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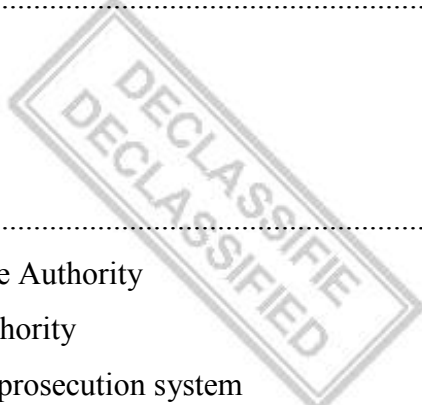
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**EVALUATION REPORT ON THE**  
**FIFTH ROUND OF MUTUAL EVALUATIONS**  
**“FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS”**

**REPORT ON SWEDEN**

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## 1. INTRODUCTION

At the Multidisciplinary Group on Organised Crime (MDG) meeting of 17 June 2008, the Group decided that the subject of the fifth round of mutual evaluations was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crimes. However, it was also agreed that the evaluation should go beyond examining how relevant EU legislation had been incorporated into national law and take a wider look at the subject matter<sup>1</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG.<sup>2</sup>

The importance of the evaluation was emphasised by the Czech Presidency while discussing the judicial reaction to the financial crisis<sup>3</sup>. The significance of the exercise was once again underlined by the Council while establishing the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA.<sup>4</sup>

Topics related to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen.

Experts with substantial practical knowledge in the field of financial crime and financial investigations were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits.<sup>5</sup> Sweden is the 24th Member State to be evaluated during this round.

According to the procedure, the experts nominated by Member States should be accompanied each time by observers from the Commission (OLAF), Europol, Eurojust and the Council Secretariat.

The experts charged with undertaking this evaluation were Ms Camelia Bogdan from Romania, Mr Stefan Uecker from Germany and Mr Attila Rigo from Hungary. Two observers were also present: Ms Nora Szavov (OLAF, European Commission) and Mr Burkhard Mühl (Europol), together with Ms Mari Hämäläinen and Ms Marie-Helene Descamps of the General Secretariat of the Council.

<sup>1</sup> 10540/08 CRIMORG 89.

<sup>2</sup> 16710/08 CRIMORG 210.

<sup>3</sup> 9767/09 JAI 293 ECOFIN 360.

<sup>4</sup> 8301/2/09 REV 3 CRIMORG 54.

<sup>5</sup> 5046/1/09 REV 1 CRIMORG 1.

This report was prepared by the expert team with the assistance of the Council Secretariat, on the basis of their findings during the evaluation visit, which took place between 10 and 13 October 2011, and Sweden's detailed replies to the evaluation questionnaire.

## 2. NATIONAL SYSTEM AND CRIMINAL POLICY

### 2.1. Specialised units

#### 2.1.1. Investigative authorities

##### 2.1.1.1. Police

The Swedish Police consists of the **National Police Board**, which is the central administrative authority and includes, for example, the National Criminal Police, and **21 police authorities** spread throughout the country. Investigations of financial crime may vary depending on the police authority, but are generally conducted at a central level within the respective police authority by specialist financial crime squads, financial crime/fraud squads or financial crime units.

The police assist the prosecutor in preliminary investigations and, for instance, execute the decisions taken by the prosecutor in confiscation cases. In certain instances, a police officer may carry out seizures, but the decision must be referred to the senior investigator as soon as possible.

Both before and during preliminary investigations, the police have an important part to play in the effort to trace and secure the proceeds of crime. The police's criminal intelligence operations are carried out in line with the national intelligence model<sup>1</sup> which means, for instance, that intelligence work is primarily carried out before a preliminary investigation has been launched. Through intelligence gathering, processing and analysis the police are often able to determine whether there is evidence of criminal proceeds in a given case. When a preliminary investigation is undertaken, police surveillance and interrogation and other measures play a part in providing the evidence the prosecutor needs before considering various coercive measures and any claims in respect of crime proceeds.

An important resource available to all the police authorities is the **Financial Intelligence Unit** (*Finanspolisen*) providing support in matters relating to money laundering, proceeds of crime issues, asset investigations and related fields. This body forms part of the criminal intelligence service of the National Criminal Police. The Financial Intelligence Unit (*Finanspolisen*) contains the Swedish FIU but is not limited to this function. It has also other tasks and is made up of four groups such as the asset recovery group that acts as the operational part of the ARO.



The Financial Intelligence Unit is the national body responsible for money laundering, terrorist financing, environmental crime, and counterfeiting and other false means of payment. It compiles, processes and analyses information with a view to identifying activities in the aforementioned areas of crime at an early stage, and also assists with police investigations. The objective is to prevent and expose underlying crime in the aforementioned areas and, where there are legitimate grounds for suspecting a crime, to hand the case over to the operational units of the police and further to the Prosecution Authority for the purpose of instigating a preliminary investigation.

The Financial Intelligence Unit's tasks include acting as the national Financial Intelligence Unit (FIU)<sup>2</sup>, and it is thus the sole recipient of information concerning suspicious transactions (STRs) from the reporting entities: banks, credit market and brokerage firms, money exchange offices, insurance brokers, money transfer companies and life assurance undertakings. The Financial Intelligence Unit also acts as the police part of the Asset Recovery Office (ARO) in the framework of international cooperation within the EU to increase opportunities for the confiscation of crime proceeds.

The Financial Intelligence Unit also includes an asset recovery group that provides support in that respect for the police authorities working in the field.

#### 2.1.1.2. Customs

The **Swedish Customs Service** is represented in all parts of the country from north to south and has an overall staff of 2100. It has a dual task: setting and collecting duties, taxes and other charges to ensure correct revenue; and monitoring and controlling the flow of goods to and from other countries, to ensure compliance with rules and regulations on imports and exports. The Service is organisationally separated into two parts with one part responsible for the revenue collection (trade management) and the other part for the monitoring and controlling activities (law enforcement).

The law enforcement part of the organisation is responsible for border protection and customs criminal investigation. The relevant law enforcement personnel has the legal power to examine goods, vehicles, containers and other means of transport where goods and products can be stored, premises and areas where goods can be stored, travellers' luggage, mail and parcels as well as transport documents.

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<sup>1</sup> *Polisens Underrättelse Modell (PUM)*

<sup>2</sup> In line with the FATF Recommendation 26: Competent authorities, their powers and resources

The criminal investigators come organisationally under the customs investigation office which belongs to the law enforcement part of the customs services<sup>1</sup>. They examine a suspect's financial circumstances in order to secure the proceeds of any crime in investigations relating mainly to aggravated smuggling and aggravated drug smuggling. Such financial inspections are carried out as part of a preliminary investigation led by the public prosecutor. In Stockholm and Gothenburg there are specialist financial bureaux within the customs investigation office. Their task is to assist with other activities in connection with the examination of a suspect's financial circumstances.

Special provisions on confiscation are laid down in the Act on the Customs Administration's powers at Swedish borders with other EU Member States (1996:701) and the Customs Act (2000:1281). In addition, the fiscal work of the service may use coercive measures to secure the State's claims for certain duties and taxes in accordance with the Taxes, Customs Duties and Levies Securities Act. A decision on distraint is taken under administrative law and is executed by the Swedish Enforcement Authority.

The fight against serious organised crime is part of the Swedish Customs Service's law enforcement work. In accordance with the Contraband Penalties Act (2000:1225), the Swedish Customs Service may decide to initiate a preliminary investigation pursuant to the Code of Judicial Procedure. If the matter is not of a simple nature, or if there is any other specific reason, a prosecutor takes over the preliminary investigation which is then assisted by the Customs service.

A customs officer is vested with the same authority as a police officer in seizure or custody of property under the Contraband Penalties Act. Like the police, the Swedish Customs Service plays an important role before and during preliminary investigations as regards tracing and recovering proceeds of crime. As a result of surveillance work in intelligence cases and preliminary investigations, any property and crime proceeds may be secured and documented so that the prosecutor can then consider various coercive measures and claims in respect of crime proceeds.

Among its other tasks, the customs is also responsible for monitoring the cross-border transport of cash. This is done by controlling that the declaration requirement is followed in passenger traffic entering and leaving the country. The controls are based on risk analysis and on random checks.

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<sup>1</sup> The below description refers to the activities of the law enforcement part of the Swedish Customs Service.

### 2.1.1.3. Tax Agency

The **Swedish Tax Agency's** activities as regards organised and financial crime are in two different areas, taxation and law enforcement. These have different objectives and are organised separately. In respect of law enforcement the Swedish Tax Agency's work is governed by the Act on the Participation of Taxation Authorities in Criminal Investigations (1997:1024). The tax crime function at the Tax Agency was accordingly established in 1998, and its long-term strategic aim is to investigate all tax fraud reported by the Tax Agency. The practical implementation of this goal amounted to 3 500 criminal cases in 2010.

The Swedish Tax Agency's criminal investigation work is carried out by the agency's seven tax crime units responsible for investigation and analysis of intelligence. There is one tax crime unit for each geographical tax region. Most of the tax crime units have offices in several locations. As of 01 June 2011, 251 persons were employed in the tax crime units, and they receive training at the Police Academy especially for the tax crime investigations.

