	<b>51</b>
4.4.1. As executing State .....	51
4.4.2. As issuing State .....	52
<b>4.5. Grounds for non-recognition or non-enforcement.....</b>	<b>52</b>
4.5.1. Usual grounds for non-recognition or non-enforcement.....	52
4.5.2. Judgments in absentia .....	53
4.5.3. Criminal irresponsibility and imposition of psychiatric care.....	53
<b>4.6. Partial recognition.....</b>	<b>54</b>
4.6.1. As executing State .....	54
4.6.2. As issuing State .....	55
<b>4.7. Challenges relating to compliance with the deadline for recognition and enforcement</b>	<b>55</b>
4.7.1. Compliance with the deadline provided for in Article 12(2) of Framework Decision 2008/909/JHA .....	55
4.7.2. Information in the event of delay .....	56
<b>4.8. Law governing the enforcement of the sentence.....</b>	<b>56</b>
<b>4.9. Further challenges.....</b>	<b>57</b>
4.9.1. Transit of the sentenced person .....	57
4.9.2. Other challenges .....	58
<b>4.10. Statistics.....</b>	<b>58</b>
<b>4.11. Conclusions.....</b>	<b>59</b>

<b>5. LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES .....</b>	<b>61</b>
<b>5.1. Problems related to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences .....</b>	<b>61</b>
5.1.1. <i>Criteria used in order to decide whether to use an EAW or a certificate: .....</i>	61
5.1.2. <i>As executing State, need for a certificate after a refusal to surrender .....</i>	61
5.1.3. <i>Surrender granted on the basis of Article 5(3) of Framework Decision 2002/584/JHA</i>	62
5.1.4. <i>As issuing State, need for a certificate after refusal of surrender by the executing State</i>	63
<b>5.2. Conclusions .....</b>	<b>63</b>
<b>6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS .....</b>	<b>64</b>
<b>6.1. Authorities competent for Framework Decisions 2008/947/JHA .....</b>	<b>64</b>
6.1.1. <i>No central authority .....</i>	64
6.1.2. <i>Authorities competent to issue and execute a request on probation and alternative sanctions.....</i>	64
<b>6.2. Problems related to lack of application of Framework Decision 2008/947/JHA.....</b>	<b>65</b>
6.2.1. <i>No problem regarding the law or institutional organisation but a lack of awareness</i>	65
6.2.2. <i>Problems underlined by the Prison and Probation Service.....</i>	65
6.2.3. <i>Statistics .....</i>	66
<b>6.3. Conclusions .....</b>	<b>66</b>
<b>7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO).....</b>	<b>67</b>
<b>7.1. Authorities competent for the Framework Decisions 2009/829/JHA .....</b>	<b>67</b>
7.1.1. <i>No central authority .....</i>	67
7.1.2. <i>Authorities competent to issue and execute an ESO .....</i>	67
<b>7.2. Problems related to lack of application of Framework Decision 2009/829/JHA.....</b>	<b>68</b>
7.2.1. <i>No problems regarding the law or institutional organisation, but limited utility .....</i>	68
7.2.2. <i>A little-used instrument .....</i>	69
<b>7.3. Conclusions .....</b>	<b>69</b>
<b>8. TRAINING .....</b>	<b>70</b>
<b>8.1. Training related to FD 2002/584/JHA .....</b>	<b>70</b>
8.1.1. <i>Judges.....</i>	70

8.1.2.	<i>Prosecutors</i> .....	71
8.1.3.	<i>Lawyers</i> .....	72
<b>8.2.</b>	<b>Training related to FD 2008/909/JHA</b> .....	<b>73</b>
8.2.1.	<i>Prison and Probation Service staff</i> .....	73
8.2.2.	<i>Judges</i> .....	73
<b>8.3.</b>	<b>Training related to FD 2008/947/JHA</b> .....	<b>74</b>
<b>8.4.</b>	<b>Training related to FD 2009/829/JHA</b> .....	<b>74</b>
<b>8.5.</b>	<b>Conclusions</b> .....	<b>75</b>
<b>9.</b>	<b>FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES</b> .....	<b>76</b>
<b>9.1.</b>	<b>Suggestions from Sweden</b> .....	<b>76</b>
9.1.1.	<i>Regarding Framework Decision 2008/909/JHA</i> .....	76
9.1.2.	<i>Regarding Framework Decision 2008/947/JHA</i> .....	76
<b>9.2.</b>	<b>Recommendations</b> .....	<b>76</b>
9.2.1.	<i>Recommendations to Sweden</i> .....	77
9.2.2.	<i>Recommendations to the other Member States</i> .....	79
9.2.3.	<i>Recommendations to the European Union and its institutions</i> .....	79
9.2.4.	<i>Recommendations to Eurojust/Europol/EJN/EJTN</i> .....	79
<b>9.3.</b>	<b>Best practices</b> .....	<b>80</b>

## 1. EXECUTIVE SUMMARY

The preparatory work and the evaluation visit to Sweden took place in a very positive and professional atmosphere thanks to the excellent preparation by the Swedish authorities and the proactive support provided by the Ministry of Justice (MoJ), which coordinated the exercise.

During the visit the Swedish authorities and representatives did their utmost, in a frank and open manner, to provide the evaluation team with information and clarifications on legal and operational aspects of the European arrest warrant (EAW), the transfer of prisoners, the European Supervision Order (ESO) and alternative sanctions. The evaluation team met the relevant bodies with responsibilities in the field of the four Framework Decisions which are the subject of the ninth round of mutual evaluations: the MoJ, the Prison and Probation Service, the judiciary (prosecutors and judges), lawyers and police officers in charge of SIS.

The MoJ is designated as central authority only in the field of Framework Decision 2002/584/JHA. Its role is limited. Indeed it assists the competent judicial authorities only if they so request. Moreover, the MoJ receives and handles information in certain cases involving surrender from Sweden of a Swedish national or of someone whose registered place of residence is in Sweden, conditional surrender from Sweden, or refusal to surrender with reference to the European Convention on Human Rights (ECHR).

Concerning the three other Framework Decisions which are the subject of the ninth round of mutual evaluations, no central authority has been designated. This was not found necessary, especially regarding Framework Decisions 2008/909/JHA and 2008/947/JAI, as competence to issue and execute requests is already centralised, and lies with the Prison and Probation Service.

In most cases Sweden follows the principle of direct contact between the competent authorities. These authorities usually have no difficulty in exchanging with their European counterparts. Nevertheless it was mentioned that the lack of secure email channels could sometimes be problematic and leads to the use of traditional post. In case of emergency, EJN and Eurojust are used. Eurojust is seen as the fastest channel for resolving problems. SIRENE is also used in rare cases, usually to arrange transit.

As regards statistics on the use of mutual recognition instruments, the Swedish authorities are able to give general figures, such as the number of measures issued or executed. However they could face difficulties if it is necessary to provide more detailed statistics, e.g. on the length of the process, or how often and why the surrender or transfer of a prisoner was refused. Moreover, figures relating to the European mutual recognition instruments can be combined with figures relating to cooperation with the Nordic countries. Accordingly, the experts, following a recommendation made during the fourth round of mutual evaluations, have recommended that Sweden enhance its collection of data in order to get a clearer view of the use of mutual recognition instruments.

Another cross-cutting topic is the right to appeal. Sweden gives the opportunity to the defendant to appeal decisions taken in the field of the four Framework Decisions covered by the ninth round of mutual evaluations. This extensive right of appeal does not lead to deadlines being missed. Indeed the Swedish legislation sets tight limits on the length of the proceedings and appeals are dealt with in a timely manner. Appeals decisions can be rendered in a day, sometimes in writing. It seems that Sweden has found a good compromise between efficiency and the right to a double level of jurisdiction.

According to the practitioners whom the team met, the EAW works well and refusals are an exception. All prosecutors are competent to issue an EAW, on the basis of a national arrest warrant. Nevertheless in practice most EAWs issued for prosecution come from the National Unit against Organised Crime. Since this is a centralised body, prosecutors in this National Unit are highly specialised and aware of developments in the CJEU's case-law. All the Swedish prosecutors were able to draw on them when issuing an EAW. EAWs issued to enforce a sentence are exclusively within the competence of the National Unit against Organised Crime, following a request from the Prison and Probation Service. The experts noted good cooperation between these two bodies.

When Sweden is the executing State, the National Unit against Organised Crime and the Swedish Economic Crime Authority (SECA) are the two bodies competent to refer the matter to the district court. Visiting the Stockholm district court, experts were pleased to learn that courts prioritise EAW cases, are available seven days a week and have sufficient human resources.



Moreover, Swedish law foresees a tight time-frame for the court to decide on surrender: 30 days from the arrest of a person, and 10 days if the person consents. In addition, Sweden accepts EAWs in four different languages. It means that from a legal perspective and a practical point of view Sweden follows the right approach to process incoming EAWs swiftly. According to Swedish practitioners, cases where time-limits are exceeded mostly result from failure to provide additional information.

As regards the principle of proportionality, it is expressly provided for by the ‘Ordinance on surrender to Sweden according to the EAW’ when issuing an EAW. In practice, judges explained to the evaluation team that the assessment of proportionality is mostly applied to the detention order (national arrest warrant) not to the EAW. Nevertheless this principle appears to be strictly followed by the Swedish authorities, using relevant criteria. When executing an EAW, all the practitioners met stated that proportionality is not assessed. Here the Swedish authorities mentioned that the principle of mutual trust must prevail.

While Sweden, as issuing State, is rarely asked about its detention conditions the situation is different when it acts as executing State. When the prosecutor has objective information about deficiencies with respect to prison conditions in the issuing State, the request for additional information is made *ex officio*. If no specific deficiencies are suspected, the prosecutor will act on the information given by the defendant. The experts also noted that the Swedish Prison and Probation Service applies the two-step evaluation procedure to detention conditions, in reference to the CJEU’s case-law in *Aryanosi and Caldararu*, when dealing with Framework Decision 2008/909/JHA.

Concerning competing EAWs, when Sweden is the executing State, it appeared to the evaluation team that Eurojust’s guidelines on this specific matter are not well known. The possibility to refer to Eurojust is enshrined in Swedish law and in the handbook on the EAW for judges, but not in the handbook for prosecutors. Taking into account the fact that the prosecutor is the authority responsible for presenting all the relevant information to the court, the experts believe it is necessary to highlight the importance of Eurojust’s guidelines in the case of competing EAWs and the possibility to reach an agreement with the other Member States.

The evaluation team was also impressed by the judiciary's case management system. Sweden has digitalised its penal procedure. The software allows prosecutors to create specific templates with an electronic signature. These procedural documents are automatically and securely sent to the court and recorded in the relevant digitalised folder. Another interesting point is that the case management system monitors the time-limits and sends an alert if a time-limit is exceeded. In addition, both judges and prosecutors are equipped with sufficient and up-to-date computer equipment and video conferencing systems. This way the centralised National Unit against Organised Crime is easily able to attend EAW hearings throughout the country.

Meeting with the Single Point of Operational Contact (SPOC) unit, which notably is competent for the **SIRENE** office, highlighted again the high level of equipment of the Swedish authorities. Indeed each police officer can directly check on his/her professional mobile phone if an SIS alert exists when carrying out a check on a person. The experts also praised the work of the SPOC's police officers. They systematically carry out a quality check of the EAW before inserting an alert in the SIS. In addition they check identification materials and insert the national identification number of the person sought. This avoids a waste of time in case of discrepancies in the EAW and ensures the person to be arrested is the right one.

Regarding Framework Decision **2008/909/JHA**, competence to order or execute the transfer of a prisoner is centralised in the legal unit of the Prison and Probation Service. Thanks to this centralisation the practitioners involved in Framework Decision **2008/909/JHA** are highly specialised. At present, the human resources dedicated to this matter appear sufficient, but the Swedish practitioners expect in the coming years to see an increase in the number of persons imprisoned and the human resources factor should be closely monitored to forestall any future difficulties. The transfer of prisoners in Sweden appears to be a hybrid procedure, as the decision of the Prison and Probation Service, an administrative body, can be appealed to the district court, a judicial body. In the same way the Prison and Probation Service must request the prosecutor to refer the case to the court when an adaptation of the sentence is needed.

Generally speaking, Swedish practitioners stated that the use of Framework Decision 2008/909/JHA works correctly. Time limits are generally complied with; nevertheless Swedish practitioners mentioned that delays can occur when the certificate sent by the issuing authorities is not properly filled in or when additional information is not provided on request.

Swedish law provides for a written judgment, not necessarily translated, to be sent when applying Framework Decision 2008/909/JHA. From a practical point of view the Swedish authorities consider it really useful to understand the different parts of the judgments, as it will be the basis for the prisoner's resocialisation. Moreover criteria to assess social rehabilitation are provided for in the Aliens Act and Swedish practitioners have defined relevant points to check when making this assessment.

Since 2020, the Prison and Probation Service has used dedicated software to identify prisoners who can request or are eligible for a transfer. This programme gathers data such as the prisoner's nationality, his/her address and the length of his/her sentence. The Swedish practitioners stated that the software helps them to start the process for transferring a prisoner at an earlier stage. In addition, in Sweden prisoners are given a leaflet, available in nearly all the European Union languages, explaining that they can request a transfer, the consequences of this transfer and their rights. The experts believe that such practical tools lead to a better way to use Framework Decision 2008/909/JHA and see it as a best practice by strengthening the fundamental rights of prisoners to be informed and by focusing actions in the area of the transfer of prisoners on the cases considered to be relevant in the Framework Decision.

As the competent authorities are different when using Framework Decisions 2002/584 /JHA and 2008/909/JHA, one might have thought that the links between the two Framework Decisions could be complicated. However the Swedish legislation provide for how to resolve the situation when there is a need to choose between an EAW and a transfer<sup>1</sup>. According to all the practitioners met, communication runs smoothly between the two competent bodies and meetings are easily arranged. The evaluation team praised such legislation and cooperative behaviour. Nevertheless the experts believe that coordination could be even better if guidelines or a memorandum of understanding were set up. Indeed a practical approach about what to do and who to contact is always useful.

The mutual recognition instruments implemented in Swedish legislation by reference to Framework Decisions 2008/947/JHA and 2009/829/JHA are clear for most Swedish practitioners. The transfer of probation measure is not used much and the European Supervision Order (ESO) appears not to be used at all by Sweden as issuing State. Discussions with practitioners underline the difficulties in identifying the cases where it would be effective and appropriate to issue an ESO. In addition, differences between the alternative punishment and probation systems in the different Member States make it difficult to apply Framework Decision 2008/947/JHA. The criminal procedure time-limits also seem not to be compatible with the length of an ESO or the mutual recognition of probation/alternative sanctions.

Another obvious point is the need to enhance awareness about Framework Decisions 2008/947/JHA and 2009/829/JHA among practitioners, especially lawyers. More training and events should be organised both at national and at EU level regarding these instruments and involve all the relevant practitioners, in particular in joint training. In addition, the experts consider it necessary to train prison staff in the field of Framework Decision 2008/909/JHA. As these staff are in direct contact with prisoners, they can easily explain to them how to apply for a transfer.

---

<sup>1</sup> - Chapter 7 section 1 Act (2003:1156) on surrender from Sweden according to the European arrest warrant, Chapter 3 section 6 Act (2015:96) on the recognition and enforcement of custodial sentences within the European Union and Section 4 and 15 Ordinance (2003:1178) on surrender to Sweden according to the European arrest warrant.

Taking all factors into account, the evaluation team appreciates Sweden's practice in the use of mutual recognition instruments. As the Swedish system appears to be efficient, it was difficult to identify specific areas where there is room for improvement. Nevertheless, the evaluation team believes that some aspects could be enhanced, such as training in the field of mutual recognition of judges, lawyers and prison staff. Also, the role of Eurojust in the event of competing EAWs could be highlighted, and data collection could be more efficient. But the main feeling is that Swedish practitioners give precedence to the principle of mutual trust and are genuinely willing to cooperate in a timely manner. The computer equipment, video conferencing system and dedicated programmes are the technical expression of the Swedish efficiency. The general opinion of the evaluators is therefore positive.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA 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.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, CATS, at its meeting of 21 November 2018, decided that the ninth round of mutual evaluations would be devoted to the mutual recognition principle.

