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NOTE

from : Swedish delegation
to : Working Party on Judicial Cooperation in Criminal Matters (Experts on the European Arrest Warrant)

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Subject : Description of the treatment of a European arrest warrant when Sweden is the executing State

This memorandum gives a brief description of how a European arrest warrant issued in another Member State is dealt with in Sweden when the requested person is found in its territory. The memorandum is not a separate, official declaration by Sweden, but a compilation of Swedish laws and other statutes, together with decisions which have relevance for issuing authorities in other Member States.

The description was compiled before Sweden began to implement the Council Framework Decision on the European arrest warrant and the surrender procedures between Member States. This means that the memorandum will probably be revised and that the current text should be regarded as a draft.

Introductory remarks

1. Statement pursuant to Article 32 of the Framework Decision:

Sweden has not made any statement pursuant to Article 32 of the Framework Decision. Consequently, the Framework Decision will also apply to acts committed before the entry into force of the Framework Decision. See below under point 2, however, regarding other transitional provisions.

2. Transitional provisions:

The Swedish rules implementing the Framework Decision enter into force on 1 January 2004. Those rules will not apply, however, in dealing with extradition cases where the case was instituted before 1 January 2004. A case is instituted when a requested person is arrested in Sweden or when Sweden receives a request for extradition. However, alerts in the SIS issued before 1 January 2004 will, where the Framework Decision on a European arrest warrant is to apply, be regarded as equivalent to an arrest warrant pending transmission of a full arrest warrant. The rules implementing the Framework Decision will also not apply in relation to a State which has not implemented the Framework Decision at the time the case is instituted.

3. Procedure where Sweden is the issuing State:

For information on the procedure where Sweden is the issuing State, please contact the Office of the Prosecutor-General, the National Police Board, the Ministry of Justice or a European Judicial Network contact point (see Annex 2).

Office of the Prosecutor-General

Box 5553

114 85 STOCKHOLM

Tel: 0046-8-453 66 00

Fax: 0046-8-453 66 99

e-mail: registrator.riksaklagaren@aklagare.se

National Police Board

National Coordination Office

Box 12256

102 26 STOCKHOLM

Tel: +46-8-401 37 00

Fax: +46-8-401 48 99

e-mail: nsk@rkp.police.se

Ministry of Justice

Criminal Affairs and International Judicial Cooperation Unit (BIRS)

Central Authority

103 33 STOCKHOLM

Tel: +46-8-405 10 00 (switchboard), +46-8-405 45 00 (office)

Fax: +46-8-405 46 76

e-mail: birs@justice.ministry.se

Execution of a European arrest warrant
Practical information for other Member States

I.

Procedure when Sweden is the executing State

1. Preliminary measures and referral to the court

If the requested person is arrested, a competent public prosecutor (depending on where the arrest took place) will be notified without delay. Immediately after an interview with the requested person, during which the latter is informed of the content of the arrest warrant, the prosecutor will decide whether the requested person is to be detained.

Under normal circumstances the requested person will be detained. However, no detention may take place if there is an expectation that the conditions for surrender will not be met or if there is no risk that the requested person will abscond or otherwise evade surrender. Even where there is no risk of evasion, requested persons may be detained if there is a risk that they may dispose of evidence or otherwise hinder investigation of an act included in the arrest warrant. Persons under eighteen years of age may be detained only where there are special grounds. Where there are grounds for detention but it is sufficient for the requested person to be notified of an injunction against travelling or to be required to report to the authorities, such a measure will be decided in place of detention.

The requested person has the right to a public defence counsel if he or she so wishes, is under eighteen years of age or is otherwise deemed to be in need of a defence counsel. Where necessary, the requested person has the right to be assisted by an interpreter.

If the requested person is detained, the prosecutor will, without delay and at the latest by twelve o'clock on the third day following the detention decision, apply to a district court for a detention order. The district court will then examine the grounds on which the requested person was initially detained to ascertain whether that detention should be confirmed.

The public prosecutor may reject a request for surrender if, despite the issuing authority having been given the opportunity to provide further details, the application is so defective as regards form or content that it cannot be used as a basis for examination of the question of surrender without considerable difficulty. In all other cases the court (the district court at first instance) will rule on the question of surrender, following an application from the prosecutor.

2. Consent

At the earliest opportunity, the requested person will be asked whether they consent to surrender. If the requested person consents, they will also be asked whether they will accept prosecution or punishment in the issuing Member State for acts committed before the surrender but which are not included in the arrest warrant (renunciation of the speciality principle). The requested person will be informed of the implications of such consent and acceptance. The document containing consent or acceptance should where possible be drawn up in a language normally used by the requested person. If another language is used, the document should indicate what measures have been taken to ensure that the requested person has understood the implications of consent or acceptance.

Consent may be revoked if it is done before the court has ruled on the question of surrender. Renunciation of the speciality principle may be revoked if it is done before the decision on surrender is executed.