The activities of the tax crime units are governed by the Act on the Participation of the Taxation Authorities in Criminal Investigations (1997:1024). Under the act, prosecutors may request the assistance of the tax crime units in criminal investigations<sup>1</sup>. The act also stipulates that the tax crime units must take steps to prevent crime, and that they are entitled to carry out intelligence and reconnaissance activities. The tax crime units actively pursue tax crime prevention for example by visiting construction sites (only by request, no *ad hoc* checks are possible) and by informing and establishing contacts with organisations of external accountants and bookkeepers.

The work of the tax crime units is always undertaken as part of a preliminary investigation and is led by a prosecutor. The tax crime units are authorised to carry out surveillance and intelligence work. From an organisational point of view, the activities carried out by the tax crime units are separate from the Swedish Tax Agency's other activities. As regards the process, the tax crime units receive reports from the administrative side of the Tax Agency, namely the tax auditors. Based on these, the criminal investigators forward the investigation protocol to the prosecutor.

When the Swedish Economic Crime Authority or the Swedish Prosecution Authority receives a notification of a matter concerning for example tax crime or false accounting, a prosecutor decides

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<sup>1</sup> Every year, the tax crime units deal with more than 2000 investigations at the request of the Swedish Economic Crime Authority and the Swedish Prosecution Authority.

whether there are grounds for instigating a preliminary investigation. If assistance is sought from the tax crime units, the preliminary investigation is conducted by one or more investigators in the unit under the prosecutor's direction. It is also customary for major investigations to take place in cooperation with investigators from the police or the Swedish Economic Crime Authority. Tax crime investigators may enforce the prosecutor's decision to seize property in cases where coercive measures do not need to be used against an individual. They may also take part and examine specific areas when the police carry out a house search. The tax crime units have direct access to the records of suspects and criminal records held by the police.

#### 2.1.2. *Prosecuting authorities*

The Swedish Prosecution Authority and the Swedish Economic Crime Authority form part of **the prosecution system**.

The prosecutor leads the preliminary investigation in most investigations where the recovery of crime proceeds is an issue. In his role as senior investigator, the prosecutor determines how investigations are to be conducted. The prosecutor must also ensure that the investigation is carried out efficiently and that the individual's legal rights are safeguarded. In addition, the investigation should be conducted as promptly as circumstances allow. The prosecutor decides whether to prosecute and whether to initiate court proceedings. As regards criminal proceedings, the prosecutor should – where applicable – seek an order for the confiscation of crime proceeds. To enable a future court ruling on confiscation, the prosecutor may order seizure or custody of the assets, or apply for attachment in accordance with rules in the Code of Judicial Procedure. An application for attachment may also seek to ensure a future decision as regards corporate fines or damages.

##### 2.1.2.1. The Swedish Economic Crime Authority

The **Swedish Economic Crime Authority** has a total personnel of about 420. Its mission is to combat and prevent economic crime by means of criminal investigations, intelligence work and cooperation with other authorities as well as the business community.

It prosecutes cases within its area of responsibility, carries out concrete criminal intelligence activities, leads investigations into economic crime and carries out operational activities in the three major urban cities (Stockholm, Gothenburg and Malmö). In addition, there are investigation units linked to the Swedish Economic Crime Authority in Visby, Karlskrona, Kristianstad, Halmstad,

Borås and Skövde. However, the government has appointed an expert who has submitted a report proposing the integrated management of financial crime. In short, it is proposed that the tasks of the Swedish Economic Crime Authority be extended to cover the entire country.

The Economic Crime Authority consists of seven public prosecution offices, three operational police units and three operational service units. Between 25 and 45 persons are employed in each office. A Chief District Prosecutor is in charge of the overall work and a chamber commissioner directs the police activities. The operational work is carried out by an investigation team consisting of public prosecutors, police officers, forensic accountants, analysts, financial experts and financial administrators. The Economic Crime Authority also cooperates with the Tax Agency's tax crime units in investigations concerning tax crime and false accounting, and with the Swedish Customs Service in connection with preliminary investigations and the criminal prosecution of certain customs offences.

The operational police units carry out criminal intelligence activities and reconnaissance and also secure and analyse any IT assets seized. The Economic Crime Office<sup>1</sup> directs the Economic Crimes Authority's police activities, and the police officers assigned to the Authority are essentially employed by the Swedish Police.

The Swedish Economic Crime Authority is also the OLAF contact point and functions as the secretariat of the SEFI Council who is responsible for coordinating measures in Sweden to combat fraud and other improper use of EU-related funds. Moreover, the Proceeds of Crime Unit of the Economic Crime Authority acts as the Swedish ARO in judicial issues.

#### 2.1.2.2. The Swedish Prosecution Authority

The **Swedish Prosecution Authority's** operational prosecution activities are conducted by 32 local public prosecution offices with responsibility for their respective geographical areas, three international public prosecution offices which deal with more serious crime, three national public prosecution offices with national responsibility for police-related cases, environmental and health and safety-related cases and corruption cases respectively, and one public prosecution office with national responsibility for matters relating to security.

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<sup>1</sup> The Economic Crime Office is a unit of the National Criminal Police and is led by a police commissioner.

The Prosecution Authority is responsible for combating financial crime in the rest of the country and carries out its financial activities in six locations. Prosecutors specialising in financial crime responsible for the areas outside the major cities as well as financial investigators/auditors are among those working in the local public prosecution offices in these six places. In certain cases, financial investigations concerning confiscation and corporate fines, etc. are dealt with by prosecutors in the international public prosecution offices or by prosecutors in the two specialist national units.

Financial investigations concerning confiscation and corporate fines, etc., which are associated with more traditional crime, are generally dealt with by "ordinary" prosecutors in the local public prosecution offices.

The prosecutors' mission consists of deciding whether to instigate a preliminary investigation, conducting such investigations and taking decisions on all measures incumbent on a public prosecutor (including issues relating to financial investigations), deciding whether or not to prosecute or instigate other proceedings and conducting proceedings in the courts of first and second instance.

#### 2.1.2.3. The allocation of tasks in the prosecution system

In line with the information received during the evaluation mission, allocation of tasks between the Prosecution Authority and the Swedish Economic Crime Authority in the area of economic/financial crime seems in general to work well, but there seem to be overlaps as regards their competences. Some of the basic rules, either codified or practical, are that the Economic Crime Authority deals with economic crimes, such as:

- accounting crimes;
- crimes under the Tax Offences Act;
- crimes related to bankruptcy;
- crimes under the Companies Act;
- crimes under the Insider Trade Act and Financial instrument Trading Act,
- EU fraud;
- cases demanding knowledge of financial conditions, the business sector conditions, taxation law or similar;

- cases concerning qualified economic crime of national extension/international connection or of a principal nature/considerable proportions.

Additionally, fraud cases are in general dealt with by the Prosecution Authority and corruption/bribery cases by the national anti-corruption unit<sup>1</sup>. In relation to some specific types of crime, such as EU fraud, the Economic Crime Authority has nation-wide competence, but in most crime areas this is not the case. When there is, for example, an economic crime case, or a mixed criminality case with aspects of economic crime, outside the geographical jurisdiction of the Economic Crime Authority, the prosecutor in this region contacts the Economic Crime Authority and a parallel investigation can be set up.

The proposal to extend the remit of the Economic Crime Authority to encompass the whole country as regards economic/financial crime is currently being debated at the Parliament. If this initiative is passed and the jurisdiction of the Economic Crime Authority becomes nation-wide, a significant re-definition of resources, for example as regards the specialised financial crime prosecutors in the current six regional locations, as well as of general competences will be necessary.

### 2.1.3. *Other authorities*

The **municipal alcohol licensing authorities**, which handle applications for the right to serve alcohol on commercial premises, can have a role to play in criminal investigations. Individuals involved in serious organised crime have been known to use the purchase of restaurants and subsequent applications for the right to serve alcohol as a pretext for money laundering. The municipal alcohol licensing authorities have therefore been trained by the police to be especially vigilant in examining the background to any restaurant purchases combined with an application for the right to serve alcohol. The police contact the licensing authorities whenever they come across a case involving a restaurant.

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<sup>1</sup> The national anti-corruption unit is one of the 39 public prosecution offices in Sweden and is physically located in Stockholm. Most public prosecution offices cover a certain geographic area of the country, but the national anti-corruption unit targets all corruption-related crimes in the whole of Sweden. The unit consists of six specialised prosecutors, three forensic accountants and administrative personnel.

**The Swedish Social Insurance Agency** is used as a source of information in matters concerning any allowances paid to an individual, their declared annual income, their declared employer and, where appropriate, their employer's contact details. If, when questioned, a suspect states that he has supported himself through illegal employment, such information can be passed on to the Social Insurance Agency so as to ensure that the suspect repays any allowances which he may have received.

The role of the **Swedish Enforcement Authority** is primarily to enforce an effective and rapid execution of financial measures, when asked to do so by other authorities. As the starting point for the Enforcement Agency is that there is a debtor in respect of whom the measure is to be executed, it helps if the authorities to whom money is owed notify the Enforcement Authority as soon as possible about those individuals who have debts, thereby enabling the Enforcement Agency to act as soon as possible. Its role is enhanced by the fact that it can enforce both private and public claims.

Although the Enforcement Authority is not an authority with direct law enforcement powers able to conduct intelligence work, some exchange of information may help towards recovering proceeds of crime, where actual persons, companies or organisations are already listed in the Enforcement Agency's register. So that the Enforcement Agency may undertake measures, a writ of execution is required, usually in the form of a judgment or court order. However, for many of the public law claims, such as claims in tax matters, the authority's decision constitutes an enforceable writ of execution from the outset.