Due to the broad range of mutual recognition legal instruments and their wide scope, at the CATS meeting on 12 February 2019 it was agreed that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW').
- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('Custodial sentences').
- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures').
- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle on mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on the specific aspects of these instruments which Member States felt warranted particular attention, as set out in detail in document 6333/19, and on the the legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947 on probation and alternative measures and FD 2009/829 on the ESO, it was decided that the evaluation would be of a rather general nature and try to establish the reasons that have resulted in these two Framework Decisions being rarely applied.

The aim of the 9th mutual evaluation round is to provide a real added value by offering the opportunity, with the on-spot visits, to consider not only the legal issues but, especially, relevant practical and operational aspects linked to the implementation of these instruments by practitioners in the context of criminal proceedings. This would serve to identify both shortcomings and areas for improvement, and best practices to be shared among the Member States, thus contributing to ensuring a more efficient and coherent application of the principle of mutual recognition at all stages of criminal proceedings across the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could significantly contribute to enhancing mutual trust among the judicial authorities of the Member States and to a better functioning of cross-border judicial cooperation in criminal matters within the Area of Freedom, Security and Justice.

In addition, the current evaluation process could provide useful input to Member States that may not have implemented all aspects of the various instruments.

Sweden was the twentieth Member State to be evaluated during this round of evaluations. Due to the health crisis, the order of visits to the Member States, adopted by CATS on 13 May 2019 and then amended upon proposal of some Member States and in the absence of any objection<sup>2</sup>, has not been adhered to. Consequently, the on-site evaluation originally scheduled for May 2020 was carried out in November 2021.

---

<sup>2</sup> ST09278-re02.en19

In accordance with Article 3 of the Joint Action, a list of experts in the evaluations to be carried out was drawn up by the Presidency. Member States nominated experts with substantial practical knowledge in the field pursuant to a written request sent to delegations on Friday 17<sup>th</sup> of May 2019 by the Secretariat of the Council of the European Union.

The evaluation team consists of three national experts, supported by one or more staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJP should be invited as observers.

The experts charged with undertaking the evaluation of Sweden were Ms Maria Grazia Benedetti (Italy), Mr Alexander Kunošik (Slovakia), and Ms Maija Andrijauska (Latvia). The following observers were also present: Mr Silvio Franz (Eurojust) and Ms. Jesca Bender (Commission) together with Mr Mathieu Bertola from the General Secretariat of the Council.

This report was prepared by the evaluation team with the assistance of the General Secretariat of the Council, based on findings arising from:

- the preparatory work done by videoconference on 29 January 2021,
- the evaluation visit in Sweden between 8 and 10 November 2021,
- and Sweden's detailed replies to the evaluation questionnaire and detailed answers to the ensuing follow-up questions.



### **3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)**

#### **3.1. Authorities competent for the European Arrest Warrant (EAW)**

##### *3.1.1. Central authority: the Ministry of Justice*

According to the notification submitted by Sweden to the General Secretariat of the Council<sup>3</sup>, the MoJ is the central authority. It only assists the competent judicial authorities if they so request. The Swedish MoJ also receives and handles information in certain cases involving surrender from Sweden. Such is the case with the surrender of a Swedish national or of someone whose registered place of residence is in Sweden, conditional (temporary) surrender from Sweden or refusal to surrender with reference to the European Convention on Human Rights.

In practice, the MoJ uses an Excel file to monitor the guarantees given for Swedish nationals (and persons who have their residence in Sweden) who are surrendered. Every four months, they request updates from the issuing State. The MoJ also checks when the surrendered person will be back in Sweden.

Since the fourth mutual round of evaluations, the role of the MoJ has remained the same.

##### *3.1.2. Competent authority as issuing State: the prosecutor*

All public prosecutors at the Swedish Prosecution Authority and at the SECA are competent to issue an EAW for prosecution under the Swedish Act on surrender<sup>4</sup>, which implements Council Framework Decision 2002/584/JHA. Regarding the enforcement of a sentence, public prosecutors at the Swedish Prosecution Authority are competent to issue an EAW<sup>5</sup>.

In that capacity, the Swedish Prosecution Authority maintains direct contact with competent authorities in other Member States.

---

<sup>3</sup> ST 10400/09

<sup>4</sup> 2003:1178 and in ÅFS 2007:12 (Chapter 4 of the Prosecution Authority's regulations on international cooperation)

<sup>5</sup> Decree which entered into force on 19 December 2016

### 3.1.2.1.EAW issued for prosecution

All Swedish public prosecutors are competent to issue an EAW, which is always based on the detention decision rendered by the court. Nevertheless, most of the EAWs issued come from the National Unit against Organised Crime. This Unit is a centralised body with three offices (Stockholm, Gothenburg and Malmö). It includes one chief prosecutor, four deputy chief prosecutors and 55 senior prosecutors.

The Swedish authorities described the following process for issuing an EAW for prosecution:

- When a prosecutor wants to issue an EAW for prosecution, the prosecutor must first obtain an arrest warrant (detention order) from the district Court. There will be an oral hearing before the district Court decides on detention. The prosecutor should, if possible, inform the district Court at the hearing that an EAW will or may be issued so the district Court can consider the proportionality of an EAW when considering detention. (The decision from the district Court can be appealed to the Court of Appeal and the Supreme Court.)
- If the district Court decides on detention, the prosecutor can issue an EAW. The EAW can only be issued if it is proportionate after taking into account the potential impact on the person sought as well as the length of time required and the costs that may arise if an EAW is issued. The decision to issue an EAW has to be justified with regard to the nature and severity of the crime and other circumstances.
- If the whereabouts of the person sought are unknown, the prosecutor will send the EAW to the police so it can be registered in the SIS and a request for the person can be sent out. Before registration in the SIS, the police officer from the SPOC checks the EAW to ensure that all the required fields are filled in and all the necessary information (e.g. identification) has been given – this informal ‘double check’ serves to avoid delays and ensure that the information in the SIS is accurate.
- When the person sought is arrested in another country, the police will send the translated EAW to the other country. The police will also inform the prosecutor of the arrest.

- The prosecutor is responsible for the transfer of the person sought to Sweden. The prosecutor assigns the Police Authority to arrange a transfer and the police in turn instruct the Swedish Prison and Probation Service to carry out certain practical tasks. However, The Police Authority is overall responsible for the practical arrangement.
- As soon as the person sought arrives in Sweden, the prosecutor must notify the district Court so that a new detention hearing can be held.
- The prosecutor is also responsible for ensuring that the suspect is questioned, served with a notice of suspicion of having committed an offence and informed that a detention hearing will be held in the district Court.

Discussion with the members of the National Unit against Organised Crime showed that centralisation is a good way to enhance knowledge, harmonise the drafting of EAWs and avoid missing elements in the EAW form. Practitioners from the National Unit against Organised Crime are also available to give advice to all prosecutors when needed. The Division for International Judicial Cooperation of the Head Office of the Swedish Prosecution Authority is always there to support all Swedish prosecutors by any means (email, telephone, etc.).

#### 3.1.2.2. EAW issued to enforce a sentence

The public prosecutor can also issue EAWs at the request of the Prison and Probation Service for the execution of imprisonment, the National Board of Health and Welfare for the enforcement of forensic psychiatric care, and the Swedish National Board of Institutional Care for the enforcement of institutional care of youth persons.

These cases are handled by prosecutors at the National Unit against Organised Crime.

In these cases, the prosecutor will issue the EAW and send it to the police for registration in the SIS. No detention hearing is needed.

### *3.1.3. Competent authorities as executing State*

The executing judicial authorities in Sweden are the public prosecutor and the ordinary courts. More precisely, regarding prosecutors the competent authorities are the National Unit against Organised Crime and the SECA. The former handles most of the cases while the latter deals with some incoming EAWs in its field of competence, generally speaking economic crimes.

The proceedings when executing an EAW in Sweden are the following:

- The police officer in the SPOC unit receives the alert in the SIS and checks it. In the end, the decision as to whether or not to flag an alert in the SIS falls within the competence of the prosecutor.
- The person sought is arrested in Sweden (he/she is wanted in the SIS on the basis of an EAW). Experts were pleased to learn that each police officer can directly check on his/her professional mobile phone if an SIS alert exists when controlling a person.

- The prosecutor decides to arrest the person sought. The prosecutor must request the district Court, no later than 12:00 on the third day of detention, to authorise the person's detention. The person sought is entitled to a state appointed defense counsel. There is always an oral detention hearing before the district Court. The coercive decision from the district Court can be appealed to the Court of Appeal without the need to grant leave to appeal. In order to overturn the decision on surrender, leave to appeal<sup>6</sup> to the Court of Appeal is required. To appeal to the Supreme Court, leave to appeal is needed in any case.

---

<sup>6</sup> To appeal the coercive decision to the Appeal Court, there is no leave for appeal. However, a leave for appeal is required for the case to be tried by the Supreme Court.

As regards the decision on surrender, a leave for appeal is needed both as regards the Appeal Court and the Supreme Court.

Leave for appeal in the Appeal Court, for the decision on surrender, may be granted only if:

1. reason exists to doubt the correctness off the conclusion that the district Court has rendered,
2. it is not possible to assess the correctness of the conclusion that the district Court has rendered without granting a leave to appeal,
3. it is of importance for the guidance of the application of law that a superior court considers the appeal, or
4. there are otherwise extraordinary reasons to consider the appeal.

(Chapter 49 Section 14 of the Swedish Code of Judicial Procedure)

Leave for appeal in the Supreme Court, for the coercive decision and/or the decision to surrender, may be granted only if:

1. it is of importance for the guidance of the application of law that the Supreme Court considers the appeal or
2. there are extraordinary reasons for such examination, such as that there are grounds for a new trial or that there has been grave procedural error or that the outcome of the case in the Court of Appeal is obviously due to gross negligence or grave mistake.

(Chapter 54 Section 10 of the Swedish Code of Judicial Procedure)

- The prosecutor then investigates the issue of surrender. Among the questions that the person is asked are whether the person consents to surrender or not, and whether the speciality rule is to apply. The person's opinion is recorded on a special form and is signed by the person, the defence counsel and the police officer assisting with the investigation. Consent to surrender is given in the presence of the prosecutor. The prosecutors stated they always join the interview, at least by telephone/videoconference.

Regarding this stage, the Swedish lawyers questioned that the prosecutor joins the interview by telephone. Indeed, lawyers' practice shows that sometimes only the police officer explains the principle of consent and the rule of speciality to the person sought, without any presence of a prosecutor (by telephone or videoconference). Moreover, lawyers stated that the notions of consent and the principle of speciality are not clearly explained to the person sought and that police officers are not always specialised in the area of the EAW.

- After the investigation is completed, the prosecutor submits an application for surrender to the district Court and the district Court decides on the question of surrender. The main rule is an oral hearing in the district Court. The district Court will also issue a new decision on detention at the same time.
- The district Court must decide on surrender no later than 30 days from the arrest of the person sought. The decision from the district Court can be appealed to the Court of Appeal and the Supreme Court. In order for the case to be tried in the Court of Appeal and the Supreme Court, leave to appeal is required. Alternatively, surrender can be carried out no later than 10 days after the wanted person has consented to be handed over.
- A decision on surrender is normally enforced within 10 days of the date when the decision became final.

## 3.2. The principle of proportionality

### 3.2.1. As issuing State

The Swedish prosecutors apply the principle of proportionality when issuing the EAW, in accordance with the legislation and in practice.

The Ordinance (2003:1178) on Surrender from Sweden according to the EAW provides expressly for the principle of proportionality in its Article 5. Furthermore, regarding detention the proportionality principle can be found in Chapter 24, section 1 of the Swedish Code of Judicial Procedure.

In practice, judges met at the Stockholm district court explained to the evaluation team that the principle of proportionality is mostly applied to the national detention order. As the EAW is based on the national detention order, the Swedish judges consider that the assessment is *de facto* carried out. It will be the task of the prosecutor to determine whether the criteria for issuing an EAW are met or not. Judges will endorse this assessment, or not, during the trial.

The Swedish authorities have disseminated content to ensure compliance with the principle of proportionality. Indeed, the Swedish Prosecution Authority has a special page concerning international judicial cooperation on its intranet site, to which all prosecutors have access. The Swedish Prosecution Authority's judicial policy documents, e.g. its own handbooks and judicial memos, together with decisions and other relevant information, are published on that page. The content of this handbook is also regularly updated.

The Commission's 'Handbook on how to issue and execute a European arrest warrant' is also available on the intranet site. However, as the Swedish Prosecution Authority has its own handbook on the EAW, providing prosecutors with comprehensive and relatively detailed guidance, it is primarily the latter handbook which prosecutors use in their day-to-day work.

The handbook describes the principle of proportionality and how it is to be applied by prosecutors. For instance, it is stated that the point of departure for issuing an EAW is an anticipated prison sentence of at least two months. Two months are seen as the timeframe for carrying out an EAW procedure.

The handbook also specifies that account should be taken of circumstances other than the length of the term of imprisonment, such as the interests of the claimant, the coordination of the investigation with other suspects and the suspect's ties to Sweden. Consideration should also be given to whether the offence has been prioritised.

It is stated in the handbook that an EAW may be issued even if the presumed sanction is of a non-custodial nature. Here the prosecutor will assess the personal circumstances of the convicted person, for instance if he/she has a previous criminal record or needs care. Even if the presumed sanction for a crime is a non-custodial sentence, the crime will also have a notional equivalent value in terms of imprisonment which the court will announce in the judgment. Therefore, even though the presumed sanction is of a non-custodial nature, for a crime which attracts a penalty equivalent to four months' imprisonment, there is still ground for issuing an EAW in this case.

Judges also have their own handbook on international cooperation in criminal matters. It covers both the EAW field and the transfer of prisoners. In practice Swedish judges, when deciding on EAW cases, may use the handbook issued by the Swedish Prosecution Authority.

In practice, an EAW is always issued where the requisite conditions exist and where the aim of the measure is to prosecute the person concerned.

The Swedish authorities provided the evaluation team with some examples of a proportionality check:

- the prosecutor refuses a request from the Swedish Prison and Probation Service for the issuing of an EAW for enforcement if that request relates to a brief period of imprisonment remaining to be served.



- the Uppsala district Court applied the principle of proportionality in the Assange case (B 3167-19 of 3 June 2019) concerning detention *in absentia*. When assessing whether detention (and, by extension, the issuing of an EAW) was proportionate, the Court considered whether the pre-trial judicial investigation could be taken forward with the investigative possibilities which were available without the person concerned being present in Sweden. Despite the district Court's finding that there was reasonable suspicion that the person concerned had committed rape of a lesser degree, it refused the request for detention on the grounds that there were less coercive measures that could be taken, such as the issuing of an EIO.

### *3.2.2. As executing State*

The Swedish authorities do not assess proportionality when executing an EAW. They consider that the principle of mutual recognition and mutual trust must prevail.

However, proportionality is always considered when it comes to the detention of the sought person pending the execution of the EAW.

## **3.3. Exchange of information**

### *3.3.1. Sweden as executing authority*

#### *3.3.1.1. Most common types of information deficit*

The Swedish competent authorities detailed the most common types of information deficit when receiving an EAW:

- Inadequate translations: in certain cases it appears that the translation has been done not by a translator, but by some form of automated software program. In some cases the translator has failed to make use of the official EAW form in the language into which the information is to be translated, but has instead translated the standard text contained in the form.

- Shortcomings in section (d) of the form: there are shortcomings in the information provided in the form with regard to judgments *in absentia*, e.g. the correct specification of the applicable legal guarantees. In addition, the issuing authorities often appear to have an insufficient knowledge of the practice of the CJEU in terms of the application of the requirements set out in Article 4a(1) of the Framework Decision. For example, it is stated that the person concerned has been convicted *in absentia* and that one of those requirements is satisfied. The fourth section of the form then goes on to describe a procedure which fails to comply with the specified requirements.