3. Possibility of the issuing authority taking part in the Swedish procedure

The issuing authority is not party to the case in Sweden but it may maintain contact with the Swedish public prosecutor investigating the case.

4. Time limits for the decision in the district court

The district court will announce its decision on surrender within a period of thirty days after the arrest of the requested person. If the requested person consents to surrender, the decision will be announced within a period of ten days after consent has been given. The district court may, where there are particular reasons, announce its decision later than the deadline specified.

5. Appeal and time limits for the final decision

If the requested person has consented to surrender, the decision is not open to appeal. Nor is appeal possible against a decision to refuse surrender on the grounds that a Swedish national has asked to serve a custodial sentence in Sweden. In other cases an appeal may be made to the court of appeal within a period of three weeks after the decision by the district court and to the Supreme Court within a period of four weeks after the decision by the court of appeal. The Supreme Court will examine the case only where it has given leave to appeal.

If the matter of surrender has not been settled by a decision which has acquired legal force within a period of sixty days after the arrest of the requested person or, where the person has consented to surrender, within a period of ten days after consent has been given, the public prosecutor will inform the issuing authority.

6. Grounds for refusal

(a) Dual criminality and scale of punishment or sentence imposed

Surrender may be granted only in respect of an act which constitutes a crime under Swedish law and for which, where the surrender is for the purposes of legal proceedings, the legislation of the issuing Member State prescribes a custodial sentence of at least one year, or for which, where the surrender is for the purposes of the enforcement of a custodial sentence, a custodial sentence of at least four months has been imposed.

If the arrest warrant indicates that the act is one of those listed in the Annex to the Framework Decision and that the act attracts a custodial sentence of at least three years under the legislation of the issuing State, surrender will, however, be granted even if the act does not constitute a crime under Swedish law, where the other conditions are met.

If surrender is granted for an act which meets the conditions mentioned, surrender may be granted also for another act which constitutes a crime under Swedish law. In other words, Sweden accepts "accessory surrender".

(b) Formal grounds for refusal

Surrender will be refused

1. if, despite the issuing authority having been given the opportunity to provide further details, a request is so defective as regards form or content that it cannot be used as a basis for examination of the question of surrender without considerable difficulty,
2. if the issuing Member State fails to provide the guarantees required for surrender to be granted,
3. if the requested person is to be surrendered to another Member State,
4. if the requested person is to be extradited for a crime or if he or she is to be surrendered to an international criminal court, or
5. if it would be contrary to a condition laid down for extradition or surrender to Sweden.

(c) Grounds for refusal relating particularly to the requested person

Surrender will also be refused

1. in respect of an act which took place before the requested person reached the age of fifteen,
2. if it would be contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms or the additional protocols to the Convention which are in force in Sweden, or
3. if it would be contrary to provisions concerning privileges and immunities.

(d) Grounds for refusal relating particularly to the act

Surrender for certain acts will be refused if

1. the act is the subject of a pardon or another similar decision according to the constitution,
2. a decision has been made not to prosecute the act,
3. the act has been the subject of a final judgment in a Member State of the European Union and, in the case of a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State,
4. the act has been the subject of a final judgment in a State other than a Member State of the European Union and this has obstructed the extradition of the requested person,
5. a preliminary enquiry or legal proceedings have started in Sweden regarding the act and the person leading the preliminary enquiry into the case is opposed to legal proceedings taking place in the issuing Member State,
6. the sentence for the act is statute-barred or may no longer be imposed under Swedish law or the act took place wholly or partly in Sweden or the requested person is a Swedish national , or
7. the act took place wholly or partly in Sweden and does not constitute a crime under Swedish law.

Where the person requested for the purposes of execution of a custodial sentence is a Swedish national, surrender will not be granted if the requested person asks for the sentence to be served in Sweden. If the requested person had been permanently resident in the issuing Member State for at least two years at the time of the act, the latter will apply only if, having regard to the requested person's personal circumstances or on some other grounds, there are special reasons for enforcement to take place in Sweden.

(e) Other grounds for refusal

Surrender may not take place where it would be contrary to Swedish constitutional law.

7. Competing arrest warrants

Where two or more Member States have issued arrest warrants in respect of the same person, the cases will be examined together at the district court which deals with the first case received. If a further arrest warrant arrives after the court has decided whether to agree to surrender, and provided the decision has not acquired legal force, the appeal court or the Supreme Court may, at the request of the prosecutor, decide that the district court should examine the cases together. The examination of which, out of a number of arrest warrants, should be granted, will be conducted with particular regard for the nature of the acts and where they took place, the time at which each arrest warrant was issued and whether they relate to legal proceedings or the execution of a custodial sentence.