The Enforcement Code and the Enforcement Ordinance regulate how enforcement is carried out. In matters regarding sequestration and distraint, the rules on attachment are also generally applicable. A decision on distraint must be enforced at once, by the Swedish Tax Agency or the Swedish Customs Service applying to the Enforcement Agency for the execution of a court order. Once a creditor has submitted a debt claim, the Enforcement Agency must immediately enforce a decision on attachment taken by an ordinary court. In both civil and criminal cases, the tribunal can decide on attachment to ensure the settlement of debt claims. Attachment in criminal cases can be granted to secure the payment of fines, the value of confiscated property, corporate fines or damages.



#### 2.1.4. *Asset Recovery Office (ARO)*

The set-up of the Swedish ARO is two-fold. It comprises the Proceeds of Crime Unit of the Economic Crime Authority and the Financial Intelligence Unit of the National Criminal Police. Both AROs represent the Swedish ARO. The ARO at the Economic Crime Authority is addressed in questions regarding economic crimes and judicial matters. The ARO at the Financial Intelligence Unit is the reference point for miscellaneous crimes, organised criminality (all crimes that fall outside the competence of the Economic Crime Authority), money laundering and intelligence matters. Queries relating to proceeds of crime issues submitted by foreign or Swedish authorities are dealt with either wholly or partly by either part of the ARO, depending on the type of information sought. The Financial Intelligence Unit's ARO consists of three police officers and two civilian employees, while the Economic Crime Authority's ARO consists of one District Prosecutor and two forensic accountants.

The two ARO offices cooperate with each other and they have also links to the Enforcement Authority, the Tax Agency, the Social Insurance Office, the Prosecution Authority and the police authorities.

Furthermore, following a government decision, a **national multi-agency specialist unit** for proceeds of crime issues was set up at the Economic Crime Authority on 01 June 2010. The objective was to improve results as regards securing the proceeds of crime. The national unit will provide support for the operational activities of the relevant authorities, as well as develop training courses and methodological support for work regarding proceeds of crime issues. However, the unit has no independent operational jurisdiction in individual cases. The national unit is composed of experts from relevant authorities (in addition to the Economic Crime Authority, the Prosecution Authority, the National Police Board, the Customs Service, the Tax Agency and the Enforcement Authority).

According to the discussions during the evaluations mission, the role of the national multi-agency specialist unit is consultative, and one of the main tasks of this specialist unit is to improve the coordination, cooperation and information exchange between the two parts of the ARO.

**The ARO at the Financial Intelligence Unit**, or the operational/police-related ARO, provides operational support to other authorities and AROs outside Sweden. The Financial Intelligence Unit is an intelligence unit and can therefore assist in the provision of expertise and information on police intelligence issues within the ARO. Its purpose is to trace, secure, identify and recover proceeds of crime in one or more Member States. The ARO can, for instance, help in cases where individuals have assets, manage companies or carry out other activities within the EU. With the Swedish Financial Intelligence Unit acting also as the FIU, it has direct links with more than 100 FIUs worldwide.

The four ARO staff at the Financial Intelligence Unit is employed on a permanent basis.

**The ARO at the Swedish Economic Crime Authority**, or the economic crimes/judicial ARO, does not carry out its own operational investigations. Rather, it responds to requests from other ARO offices and liaises with (other parts of) the Economic Crime Authority and the Prosecution Authority. The Proceeds of Crime Unit, where the judicial part of the ARO is located, is currently based in the Authority's chamber for economic crime in Stockholm. The Proceeds of Crime Unit is led by a prosecutor who is responsible for monitoring and assessing the activities of the Proceeds of Crime Unit. The Proceeds of Crime Unit is responsible for the provision of operational support to senior investigators in proceeds of crime issues, development and documentation of methodological support in asset-related criminal investigations, development and implementation of training and measures to improve skills in proceeds of crime issues, and liaising and working with other authorities in proceeds of crime issues.

According to the information provided during the evaluations mission, the Proceeds of Crime Unit organises a 3-day asset recovery course for relevant staff at the Economic Crime Authority twice a year with approximately 20 to 30 participants, as well as educational training for other law enforcement agencies.

At present the operational/police-related ARO at the Financial Intelligence Unit does not have its own database, but this is under consideration. It has access to police records, the money laundering register, and the suspects and criminal records databases.

The economic crimes/judicial ARO at the Economic Crime Authority does not have its own database. It does not have access to the same databases as the operational or police-related ARO, but can apply for data from these records from the police.

However, both parts of the ARO have access to the land register, vehicle licensing register, civil register, company register and the European business register. These are open registers and do not require preliminary investigation or a request for judicial assistance. Access to the tax register is possible through the Swedish Tax Agency.

Actions for damages by individuals also form part of the criminal proceedings, and the ARO at the Economic Crime Authority can also assist with this. The Financial Intelligence Unit's ARO deals exclusively with criminal proceedings.

## 2.2. Multi-agency platforms

On 17 July 2008 the government decided on the strengthening of cooperation between authorities to reinforce the fight against serious organised crime from a multi-disciplinary perspective (Cooperation on Organised and Serious Crime, *GOB*<sup>1</sup>). The emphasis of the government was to build on the work already established and on-going but with a decidedly local support. As a follow-up to this, several multi-agency platforms were formed, such as the Cooperation Council (*Samverkansrådet*) and the Operational Council (*Operativa rådet*).

The task of the **Cooperation Council** is to decide about the strategic direction based on a situation report that has been drafted by all participating authorities in the National Intelligence Centre (NIC).

The following authorities participate in the Cooperation Council:

- National Criminal Police
- Security Police
- Prosecution Authority
- Economic Crime Authority
- Tax Agency
- Probation Service
- Enforcement Authority
- Coast guard
- Customs

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<sup>1</sup> *Grov Organiserad Brottslighet (GOB)*

The Council's task is to jointly decide on strategic goals and the authorities' common efforts in the fight against serious and organised crime.

The **Operational Council** makes decisions on the national operational focus of the fight against serious organised crime. It decides for example on the use of the national special action groups<sup>1</sup> in individual cases.

A **National Intelligence Centre (NIC)** (*Nationellt underrättelsecentrum*) has been established at the National Criminal Police to produce and analyse intelligence from all the cooperating authorities and thus produce supporting data for the Cooperation Council.

The NIC produces an annual joint status report on trends in serious organised crime for the Cooperation Council. The status report then forms a supporting document for decision-making on strategic focus.

The NIC also produces and analyses operational intelligence and produces supporting documents for actions by the Operational Council.

The authorities participating in the NIC are the members of the Cooperation Council minus the Prosecution Authority and with the addition of the Social Insurance Agency and the Migration Board.

The task of the **Regional Intelligence Centres (RIC)** (*Regionala underrättelsecentrum*) is to support the efforts to combat serious organised crime. Their work is led by steering groups representing the participating authorities. These steering groups decide which authority is the most appropriate to continue the work with a specific issue or case that has been jointly identified.

The RICs work on cross-agency cases within the framework of the national fight against serious organised crime. There are currently eight RICs established at the police authorities. The same authorities are represented as in the NIC<sup>2</sup>.

Based on the information provided during the evaluation mission, it seems that the direction of the work in the fight against serious organised crime is defined both top-down and bottom-up. Firstly, the government issues once a year so-called regulatory letters that do not as such define official

<sup>1</sup> The national special action group with a total of 200 policemen is a support resource for example in places or cases where the ability of the local police to combat crime is limited.

<sup>2</sup> In line with its mandate, the Economic Crime Authority is represented in the three RICs located in the urban cities.

priorities in the fight against serious organised crime, but invite the relevant authorities to focus on certain crime phenomena or approaches to battle them (top-down definition). For example, as is indicated in 2.4. below, in 2011 the government introduced requirements concerning proceeds of crime to the relevant authorities. On the other hand, the work in the joint multi-agency platforms is more intelligence-led and based either on a multi-agency overview or assessment of the crime situation, or practical case demands based on a need to know concerning a certain criminal issue (bottom-up).

Furthermore, according to the discussions, the government focus expressed in the regulatory letters can also act as a starting point, or the need to know, for the intelligence process based on which an assessment is produced and possible further activities defined in the GOB context. However, these slightly different and even converging approaches (top-down, bottom-up, and a combination of the two) make it more complex to evaluate based on what and how the priorities and goals for the work are defined.<sup>1</sup>

## **2.3. Training**

### *2.3.1. Police*

The training provided for the Swedish Police does not include any specific training in financial investigations, nor do the police themselves organise any further training in financial investigation techniques. However, training is offered by the Economic Crime Authority. Additionally, the asset recovery group in the Financial Intelligence Unit provides support for police authorities working in the field as regards information/training in how to conduct such investigations.

### *2.3.2. Customs*

The "Investigator III" supplementary course for criminal investigators in the Customs Service includes one training session on financial investigations and matters relating to the proceeds of crime. A prosecutor from the Economic Crime Authority has delivered such training up to now. In addition, around 20 investigators/economists have attended the Authority's course on matters relating to the proceeds of crime.