- Requests for additional information are made in the original language: with regard to outgoing EAWs, one reason for delay may be that the request for additional information from the executing State is received in the original language. In such cases, the request for additional information must be translated before Swedish prosecutors can respond.

#### 3.3.1.2. Channel to request additional information

Requests for additional information are normally sent directly to the issuing judicial authority, or alternatively to the central authority specified in the form. As the fastest of all channels of communication, Eurojust is used in urgent cases. The police channel (SIRENE) is also used for less formal enquiries.

#### 3.3.1.3. Consequences following a request for additional information

Under Swedish national legislation, the court of first instance must take a decision within 30 days. This is usually achieved, even in cases where additional information has been requested. The decision can then be appealed against before the Court of Appeal within three weeks. The Court of Appeal's decision (even if it is to refuse to allow the appeal to proceed) can then be appealed against before the Supreme Court within four weeks. Pending the decision of the Supreme Court, the decision cannot take legal effect or be enforced. Consequently, the 60-day time-limit may be exceeded, even in straightforward cases.

Generally speaking, the time-limit can also be complied with in cases where additional information is requested. In the case of repeated requests for additional information, however, it becomes difficult to comply with the time-limit. In such cases, there are usually particular reasons why the time-limit is exceeded.

The most common reason for exceeding the time-limit is that the issuing State fails to give the correct response to the questions posed in the original request, thereby making it necessary to request further information. When requesting additional information from the issuing State, the prosecutor must always set a deadline for receiving a response.

The Swedish Prosecution Authority's handbook on the handling of matters relating to the EAW draws attention to the information to be provided by the prosecutor handling the case. This applies *inter alia* to cases where it has not been possible to comply with the prescribed time-limits.

#### 3.3.1.4. Follow-up information

As executing authority, the Swedish Prosecution Authority always informs the issuing authority of the period for which the requested person has been detained, whether he or she has consented to surrender and whether he or she has renounced protection pursuant to the speciality rule. This is done using a specially designed form drawn up in Swedish and English.

### *3.3.2. Sweden as issuing authority*

#### 3.3.2.1. Possible requests for additional information

The executing authorities in certain Member States continue to request translations of the judgment or detention order on which an EAW is based. It is primarily the Italian and Polish authorities which ask for translations of judgments and detention orders. With regard to Italy, it has been explained to the Swedish authorities that Italian national legislation requires that a translation of the underlying detention order or judgment be attached to the EAW. Experts agree with the Swedish statement that such a request is contrary to the very aim of the Framework Decision.

As there is a risk that the arrest warrant might not be enforced when failing to comply with a request for additional information, Swedish authorities usually agree to such requests, while pointing out that the executing authority is going beyond what is required under the Framework Decision.

#### 3.3.2.2. Consequences following a request for additional information

In general, Swedish prosecutors comply with the time-limits laid down in requests for additional information.

### 3.3.2.3. Follow-up information

As issuing authority, the Swedish Prosecution Authority generally also receives follow-up information from the executing authority. However, the follow-up information is not always drawn up in English or Swedish. This can lead to problems when a translation has to be arranged in order to enable the Swedish authorities to understand the notification. They usually also receive information via the police channels (SIRENE); such information is written in English.

## **3.4. Grounds for refusal**

### *3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention*

#### 3.4.1.1. Assessment of detention conditions

##### 3.4.1.1.1. As executing State

When the prosecutor has objective information about deficiencies with respect to prison conditions in the issuing State, the request for additional information is made *ex officio* - for example with regard to EAWs from Hungary and Romania. As regards other countries, the prosecutor acts on information given by the defendant.

When detention conditions are at issue, it will be the task of prosecutors to provide the information required by the court for its decision. The prosecutor will therefore be in charge of requesting additional information from the issuing Member State. Judges do not contact the issuing judicial authorities.

Generally speaking, assessment of detention conditions is carried out with due regard for the practice of the European Court of Human Rights (ECtHR) and the EUCJ as well as the assurances provided by the issuing State. In a recent case, official statistics concerning the occupancy rate in certain prisons, to which the requested person had referred, were also taken into account when the court concluded that an assurance provided by the issuing State could not be relied upon.

Swedish authorities look for additional information linked to the person sought rather than a general statement on detention conditions in the issuing country.

All incoming EAWs are dealt with, either within the Swedish Prosecution Authority or within the SECA, by specially designated prosecutors. Those prosecutors have access to templates to be used, e.g. for requests for individual opinions. The following are examples of the questions contained in those templates:

- Information about the current status in Romanian prisons regarding the problem of overcrowding etc. as described in the above-mentioned rulings by the ECtHR.
- A specific and individual guarantee that the wanted person, if extradited to Romania, will not be exposed to prison conditions that are in breach of Article 3 of the ECHR, with as concrete information as possible on, for example, personal space in the cell, outdoor exercise, access to natural light and fresh air, sanitary facilities and hygiene.
- Any other information regarding the Romanian prison standards that would be of relevance to the case, for example measures taken by the Romanian authorities to comply with the standards set out in the Council of Europe's European Prison Rules adopted on 11 January 2006<sup>7</sup>.

The request is sent to the central authority, which is the MoJ in both Hungary and Romania. In general, the same questions are put to both Romania and Hungary.

It was stated that, in recent cases, the additional information has led to a positive result.

#### 3.4.1.1.2. As issuing State

Sweden does not often receive questions regarding detention conditions and guarantees. In a few isolated cases, the Netherlands has requested information concerning restrictions on detention.

Prosecutors will be in charge of replying to the executing authorities. The additional information in the area of detention conditions is based on inputs from the Swedish Prison and Probations Service.

---

<sup>7</sup> Recommendation Rec (2006) 2 of the Committee of Ministers to members states on the European Prison Rules

#### 3.4.1.2.No role for the consent of the person sought

According to the Swedish authorities the consent of the person sought to his or her surrender does not play any role. They underline that potential infringements of Article 3 ECHR are at stake. Requests for assurances with regard to detention conditions are submitted regardless of whether the person concerned consents to them or not.

#### 3.4.1.3.Delays or refusal in case of disputes relating to prison conditions

When there is a need for additional information the issuing authorities generally comply with the time-limits which the Swedish Prosecution Authority specifies (usually between one week and ten days). The procedure is now relatively formalised. Delays can arise on account of the opinion having to be translated into and submitted in English. The issuing State usually gives notice of any delays.

This process does not normally lead to delays which are any longer than in the case of standard requests for additional information. Nevertheless some representatives of the judges mentioned that it has occasionally resulted in time-limits being exceeded.

The Swedish authorities mentioned some cases where refusal was denied due to detention conditions. In two 2016 court decisions<sup>8</sup>, the prosecutor's appeal was rejected after the district court decided to refuse the request for surrender. The failure of the Romanian authorities to guarantee a living space of at least three square metres per person was a critical factor in both of those decisions.

For some time thereafter, courts would regularly turn down requests for surrender to Romania in cases where a living space of at least three square metres could not be ensured during enforcement of the sentenced person's term of imprisonment.

---

<sup>8</sup> Svea Court of Appeal, 16 September 2016, Case Ö5368-16 and Case Ö5372-16

More recently, the opinions and assurances provided by the Romanian authorities have been accepted by Swedish courts, inter alia with regard to a decision issued by Svea Court of Appeal in May 2018<sup>9</sup>. In that case, the Court of Appeal found that the guarantees, together with other information provided by the Romanian prison service, were sufficient to prevent the requested person from running any real risk of being subject to treatment in contravention of Article 3 of the European Convention on Human Rights.

In a recent ruling by Svea Court of Appeal<sup>10</sup>, the court concluded that poor detention conditions presented an obstacle to surrender to Romania. In that particular case, the assurances provided by the Romanian authorities were rejected. An appeal against the decision was brought before the Supreme Court. The Supreme Court found that considering the international reports on detention conditions in Romania and the CJEU jurisprudence there was a general risk that the surrender of the person in question would be in violation of Article 3 of the ECHR. However, The Supreme Court - recalling the principle of mutual trust - did not find reason to doubt the guarantees provided by the Romanian authorities containing detailed information about the enforcement of the sentence for the person in question. The Supreme Court found that the guarantees, together with other information provided by the Romanian prison service, were sufficient to prevent the requested person from running any real risk of being subject to treatment in contravention of Article 3 of the ECHR.

The Swedish authorities provided the experts with statistics on EAWs cases where Romania was the requesting authority:

- In 2018, Swedish courts dealt with EAWs from Romania in at least nine cases. The courts agreed to surrender in seven cases in respect of which Romania had provided opinions and assurances regarding the detention conditions. One request was turned down in the absence of any assurances from Romania, while another was refused on the grounds of a lack of double criminality.

---

<sup>9</sup> Svea Court of Appeal decision no 2018-05-04 in Case Ö4099-18

<sup>10</sup> Decision 2019-11-13 in Case Ö10436-19

- In 2019, Swedish courts decided to surrender requested persons to Romania on the basis of an EAW in at least 11 cases. Of those, nine cases were approved upon receipt of assurances from the Romanian authorities. Two cases were turned down on formal grounds. In one of those cases, the requested person was a Swedish national who had requested that the custodial sentence be served in Sweden, while in the other case there was a lack of double criminality.

#### 3.4.1.4. Avoiding impunity

The Swedish practitioners mentioned that refusing an EAW on the grounds of shortcomings in detention conditions in the issuing State does not automatically result in the executing State being obliged to enforce the custodial sentence. When surrender is refused, the Swedish Prison and Probation Service carries out an assessment on the basis of the requested person's ties to Sweden. If the person concerned does not have sufficient ties to Sweden, then the requirements for enforcement of the custodial sentence in Sweden are not present.

There have been several cases where Swedish courts have rejected an EAW on account of inadequate guarantees from Romania, and where the Swedish Prison and Probation Service has subsequently received a request to assume responsibility for enforcing the sentence but has turned down that request on the grounds of insufficient ties to Sweden. In such cases, the requested person consequently goes unpunished.

#### *3.4.2. Refusal in the event of judgment in absentia*

##### 3.4.2.1. Main issues regarding in absentia judgments

The Swedish Prosecution Authority mentioned that the problem in cases of *in absentia* judgments is that the issuing authority fails to tick any option or ticks the wrong option on the form, and does not indicate how the person in question was notified. They added that many authorities only refer to their national legislation as regards the manner in which the person was notified but do not describe how this was done.



The Swedish Economic Crime Authority gave the experts the example<sup>11</sup> of an EAW issued by Romania in 2019 in which an *in absentia* problem arose. They explained that they asked for additional information because it was unclear to them whether the person sought was present or not when he was sentenced, even though the issuing authority confirmed that requirements 1(a) and 1(b) of Article 4a of the Framework Decision were met. At least, they understood that the person was sentenced by a Romanian court and submitted an appeal to the Romanian Supreme Court.

The Supreme Court's judgment was handed down after a hearing at which the person was present for three of the five days of the hearing. He did not appear in person on two days of the hearing. He had been summoned to attend the hearing in person on one of the days. A summons had been sent to his registered address and to another two addresses, requiring him to attend the last day of the hearing. The date of the hearing had been publicised at the start of the hearing. A counsel of his own choosing had represented him up to and including the penultimate day of the hearing. On the last day of the hearing he was represented by a lawyer appointed by the State.

Referring to the EUCJ case-law in Dworzecki (Case C-108/16), the Swedish Court of Appeal found that it was not clear from the arrest warrant or from the additional information that the person had been aware of the last day of the hearing. In view of the above and of the fact that it was not clear that the State-appointed defence counsel was instructed by the person concerned to defend him on the last day of the hearing, the Court of Appeal refused the request for surrender based on the arrest warrant.

---

<sup>11</sup> Court of Appeal for Western Sweden, Ö4708-19

### 3.4.2.2. Impact of the Tupikas<sup>12</sup>, Zdziaszek<sup>13</sup> and Ardic<sup>14</sup> judgments

According to the Swedish practitioners the Tupikas , Zdziaszek and Ardic judgments have led to more requests for additional information. In particular, it appears that the issuing authorities have insufficient knowledge of these decisions. The issuing authorities often state that one of the requirements in Article 4a(1) of the Framework Decision 2002/584/JHA has been met, but then describe a procedure that does not comply with case-law in this area. Also there have been several instances where an executing authority in Sweden refused an EAW because the issuing authorities did not indicate the requirements or indicated the wrong requirements.

### *3.4.3. Other grounds for refusal*

#### 3.4.3.1. Double criminality

##### 3.4.3.1.1. As executing State

In previous years, some EAWs have been refused due to lack of double criminality. One problem, in particular, occurs with EAWs for enforcement in cases involving multiple criminality, where there was a lack of double criminality for any of the offences. In those cases, the Swedish Supreme Court has stated that surrender is possible if the sentence in the issuing State can be split. If it is not possible to split the sentence, it is unclear whether surrender can take place.

In such situations the Swedish competent authorities request additional information from the issuing State on whether the sentence can be split. If the issuing State maintains that a split sentence is not possible, as a rule Swedish courts now consider that there are grounds for non-surrender. The Swedish authorities highlighted a need for guidance from the CJEU on these issues.

---

12 CJEU: Tupikas , C-270/17 PPU, 10 August 2017, ECLI:EU:C:2017:628

13 CJEU: Zdziaszek , C-271/17 PPU, 10 August 2017, ECLI:EU:C:2017:629

14 CJEU: Ardic, C-571/17PPU, 22 December 2017, ECLI:EU:C:2017:1026

Swedish prosecutors have also encountered problems where it has not been clear which offence is being described. Examples are where an EAW expressly covers a certain number of offences but then does not provide a description of the offences in question. Instead, the description of the offences is a detailed description of the sequence of events. If some of the offences are then indicated as listed offences, but there is no indication which offences are specifically listed offences, it becomes difficult to determine which offences are covered by the double criminality requirement.

#### 3.4.3.1.2. As issuing State

In order to avoid difficulties with double criminality the Swedish prosecutors mentioned that they normally provide information on the time and place of an offence, as well as the constituent elements of the alleged offence or the criminal offence for which the person has been sentenced. With regard to the issue of EAWs for the purposes of sentence enforcement, they proceed on the basis of the description of the facts of the case that the Court has declared as established.

Swedish prosecutors use the Swedish Prosecution Authority's handbook on EAWs. This handbook includes an example of a completed EAW.

In 2018, two EAWs were refused pursuant to Article 4(1) of Framework Decision 2002/584/JHA.

#### 3.4.3.2. CJEU jurisprudence

Following the notification submitted to the SGC<sup>15</sup>, in view of the outcome of CJEU case C-452/16 PPU, Poltorak, Sweden has amended its national law in respect of the judicial authority (Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States) in cases where Sweden is the issuing State.

As of 19 December 2016, all public prosecutors at the Swedish Prosecution Authority are competent for issuing an EAW to enforce a sentence.

---

<sup>15</sup> ST 6122/17

Moreover the MoJ is currently reviewing the Act (2003:1156) on surrender from Sweden according to the European arrest warrant, the Ordinances (2003:1178) and (2003:1179) relating to the same subject, to adapt to the CJEU jurisprudence. The government bill is planned to be submitted in 2022.

The Swedish authorities also explained that the ground for refusal provided by the CJEU's case law in C-216/18 PPU - Minister for Justice and Equality (LM), based on the right to a fair trial in terms of an independent judiciary, has been raised in courts. Nevertheless, to their knowledge, it never led to a refusal of surrender.

#### 3.4.3.3. Other legal and practical issues

The Swedish authorities did not mention difficulties regarding *ne bis in idem*.

Moreover they underlined that in 2018 one EAW was refused pursuant to Article 4(4) of Framework Decision 2002/584/JHA (statute-barred) and one because of competing EAWs.