8. Time limits for execution

A decision to surrender must be executed within ten days of the decision becoming final. The court may, when taking the decision on surrender, rule that execution will take place at some later date where this is necessary in order for legal proceedings to be taken in Sweden against the person to be surrendered or, where a sentence has already been passed, for the person to serve, in Sweden, a sentence imposed in respect of an act other than that to which the surrender relates, or where there are serious humanitarian reasons. Instead of deferring execution, the court may decide that surrender to the issuing Member State will take place subject to such conditions regarding return as are determined in agreement with the issuing authority.

The prosecutor may, after consultation with the issuing authority, decide that execution will take place at a date later than specified above where circumstances beyond the control of the Member States involved prevent surrender, or where serious humanitarian reasons have arisen after the court has taken its decision on surrender.

Where the person to be surrendered makes a declaration renouncing the right to appeal and agrees that the decision on surrender may be executed, the fact that the decision is not final will not prevent execution taking place.

II.

Practical questions

1. Executing authorities

The executing authorities are the public prosecutors and the ordinary courts.

The public prosecutor has full responsibility for the investigation and for contacts with the issuing authority. The role of the courts is central but limited to decisions on certain means of compulsion and on surrender. Information regarding court decisions will be passed on to the issuing authority by the public prosecutor.

The public prosecutors at the international public prosecution chambers are competent within their regions to deal with cases in accordance with the law on surrender by Sweden under a European arrest warrant. Outside office hours regular duty and stand-by prosecutors are competent to handle such cases. Annex 1 shows the regional catchment areas of the international public prosecution chambers. The information is also given on the home page of the European Judicial Network (www.atlas.mj.pt).

2. Telephone and fax numbers and e-mail addresses

Office of the Prosecutor-General

Box 5553

114 85 STOCKHOLM

Tel: +46-8-453 66 00

Fax: +46-8-453 66 99

e-mail: registrator.riksaklagaren@aklagare.se

National Police Board

National Coordination Office

Box 12256

102 26 STOCKHOLM

Tel: +46-8-401 37 00

Fax: +46-8-401 48 99

e-mail: nsk@rkp.police.se

Executing authorities

See Annex 1 for the addresses and telephone numbers of the international public prosecution chambers.

Ministry of Justice

Criminal Affairs and International Judicial Cooperation Unit (BIRS)

Central Authority

103 33 STOCKHOLM

Tel: +46-8-405 10 00 (switchboard), +46-8-405 45 00 (office)

Fax: +46-8-405 46 76

e-mail: birs@justice.ministry.se

3. Time limits and procedure for sending a European arrest warrant to executing authorities in Sweden

Following the arrest, the issuing authority should send the arrest warrant to the executing authority in Sweden, i.e. to the public prosecutor who is competent to deal with the case, in accordance with point 1 above. If necessary the Office of the Prosecutor-General, the National Police Board or a contact point in the European Judicial Network (EJN) will provide information about the competent public prosecutor.

Sweden assumes that the arrest warrant, duly translated where appropriate, will be sent to the competent public prosecutor without delay and that it will be received within a few days of the arrest.

4. Language requirement

Sweden will accept arrest warrants written in Swedish, Norwegian, Danish or English, or translated into one of those languages.

5. Contacts with the Swedish authorities

The competent public prosecutors in Sweden welcome direct contact with the issuing authorities, via telephone, fax or e-mail. The National Police Board (National Coordination Office) will also assist in forwarding information. It is an advantage for such contacts to be conducted in English.

6. National contact point

Sweden will use direct contact between judicial authorities in the dispatch and reception of a European arrest warrant. The central authority of the Ministry of Justice may, however, receive or forward documents or otherwise assist in a case where an authority in Sweden has so requested.

Sweden's six international public prosecution chambers and their respective geographical catchment areas

International public prosecution chamber in Stockholm

Box 70296
107 22 STOCKHOLM
Tel: +46-8-762 10 00
Fax: +46-8-762 16 99
Counties: Stockholm, Gotland

International public prosecution chamber in Uppsala

Box 1943
751 49 UPPSALA
Tel: +46-18-7 10 00
Fax: +46-18-13 62 41
Counties: Uppsala, Värmland, Örebro, Västmanland, Dalarna, Gävleborg

International public prosecution chamber in Göteborg

Box 2565
403 17 GÖTEBORG
Tel: +46-31-739 41 00
Fax: +46-31-701 73 16
Counties: Västra Götaland, Halland

International public prosecution chamber in Malmö

Box 6202
200 11 MALMÖ
Tel: +46-40-664 68 00
Fax: +46-40-10 33 85
Counties: Skåne, Blekinge

International public prosecution chamber in Linköping

Box 4
581 02 LINKÖPING
Tel: +46-13-24 13 00
Fax: +46-13-24 59 70
Counties: Södermanland, Östergötland, Kalmar, Kronoberg, Jönköping

International public prosecution chamber in Sundsvall

Box 721
851 21 SUNDSVALL
Tel: +46-60-18 59 00
Fax: +46-60-18 59 34
Counties: Norrbotten, Västerbotten, Jämtland, Västernorrland