### *2.3.3. Swedish Economic Crime Authority*

The staff of the Economic Crime Authority consists of various professionals - prosecutors, police officers, forensic accountants, other specialists and administrators. These professional groups are

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<sup>1</sup> For further discussion, see also 2.4.

also represented at a number of other authorities, in addition to the Economic Crime Authority, that are, among other tasks, responsible for combating financial crime.

According to the information received, the Economic Crime Authority is tasked to provide professional training in the area of the fight against economic crime to its entire staff regardless of which employer the member of staff belongs to. The courses are primarily meant for personnel in operational law enforcement activities at the Economic Crime Authority, the Prosecution Authority and police authorities outside the Economic Crime Authority as well as to the staff of collaborating agencies.

The different levels of training provided are: basic courses, advanced/specialised courses, and special update training. All new employees must have completed most of the basic and advanced courses in three years. All staff is expected to take part in these courses and they are considered mandatory. In order to develop further specialist skills, in-depth training and specialist courses are also organised as well as seminars and workshops. External courses are also available to the staff of the Economic Crime Authority.

#### *2.3.4. Prosecution Authority*

The basic training provided by the Swedish Prosecution Authority does not include any specific training in financial investigation at present. However, training is provided in the fight against fraud, embezzlement, misappropriation of funds and recovering the proceeds of crime.

The Economic Crime Authority also participates in the basic training provided by the Prosecution Authority in the form of a number of lectures presenting its activities and working methods. There are plans to increase this input. The advanced training provided by the Prosecution Authority also includes more detailed courses in the aforementioned areas of crime. The Prosecution Authority's financial experts receive their specialist training from the Swedish Economic Crime Authority.

#### *2.3.5. Judges involved in the pre-trial phase*

The Courts of Sweden Judicial Training Academy (*Domstolsakademin*) is responsible for the training of judges in Sweden. In addition to general training on penal law, advanced training for judges wishing to specialise in cases concerning financial crimes is available. This particular training is divided into four separate courses each comprising two to four days and covering matters such as book-keeping crimes (*bokföringsbrott*), tax crimes, and how to make economical assessments required to try a case concerning financial crime. The Academy also provides training in business administration, including accounting, to improve the understanding of financial crimes.

Judges who have participated in the advanced training form a network where they can continue discussing various aspects of financial crime.

The Judicial Training Academy was established in 2009 and initially had only some basic courses. In 2010 its mandate was widened and also training for more experienced judges was offered. In the spring of 2011 the first course for judges specialising in financial crimes was started. This training takes place in four separate steps. The 20 judges that started the course are given the fourth and last step this year. This spring the course starts again with step one and another 20 judges participating.

When it comes to the participation of more experienced judges, it varies between different courses and different courts. In the specialised course on financial crimes all participants are experienced judges.

#### 2.4. Criminal policy

According to the Swedish authorities, measures to prevent profit gained from crime are given high priority in law enforcement. Through regulatory letters, orders and appropriation directions, the government has adopted a number of measures with a view to strengthening the work of the authorities. The focus on proceeds of crime issues in the budget proposal is being sharpened. Examples of adopted measures are:

- **National multi-agency specialist unit on proceeds of crime issues<sup>1</sup>** – under the Government's national strategy to combat serious organised crime and with a view to improving performance as regards securing the proceeds of crime, in 2009 the government commissioned the Economic Crime Authority to set up a joint inter-agency specialist unit on proceeds of crime issues. This unit was set up on 01 June 2010. A review of its work will be submitted to the government on 31 May 2012. One of the unit's objectives is to provide an inter-agency resource for crime proceeds issues, and at a national and inter-agency level to provide support for the operational activities in each agency so that proceeds of crime issues can be dealt with using the most effective method and tools for each case.
- **Reporting requirement in regulatory directions relating to proceeds of crime issues** – in order to force the pace in the authorities' work on proceeds of crime issues and to improve results, in the 2011 regulatory directions for the relevant authorities the government imposed a feedback reporting requirement for proceeds of crime issues. Reports should comprise analysis of the measures authorities have taken to develop work on proceeds of crime issues,

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<sup>1</sup> See also 2.1.4.

along with a review of the quantitative results on work on the tracing, securing, confiscation and recovery of proceeds of crime.

Investigation and prosecution of acquisitive crime is not given higher priority than other forms of crime.

The National Criminal Police's "*Rikskrim 2010*" (National Crime) report stated that a strategy in the fight against organised crime is to investigate the capital flows of criminal networks. Focusing on criminal profits and cash flows increases the police's ability to link criminal individuals and groups to crime. The National Criminal Police has prioritised this objective by appointing special asset investigators, and money laundering is one of the serious crimes that the National Criminal Police is prioritising.

The recovery of crime proceeds is one of the areas to which the Economic Crime Authority has given priority in its action plans and five-year goals. Currently the authority's work on tracing, securing, confiscating and recovering crime proceeds is being reviewed. The aim is to enhance the Authority's tracing and recovery of crime proceeds. The review will be published in the near future and will include proposals on how the Authority should be organised in order to develop its work in the area at a strategic and operational level<sup>1</sup>. The agency has also been commissioned by the government for the financial year 2011 to report on and analyse the measures it has taken to carry forward its work on proceeds of crime issues at strategic and operational levels. One of the five-year goals for 2015 is to recover proceeds of crime equivalent in value to its funding.

Tracing, securing, confiscating and recovering crime proceeds is also a priority for the Prosecution Authority. This is done partly through the work of relevant prosecutors on non tax-related proceeds of crime issues. This occurs in conjunction with criminal proceedings, primarily through demands for confiscation or the imposition of corporate fines. Proceeds of crime issues normally require specific action, and to a large extent this entails the employment of specialised personnel. In crime with an international dimension, the prosecutor also takes every measure necessary to trace the proceeds of crime in the international context. This may require specific measures, which may involve cooperation through Eurojust and, occasionally, cooperation in the framework of the European Judicial Network (EJN).

With economic crime in the form of tax fraud, the proceeds of crime are normally recovered under tax law, through an administrative procedure that involves the Tax Agency.

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<sup>1</sup> The expert commission suggested in May 2011 that the territorial competence of the Economic Crime Authority is expanded to cover the whole country. The matter is currently under discussion in the government.



## 2.5. Conclusions

- The Swedish Customs Service has, specifically as regards monitoring and controlling the cross-border flow of goods, very similar legal powers to the police. Like the police, the customs also plays an important role before and during preliminary investigations in relation to tracing and recovering proceeds of crime. The Swedish Customs Service has thus a clear and important law enforcement task, and its liaison officers are represented for example at the Swedish Liaison Bureau at Europol. However, the customs is not, unlike the police, directly connected to the Europol SIENA System. This may slow down data exchange and analysis (both as regards contributing information to Europol analysis and disseminating Europol analysis results), and may thus limit the role the customs can play in the law enforcement area.
- The division of tasks between different prosecuting services (i.e. the Prosecution Authority and the Economic Crime Authority) based on geographical criteria seems at times unclear. Even if a mechanism to resolve conflicts of competence between key prosecuting services is in place, the expert team is concerned that for example an investigation where a case on corruption has links with an organised crime activity may pose difficulties in the pre-trial phase and the evaluation of the evidence might be jeopardised, due to the separation of competences between the Economic Crime Authority and the Prosecution Authority.
- The extension of the territorial mandate of the Economic Crime Authority to cover the entire Swedish territory is currently under discussion. It is clear that as regards certain specific types of crime such as EU fraud, the Swedish Economic Crime Authority has nation-wide jurisdiction, and that in practice all relevant authorities are aware of their competences in the different regions and in relation to specific crime types, and there are thus only few overlaps. However, nation-wide competence would certainly clarify and strengthen the position and role of this highly specialised authority that can be seen as an example of a good practice in fighting economic crime. In order to fully test the suitability and effectiveness of this type of an authority, the extension of its mandate is a necessity.
- At present the competence of the Economic Crime Authority is in practice concentrated on economic crimes and book-keeping offences. Its competence should be defined based on a clearly delineated concept of economic/financial crime, or even economic/financial aspects of all serious crime, including a list of the types of offences explicitly in its overall competence and jurisdiction<sup>1</sup>.

<sup>1</sup> The Council of Europe Recommendation on Economic Crime (Recommendation no. R (81) 12) could be used as a guideline for the definition.

- The operational police unit at the Economic Crime Authority provides intelligence reports and generally supports the prosecutors in their investigations. International co-operation in the Economic Crime Authority is mainly carried out with the EJA and Eurojust. Consideration should be also given to make better use of Europol in the international information exchange.
- The multi-agency platforms developed to coordinate cooperation between the authorities in the fight against crime are a good way to “institutionalise” the cooperation and ensure that the planning of the work is jointly defined, prioritised and steered. However, the structures of the set-up seem relatively complex and formal, and it is thus difficult for the evaluation team to assess how efficiently and flexibly these structures support operational law enforcement work especially in the field of economic and financial crime.
- Additionally, it is not totally clear to what extent the priorities of the multi-agency cooperation are intelligence-led and identified by the common threat assessments and situation overviews, and, on the other hand, how much the so-called government regulatory letters influence and define the work of the relevant authorities. It is also unclear whether the issues addressed in the regulatory letters are based on intelligence and analysis or on more pre-defined political issues.
- The Swedish prosecuting and law enforcement authorities are in general well-trained. Moreover, beyond initial qualifications the need to continue training and develop skills throughout the career is largely recognised and encouraged. The development of management business processes and methods is also highly developed (e.g. handbooks, check-list, fact-sheets, and the prosecution development centre). There are also ample training modules available for judges at the Courts of Sweden Judicial Training Academy. Even though there are some general level concerns about the participation of experienced judges in continued training organised by the Academy, this does not seem to be the case with financial crime training. According to the Academy, the needs of the courts are well addressed by the training provided in this field, and a new four-step course for experienced judges begins once a year.
- The training on the fight against economic crime including asset recovery provided by the Economic Crime Authority is extensive, comprehensive and encompasses the staff of the key agencies. This is a recommendable integrated approach since it guarantees the overall consistency of the training provided to all personnel involved in this field. It is however unclear what specific training is provided on asset recovery, which authorities normally participate in this training, and whether the training programmes in general cover relevant EU instruments from a practical perspective.