The evaluation team asked the Swedish practitioners what they would do in the case of competing EAWs. The practitioners replied, variously, that the first EAW, or an EAW to enforce a sentence, should take precedence. Here the role of Eurojust has hardly been highlighted and it seems that awareness of its guidelines could be improved. Swedish law, and the judge's handbook on international cooperation in criminal matters, mention the possibility of consulting Eurojust in the case of competing EAWs; but not the prosecutor's handbook. Even if cases of competing EAWs are rare, it appears that the role of Eurojust should be better known by prosecutors, especially because prosecutors are the main authority giving evidence to the court.

### 3.5. Further challenges

#### 3.5.1. Transit

The Swedish Police Authority manages transit arrangements.

The Swedish SPOC (within the Swedish Police Authority) receives incoming transit requests. In practice, these requests are in M-form, in an attached document or in the form of a fax message. The **SIRENE** Bureau receives the request and forwards it to the case officer responsible for the surrender. This officer deals with the request and checks with the Swedish airport concerned whether it is possible to accept the transit. When the airport has given its consent, the case officer reports back to the **SIRENE** Bureau and a team leader at the International Affairs Division of the Swedish Police Authority makes the decision to accept the transit request and signs the document. The signed document with the accepted request is scanned and sent to the **SIRENE** Bureau in the requesting country. The transit should be escorted and the airport needs to accept the transit, otherwise it is not possible to accept the request.

According to the Swedish Prosecution Authority one problem that arises is that other States require a prosecutor to request transit. This can lead to problems in urgent cases.

The Swedish Police Authority underlined several issues. When transit plans are made, the 10-day period for the transfer may mean that there is little time to apply for and arrange transit. It may take up to five days to receive a response to a transit request from some States, which means that there may be considerable uncertainty about whether transit is feasible. Additional time constraints may arise if there are public holidays during the 10-day period.

There are a few States that require the translation of transit requests into their language, and in some instances a translation of both the transit request and the EAW have been needed to process the request.

The transit request needs to be sent by fax to some States which gives rises to more uncertainty as, in some cases, fax transmission has not been reliable.

It was also pointed out that there is currently no database of contact details for the competent authorities in the other countries. The Swedish Police Authority has its own ‘informal’ catalogue of contacts but it would be preferable to have an official source of information regarding contact details, time-frames, and the documents and language regime required by the other countries for authorising transit requests.

### 3.5.2. CJEU case-law

The Swedish authorities consider that the relationship between the executing authority’s obligation to investigate, as stated in the case-law of the Court of Justice of the European Union, and the principle of mutual recognition laid down in the Framework Decision and in Swedish law can give rise to practical problems.

According to the Swedish prosecution authority there is often confusion when authorities are required to communicate with regard to information concerning judgments *in absentia* and notifications. According to Framework Decision 2002/584/JHA and Swedish law, information indicating compliance with the requirements set out in Article 4a(1) of the Framework Decision must be accepted. However, according to the case-law of the CJEU<sup>16</sup>, an obligation has been placed on the executing authority to assess whether the requirements have in fact been met. This is particularly relevant to Sweden, as Swedish law provides that shortcomings regarding requirements are a mandatory ground for refusal. According to Framework Decision 2002/584/JHA the grounds for refusal in accordance with Article 4a(1) are optional. Issuing authorities in States that do not apply the requirements in the same way as in Sweden have difficulties in understanding the need for accurate provision of information.

---

<sup>16</sup> CJEU case law Dworzecki C-108/16

The Swedish prosecution authority gave another example related to information and guarantees on detention conditions. The principle of mutual recognition and trust means that the executing authority should accept the information provided by the issuing State. However, the CJEU has in its recent case-law<sup>17</sup> placed an obligation on the executing authority to carry out an investigation. The extent of this obligation has been applied differently by courts in Sweden and is a genuine practical problem as regards the execution of EAWs from States where there are shortcomings in detention conditions.

### *3.5.3. Conditional surrender and acquittal*

When a person is surrendered to Sweden for a limited period of time, according to Article 24(2) of Framework Decision 2002/584/JHA, and during this period this person is acquitted in Sweden (or punished with a non-custodial sentence) for an EAW offence, Swedish legislation provides that the police could keep the person in custody for up to 48 hours. The transfer back to the executing State should be done within this timeframe.

### *3.5.4. Speciality rule*

When Sweden acts as issuing State and wants to send a request for consent to the executing State, following the speciality rule<sup>18</sup>, the Swedish practitioners use a special form. This form includes all the information given in the EAW form. If one of the offences is too minor for an EAW to be issued, it can still be brought up in the form as an accessory offence to the original crime.

As executing State, when the Swedish authorities face a request following the speciality rule, they require the information that is set out in Framework Decision 2002/584/JHA.

---

<sup>17</sup> CJEU case-law in C-220/18

<sup>18</sup> Art. 27 (4) Framework Decision 2002/584/JHA

### 3.6. Conclusions

#### 3.6.1. General consideration

- In Sweden, Framework Decision 2002/584/JHA on the EAW is fully implemented and effectively applied.
- The principle of proportionality is mentioned in Swedish law: Section 5 of the ‘Ordinance on surrender to Sweden according to the EAW’
- Applying Framework Decision 2002/584/JHA, Swedish authorities pay due respect to the fundamental rights and the CJEU case-law.
- Swedish judges are not specialised in international judicial cooperation. The burden is on the specialised prosecutor to present to the court all the relevant information required for its decision.
- The smooth, direct and quick communication between all authorities involved in the issuing and executing of the EAW – police, prosecution authority and courts - makes a major contribution to the effective application of Framework Decision 2002/584/JHA. This is also due to the well-developed case management system, which is accessible online to all the authorities involved. This also results from digital and secure channels for communication between all of the authorities involved in the procedure.
- The optional ground for refusal of an EAW related to Article 4a(1) of the Framework Decision 2002/584/JHA is regulated in national law in a mandatory way which seems to be contrary to the jurisprudence of the CJEU (judgment C – 665/20)<sup>19</sup>.

---

<sup>19</sup> After the onsite evaluation, the experts were informed that there is an ongoing legislative project in which the national legislation is reviewed with regard to the latest case law from CJEU, including case C-665/20 and its relevance for the Swedish implementation of article 4a(1) of Framework Decision 2002/584/JHA.



- In addition to the national and EU legislation, Swedish prosecutors have access to supplementary information to assist them. As a supporting source of information and guidance when issuing or executing an EAW, Swedish prosecutors use the handbook that was published by the Swedish Prosecution Authority. This handbook is updated on a regular basis, taking into account new case-law of the CJEU and other relevant law and updates. The intranet page available to all Swedish prosecutors contains necessary information regarding international judicial cooperation in criminal matters, including the EAW. The content and updates of the handbook are consulted with information that is available to the courts, in order to maintain common ground and a coordinated approach, respecting the roles and competencies of both branches of the justice system.
- Digital communication between all the national authorities involved in Sweden via secure channels is a very efficient way of transmitting important information and documents, but without having a similar channel or way of communicating with authorities in other MSs the efficient execution of EU instruments, based on traditional communication, is weakened and the data protection rules may be infringed. The collection of statistical data on the application of the EAW is fragmented and based on the methodology adapted to the needs and priorities of the various authorities involved. It presents overlap when it comes to the implementation of EAWs involving countries, such as Finland and Denmark, which are parties to the multilateral convention of the Nordic Countries. Considering the high technological level of Sweden, the evaluation team believes Sweden can improve its collection of data.

### *3.6.2. Sweden as issuing State*

- All the Swedish prosecutors are competent to apply to the district court for a detention order and subsequently to issue an EAW. Nevertheless, the most important body in this field is the National Unit against Organised Crime. It is also the only authority competent to issue an EAW to enforce a sentence when the Detention and Probation Service so requests.

- As a centralised body, the National Unit against Organised Crime is highly specialised in EAW matters. Together with the International Judicial Cooperation Division of the Head Office of the Swedish Prosecution Authority, they are a key resource supporting all Swedish practitioners in the issuance of EAWs.
- Where Sweden is the issuing State, Swedish prosecutors and courts apply the principle of proportionality. Among the assessment criteria there are the length of imprisonment (or anticipated length of imprisonment), the interests of the claimant, the coordination of the investigation, ties to Sweden, and the possibility of adopting other – less coercive – measures.
- The police play a crucial role when Sweden is the issuing State: they register the EAW in the SIS, meanwhile double-checking whether it has been completed correctly (with all the fields filled in and no information missing)
- Transit cases require clear and relevant information, since urgent situations frequently occur; however Sweden is not often requested to grant such approval for transit. In this respect, the EJN seems the best resource for taking measures related to the transit of a person, using the EJN Atlas and Fiches Belges to rapidly identify the competent authority and requirements regarding necessary documents, timeframe and accepted languages.
- The evaluation team was informed by the Swedish lawyers that the double representation (in the issuing and the executing State) is difficult to carry out in practice. Indeed the lawyer in the executing State does not know how and where to find information on the relevant lawyer to contact in the issuing State.

### *3.6.3. Sweden as executing State*

- Regarding prosecutors, the competent authorities to execute an incoming EAW are the National Unit against Organised Crime and the SECA. The first handles most of the cases and the latest deals with some incoming EAWs in its field of competence, generally speaking economic crimes.

- When needed, the Swedish authorities request guarantees and a specific opinion regarding the detention conditions in the issuing state. The consent of the person to be surrendered does not play a role in determining whether to request guarantees or not.
- Where Sweden is the executing State, Swedish law prescribes a tight time-frame – 30 days from the arrest of a person to be surrendered – for the district Court to decide on surrender, which is even shorter than the time-limit provided for in Article 17 of Framework Decision 2002/584/JHA (60 days). However, the 60-day time-limit can be exceeded in case of appeal – especially pending a decision from the Supreme Court, but the main reason for delay is failure by the issuing State to reply to a request for additional information.
- Experts underlined that several issues in the use of the EAWs, and more generally in the use of the mutual recognition instruments, are due to shortcomings when filling in the dedicated forms (EAW or certificate). Therefore experts believe that a proper quality check, such as Sweden carries out, could prevent such difficulties, avoid the need for additional information and ensure smooth cooperation between Member States.
- The experts were informed that some Member States asked for information which is not provided for in Framework Decision 2002/584/JHA or related to the CJEU's case-law. The experts find that such behaviour is contradictory to the very aim of the Framework Decision and should be avoided.
- When Sweden is executing State, police officers are equipped with the relevant software on their professional mobile phones, and can quickly check whether a person is wanted in SIS whenever they come into contact with the person.

- Regarding the way in which consent to surrender is given, it appears from lawyers' practical experience that the prosecutor may not be present when the person sought is being interviewed. Indeed lawyers explained that prosecutors did not even participate by telephone when consent was given to the police officer. Leaving aside the debate on the actual presence of the prosecutor, the evaluation team considers it inappropriate to use the telephone to receive the consent of the person sought, and video-conferencing appears to be the minimum means to ensure the prosecutor's presence. Using video-conferencing will make it possible to see the conditions in which the person sought consents to his or her surrender and ensure that the prosecutor provides a good explanation of the principle of consent (and the speciality rule) and its consequences.
- Where Sweden is the executing State, when dealing with EAWs that refer to judgments *in absentia*, the Swedish authorities have encountered several problems which have led, *inter alia*, to a refusal of surrender – an EAW form incompletely filled in by the issuing State that does not indicate the required information; incomplete additional information; new information linked to the CJEU's case-law; failure to comply with the *in absentia* procedure.
- Where Sweden is the executing State, the proportionality of the EAW sent by the issuing State is never assessed. Here the Swedish authorities give precedence to the principle of mutual trust. Nevertheless, surrendering a person does not mean that Swedish judicial authorities automatically send the person sought to jail. The criteria for deprivation of liberty are still accurately analysed and, as previously mentioned, the detention order is still appealable.
- The fact that Sweden, according to its official notification, accepts languages other than its official language proves to be an important element towards achieving efficient results in application of this instrument by swift communication with the MSs with whom Sweden cooperates most frequently.

- Situations where there are competing EAWs are tackled in an appropriate way, taking into account the legislative, institutional and practical set-up. However, the role of Eurojust in this respect is not taken into account on a systematic basis. For example, experts have noticed that the prosecutor's handbook does not mention the possibility of contacting Eurojust in the case of competing EAWs.

#### **4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION**

According to the notification submitted to the GSC<sup>20</sup>, no central authority has been designated in the field of Framework Decision 2008/909/JHA.

##### **4.1. Authorities competent for the recognition of the judgment and execution of the sentence**

The Swedish Prison and Probation Service is the competent issuing and executing authority. Within the Legal Unit at the head office of the Swedish Prison and Probation Service, a section is responsible for the transfer of prisoners.

Appeals against decisions of the Swedish Prison and Probation Service may be lodged with a district court. The district court judgment can be appealed to the Court of Appeal and the Supreme Court can review the Appeal Court's decision. In any case the appeal process is very fast: it could take only a day or even be conducted in writing.

##### *4.1.1. Sweden as issuing State*

Specifically-trained lawyers administer and decide on transfers from Sweden.

This staff uses dedicated software to swiftly identify prisoners who can apply for a transfer. Penitentiary staff then help in providing information about transfers to prisoners, preparing materials and investigations regarding ties to another Member State, and receiving the consent of the detained person. Previously, each individual detention center checked among their inmates who could be eligible for transfer.

In cases where the convicted person is eligible for transfer, institutions and the prison are asked to send documentation to the legal unit for consideration of the matter.

---

<sup>20</sup> ST9822/1/15

#### *4.1.2. Sweden as executing State*

The Legal Unit of the Swedish Prison and Probation Service collects the relevant information and investigates before taking its decision. Decisions on transfers to Sweden are taken by the head of the Unit, and not by the case officers.

When the decision - or in cases of appeal - the judgment, is legally binding, the Legal Unit will send the decision to the issuing State.

#### *4.1.3. Principle of direct contact*

The Swedish Prison and Probation Service has direct contact with the other competent authorities. In some cases, Interpol is used as a channel through which to establish contacts, in particular with regard to transit arrangements.

### **4.2. Documents required for recognising the judgment and executing the sentence**

#### *4.2.1. As executing State*

Swedish legislation requires a written judgment. If the judgment is not provided, it can be requested from the issuing State.

It is not necessary for the judgment to be translated. If translation is needed in order to assess whether the judgment should be recognised and enforced, the Swedish Prison and Probation Service may, after consulting the issuing authority, request that the foreign judgment or part of it be translated. The issuing authority will do so and bear the cost of the translation.

#### *4.2.2. As issuing State*

When Sweden is the issuing State, translations of judgments or parts of judgments are regularly requested. The dates and times of deprivation of liberty are also quite often requested.

### **4.3. Criteria to assess the facilitation of social rehabilitation**

#### *4.3.1. Criteria to assess social rehabilitation*

The Swedish Prison and Probation Service's assessment covers such aspects as citizenship, periods of residence in different States and current housing. In the case of foreign nationals, the type of residence permit the sentenced person holds in Sweden or in the other State is also taken into consideration. In the case of European Economic Area (EEA) nationals and their family members, the specific rules in Chapter 3a of the Aliens Act (2005:716) on the right of residence are taken into account. Other factors that are taken into account are family circumstances, working conditions or whether the sentenced person has been deported. The sentenced person's linguistic, cultural, social, economic or other ties to a State may also be considered.

#### *4.3.2. Exchange of information between the issuing State and executing State*

##### *4.3.2.1. Sweden as issuing State*

To a significant degree, the Swedish Prison and Probation Service consults the executing authorities in accordance with Article 4(1)(c) of Framework Decision 2008/909/JHA. In some cases, it may be difficult to determine the competent authority in the executing State. The reason mentioned by the Swedish authorities is that the information on the EJN website is not updated. However, the Swedish Prison and Probation Service believes that it has improved. In some cases, when the sentenced person has no address in the other Member State, it may also be unclear which court has jurisdiction in the other country.