- The expert team was impressed by the dedication of all relevant authorities involved in conducting financial investigations and combating financial crime. The team found especially the Tax Agency and the activities of its tax crime units as well as the Enforcement Authority as exemplary. Even though neither the Tax Agency nor, fully, the Enforcement Authority is defined as a competent law enforcement agency in line with, for example, the Framework Decision 2006/960/JHA, both authorities show a clear dedication and enthusiasm to pursue and support a multi-disciplinary approach to fighting financial (aspects of) crime. It would be thus worthwhile to nationally assess and define whether changing the formal position of these authorities would enhance and facilitate their cooperation with the current law enforcement authorities.
- There seems to be no specific integrated national asset recovery policy in Sweden. A well-defined criminal policy for how to prevent criminal profit exists, but an elaborated strategy of asset recovery seems to be missing from it.
- The Swedish ARO has two parts: the operational or police-related ARO is located within the structures of the Financial Intelligence Unit and the economic crime or judicial one within the Economic Crime Authority. The national multi-agency specialist unit for asset recovery, which was established in 2010, is tasked to improve the co-operation of the two parts of the ARO, to identify obstacles in the Swedish legal framework and basically to have an advisory role in the area of asset recovery.
- The discussions during the evaluation mission have shown that there is some uncertainty and possibly overlaps as regards the competences of the two AROs. For example, both parts of the ARO seem to be involved in international co-operation, depending on the type of information sought (intelligence or pre-investigation phase, and the type of crime/competence). This may cause confusion with the international partners as regards which office to contact for which request. Additionally, the overlaps may lead to delays in the procedure and a certain lack of continuity while a given dossier is handed over from one service to another. Moreover, there is no exhaustive possibility for any of the authorities to actually verify whether any proceedings are being conducted against the same person by another service. In practice, it might happen that the services are not aware of personal or factual links between their cases, something which is of outstanding relevance for financial investigations.

- Furthermore, creating in a way an additional function, the national multi-agency specialist unit for asset recovery, on top of and at least partly separate from the existing two parts of the ARO may add to the confusion, not necessarily increase cohesion and clarity of overall asset recovery activities.
- In order to fully comply with the Council Decision 2007/845/JHA, only one ARO should be nominated as the gateway for the international exchange of information for tracing and identifying criminal proceeds, and this ARO should also be linked as a competent authority to the Europol SIENA System in order to facilitate data exchange and analysis. Dedicated multi-disciplinary asset-tracing teams should be created in order to support investigations into serious or organised crime.
- Sweden does not currently have an asset forfeiture fund into which all or a portion of confiscated property would be deposited. Mechanisms for the management of seized goods should be made more flexible and allow for the items to be cashed.

### **3. INVESTIGATION AND PROSECUTION**

#### **3.1. Available information and databases**

##### *3.1.1. Bank accounts*

Sweden has no central bank account register.

Identification of an unknown bank account belonging to a specified person is feasible but difficult since all financial institutions need to be contacted. The identification of the unknown owner of a specified bank account is feasible.

The identification of operations from and to a specified bank account in a specified period in the past is possible. However, there is no real time monitoring of operations to and from a specified bank account, as there is for example with secret telephone monitoring. Upon request, a bank can supply information directly whenever there has been a transaction on a specified account, which effectively involves monitoring that is almost equivalent to real time. However, according to the practitioners, this is extremely resource-intensive for banks and accordingly can only be used in special cases.

According to information provided during the mission, the law does not require that information on beneficial ownership is collected or made available, and the relevant system does not currently provide access to fully up-to-date information on beneficial ownership in a timely manner.

##### *3.1.2. Company register*

The company register contains information compiled by the Swedish Companies Registration Office from all its other registers, including the limited liability companies register, the trade register (e.g. trading partnerships and joint ventures) and the European companies register, covering around 1 million Swedish undertakings. The register contains details of for example the undertaking's organisational number, its shareholders, the members of its board of management and whether there are any corporate mortgages. The certificate of registration, annual accounts, articles of association, constitution and financial plans can also be downloaded.

Anyone, including the authorities, can access the register on a fee. Direct connection to the database can also be established for a fee.

### 3.1.3. *Road vehicles register*

This register contains information relating to a specific vehicle, details of its owner and his/her address, details of previous owners and their addresses, information concerning its technical specifications, details of the insurance company, information on whether it was purchased with a credit hold, whether it is leased, whether it or its registration plates have been reported stolen, and whether any parking tickets have been issued in respect of it, as well as information concerning inspections, details of any paid or unpaid road tax or congestion charges, and information concerning the vehicle's status, such as whether it is still being driven on the road or whether it has been withdrawn from service and therefore cannot be used.<sup>1</sup>

The police, the Economic Crime Authority, the Prosecution Authority, the county administrative boards, the municipalities, the Tax Agency and the Enforcement Authority have direct access to the database.

### 3.1.4. *Rail vehicle register*

The register includes information concerning a rail vehicle's identification number, its keeper, the person responsible for its maintenance, its owner (not compulsory), whether or not it has been withdrawn from service and details concerning its approval. The register is currently under construction and currently contains details of around 16 000 vehicles.

No authorities have access to the register.

Provided one knows its identification number, certain information concerning a vehicle may be obtained via the home page of the Swedish Transport Agency. The vehicle's keeper/person responsible for its maintenance/owner has direct access to information concerning the vehicle, but cannot edit the information. An individual examination is carried out in cases where someone wishes to download large quantities of data.

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<sup>1</sup> Some statistics concerning the road vehicles register are provided below:

- Number of vehicles in the register as of 31 December 2010 = 10 058 788.
- Number of changes of ownership in 2010 = 3 122 305.
- Number of vehicles which underwent a verification of origin in 2010 and which were imported from other countries (both inside and outside the EU) = 22 247.
- Number of registration plates manufactured in 2010 = 1 055 681.
- Number of registered commercial vehicles as of 31 December 2010 = 144 033.

### 3.1.5. *Aircraft register*

The aircraft register is a register governed by public law containing details of the approximately 3 100 aircraft registered in Sweden. The information recorded includes the aircraft's national and registration mark, its manufacturer, the place of manufacture, the year of manufacture, the production number and type designation, its class, the scope of the current certificate of airworthiness and noise certificate, the reasons for the aircraft having been withdrawn from service (where applicable), and whether the aircraft was previously registered in another country. The owner's name, nationality and address and the nature of his/her acquisition are also recorded, as are the date of registration, information on whether the ownership of the aircraft has changed, any withdrawal from service and the existence of any mortgages.

Aeronautical Search and Rescue (Swedish Maritime Association) and Air Navigation Services of Sweden have access to the database. In addition, the general public have access to certain information contained in the aircraft register (personal data is not shown) via a search function on the Swedish Transport Agency's home page.

Aeronautical Search and Rescue and Air Navigation Services have direct access to the aircraft register and are authorised to consult the data recorded there.

### 3.1.6. *Register of rights in aircraft*

The register is a register under private law containing information on rights relating to aircraft such as registered rights of ownership, exploitation rights and mortgages. In order to be included in the register, an aircraft must be registered in the Swedish aircraft register. Around 1 000 aircraft are listed in the register of rights. The information recorded includes details of the aircraft, the owner, the keeper, any mortgages, the holding of any mortgages, attachment, seizure, insolvency and rights of lien.

No authorities have access to the database. Information from the register of rights is provided on request in the form of an extract from the register.

### 3.1.7. *Land register*

The land register is maintained by the National Land Survey. It contains information on title deeds, leaseholds, mortgages and previous owners. 3.2 million properties and leaseholds are listed in the register. The title deed contains details of who owns the property, whether the owner acquired the property through purchase, gift or inheritance, what the purchase sum was (if any), and whether the property is leased out.

The Land Register is a public register. Anyone may request a paper extract from the register without having to provide reasons or undergo an examination of the intended purpose. The register may be accessed digitally via online operations or extracts, accompanied by updates of the information concerned. In order to obtain direct (digital) access to the register, the data must be used for certain specific purposes as laid down in the Land Register Act (2000:224). Direct access must not be granted in such a way that a person's name or social security number (either full or partial) may be used as a search term. The National Land Survey sells connections to the online Land Register (direct access), and in such cases it examines customers' motives in order to ensure compliance with the requirements laid down by the Act. As connections are sold by distributors, it cannot readily be ascertained which authorities are connected in this way.