Occasionally, there have been cases where the Swedish Prison and Probation Service has received an opinion on the basis of Article 4(4) or 4(5) of Framework Decision 2008/909/JHA. These opinions have been taken into account, but this has not led to the withdrawal of the certificate.

Regarding Article 21 of Framework Decision 2008/909/JHA, the Department of Prison and Probation explained that the cases referred to in Article 21(f) and (h) have never occurred.

It added that it has received information in accordance with Article 21(a). However, it may take a long time before the information reaches the Swedish Prison and Probation Service.



Information pursuant to Article 21(b) (the impossibility of enforcing the sentence on the grounds that the sentenced person cannot be found in the territory of the executing State) has been provided by the executing State without delay. Such situations are very infrequent.

Information pursuant to Article 21(c) to (e) (decision recognising the judgment and enforcing the sentence, decision not to recognise the judgment and enforce the sentence and decision to adapt the sentence) are not usually received within the 90 days laid down in Article 12(2). Reasons are normally given for decisions.

Information pursuant to Article 21(g) (the beginning and the end of the period of conditional release) is seldom received, even though it is requested in the certificate along with the final decision of the executing State, but is quite often requested again at a later stage.

In some cases, the Swedish Prison and Probation Service receives information pursuant to Article 21(i) (enforcement of the sentence), and this is provided without delay.

#### 4.3.2.2. Sweden as executing State

When the certificate is completed correctly, there is sufficient information for a decision to be made. Unfortunately insufficient or contradictory information within the certificate is common - for example, regarding credit for periods of deprivation of liberty or regarding the presence of the sentenced person during the trial. It also happens relatively often that the issuing Member State states in the certificate that the sentenced person has applied for transfer, but not whether the sentenced person consents to transfer, which is important regarding the principle of speciality<sup>21</sup>.

If the person is not in custody, the Swedish Prison and Probation Service needs information from the issuing State on its limitation rules concerning the sentence. Quite often, this information does not exist.

---

<sup>21</sup> Article 18(e) Framework Decision 2008/909/JHA

Regarding reduced sentence credits, the Swedish authorities suggest, in order to improve the information given in the certificate, that the issuing authority should state in the certificate both the number of days to be served and the dates of deprivation of liberty. The Swedish authorities would also appreciate it if the issuing authority indicated in the certificate when the sentence is statute-barred, since they apply the issuing Member State's rules on prescription.

After a request for additional information, the Swedish Prison and Probation Service generally receives the information.

#### *4.3.3. Opinion and notification of the sentenced person*

##### *4.3.3.1. Procedure followed*

The Swedish Prison and Probation Service is responsible for requesting the sentenced person's opinion and providing information on the consequences of the transfer of enforcement.

If the sentenced person is incarcerated in Sweden, he or she receives information on transfer and the consequences of consent before signing the consent form. When needed, an interpreter is engaged to ensure that the sentenced person understands the information. The information on transfer and the consequences of consent is translated into a language that the sentenced person understands. To date, the information on transfer has been translated into 19 different languages and is translated into additional languages as necessary.

The opinion must be given in writing.

##### *4.3.3.2. Importance of the sentenced person's consent*

The sentenced person's opinion is always taken into account, even where that person's consent is not required pursuant to Article 6(2) of Framework Decision 2008/909/JHA.

However, the Swedish Prison and Probation Service may, under certain conditions laid down in national law, issue a certificate even if the sentenced person does not agree, if:

- the sentenced person is a citizen and resident of the other member State;

- the sentenced person will be deported to the other member State after enforcement;
- the sentenced person returned to the executing member State after the final decision rendered by Swedish courts.

In addition to this, according to Swedish legislation, a fundamental prerequisite for forwarding a certificate is the social rehabilitation of the sentenced person.

#### 4.3.3.3. Information given to the sentenced person

Since 2015, Swedish prison staff have issued to persons in prison a leaflet, available in nearly all the European Union languages, explaining whether they can request a transfer, the consequences of this transfer and their rights.

The Swedish Prison and Probation Service notifies the sentenced person of the decision to forward the judgment and certificate, and provides a copy of the certificate and the notification set out in Annex II to the Framework Decision 2008/909/JHA in a language that the sentenced person understands.

In addition, the sentenced person is entitled to a state appointed defense counsel unless it can be agreed that counsel is unnecessary.

### **4.4. Adaptation of the sentence**

#### *4.4.1. As executing State*

Where Sweden is the executing State, the Swedish Prison and Probation Service assesses the need to adapt the sentence. However in practice, to-date, there has been no case where the Swedish Prison and Probation Service has decided on adaptation, since the Swedish Prison and Probation Service has not deemed the adaptation to be straightforward in any case.

When the sentence forwarded needs to be adapted, the Swedish Prison and Probation Service leaves it to the Swedish Prosecution Authority. Prosecutors will then seise the district court to set a new sentence. The Swedish Prison and Probation Service provides information from the court on sentence adaptation to the prisoner.

#### *4.4.2. As issuing State*

Where Sweden is the issuing Member State, it is the Swedish Prison and Probation Service that assesses whether the executing State's potential decisions on adaptation can be accepted or if there are grounds to revoke the certificate because, for example, the adaptation is deemed to erode the sentence.

The Swedish Prison and Probation Service has encountered one case in which the executing State commuted a custodial sentence to a fine.

In cases involving the transfer of forensic psychiatric care, it is often problematic to change the nature of the sentence, given that the type of enforcement varies depending on the State. This applies irrespective of whether Sweden is the issuing State or the executing State.

The Swedish Prison and Probation Service has not encountered cases where certificates were withdrawn owing to sentences being too lenient after being adapted.

### **4.5. Grounds for non-recognition or non-enforcement**

#### *4.5.1. Usual grounds for non-recognition or non-enforcement*

##### *4.5.1.1. As executing State*

When Sweden is the executing State, the reason set out in Article 9(b) (lack of social rehabilitation) of the Framework Decision 2008/909/JHA is most often used as grounds for non-recognition or non-enforcement. The reasons set out in Article 9(i) (the judgment was rendered in absentia) and (k) (the sentence cannot be executed) are also sometimes used.

##### *4.5.1.2. As issuing State*

Before initiating a transfer the Swedish Prison and Probation Service takes into account the prison conditions in the executing State where a qualified source has raised doubts concerning the prison conditions. If those conditions are deemed unsatisfactory, the transfer is not initiated or, if the process has started, not finalised.

The Swedish Prison and Probation Service stated that they also apply the Aranyosy/Căldăraru two-step test on detention conditions in the case of transfer of prisoners.

The main grounds for non-recognition or non-enforcement given to Sweden when acting as issuing State are those set out in Article 9(b) (lack of social rehabilitation) and (h) (less than six months still to be served) of Framework Decision 2008/909/JHA. The reasons set out in Article 9(l) (acts committed on the executing State's territory) are also sometimes used.

#### 4.5.2. *Judgments in absentia*

##### 4.5.2.1. As executing State

In some cases there has been conflicting information regarding judgments *in absentia*, which has made the cases more difficult to handle. It can also happen that information is missing in the certificate.

##### 4.5.2.2. As issuing State

Where Sweden is the issuing State, the Swedish authorities did not mention major problems regarding persons sentenced *in absentia*.

#### 4.5.3. *Criminal irresponsibility and imposition of psychiatric care*

##### 4.5.3.1. As executing State

The Swedish Prison and Probation Service has encountered problems with the surrender of people sentenced to psychiatric care. Indeed in Sweden this type of sentence is not time-limited, whereas in most Member States psychiatric care is time-limited. The Swedish authorities consider that an adaptation of a sentence in such a case could render the sentence harsher.

In one case, a Swedish national was sentenced to forensic psychiatric care in another Member State. The sentenced person escaped from the institution in the other Member State. This Member State issued an EAW. The person sought was found in Sweden. The decision on surrender could not be approved by the court because the sentenced person was a Swedish national and wanted the sentence to be enforced in Sweden. Then the Member State attempted to issue a certificate in order to transfer the sentence. However, because of the time-limitation of the psychiatric care, the sentence could not be adapted.

Another case serves as an example of when forensic psychiatric care was adapted to Swedish law. A Swedish national who also held the nationality of another Member State was sentenced for murder to forensic psychiatric care in the other Member State. Upon the transfer of the person to Sweden, the Member State presented the documents, which were reviewed by the expert from the Swedish national Board of Health and Welfare. According to the expert's opinion, the person still needed psychiatric care, there was a risk that he could continue to commit aggravated offences and the sentence from the Member State most resembled the Swedish psychiatric care version number two. So the Swedish Court decided to adjust the foreign sentence to psychiatric care involving deprivation of liberty until an administrative court deemed it to be unnecessary.

#### *4.5.3.2. As issuing State*

The Swedish competent authorities consider that there are significant differences in legislation on forensic psychiatric care sentences, which makes it difficult to transfer such a sentence.

In Sweden, a person can be sentenced to psychiatric care with a special discharge review. The sentence is not limited in time and the question of whether care should continue is examined by the administrative court. The sentence always begins as institutional forensic psychiatric care (i.e. the sentenced person is committed to an institutional care facility), but can evolve into non-institutional psychiatric care (possibility to leave in his/her own house, or with a group under certain conditions).

It is not possible to transfer this type of sentence, especially when it evolves into non-institutional psychiatric care. Usually there is no equivalent in the other Member States.

### **4.6. Partial recognition**

#### *4.6.1. As executing State*

Sweden has not experienced cases of partial recognition as the executing State.

Nevertheless, if such a case occurs the Swedish Prison and Probation Service explained that it would probably not accept partial recognition, which would weaken the penalty.

#### *4.6.2. As issuing State*

The Swedish Prison and Probation Service mentioned one case of partial recognition when acting as issuing authority. The executing State was Poland. The Polish authorities stated that they could not take over the judgment in its entirety, after which the Swedish Prison and Probation Service notified the judgment to the Swedish court for removal of the offence which was not criminalised in Poland. The judgment and certificate could then be forwarded for recognition and enforcement.

In that case the consultation process established under Article 10(1) Framework Decision 2008/909/JHA worked well.

### **4.7. Challenges relating to compliance with the deadline for recognition and enforcement**

#### *4.7.1. Compliance with the deadline provided for in Article 12(2) of Framework Decision 2008/909/JHA*

##### *4.7.1.1. As executing State*

When Sweden is the executing State, the deadline set in Article 12(2) Framework Decision 2008/909/JHA is adhered to. The national legislation states that the Swedish Prison and Probation Service has 30 days in which to decide on the recognition and enforcement of sentences. This national timeframe is generally respected. In certain cases, where further information is required from the issuing State or national legislation requires investigation (for example obtaining the opinion of social services when the sentenced person has children in Sweden), it may take longer to handle the case and the 30-day deadline may be exceeded.

##### *4.7.1.2. As issuing State*

When Sweden is the issuing State, the Swedish Prison and Probation Service receives a reply from the executing State within 90 days in more cases than before, although delays still occur.. The reasons for delays are not known, since the information referred to in Article 12(3) is most often not provided.

#### *4.7.2. Information in the event of delay*

##### *4.7.2.1. As executing State*

Because Sweden always respects the 90-day deadline there has been no need for the Swedish competent authorities to send the issuing State explanations for non-compliance with this deadline.

##### *4.7.2.2. As issuing State*

When a deadline has passed, the Swedish Prison and Probation Service generally sends a reminder to the executing State and asks for this information; information regarding reasons for the delay is then sometimes provided.

#### **4.8. Law governing the enforcement of the sentence**

The Swedish Prison and Probation Service has not withdrawn any certificates because of applicable provisions on early or conditional release.

However, in some cases the authority has decided not to forward a judgment and certificate when it has become clear during the investigation phase of the case that the sentenced person could be released considerably sooner than they would be in Sweden. The basic principle is that minor differences in the rules on conditional release should not affect the assessment of whether or not to forward a judgment. But if the sentenced person will in principle be released immediately after a transfer or considerably sooner than they would be in Sweden, there may be doubts as to whether it is appropriate to transfer the enforcement. The preparatory work for the Swedish legislation<sup>22</sup> indicates that a transfer of enforcement to a State which applies part-time release should be accepted, but early release can be challenged. The Swedish Prison and Probation Service follows these guidelines.

As executing State, no certificate received has been withdrawn because of applicable provisions on early or conditional release.

---

<sup>22</sup> Swedish government proposal 2014/15:29, page 73



The Swedish Prison and Probation Service is careful to check any information regarding deductions, and credits the amount of time indicated in the certificate. It can, however, happen that information regarding a deduction is not provided in the certificate but elsewhere, for example in the judgment or in a submission from the sentenced person.

#### **4.9. Further challenges**

##### *4.9.1. Transit of the sentenced person*

In Sweden it is not the Police Authority but the Swedish Prison and Probation Service's national transportation unit that plans and carries out transports when transferring a prisoner.

Even if the Swedish Prison and Probation Service is competent, the Swedish Police Authority handles the communication with the other Member States. This situation can be explained by the fact that most Member States use Interpol's channel to exchange information. Moreover the Swedish Prison and Probation Service does not have direct access to the relevant databases which are relevant for the assessment of the respective cases, e.g. ECRIS.

According to the Swedish Police Authority there have been problems and difficulties with the transit of sentenced persons (as described in 3.5.1.). The Police Authority mentioned that it has tried to minimise the issues connected with transits through several measures. The first and most important measure is information and discussions with the travel department of the Swedish Prison and Probation Service, which has been informed about the problems with travel schedules that include transits. The Swedish Police Authority has requested that the Swedish Prison and Probation Service try their utmost to book flights without transits. Secondly, the Swedish Police Authority endeavours to handle transit requests very quickly and has prepared forms in e.g. German to be ready when such a transit is required, in order to not lose time with translations etc. The internal routine for handling such requests has also been streamlined, so as to not have to wait for superiors to sign the request. Finally, the Swedish Police Authority has informed the MoJ regarding such requests, including the requirement for speedy handling, for further action.

#### 4.9.2. Other challenges

According to the Swedish Prison and Probation Service the competent authorities within the other Member States could check more carefully which languages are accepted in Sweden. The Swedish Prison and Probation Service quite often receives letters in languages which are not accepted. When it takes a long time to handle a case, on many occasions this means that the transfer does not take place.

When Sweden is the issuing State, it happens fairly often that the Swedish Prison and Probation Service receives a final decision under Article 12 Framework Decision 2008/909/JHA with no reference to any of the grounds for refusal in Article 9, despite the fact that the requisite conditions in Article 4 are fulfilled.

When Sweden is the issuing State, the Swedish Prison and Probation Service faces the practical and time-consuming problem that, for information security reasons, it cannot send documents electronically. In such cases, when possible, the Swedish authorities send by post and/or fax.

#### 4.10. Statistics

The Swedish Prison and Probation Service keeps statistics of the number of cases and the number of persons transferred, but has no information on how many requests have been recognised and how many have been refused during the period 2016-2018.

Nevertheless the Swedish Prison and Probation Service provided the evaluation team with the following statistics:

##### Sweden as issuing State

Year	2018	2019	2020
Number of cases	108	132	152
Number of sentences transferred	53	45	63

### Sweden as executing State

Year	2018	2019	2020
Number of cases	28	37	44
Number of sentences transferred	10	8	12

#### 4.11. Conclusions

- In Sweden, Framework Decision 2008/909/JHA is fully implemented and is effectively applied, paying due respect to the requirements and standards set out in the legal instrument.
- Competence to issue or execute the transfer of a prisoner is centralised within the Prison and Probation Service's legal unit. Thanks to this centralisation the practitioners involved with Framework Decision 2008/909/JHA are highly specialised.
- The number of transfer cases, including cases recognised and refused, and related relevant information linked to those cases such as grounds for refusal and/or the nationality of prisoners, are more indicative than a result of coordinated or methodologically unified action, and therefore the statistical data cannot serve as a source for a comprehensive assessment or future discussions on possible adjustments in this area.
- At present, the human resources dedicated to this matter appear sufficient but the Swedish practitioners expect in the coming years to see an increase in the number of persons imprisoned and the human resources factor should be closely monitored to forestall any future difficulties.

- The transfer of prisoners in Sweden appears to be a hybrid procedure, as the decision of the Prison and Probation Service, an administrative body, can be appealed to the district court, a judicial body. In the same way the Prison and Probation Service must request the prosecutor to seize the court when an adaptation of the sentence is needed.
- The Prison and Probation Service and its staff take advantage of using dedicated software to swiftly identify prisoners who can apply for a transfer. Penitentiary staff then help in providing information about transfers to prisoners (leaflet translated into several EU languages), preparing materials and investigations regarding ties to another Member State.
- When deciding on the transfer of a person from Sweden, one of the major concerns of the Swedish authorities is respect for the fundamental rights of a person and prison conditions in the other Member State. Going beyond the scope of the CJEU judgment in the Aranyosy/Căldăraru case, the Swedish Prison and Probation Service also applies the two-step evaluation procedure when dealing with Framework Decision 2008/909/JHA.
- Sentenced persons who are identified as those to whom Framework Decision 2008/909/JHA could apply are contacted by the Swedish Prison and Probation Service and provided with information about their rights and procedure.
- Despite being a competent authority for cases related to transfer of sentences, the Swedish Prison and Probation Service does not have direct access to ECRIS and therefore has to liaise with the police to obtain the relevant information
- As an executing State, Sweden has always respected the time-limits set out in Framework Decision 2008/909/JHA. However, when Sweden is the issuing State, other Member States often do not provide a response in time, which causes delays in the procedure.
- The differences between the Member States in the rules on forensic psychiatric care have caused difficulties in transferring this type of prisoner.
- As with the EAW, there can be difficulties regarding the transit of prisoners due to the lack of contact details and other relevant information.

## **5. LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES**

### **5.1. Problems related to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences**

#### *5.1.1. Criteria used in order to decide whether to use an EAW or a certificate:*

If the sentenced person is at large, is a national of and has an address in another Member State, or there is an indication that the sentenced person is in the executing State, the Swedish Prison and Probation Service investigates whether there are grounds to transfer the sentence and certificate for recognition and execution.

If there are no grounds to transfer the sentence and certificate for recognition and execution, the Swedish Prison and Probation Service asks the Prosecution Authority to issue an EAW, unless the custodial sentence is shorter than four months.

There is no formalised agreement between the Swedish Prison and Probation Service and the Prosecutors, nevertheless there is very good practical cooperation between these two bodies.

#### *5.1.2. As executing State, need for a certificate after a refusal to surrender*

When Sweden is the executing State and a Swedish court refuses to execute a surrender due to the fact that the person sought requested to serve the sentence in Sweden, the issuing authority is required to forward the judgment and certificate in order to have the judgement enforced in Sweden<sup>23</sup>. A decision on recognition and enforcement in Sweden cannot be based solely on the contents of the EAW.

However, in such cases the Swedish Prison and Probation Service will carry out a simplified examination. The criteria for transfer (Article 4 of Council Framework Decision 2008/909/JHA) or the grounds for refusal (Article 9 of the Council Framework Decision 2008/909/JHA) will not be assessed.

---

<sup>23</sup> Chapter 7 section 1 Act (2003:1156) on surrender from Sweden according to the European arrest warrant and Chapter 3 section 6 Act (2015:96) on the recognition and enforcement of custodial sentences within the European Union.

The experts asked about the possibility to keep the sentenced person in jail between the decision from the Swedish court on refusal to surrender and the decision from the Swedish Prison and Probation Service to take over the sentence. The Swedish authorities explained that the decision depends on the grounds for refusal. There are two possible responses:

- If the requested person is a Swedish citizen and requests to have his/her sentence enforced in Sweden instead of in the issuing State, the Swedish court may not decide on surrender on the EAW. In this case, the prosecutor can then instead decide on coercive measures if there is a risk of escape and without a request on coercive measures from the other State.
- If the EAW case involves a national of another EU Member State and the Swedish court rejects the EAW, for instance on account of inadequate guarantees regarding detention conditions, it is no longer possible to have the requested person deprived of liberty on the basis of the EAW. However the prosecutor has the possibility to decide on coercive measures on new grounds (new case), according to Framework Decision 2008/909/JHA and the national legislation if there is a request for coercive measures from the other State (which delivered the judgment/sentence that may be transferred). There will be a gap in the coercive measures and the individual will not be in jail for the whole time between the decision on refusal on surrender and the decision on transfer of sentence.

In those two possibilities, time limits are the same. The Swedish Prison and Probation Service must receive the judgement within 40 days and if not, there is no longer grounds for keeping the person in custody. When the Swedish Prison and Probation Service receives the judgement, it normally has 30 days to make a decision on the transfer.

#### *5.1.3. Surrender granted on the basis of Article 5(3) of Framework Decision 2002/584/JHA*

If surrender is approved on the basis of Article 5(3) a simplified procedure is applied, under which the Swedish Prison and Probation Service does not take a position on the transfer but instead refers to the prosecutor's guarantee of return. The Swedish Prison and Probation Service does, however, use the certificate.

#### *5.1.4. As issuing State, need for a certificate after refusal of surrender by the executing State*

The Swedish legislation does not allow the executing State to execute the sentence without a certificate<sup>24</sup>. If the executing State has refused the surrender, the Swedish Prison and Probation Service sends the sentence and certificate afterwards.

Nevertheless in practice the Swedish Prison and Probation Service has experienced cases in which the executing State refuses the surrender based on an EAW and in the same decision takes over the execution. This is not a problem in itself, as long as the executing State does not change the sentence. In such cases the Swedish Prison and Probation Service has decided at a later stage to forward the sentence and certificate. These forms are enclosed together with an explanatory letter. The Swedish Prison and Probation Service asks the executing Member State to confirm that they have recognised and enforced the judgment.

## **5.2. Conclusions**

- In Sweden, there is only one competent authority to assess whether there are grounds to apply either Framework Decision 2008/909/JHA or Framework Decision 2002/584/JHA – the Swedish Prison and Probation Service. They inform the Prosecution Authority in the case if there are grounds for issuing the EAW.
- The direct and informal communication between all the national authorities involved could serve as an appropriate basis for fulfilling the objective of this instrument. Legislative regulation is not always a guarantee of a clear division of responsibilities and roles in the whole process and practical solutions can lead to a workable way of cooperating.
- The cooperation between the competent authorities applying both EU instruments proves to be efficient and shows that practical measures can solve potential situations when both instruments are applied by the national authorities.

---

<sup>24</sup> Chapter 7 Section 1 of the Act (2003:1156) on Surrender from Sweden according to a European Arrest Warrant

- When a surrender is refused, or in the case of temporary surrender, the Swedish authorities always send or a certificate to, or request one from, their counterparts. Where Sweden is the executing State, when the surrender of the person sought is denied, Swedish legislation does not provide for the possibility to directly enforce the sentence by using the information in the EAW.

## **6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS**

### **6.1. Authorities competent for Framework Decisions 2008/947/JHA**

#### *6.1.1. No central authority*

No central authority has been designated in the field of Framework Decision 2008/947/JHA. This was not found to be necessary, as competence to issue and execute requests is already centralised, and lies with the Prison and Probation Service.

#### *6.1.2. Authorities competent to issue and execute a request on probation and alternative sanctions*

The Swedish Prison and Probation Service was designated as the competent authority in the national legislation. Appeals against decisions of the Swedish Prison and Probation Service may be lodged with a district court.

According to the notification submitted by Sweden regarding Framework Decision 2008/947/JHA<sup>25</sup>, parole boards and the ordinary courts are also competent authorities in the situation where Sweden is the issuing State and where the parole board or the court issues such subsequent decisions as are referred to in Article 17. A parole board is also the competent authority in the situation where Sweden is the issuing State, in cases where the board issues probation decisions as referred to in Article 2(5)<sup>26</sup>.

---

<sup>25</sup> ST 5221/16

<sup>26</sup> Chapter 2 section 5 of the Act (2015:650) on the recognition and enforcement of non-custodial sentences within the European Union



The Swedish Prison and Probation Service explained that courts are mentioned as the competent authority because the decision of the Swedish and Probation Service can be appealed to the courts; however, appeals are not very common in these cases because in practice either the consent of a person is needed to ensure that he/she cooperates, or the procedure starts due to the person's initiative.

The Swedish Prison and Probation Service has direct contact with other Member States' competent authorities. In practice, Swedish practitioners find it easier to work with the other Member State when there is only one competent authority.

## **6.2. Problems related to lack of application of Framework Decision 2008/947/JHA**

### *6.2.1. No problem regarding the law or institutional organisation but a lack of awareness*

Framework Decision 2008/947/JHA Decision has been implemented within Sweden's existing institutional framework.

The Swedish Bar Association explained to the evaluation team that the legislation implementing the framework decision is clear and consistent with the legal instrument. There is, however, a need for better knowledge of the options for enforcing non-custodial sentences in another EU Member State amongst the majority of those involved in the criminal justice process. Such cases are unusual in Swedish courts and consequently lawyers rarely come into contact with them. Moreover, they are considered by certain defence counsels to be complicated and it can often take the executing State a long time to deal with them.

### *6.2.2. Problems underlined by the Prison and Probation Service*

The Prison and Probation Service added that one problem is that Swedish courts do not usually impose non-custodial sentences because they are unsure as to whether it will be possible to transfer such a sentence. Courts would perhaps impose more probation sentences if it were possible to remove the probation element once the issue of transfer has been examined.

The Prison and Probation Service officials also stated that the challenges in the application of the Framework Decision 2008/947/JHA arise from the fact that there are big differences in how Member States draw up sentences. This makes it difficult to treat different countries' judicial systems in the same way. Another problem is that it can take too long for cases to be dealt with, meaning that, for example, monitoring after conditional release - which in Sweden lasts for one year - will expire before the transfer has taken place.

### 6.2.3. Statistics

The table below shows how many cases of transfer under FD 2008/947/JHA the Swedish Prison and Probation Service dealt with in 2017 and 2018, however this is not accurate since it also includes the cooperation with the Nordic countries under a different legal basis.

	2017	2018
Cases transferred from Sweden	53	60
Cases transferred to Sweden	9	11

## 6.3. Conclusions

- Framework Decision 2008/947/JHA has been fully implemented in Sweden, in 2016, and Swedish law provides for a clear and comprehensive procedure for transfer of probation measures and alternative sanctions. However, in practice the legal instrument has not often been applied.
- The differences between the alternative punishment and probation systems in different Member States make it difficult to apply Framework Decision 2008/947/JHA. Moreover, time-limits in the legal instrument are often not effectively compatible with the length of probation/alternative sanctions.

- Although improving, awareness of Framework Decision 2008/947/JHA among practitioners should be higher. More training and events should be organised both at the national and the EU level regarding this instrument.
- It would be very helpful to have a single source of information on the probation and alternative measures in the EU Member States, for example the EJM website. It is of utmost importance, especially in the application of those EU instruments which are not used on a daily basis, to have efficient direct contact between the competent authorities, and therefore Member States should update, on the EJM website (EJM Atlas), the competent authorities dealing with the mutual recognition instruments covered by the 9th round of mutual evaluations.

## **7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)**

### **7.1. Authorities competent for the Framework Decisions 2009/829/JHA**

#### *7.1.1. No central authority*

No central authority has been designated in the field of Framework Decision 2009/829/JHA.

#### *7.1.2. Authorities competent to issue and execute an ESO*

In accordance with the notification submitted to the GSC<sup>27</sup>, the Swedish Prosecution Authority and Swedish Economic Crime Authority are the competent authorities under the national legislation. Appeals against decisions of a prosecutor related to recognition and monitoring may be lodged with a district court that is also a competent authority to issue the ESO. Courts are also competent to issue the ESO, however, their jurisdiction is limited to certain decisions on supervision measures and related to them.

The competent authorities do have direct contact with other Member States' competent authorities.

---

<sup>27</sup> ST 12910/15

## **7.2. Problems related to lack of application of Framework Decision 2009/829/JHA**

### *7.2.1. No problems regarding the law or institutional organisation, but limited utility*

Framework Decision 2009/829/JHA Decision has been implemented within Sweden's existing institutional framework and has been in force since 1 August 2015.

The Swedish prosecution authorities have limited data in the area of the ESO, and so they consider it not appropriate to give a general reply about problems related to lack of application of the Framework Decision.

Nevertheless they stated that the Swedish legislation is comprehensive and clear. However, the underlying practice as such is perceived as less useful. This is most likely because the number of situations in which application is relevant seems to be limited.

On the Intranet page prosecutors are able to find relevant and practical information on the ESO, which is sufficient.

The Swedish Bar Association added that legislation implementing the instrument is clear, but in the same way that national alternatives to detention are rarely applied, practitioners have limited knowledge of the corresponding alternative measures possible under EU law.

As it was presented during the meeting, in Sweden during investigation, while deciding whether to keep a suspect/accused in detention, three risks are assessed:

- the risk that the person may escape;
- the risk that the person may tamper with evidence;
- the risk that the person may continue criminal activities.

In practice, it is difficult to identify cases where the ESO could be applicable. It could be suitable for minor cases, but they are usually resolved in a rather short time, so there is no need to apply the ESO. Moreover, if a person is a resident of another State, it is not very beneficial for him/her to agree to an ESO because it would require travelling to Sweden for investigation or/and travel at his/her expense.

#### *7.2.2. A little-used instrument*

The authority has received two requests for recognition of decisions on supervision measures (both in the same case) since the current legislation came into force on 1 August 2015. Both requests came in 2019 and relate to ongoing cases. Up to the beginning of the evaluation, Sweden had not applied the ESO as the issuing State.

### **7.3. Conclusions**

- Framework Decision 2009/829/JHA is fully implemented in Swedish law. On a theoretical level, the competent authorities are sufficiently aware of the legal requirements and are ready to apply the knowledge in practice.
- On the practical side, Sweden has limited experience in applying this legal instrument.
- The lack of implementation of Framework Decision 2009/829/JHA is due to the difficulty in identifying cases where it would be effective and appropriate to issue an ESO. This would work better for minor cases, where pre-trial investigation is completed rather quickly in Sweden and therefore there is no need to issue an ESO. For complex investigations, where suspects are usually in detention, the ESO might jeopardise the investigation.

## **8. TRAINING**

The MoJ assumes initial responsibility for providing information on legislation as regards its entry into force; this is also the case for other instruments, such as the EIO. However, the MoJ has no overall responsibility for ongoing training in the relevant authorities, which is the internal responsibility of those authorities.

It means that each profession organises its own training.

### **8.1. Training related to FD 2002/584/JHA**

#### *8.1.1. Judges*

The Judicial Training Academy is responsible for the training of judges, both continuous training for permanent judges and initial training for non-permanent judges. The Judicial Training Academy offers a great variety of courses on most of the jurisprudence and on different levels, adapted to the different training needs of judges (both permanent and non-permanent). The Judicial Training Academy has dedicated courses for judges or staff serving as a law clerks.

The Judicial Training Academy does not provide specific training on international cooperation, including in the area of the EAW, on a regular basis.

However, during the onsite evaluation it was mentioned that an online learning platform was available to judges and covers, *inter alia*, the EAW. This online training was made available one week before the arrival of the evaluation team. The platform contains videos and texts about national legislation, CJEU decisions and decisions from the Swedish Supreme Court. In addition, there are practical examples and advice about how to draft a decision and what application form the court should use.

Swedish judges also participate in training at EU level, both in exchange programmes and in seminars (such as those run by the EJTN). Due to the pandemic there has been no participation in either seminars or exchange programmes during 2020 and 2021, up to September 2021.

### 8.1.2. Prosecutors

Training activities for prosecutors at the Swedish Prosecution Authority are run by the authority's own training centre. External lecturers and experienced prosecutors are used for the training. The quality of the training is monitored internally.

All newly-appointed prosecutors undergo compulsory basic training (15 weeks in total). This includes a training package on international judicial cooperation and EU instruments, including the EAW and EIO.