#### 3.1.8. *Shipping register*

The Swedish shipping register contains a section on ships, a section on ships under construction and a section on boats. Ships are defined as vessels which are at least 12 metres long and 4 metres wide. Boats are vessels not defined as ships. The main principle is that a ship must be registered if more than 50 per cent of it is owned by a Swedish private individual or Swedish organisation, regardless of what the ship is used for or where it is used. In general, a boat must be registered if it is used for one of the commercial purposes laid down by law and if 50 per cent or more of it is owned by a Swedish national or organisation. Pleasure craft may be registered on an optional basis. Ships under construction in Sweden may be registered regardless of the owner's nationality.<sup>1</sup>

The following information is recorded in respect of ships:

- Identification details
- Owner's details
- Details of any shipping partnerships
- Mortgage details
- Annotations
- Identification details for ships under construction

The content of the register in respect of boats is the same as that for ships, except that no mortgages are taken out for boats, nor are the same types of annotations made.

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<sup>1</sup> As of 30 May 2011, 4 149 ships, 8813 boats and 78 ships under construction were registered.



The authorities which have access to the register are the Swedish Board of Shipowners, the National Post and Telecom Agency, the Swedish Board of Fisheries, the Stockholm police authority, the Coast Guard, the Östergötland police authority, all the offices of the Tax Agency, the IFC Shipping Office of the Social Insurance Agency and the Västmanland police authority.

The authorities have direct access to the register. The Swedish Transport Agency may, for the purposes referred to in Section 2 of the Shipping Register Decree (1975:927), grant an authority or anyone else direct access to the shipping register. Members of the general public may obtain access to information contained in the shipping register by calling or e-mailing the Transport Agency.

#### *3.1.9. Cooperation at national level*

The provision in Chapter 1, Section 11, of the Swedish Banking and Financing Business Act (2004:297) implies an obligation on credit institutions to supply information relating to bank accounts<sup>1</sup> also in respect of requests received from abroad for international legal assistance as part of a preliminary investigation in a criminal case. No special conditions apply except that requests must be made during a preliminary investigation in a criminal case, and must be made by the person leading the preliminary investigation or by the prosecutor if the matter regards a request for international judicial assistance.

The information requested need not relate to the suspected individual; it can also concern other individuals in the investigation. These measures can be obtained in relation to any type of crime.

The person in charge of the preliminary investigation, who is normally a prosecutor, is authorised to request or take action. Prior approval is not required for any of the information.

The implementation of these measures is not impeded or affected by any obligations and/or privileges. As indicated above, and in accordance with Chapter 1, Section 12, of the Banking and Financing Business Act (2004:297), the person leading the preliminary investigation may stipulate that the person affected is not informed of the measure.

In practical terms banks have usually a contact person designated for liaising with the judicial system in such cases. As a rule requests are transmitted by fax to a bank's "Money Laundering Officer" who deals with the request and sends statements of account in paper format or, in exceptional cases, in digital format.

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<sup>1</sup> Identification of an unknown bank account, unknown owner of a bank account, operations from and to a specified bank account, and, to a certain extent, monitoring of operations to and from a specified bank account in the future.

For the monitoring of banking operations, information is transmitted by fax, mail or telephone, as agreed.

According to the Swedish authorities, the need for a central bank register has been put forward by the police since its lack hinders the work. In the past the Swedish Central Bank Association was approached when the law enforcement authorities required bank account data and they would centrally disseminate the requests to the member banks. Currently this is not possible and thus the identification of a bank account requires requests to be sent to all banks individually.

#### *3.1.10. Cooperation at European level*

Sweden has ratified the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000. Swedish law has already met most of the requirements set out in the Protocol, primarily through the Act (2000:562) on international assistance in criminal proceedings. However, some new regulations have been introduced. For instance, new provisions were incorporated in a number of laws as regards opportunities for credit institutions to prescribe bans on disclosure in relation to customers and other third persons (*Article 4*). In addition, to implement Article 5 of the Additional Protocol, regulations have been introduced on information intended to provide a basis for further applications for mutual legal assistance and other measures in the requesting State.

Swedish law provides that information may be requested in an ongoing preliminary investigation of a criminal case (cf. Chapter 1, Section 11 of the Banking and Financing Business Act). Therefore, mutual legal assistance request from another State is normally required for such information to be made available to a competent law enforcement authority in another Member State.

Within the Financial Intelligence Unit's remit, certain information such as the existence of a bank account can be passed on for intelligence purposes to another Member's State's counterpart of the Financial Intelligence Unit.

Sweden has transposed the Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union by the adoption of the Act on the facilitation of information exchange between law enforcement authorities in the European Union (2008:1396).

The latter Act can also be applied to information exchange in the context of the Council Decision 2007/845/JHA of 06 December 2007 concerning cooperation between the AROs of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

According to the Swedish authorities, as a general rule the ARO at the Financial Intelligence Unit is responsible for issues pertaining to the intelligence stage and the ARO at the Economic Crime Authority for questions regarding preliminary investigations. Additionally, the ARO at the Financial Intelligence Unit handles money laundering-related topics. If, for example, an ARO abroad would contact the Swedish AROs to ask for banking data, the Swedish ARO would not be in a position to help since a formal mutual legal assistance request is necessary for obtaining the data. Such a request would be handled by a prosecutor and would not by default be dealt with by the ARO.

The competence to deal with mutual legal assistance requests depends on which crime the request relates to. Such a question can be answered by a public prosecutor at the international public prosecution chambers, or, if it concerns crime within the competence of the respective local public prosecutors chambers, by a public prosecutor at such a chamber. If the request concerns a financial crime within the regional competence of the Economic Crime Authority, it shall be answered by the Authority. There is no need for it to be answered by one of the contact prosecutors. It is the chief public prosecutor in the chamber concerned who decides which prosecutor should answer the request.

Swedish criminal investigation authorities have mostly positive experience of judicial cooperation in this area. In Sweden, banking secrecy is not an obstacle to the provision of mutual legal assistance. Obligations on banks and other institutions as regards disclosure of information in a Swedish criminal investigation also apply to criminal investigations outside Sweden. Sweden can assist in the identification of an unknown bank account belonging to a specified person. However, the procedure can be quite burdensome if the identity of the bank concerned is unknown, as a request needs to be sent to all banks.

### **3.2. Financial investigation and use of financial intelligence**

#### *3.2.1. Financial investigations*

Financial investigations are carried out in the context of normal criminal investigations. Financial crime can also be handled through an administrative process involving the Tax Agency/Customs Service (tax and toll penalties).

Financial investigations are rarely carried out in criminal cases involving trafficking in human beings and cyber crime. It is more common in cases involving serious drug offences and serious tax infringements. However, trafficking in human beings is an offence regarding which extended confiscation can be used. This is however not the case for cyber crime.

Once a natural person has been prosecuted, it is possible to apply for a corporate fine against the legal person, after the criminal investigation has been closed and after a conviction has been secured. Extended confiscation (Chapter 36, Section 1b, of the Penal Code) can be applied once a person has been sentenced for an offence for which there is a mandatory sentence of six years or more. In extended confiscation, the proceeds from a particular crime and also from other non-specified criminality may be confiscated.

The same powers apply for the investigation of proceeds of crime and financial aspects of crime as for other criminal investigations. Special rules apply to tax procedures.

Involvement of private experts in financial investigations is possible. According to the rules of criminal procedure, the prosecution authorities are free to approach whatever external experts they deem necessary. The Economic Crime Authority employs financial experts for the investigation of financial market offences, for example, so it does have in-house expertise, but it has also made use of external experts.

According to the Swedish authorities, criminal investigators at all levels should be aware of the need to look for the finances when they are investigating non-financial crime cases such as drugs trafficking cases. In practice this may, however, be a challenging objective especially in some regions where the law enforcement resources are not specifically trained in asset recovery matters. In order to ensure that investigations on organised crime cases are also integrating financial investigations, the prosecution authority has international chambers with accountants to support this objective. At the regional level, the RICs work with the Enforcement Authority, and investigations are supported by auditors from the Tax Agency and by tax investigators.

### 3.2.2. Financial intelligence

Both the Swedish Economic Crime Authority and the Financial Intelligence Unit (also acting as the FIU) conduct financial investigations in the intelligence phase. One of the objectives of the criminal intelligence branch of the Economic Crime Authority, defined in its 2011 work programme, is to work more proactively to trace the proceeds of crime and to produce intelligence-based financial surveys.

Acting as the national FIU, the Financial Intelligence Unit receives all reports of suspected money-laundering operations (STRs) forwarded by financial institutions. The reports are processed by the Financial Intelligence Unit and then passed on within the police, or to the Economic Crime

Authority or the tax crime units of the Tax Agency. The information then forms the basis for a prosecutor to launch a preliminary investigation. It may also be processed further in the context of the intelligence work carried out by the recipient body.

Much of the financial intelligence is submitted to the regional cooperation platforms. The FIU drafts and provides financial intelligence reports to the RICs based on the information in the STRs. These intelligence reports form the basis, in addition to other intelligence, of operational intelligence reports developed by the RIC and forwarded to relevant authorities for action. It should be noted, however, that the FIU uses only some general parts of the intelligence contained in the STRs for the financial intelligence reports. The STRs themselves do not leave the FIU.

#### 3.2.2.1. Financial Intelligence Unit (FIU)

The FIU in Sweden is located at the Financial Intelligence Unit in the National Criminal Police. The Financial Intelligence Unit has four groups (asset recovery, environmental crime, counterfeit money and payment card manipulation, and money laundering). The FIU is located in the money laundering group.