In addition to the initial training, there is further training in international judicial cooperation, which 20 to 25 prosecutors undergo every year. This training includes a more extensive module on the EAW (6 x 45 minutes) and covers recent CJEU case-law.

All new staff of at the National Unit against Organised Crime at the Swedish Prosecution Authority, which deals with all incoming EAWs and issues the majority of them, are also given specific training on international judicial cooperation. This training also comprises in-depth study of legislation relating to the EAW. It should be emphasised that the prosecutors in this specialised unit are given regular updates on the legal situation and CJEU case-law.

The Swedish Economic Crime Authority also regularly runs its own training sessions in the field of the EAW. This training is available to prosecutors and police officers. For example, a training course on international judicial cooperation was held in the autumn of 2019. The course covered recent CJEU case-law. The Swedish Economic Crime Authority also has specially designated 'international contact prosecutors' who deal with the majority of incoming EAWs and are given regular updates on the legal situation.

The Swedish Prosecution Authority has a handbook on surrender pursuant to an EAW, which is updated on a regular basis. In addition, the Swedish Prosecution Authority has an intranet page that publishes information on the EAW, as well as relevant documents and updates.

In addition, the Swedish Prosecution Authority intranet site also publishes updates on, for instance, CJEU case-law that may have a direct impact on the processing of EAWs. In addition, the Swedish Economic Crime Authority has its own web page on international cooperation and publishes news on, for instance, the case-law of the CJEU.

Swedish prosecutors are well acquainted with the EJN. Knowledge about this network is disseminated at internal training sessions as well as through information published on the intranet site. The intranet site also has a specific page on the Network comprising, for instance, information on the Network's tools and Swedish contact points. In particular, the Atlas is regularly used to access the contact details of foreign authorities. Swedish prosecutors have positive experience of the Atlas, but the importance of keeping the data in the Atlas up-to-date should be stressed.

### *8.1.3. Lawyers*

Pursuant to the Charter of the Swedish Bar Association, lawyers are required to maintain and develop their professional qualifications. They are obliged to participate in continuing professional training for this purpose and to supply information about this to the Board of the Bar Association. The Code of Conduct of the Swedish Bar Association states that a lawyer is obliged to maintain and develop his or her professional competence by monitoring the development of the law in the fields in which the lawyer is active and to undergo the necessary ongoing training.

There is no specific requirement to participate in training on the EAW but the Swedish Bar Association and several other education providers offer training in criminal proceedings including coercive measures.

Lawyers - as well as the judges - stated that, since the number of cases in the field of EU legal cooperation is limited, there is no scope for them to specialise in it.



## 8.2. Training related to FD 2008/909/JHA

Although the Ministry of Justice is not responsible for training, it has an ongoing dialogue with the authorities in charge of training regarding developments in the law.

### 8.2.1. *Prison and Probation Service staff*

As transfer of enforcement cases are handled by a group of lawyers at the head office of the Swedish Prison and Probation Service, there is no need to train a wider group. Training is, however, provided for new staff, and the Swedish Prison and Probation Service makes efforts to improve knowledge of transfer of enforcement within the service.

Guidelines on how to handle transfer cases are shared within the competent section. Currently the head office of the Swedish Prison and Probation Service is working on a handbook on this topic with the aim of improving knowledge of transfer amongst prison and detention staff.

The online tools, such as the EJM website, are used on a daily basis, for example to check which authority is competent. Sometimes different information is given on which authority is competent, and the information is not always updated. Swedish practitioners consider that these tools need to be updated more effectively. Despite this issue, they consider it very good.

The Swedish Prison and Probation Service is also very familiar with EuroPris' work. It participates in annual expert meetings held by EuroPris on the transfer of enforcement pursuant to the Framework Decision, and sometimes makes use of established contacts in the expert group. Administrators use the prison information sheets. They appreciate the cooperation within the EuroPris expert group and consider that it has fruitful meetings and good discussions.

### 8.2.2. *Judges*

Regarding judges, the Judicial Training Academy does not provide specific training on the transfer of prisoners.

This could be explained by the fact that the role of judges is rather limited in Framework Decision 2008/909/JHA (appeal against the Prison and Probation Service's decision and adaptation of sentence).

### **8.3. Training related to FD 2008/947/JHA**

The Swedish Prison and Probation Service does not offer any regular training on Framework Decision 2008/947/JHA. In Sweden, transfer of enforcement cases are handled by a group of lawyers at the head office of the Swedish Prison and Probation Service. It is nevertheless necessary to train staff in the authority's local units overseeing non-custodial sentences.

The head office of the Swedish Prison and Probation Service is working on a handbook on transfer of probation and alternative sanctions with the aim of improving knowledge of transfer amongst staff dealing with non-custodial sentences.

At EU level the Swedish Prison and Probation Service participates in the CEP's annual expert meetings.

Unfortunately lawyers are scarcely familiar with Framework Decision 2008/947/JHA. However, in practice they should be the key players in initiating the process in the interest of the defendant.

### **8.4. Training related to FD 2009/829/JHA**

Before the law on recognition and monitoring of decisions on supervision measures within the EU entered into force in 2015, internal training was held at the Swedish Prosecution Authority. Guidance is provided on the authority's intranet site. It also gives a description of what supervision measures are, templates to be used when applying them, and links to relevant documents.

The authority's prosecutors are familiar with the EJM website and use it frequently. Since the authority has only received a few requests for recognition of decisions on supervision measures, they cannot describe their experience or give suggestions for improvement.

The authority's staff have not, as far as the Swedish authorities know, participated in any training on FD 2009/829/JHA organised at EU level. They consider that the training organised internally is sufficient to maintain the necessary skills in this area.

Unfortunately lawyers are scarcely familiar with Framework Decision 2009/829/JHA. However, in practice they should be the key players in initiating the process in the interest of the defendant.

## 8.5. Conclusions

- The MoJ provides the relevant authorities with rather limited information on the legislation; however, it has no overall responsibility for ongoing training, which is the internal responsibility of those authorities.
- The Judicial Training Academy has dedicated courses for judges or staff serving as law clerks and it currently does not provide specific training on the EAW or the transfer of prisoners, but plans to do so in the future.
- The Swedish Prosecution Authority runs its own training centre offering training on international judicial cooperation, including legislation relating to the EAW. The Swedish Prosecution Authority has a handbook on surrender pursuant to an EAW, which is updated on a regular basis and is available on the intranet page that contains information on the EAW, as well as relevant documents and updates.
- The Swedish authorities take a different approach to training on the EAW, which can nevertheless be considered sufficient for their competence in this field: when newly appointed, Swedish prosecutors undergo compulsory 15- week training which includes a module on international cooperation, including the EAW. Prosecutors from the National Unit against Organized Crime at the Swedish Prosecution Authority, who are competent to deal with incoming EAWs, also receive in-depth training on the law related to this topic. Although judges do not have specific training in the area of the EAW, the Judicial Training Academy has developed an online learning platform that also covers topics related to it. Prosecutors and judges also actively participate in training activities at EU level.
- Swedish lawyers are obliged to participate in continuing professional training for this purpose and to supply information about this to the Board of the Bar Association, but there is no specific requirement to participate in training on the EAW and more generally in training on mutual recognition instruments. Nevertheless, each lawyer can, within the existing educational offer, take part in such training to further increase his or her competences in the area.

- Swedish lawyers should be the key players in the field of Framework Decisions 2008/947/JHA and 2009/829/JHA. However, they receive no trainings on these FDs.
- The Swedish Prison and Probation Service does not offer regular training on Framework Decision 2008/947/JHA.

## **9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES**

### **9.1. Suggestions from Sweden**

#### *9.1.1. Regarding Framework Decision 2008/909/JHA*

The Swedish authorities would appreciate better communication channels between the competent authorities, for example via the EJN or EuroPris. In this connection, they believe it would also be good to have contact points within EuroPris, as is already the case in the EJN.

#### *9.1.2. Regarding Framework Decision 2008/947/JHA*

The Swedish authorities believe that in several Member States the application of Framework Decision 2008/947/JHA needs to be prioritised. Also, to improve knowledge and facilitate transfers, more information should be gathered on the non-custodial sentences imposed in different Member States.

The Prison and Probation Service considers that it would be good to have more training at EU level in order to improve knowledge of the Framework Decision.

### **9.2. Recommendations**

As regards the practical implementation and operation of the Directives and the Regulation, the expert team involved in the evaluation of Sweden was able to satisfactorily review the system in Sweden.

Sweden should conduct an 18-month follow-up on the recommendations mentioned below, after this report is adopted by the Working Party concerned.

The evaluation team thought fit to make a number of suggestions for the attention of the Swedish authorities. In addition, based on the various good practices, related recommendations to the EU, its institutions and agencies, Eurojust and EJP in particular, are also put forward.

#### *9.2.1. Recommendations to Sweden*

##### *9.2.1.1. Regarding Framework Decision 2002/584/JHA*

Recommendation No 1: Following recommendation No 1 in the report on the EAW following the 4th round of mutual evaluations, Sweden should further improve the mechanisms to regularly provide complete and reliable statistics on European Arrest Warrants issued, executed or rejected by the Swedish authorities. (cf. 3.6.1.)

Recommendation No 2: Sweden should consider providing a comprehensive overview of the legal cooperation data within the EU; it could therefore consider including the figures on Nordic Arrest Warrants issued regarding EU Member States as a separate category. (cf. 3.6.1)

Recommendation No 3: Sweden should raise awareness of the role of Eurojust in the case of competing European Arrest Warrants, following Article 16 FD 2002/584/JHA, and mention it in the handbook, in part 2.3.5. (cf. 3.6.3)

Recommendation No 4: Sweden is encouraged to ensure the actual presence of the prosecutor when receiving the consent of the person sought, at least via video conference. (cf. 3.6.3.)

Recommendation No. 5: Sweden should further consider whether the mandatory ground for refusal laid down in national law is in line with the optional nature of the ground for refusal provided for in Article 4a(1) of Framework Decision 2002/584/JHA on the EAW, taking into account the relevant jurisprudence of the CJEU. (cf. 3.6.1.)<sup>28</sup>

---

<sup>28</sup> After the onsite evaluation, the experts were informed that there is an ongoing legislative project in which the national legislation is reviewed with regard to the latest case law from CJEU, including case C-665/20 and its relevance for the Swedish implementation of article 4a(1) of Framework Decision 2002/584/JHA.

#### 9.2.1.2.Regarding Framework Decision 2008/909/JHA

Recommendation No 6: Sweden is encouraged to enhance its collection of data in the field of Framework Decision 2008/909/JHA. (cf. 4.11.)

Recommendation No 7: Sweden should provide direct access to ECRIS to the Prison and Probation Service. (cf. 4.11.)

#### 9.2.1.3.Regarding links between Framework Decisions 2002/584/JHA and 2008/909/JHA

Recommendation No 8: Sweden is encouraged to draft guidelines in order to facilitate liaison between prosecutors and the Prison and Probation Service when there is a need to choose between Framework Decision 2002/584/JHA and Framework Decision 2008/909/JHA. (cf. 5.2.)

#### 9.2.1.4.Regarding training

Recommendation No 9: Sweden should enhance the dissemination of knowledge among judges and lawyers regarding the four Framework Decisions which are the subject of the 9th round of mutual evaluations. (cf. 8.5.)

Recommendation No 10: Sweden should enhance the dissemination of knowledge and strengthen the training of all competent authorities, especially lawyers, in the area of Framework Decisions 2008/947/JHA and 2009/829/JHA and more generally consider setting up combined training involving all the competent practitioners on the four Framework Decisions which are the subject of the 9th round of mutual evaluations. (cf. 8.5.)

Recommendation No 11: Sweden should consider the wider use of the EU Commission Handbook on Framework Decision 2008/909/JHA in the Prison and Probation Service. (cf. 8.5.)

Recommendation No 12: Sweden is encouraged to train prison staff on Framework Decision 2008/909/JHA to enable them to explain to the detained person the possibility of being transferred to another EU Member State to serve the sentence. (cf. 8.5.)

#### *9.2.2. Recommendations to the other Member States*

Recommendation No 13: Member States are encouraged to update, on the EJM website (EJM Atlas), the competent authorities dealing with the mutual recognition instruments which are the subject of the 9th round of mutual evaluations. (cf. 4.3.2.1.)

Recommendation No 14: Member States should not ask the issuing State to provide information other than that which is referred to in Framework Decision 2002/584/JHA or related to the CJEU's case-law. (cf. 3.6.3.)

Recommendation No 15: Member States are encouraged to train practitioners on correctly completing the forms related to mutual recognition instruments. (cf. 3.6.3.)

#### *9.2.3. Recommendations to the European Union and its institutions*

Recommendation No 16: European institutions are encouraged to regulate and create a secure channel to exchange information regarding the mutual recognition instruments covered by the 9th round of mutual evaluations. (cf. 3.6.1.)

Recommendation No 17: European Institutions are encouraged to assess the situation and find solutions to avoid impunity in cases where a court has refused surrender and the enforcement of the sentence cannot be taken over by the executing Member State. (cf. 3.6.3.)

Recommendation No 18: European Institutions are encouraged to create a network of contact points in the field of EuroPris. (cf. 9.1.1.)

#### *9.2.4. Recommendations to Eurojust/Europol/EJM/EJTN*

Recommendation No 19: The EJM should add the measure related to transit of a person to the EJM Atlas and Fiches Belges in order to enable rapid identification of the competent authority and requirements regarding the necessary documents, timeframe and accepted languages. (cf. 3.6.3.)

### 9.3. Best practices

Only the best practices that are recommended to be adopted by other MSs are listed.

The Member States:

1. are encouraged to follow the example of the Swedish SPOC in regard to the thorough checks made on EAWs issued; it should be noted that these checks are never related to the substantial grounds for issuing of the EAW but only to whether all the required fields in the form are filled in. (cf. 3.6.)
2. are encouraged to establish good cooperation between the authorities competent in the fields of Framework Decisions 2002/584/JHA and 2008/909/JHA, as Sweden has done. (cf. 5.2.)
3. are encouraged to provide the possibility for all police officers to check on their mobile devices for an SIS alert. (cf. 3.6.2.)
4. are encouraged to implement software to make it possible to identify prisoners who are eligible for a transfer, as the Swedish Prison and Probation Service has done. (cf. 4.11.)
5. are encouraged to implement a case management system which makes it possible to automatically create template and send documents securely and directly to the court's file, as in Sweden. (cf. 3.6.1.)
6. are encouraged to accept the European Arrest Warrant not just in the executing Member State's language. (cf. 3.6.3.)
7. are encouraged to specify the principle of proportionality in their legislation and find relevant practical criteria to assess this proportionality when issuing an EAW, as Sweden does. (cf. 3.6.1.)



## ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

### **Preparatory work, 29 January 2021**

- |             |                                                                                                                                                                                                                                                                           |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.00-10.15 | Introduction of representatives from the Swedish Ministry of Justice, the Swedish Prosecutor's Offices, the Swedish Prison and Probation Service and the evaluation team.                                                                                                 |
| 10.30-10.45 | Introduction to the Swedish implementation of FD 2009/829/JHA (ESO) and FD 2008/947/JHA                                                                                                                                                                                   |
| 10.45-11.00 | Presentation of and discussions on the agenda for the on-the-spot-visit                                                                                                                                                                                                   |
| 11.00-12.00 | FD 2009/829/JHA (ESO)<br><br>Presentation of the Swedish procedure followed by discussions regarding experience and statistics related to the application of the FD, the reasons why the FD is rarely used, general challenges in the application of the FD and training. |
| 12.00-13.00 | FD 2008/947/JHA<br><br>Presentation of the Swedish procedure, followed by discussions regarding experience and statistics related to the application of the FD, the reasons why the FD is rarely used, general challenges in the application of the FD and training.      |

### **Onsite evaluation, 08-10 November 2021**

#### Sunday 7 November

Arrival of the evaluation team

#### Monday 8 November 2021

- |             |                                                                                                                                                                           |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 09:00-09:45 | Introduction to the Swedish implementation of Framework Decisions 2002/584/JHA (EAW) and 2008/909/JHA                                                                     |
| 10:00-12:00 | Meeting with representatives of the Swedish Prison and Probation Service<br><br>Discussions regarding practical experience related to the Framework Decision 2008/909/JHA |
| 12:15-13:15 | Lunch (restaurant TAK, Brunkebergstorg 4)                                                                                                                                 |

- 13:30-14:15 Continued discussion regarding the link between Framework Decisions 2008/909/JHA and 2002/584/JHA (EAW) with representatives of the Swedish Prison and Probation Service, joined by representatives from the Swedish Prosecutors Office, Government Offices
- 14:30-15:45 Visit by representatives of the Swedish Police Authority joined by representatives from the Swedish Prosecutors Office
- Discussions regarding practical experience related to Framework Decisions 2002/584/JHA (EAW) and 2008/909/JHA
- 16:00-17:00 Internal meeting of the evaluation team
- 19:00 Dinner (restaurant Di Sotto at the Royal Swedish Opera, Strömgatan 14)

#### Tuesday 9 November 2021

- 09:30-12:15 Visit to the National Unit against Organised Crime at the Swedish Public Prosecutors Office
- Discussions regarding practical experience related to Framework Decision 2002/584/JHA (EAW) with representatives from Swedish Public Prosecutors Office joined by representatives from the Swedish Economic Crime Authority
- 12:30-13:15 Lunch (restaurant Spisa Hos Helena, Scheelegatan 18)
- 13.30-15.30 Visit to Stockholm District Court and discussions with representatives of the Swedish Courts
- Discussions regarding practical experience related to Framework Decisions 2002/584/JHA (EAW) and 2008/909/JHA
- 16:00-18:00 Internal meeting of the evaluation team

#### Wednesday 10 November 2021

- 09:00-10:00 Visit by representatives of the Swedish Bar Association
- Discussions regarding practical experience related to Framework Decisions 2002/584/JHA (EAW), 2008/909/JHA, 2009/829/JHA (ESO) and FD 2008/947/JHA
- 10:15-11:15 Internal meeting of the evaluation team
- 11:30-13:00 Round-up and presentation of the conclusions and recommendations of the evaluation team

## ANNEX B: PERSONS INTERVIEWED/MET

**29 January 2021**

*Venue: virtual meeting*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Ms. Ida Kärnström	Deputy director and head of unit at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Elin Sehlström	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Linda Lauronen	Senior public prosecutor, Swedish Prosecution Authority, Legal department, Division for International Judicial Cooperation and Division for International Coordination and Development
Ms. Lisa Gezelius	Head of section, Swedish Prison and Probation Service, Legal Unit, international and other special client cases section

08 November 2021

Morning session

*Venue: Ministry of Justice (Government Offices, Jakobsgatan 24, Symfoniorkestern Room, 12th floor )*

Person interviewed/met	Organisation represented
Ms. Ida Kärnström	Deputy director and head of unit at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Elin Sehlström	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Mr. Ashraf Ahmed	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Lisa Gezelius	Swedish Prison and Probation Service, Head of Section
Ms. Åsa Brask Gustafsson	Swedish Prison and Probation Service, Legal Advisor
Ms. Elina Ahlqvist	Swedish Prison and Probation Service, Legal Advisor

Afternoon session

*Venue: Government Offices, Jakobsgatan 24, Symfoniorkestern Room, 12th floor, Stockholm*

Person interviewed/met	Organisation represented
Ms. Ida Kärnström	Deputy director and head of unit at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Elin Sehlström	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Mr. Ashraf Ahmed	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Lisa Gezelius	Swedish Prison and Probation Service, Head of Section
Ms. Åsa Brask Gustafsson	Swedish Prison and Probation Service, Legal Advisor
Ms. Elina Ahlqvist	Swedish Prison and Probation Service, Legal Advisor
Mr. Per Hedvall	Swedish prosecution authority, Head of Division for International Judicial Cooperation, Head Office
Ms. Marie Lind Thomsen	Swedish prosecution authority, Deputy Chief Public Prosecutor, National Unit against Organised Crime
Mr. Pontus Bergsten	Swedish prosecution authority, Senior Public Prosecutor, National Unit against Organised Crime
Ms. Linda Lauronen	Swedish prosecution authority, Senior Public Prosecutor, Division for International Coordination and Development, Head Office
Ms. Helena Landelius	Swedish police authority, EU Coordinator

Person interviewed/met	Organisation represented
Ms. Latifa Söderlund	Swedish police authority, Inspector
Ms. Tatjana Markus	Swedish police authority, Desk officer

**9 November 2021**

Morning session

*Venue: Hantverkargatan 25 a, Stockholm*

Person interviewed/met	Organisation represented
Mr. Per Hedvall	Swedish prosecution authority, Head of Division for International Judicial Cooperation, Head Office
Ms. Marie Lind Thomsen	Swedish prosecution authority, Deputy Chief Public Prosecutor, National Unit against Organised Crime
Mr. Pontus Bergsten	Swedish prosecution authority, Senior Public Prosecutor, National Unit against Organised Crime
Ms. Linda Lauronen	Swedish prosecution authority, Senior Public Prosecutor, Division for International Coordination and Development, Head Office
Ms. Gunilla Arph-Malmberg	Swedish Economic Crime Authority, Deputy Chief Public Prosecutor and International Coordinator, Head Office, International Cooperation
Ms. Ida Kärnström	Deputy director and head of unit at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Elin Sehlström	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation

Afternoon session

*Venue: Scheelegatan 7, Stockholm*

Person interviewed/met	Organisation represented
Mr Joakim Zetterstedt	Swedish National Courts Administration, Head of Division, Courts of Sweden Judicial Training Academy
Ms. Gudrun Antemar	Stockholm district Court, Chief Judge
Mr. Måns Wigén	Stockholm district Court, Senior Judge, Head of division
Ms. Anne Wartin	Stockholm district Court, Senior Judge
Ms. Ida Kärnström	Deputy director and head of unit at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Elin Sehlström	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation

### 10 November 2021

First meeting

*Venue : Government Offices, Fredsgatan 8, Stora Tigern Room, 2nd floor*

Person interviewed/met	Organisation represented
Mr. Johan Sangborn	General Counsel at the Swedish Bar Association
Mr. Jonas Tamm	Lawyer, member of the Swedish Bar Association
Mr. Peter Lindahl	Lawyer, member of the Swedish Bar Association

## Wrap-up meeting

*Venue : Government Offices, Fredsgatan 8, Stora Tigern Room, 2nd floor*

Person interviewed/met	Organisation represented
Ms. Ida Kärnström	Deputy director and head of unit at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Elin Sehlström	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Mr. Ashraf Ahmed	Legal Advisor at the Swedish Ministry of Justice, Division for Criminal Cases and International Judicial Cooperation
Ms. Lisa Gezelius	Swedish Prison and Probation Service, Head of Section
Mr. Per Hedvall	Swedish prosecution authority, Head of Division for International Judicial Cooperation, Head Office
Ms. Marie Lind Thomsen	Swedish prosecution authority, Deputy Chief Public Prosecutor, National Unit against Organised Crime
Mr. Pontus Bergsten	Swedish prosecution authority, Senior Public Prosecutor, National Unit against Organised Crime
Ms. Linda Billfalk Åkerlund	Swedish prosecution authority, Head of International Coordination and Development, Head Office
Ms. Helena Landelius	Swedish police authority, EU Coordinator
Mr. Johan Sangborn	General Counsel at the Swedish Bar Association




# ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	SWEDISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CATS		Coordinating Committee in the area of police and judicial cooperation in criminal matters
CJEU		Court of Justice of the European Union
CPT		European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment
EAW		European Arrest Warrant
ECHR		European Court for Human Rights
ECJ		European Court of Justice (Court of Justice of the European union)
EEA		European Economic Area
EJN		European Judicial Network
EJTN		European Judicial Training Network
ERA		Academy of European Law
ESO		European Supervision Order
EU		European Union
FD		Framework Decision
GSC		General Secretariat of the Council
JHA		Justice and Home Affairs
MoJ		Ministry of Justice
SIRENE		Supplementary Information Request at the National Entries
SIS		Schengen Information System

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	SWEDISH OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
SPOC		Single Point of Operational Contact

---

## ANNEX D: THE IMPACT OF COVID-19 ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

<div style="text-align: center;"> <b>SWEDEN</b>   </div>	
<p><b>EAW</b></p> <ul style="list-style-type: none"> <li>-issuing of EAWs (<i>suspension; impact on already issued EAWs; prioritisation in issuing new EAWs + criteria</i>)</li> <li>- execution and postponement of the actual surrender (<i>legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding</i>)</li> <li>-expected resumption of surrenders</li> <li>-transit</li> </ul>	<p><b>Impact on the issuing of EAWs</b></p> <p>There has been no change with regard to the issuing of EAWs. A proportionality check is, as always, carried out. It is important that the system of surrender is upheld as far as possible.</p> <p><b>Impact on the execution of EAWs and postponement of the actual surrender</b></p> <p>Surrenders are possible. Sweden has not made a general decision to suspend the execution of EAWs. Upon requests for postponement of the execution of arrest warrants, the Swedish Prosecution Authority and the Swedish Economic Crime Authority have decided to postpone the execution of these arrest warrants in accordance with Article 23(3) in the EAW Framework Decision. In order to uphold the system of surrender it is however important that all possibilities for the surrender have been exhausted before requesting postponement. When postponing a surrender an assessment of the proportionality will be done in the individual case with regard to the length of postponement and detention.</p> <p><b>Impact on surrender, extradition, transfer by land</b></p> <p>We seldom have this procedure by land, but the ones that have been requested are difficult to execute due to lack of Swedish police staff to assist and escort by land.</p> <p><b>Impact on surrender, extradition, transfer by air</b></p> <p>For some time air traffic has been reduced in intensity, and it has been difficult to fly to execute the surrender. There have been many prolongation requests both from other countries to us and from us to other MS. Due to the fact that in many countries the travel restrictions have been lifted, most of the surrenders previously postponed have now been executed.</p> <p>Some countries have sent charter flights to pick up their clients, and these arrangements tend to take a lot of time to plan and organise, but are also appreciated.</p> <p><b>Legal basis for postponing the actual surrender</b></p> <p>Upon the request of the issuing authority, Article 23(3) is used as the legal basis for the temporary postponement in individual cases of surrenders when the surrender, due to the COVID-19 virus, cannot be executed because for example flights are cancelled, airports closed or national decisions are taken restricting the possibilities for escorting officers to travel abroad. In order to uphold the system of surrender it is however important that all</p>

	<p>possibilities for surrender have been exhausted before requesting postponement.</p> <p>Article 23(4) could in principle be used as the legal basis for the temporary postponement of a surrender if the person to be surrendered is infected by the COVID-19 virus. There have so far been no such cases in Sweden.</p> <p>When postponing a surrender, an assessment of proportionality will be done in the individual case with regard to the length of postponement and detention.</p> <p><b>Adequacy of these provisions</b></p> <p>These provisions are applicable and sufficient to deal with the situation. Communication between the executing and issuing authorities is of great importance.</p> <p><b>Releases of requested persons following the postponement of the surrender</b></p> <p>There are no recent cases of release due to the postponement of the surrender.</p> <p><b>Expected resumption of surrender</b></p> <p>There is no general decision in Sweden to postpone surrenders. Thus, surrenders to and from Sweden can already take place now, as long as it is practically possible and the other Member State agrees. A postponement in the particular case can be decided by the prosecutor handling the case. The postponement is usually for one month but can, if necessary and proportionate, be prolonged. The tendency is however that only shorter postponements are necessary, due, for example, to the lack of direct flights.</p> <p><b>Transit</b></p> <p>Transits via the territory of Sweden are possible, however a negative COVID-19 test within the last 72 hours is required for both the escorting personnel and the escorted person.</p>
<p><b>Precautionary measures for surrender, extradition and transfer</b></p> <ul style="list-style-type: none"> <li>- COVID19 test</li> <li>- health certificate</li> <li>- quarantine</li> <li>- facial masks</li> </ul>	<p><b>Precautionary measures</b></p> <p>A negative COVID-19 test within the last 72 hours is required for both the escorting personnel and the escorted person. When arriving in Sweden from Denmark, Finland, Iceland or Norway, there is no requirement to present a negative COVID-19 test. Fully vaccinated persons with a vaccination certificate in accordance with (EU) 2021/9532 do not have to present a negative COVID-19 test. Swedish citizens and foreign citizens domiciled in Sweden do not need a COVID-19 test, but proof of residence in Sweden is required for a foreign citizen in order to be exempted from the requirement for a negative COVID-19-test.</p> <p><b>Specific measures for the escorting police officer</b></p> <p>A negative COVID-19 test within the last 72 hours is required for the escorting officer.</p> <p><b>Need (or not) for further guidance on precautionary measures</b></p>

	<p>The need for guidance with regard to additional precautionary measures will have to be evaluated in due time if Member States put such measures in place.</p>
<p><b>Extradition</b></p> <ul style="list-style-type: none"> <li>-suspension</li> <li>-legal basis</li> <li>-third countries involved</li> <li>-expected duration of suspension</li> </ul>	<p><b>Impact on extradition procedures</b></p> <p>Extradition procedures have not been temporarily suspended. The surrender of the person to be extradited can be postponed. The decision on this is taken in the individual case.</p>
<p><b>Transfer of sentenced persons</b></p> <ul style="list-style-type: none"> <li>-prioritisation in issuing/execution</li> </ul>	<p><b>Impact on transfers of sentenced persons</b></p> <p>Prioritisation is not applied. Transfers of prisoners are possible. The Swedish Prison and Probation Service has reported, regarding Framework Decision 2008/909, problems in executing decisions on transfer of enforcement. At this time, it is not possible to meet the deadline for transport within 30 days due to the closing of borders by many Member States.</p> <p>It is essential for the transport of a client that he or she is not suspected or confirmed infected by COVID-19. The transport of a client with suspected or confirmed infection can only be carried out if it is absolutely necessary.</p>
<p><b>SIRENE Bureaux</b></p> <ul style="list-style-type: none"> <li>-working of SIS bureau</li> <li>-exchange of information with other SIS Bureaux</li> </ul>	<p><b>Impact on the working of the SIRENE Bureau</b></p> <p>The SIRENE Bureau is working at full capacity.</p> <p><b>Impact on the exchange of information with other SIRENE Bureaux</b></p> <p>No impact.</p>
<p><b>EIO and MLA</b></p> <ul style="list-style-type: none"> <li>-prioritisation in issuing/execution</li> <li>-electronic transmission</li> <li>-whom to contact</li> </ul>	<p><b>Impact on the issuing of EIOs and MLA requests</b></p> <p>Prioritisation is not applied.</p> <p>Regarding outgoing EIOs, the Authority has reported that they have received information on restrictions in the channels of communication and in the execution of EIOs from other member states.</p> <p><b>Impact on the execution of EIOs and MLA requests</b></p> <p>No national instructions are given that restrict the execution of EIOs. In some cases the execution of for instance a witness interview has been delayed, due to the fact that the person belongs to a vulnerable group or has reported having COVID-19.</p> <p><b>Electronic transmission and contact details</b></p> <p>We deal with all incoming EIOs and other MLA requests. Email is for the time being preferred, but we do attend to ordinary mail too. The ordinary addresses in the EIJN Atlas should be used.</p>

<b>Freezing and confiscation orders</b> -prioritisation in issuing/execution	<b>Impact on freezing and confiscation orders</b> Prioritisation is not applied.
<b>JITs</b> -prioritisation and alternative telecommunication solutions	<b>Impact on JITs</b> Prioritisation is not applied.
<b>Recommended channels for transmission of</b> -urgent requests -information exchange	N/A
<b>Any other relevant information</b>	N/A

---