The number of STRs received was 12218 in 2010 from over 14000 reporting entities. According to the Swedish authorities, the number of STRs is on the increase mainly due to the implementation in 2009 of the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

In line with many other EU MS, the greatest challenge in enforcing due diligence as regards the reporting of suspicious transactions is with the non-financial sector. As an answer to this challenge, supervision boards have been established to control the various reporting sectors, such as antiques and arts. County boards in bigger towns are responsible for the supervision of car dealers, etc. Almost all key sectors have a supervision board. There is regular cooperation between them and the FIU, and the supervision boards meet almost monthly to discuss topical issues.

As regards cooperation with other authorities, the FIU supports the RICs by seconding its staff to them<sup>1</sup>. In addition to this, the FIU cooperates closely with the Economic Crime Authority and the Tax Agency.

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<sup>1</sup> Since 2009 the FIU has six persons deployed to the RICs.

Additionally, as described above, the FIU has an important role in providing financial intelligence reports to the RICs which then further disseminate them to relevant authorities or support joint operations and activities established on the basis of the intelligence.

The FIU does not conduct its own investigations. Majority of the cases initiated based on an STR<sup>1</sup> is forwarded to the Tax Agency for tax audit investigations (e.g. fraud cases). Additionally, where the STR relates to for example drugs trafficking, the case is passed on to the prosecutor and in economic crime cases to the Economic Crime Authority.

Currently the FIU has no powers to provisionally freeze suspicious transactions. The FIU participates in a legal committee which discusses among others the issue of the allocation of provisional freezing powers to the FIU.

The FIU is a member of the Egmont Group and is connected to its secure web. Memoranda of Understanding (MoU) with various partners are used for cooperation and information exchange. The FIU regards its possibilities to share and exchange intelligence in the intelligence context as unproblematic and good.

The identifiers<sup>2</sup> of every piece of information that arrives at the FIU, e.g. an STR or an intelligence report from another authority, are fed into a search engine. The resulting text file indicates so-called hits in various public and police databases without giving any specifications of the nature of the hit. Detailed information can then be requested as necessary.

The number of persons deployed for handling money-laundering investigations at the FIU was 11 in 2006. By the end of 2011 the number has increased to 13. According to plans, the figure will rise to approximately 15 to 18 persons during 2012.

### **3.3. Cooperation with Europol and Eurojust**

#### *3.3.1. Cooperation with Europol*

According to the Swedish authorities, Europol can be a good way to initially start with a data request. If there is, for example, a specific question about how something works in a specific country, the Swedish Liaison Office at Europol is able to find the answer.

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<sup>1</sup> Currently approximately 1000 cases are referred to other authorities. 600 of these cases are submitted to the Tax Agency.

<sup>2</sup> The identifier is normally the organisation number of a company or the social security number of an individual.

Europol is, to the extent possible, expected to be prepared and interested to cooperate and provide assistance to support financial investigations in and as regards Sweden.

Sweden is an active participant in Europol Analysis Work Files (AWF) and generally contributes data of good quality. Sweden participates in a total of 18 AWFs and actively participates in operational activities. As regards the most important financial crime AWFs, Sweden does not participate in AWF MTIC (Missing Trader Intra-Community fraud) but is a full member of AWF Sustrans (cross-border money laundering based on data contained in SARs and STRs) but does not contribute strongly to this file.

### 3.3.2. *Cooperation with Eurojust*

Experience of the support offered by Eurojust has been good. The Swedish desk at Eurojust provides help with inquiries, and the arranged coordination meetings have been effective. Sweden does not have an extensive experience of joint investigation teams in which Eurojust has provided assistance, but it is positive about the prospect.

In connection with criminal investigations, the need to trace, secure, confiscate and recover the proceeds of crime in an international context has arisen. In such cases valuable help has been provided by Eurojust, partly in the EU but also through the contacts which can be established via Eurojust with third countries. In several cases this has produced good results.

Eurojust is expected to be prepared and interested to cooperate and resolve problems in international legal cooperation, and also to provide opportunities to meet representatives from the authorities of other Member States when cases need to be coordinated or when support is needed to launch preliminary investigations. Overall Sweden is satisfied with the assistance Eurojust provides.

## 3.4. **Conclusions**

- There is currently no central register of bank accounts in Sweden. Thus the identification of an unknown bank account belonging to a specified person is feasible but difficult, since all financial institutions need to be contacted. A central register of bank accounts, or central access to the bank account data, would substantially facilitate financial investigations and the fight against financial crime. The FIU and the operational/police-related part of the ARO should have direct access to this database.
- Monitoring of specified bank accounts in real time is not feasible in Sweden due to the lack of specific legal basis. In exceptional circumstances, such requests may be addressed to the banks. However this appears to be extremely resources-intensive for banks and is thus not often used in practice.

- The law does not require that information on beneficial ownership is collected or made available, and the relevant system does not currently provide access to fully up-to-date information on beneficial ownership in a timely manner. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>1</sup> should be applied, in order to establish the beneficial owner of an account.
- There is no specific legal framework for financial investigations, since the latter are carried out within the framework of regular criminal investigations, nor does the system allow for the separation of the financial investigation from the investigation concerning the predicate offence.
- Asset recovery and financial investigations do not always form an integral part of criminal investigations and prosecution. Financial investigations are carried out in criminal cases involving trafficking in human beings and cyber crime, but more commonly in serious drug offences and serious tax infringements. Trafficking in human beings is an offence in relation to which extended confiscation can be used. This is, however, surprisingly not the case for example for cybercrime.
- The FIU receives all reports of suspected money-laundering operations forwarded by financial institutions. The reports are processed by the FIU and then passed on to the police, the Economic Crime Authority or the tax crime units of the Tax Agency. However, it is not clear how the receiving institutions are identified and in which cases this is done at the regional context via the RICs.
- In 2010 the FIU received over 12 000 STRs, which are currently processed by 13 money laundering investigators. Five money laundering investigators are tasked to support the RICs, which reduces the personnel to eight money laundering investigators within the FIU. Although the shortage of resources of the FIU has been highlighted in the last FATF evaluation in 2005, where it was mentioned that the number of staff is not adequate, the personnel situation has not changed since. This obviously has an impact on the capacity of the FIU which does not seem to have the resources to investigate money laundering cases on its own, even though during the

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<sup>1</sup> Art 8, para 1(b): Customer due diligence measures shall comprise:

- identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the institution or person covered by this Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer.



evaluations mission the representatives of the FIU expressed their wish to do so. In order to increase the ability of the FIU to investigate or at least participate in the pre-investigation of major money laundering cases in Sweden, a reinforcement of the FIU staff should be considered in the ongoing discussion to re-organise the Swedish FIU. The plans to increase the number of staff to 15 or 18 in 2012 are thus most recommendable.

- The functions, powers, and processes of the FIU are generally satisfactory, but would be further improved if, in addition to allocating extra resources to it, there was less reliance on manual processes and the limitations on the timeframes to keep suspicious transaction reports were removed.
- Currently the FIU has no powers to provisionally freeze suspicious transactions. The FIU participates in a legal committee which discusses inter alia the issue of allocating provisional freezing powers to the FIU. The FIU should be provided with provisional freezing powers which would help avoid the dissipation of criminal assets.
- The FIU is already a member of the FIU.NET, but the relevant computer system is not operational, mainly due to the foreseen introduction of a new data protection act during 2012. Sweden should be able to start using the FIU.NET in the second part of this year.
- Money Laundering is not an autonomous crime in Sweden but co-punished with the predicate offence. The evaluation team was, however, assured that all the elements that usually fall under this offence are criminalised under the Swedish Penal Code<sup>1</sup>. However, Swedish law enforcement authorities seem to mainly focus on the investigation of the predicate offence, possibly due to the lack of adequate money laundering provisions. It is difficult to evaluate whether this has an impact on the overall capacity to investigate money laundering offences in Sweden.
- Additionally, Sweden has implemented the Palermo Convention. Article 6(2)(e) of the Convention obligates countries to make self-laundering an offence unless it is contrary to fundamental principles of domestic law. The Supreme Court has ruled that self-laundering is not separately punishable under Swedish law but it did not indicate whether self-laundering would be contrary to the Constitution or another fundamental principle of Swedish law. There is, as far as the expert team is aware, no indication that the criminalisation of self-laundering would be contrary to fundamental laws in Sweden.

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<sup>1</sup> Chapter 9, Section 6 and 6a of the Penal Code, money laundering-related receiving of stolen goods.

- According to the expert team, Sweden should provide a legal definition of the money laundering offence, in accordance with Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing standards. The Swedish government has appointed a national rapporteur in August 2010 in order to consider whether the criminalisation of money laundering needs to be simplified and clarified to ensure an increased effectiveness and accessibility of the existing legislation.
- Sweden is an active participant in Europol AWFs and contributes mainly good quality data. Sweden participates in a total of 18 AWFs and has a high participation rate in operational activities. Sweden also actively participates in the Platform of Asset Recovery Offices and is actively engaged in the CARIN Network of asset recovery specialists.
- Sweden is not a member of AWF MTIC which seems to be mainly due to the fact that the tax crime units of the Tax Agency are not regarded as a law enforcement agency under Swedish law, and therefore they have not been defined as a competent authority to submit tax fraud cases to Europol. It is recommended that Sweden reconsiders the mandate of the Swedish Tax Agency, or its tax crime units, in order to enable their active participation in AWF MTIC to more actively participate in the fight against VAT fraud at the European level.
- Sweden is a full member of AWF Sustrans and the co-operation with competent Swedish authorities in operational cases is good. However, the co-operation as regards the transmission of STRs to AWF Sustrans is modest and could be improved. It is acknowledged that this might also be related to the staffing issues at the national FIU.
- Swedish judicial authorities seem to have very good cooperation with Eurojust, not only in respect to the EU MS but also through contacts which can be established via Eurojust with third countries. The type of support required from Eurojust may however vary greatly. In most cases, Eurojust is used as an interface to help establish contacts and provide opportunities to meet and coordinate with the competent authorities in the recipient State(s). Moreover, support from Eurojust will be asked with respect to securing or confiscating identified assets. However, in the early phase of tracing assets, support from the ARO or CARIN network should be preferred.

- According to the representatives of the Economic Crime Authority, cases involving international cooperation would almost systematically be referred to Eurojust, no matter how complex the case or which type of support would be required. In any case referral to Eurojust would be preferred to using the European Judicial Network, as it is considered to present more added value to operational work. The Economic Crime Authority in particular would make use of Eurojust with a view to speeding up the process of mutual legal assistance requests or decisions on judicial cooperation.
- Regarding cooperation with Europol and Eurojust, there are very few statistics available and thus a more general evaluation of the cooperation is not possible.
- Every Swedish law enforcement agency compiles their own statistical figures but there is no integrated national statistics especially as regards financial crime/financial investigations or asset recovery. This is surprising, especially since the government regulatory letters for 2011 have pertained, among others, to asset recovery issues and especially a better reporting and collection of statistics as regards the assets recovered.

## 4. FREEZING AND CONFISCATION

### 4.1. Freezing order

#### 4.1.1. *At national level*

##### 4.1.1.1. Legal basis

The rules on coercive measures are set out in the Code of Judicial Procedure. Chapter 26 contains the rules on *attachment*<sup>1</sup> in criminal cases, and Chapter 27 governs the possibilities for the *seizure* of property connected to a crime. Attachment is used to ensure that any fine likely to be imposed on the suspect due to the crime can be paid. Attachment can thus not be used for the purposes of an investigation (gathering of evidence), or in relation to property which has to be confiscated through the confiscation<sup>2</sup> procedure. In such cases seizure has to be used instead.

##### 4.1.1.2. The use of attachment and seizure

Attachment and seizure may be used irrespective of the nature of the crime. The court is the competent authority as regards attachment whilst the police/prosecutor decides for seizure. Prior authorisation is not required. As for any coercive measures, when the decision on attachment or seizure is taken, the proportionality of the measure must be assessed, i.e. the reasons for the measure must be weighed against the inconvenience which the measure may cause to the interests of the suspect or any other equivalent interests.

### **Attachment**

Pending the court's decision on attachment, the prosecutor may take the property into custody. The prosecutor must make an application to the court for attachment within five days of taking the property into custody. The court must then hold an attachment hearing within four days. In conjunction with the court's decision on attachment, it must also set a period within which the prosecution must be instituted, if this has not already been done. In practice this time period is usually set at one month. The court may decide on an extension of the period which has been fixed for the prosecution to be instituted. Notification may be given of such decisions without any proceedings. The Code of Judicial Procedure does not specify any maximum limit as regards the period for which property may be attached.

<sup>1</sup> In this report “attachment” refers to “*kvarstad*” in the Swedish language.

<sup>2</sup> In this report “confiscation” refers to “*förverkan*” in the Swedish language.

The first prerequisite for attachment to be imposed on property is that the person against whom the measure is directed must be reasonably suspected of an offence. Another prerequisite is that there is reasonable cause to anticipate that by fleeing, removing property or otherwise, he will evade the payment of the compensation which the attachment is intended to secure. Attachment may therefore be ordered irrespective of the nature of the offence, and irrespective of whether the claim is being pursued by a prosecutor or an injured party.

Attachment is only a provisional measure to secure property that will be confiscated at a later stage and ensure that the defendant/owner does not sell the property. Thus the conditions for confiscation need to be met when an attachment is foreseen. Immovable property (real estate) may also be subject to attachment by a court order.

### Seizure

The Code of Judicial Procedure does not specify any maximum limit as regards the period for which property may be held following seizure. A person whose property has been seized is entitled to ask the court to determine whether the property should continue to be held. This happens at a seizure hearing which the court must hold within four days; if the prosecution has not yet been instituted, the court must set the period within which it is to be instituted, in conjunction with the seizure decision. The court may order an extension to the period after which the prosecution must be instituted.

Seizure may only relate to *movable property*, which is *accessible* to such a measure. It should be noted that the right to seizure does not in itself give authority to undertake measures to seek objects. As a means of bringing to light objects which have not voluntarily been handed over, other measures, such as for example a search of premises or a body search, must be used. This means, for example, that a prosecutor cannot decide that certain objects are to be seized before a search of premises. However, the prosecutor may give directions about objects which may be looked for, but it is the persons carrying out the search of the premises who decide whether the objects they come across are to be seized.

### Enforcement

If the aim of the measure is the confiscation of assets, the measure is carried out by the Enforcement Authority. Seized evidence is managed by the police; other property is managed by the Enforcement Authority.

If there are immovable goods that should be frozen, the prosecutor decides that the rules on attachment shall apply. The decision is then brought to the Enforcement Authority for execution. Thus the Enforcement Authority does not seize the assets but executes a decision on attachment.

### **Legal remedies**

Persons affected by the measure are informed in writing by the police/prosecutor (serving). As regards legal remedies, appeals may be made against decisions by the prosecutor and the court.

### **Role of the ARO**

The ARO does not play any role during this procedure.

### **Possibility to withdraw the freezing order**

As regards the possibility to withdraw the freezing order, this can be done by the prosecutor. A hypothetical example might be that the prosecutor has decided on seizure in accordance with Chapter 2, Section 1, of the Act on Recognition and Execution of European Union Freezing Decisions (2005:500), where the object of the seizure is not yet available. Then the circumstances change, for example because the object turns up in Sweden, where the first decision cannot be executed under the provision mentioned above. The prosecutor then has to amend his earlier decision.

#### *4.1.2. Cooperation at European level - Implementation of Framework Decision 2003/577/JHA*

Sweden has implemented the Framework Decision through the Act on Recognition and Execution of European Union Freezing Decisions (2005:500) and the Ordinance on the Recognition and Execution of European Union Freezing Decisions (2005:501).

For Sweden, entirely new legislation was required to implement the Framework Decision. The legislation contains provisions on the prerequisites and procedure for the recognition and enforcement of freezing orders which have been sent to Sweden by another EU Member State. It also contains provisions on the prerequisites and procedure for the transmission of freezing orders by Sweden. A freezing order which is to be executed in Sweden must, on the whole, be executed in accordance with the provisions which apply for execution in Sweden of equivalent national decisions. However, special provisions have been needed to complement the national rules on execution, for example rules on postponement and time limits.

The freezing instrument has been used only to a limited extent in Sweden. Practical experience of handling freezing orders is therefore relatively scarce. Relevant statistics do not exist to this extent.

## 4.1.2.1. Experience when acting as an issuing State

**Competent authority**

Prosecutors are competent to issue freezing orders referred to in the Framework Decision 2003/577/JHA. The prosecutor is thus the authority that needs to be contacted also by the executing authorities.

**Practical guidelines**

As regards practical completion of the freezing order, the Prosecution Authority has issued a handbook on freezing, "The recognition and execution of freezing orders within the EU", which is used when freezing cases are being processed, whether Sweden is the issuing or the executing state.

The handbook states that the freezing order must be accompanied by a certificate. The certificate exists as a form in the Prosecution Authority's computer system (in Swedish and English) and also as an Annex to the handbook. The certificate has been drawn up in accordance with the Annex to the Framework Decision. The handbook emphasises that the certificate is crucial for the EU freezing procedure, and stresses the importance of filling it in correctly and in full.

It also states that the certificate must be translated to the language of the other state, or to a language which the executing state has declared that it will accept. For more detailed practical information on languages, addresses and competent authorities, the handbook refers to the home page of the Council Secretariat. There is a link to that page from the Swedish Prosecution Authority's home page.

There is no requirement to transmit any other material than the freezing order and the certificate. The handbook and the Prosecution Authority's computer system also contain other templates, for example for the provision of information to the issuing state when Sweden is the executing state.

**Procedure**

If a freezing order relates to *evidence*, the freezing order sent by Sweden must as a general rule be followed by a request from the Swedish prosecutor for the surrender to Sweden of the frozen property. Such an application must be sent in conjunction with or as soon as possible after the transmission of the freezing order. This constitutes thus a request for mutual legal assistance, and the conventions and agreements governing legal assistance come into application, for example the 1959 European Convention on Mutual Assistance in Criminal Matters and the EU Convention on Mutual Assistance in Criminal Matters of 2000.

In the case of a freezing order relating to property which is covered by a final *confiscation* order, the procedure is different. The Swedish authority, that processes and examines the question of transmitting a final confiscation order which has gained legal force for execution abroad, is the Enforcement Authority. The Swedish prosecutor is responsible for informing the Enforcement Authority when a freezing order issued to secure confiscation has been sent to another EU MS. A request for the execution of a freezing order must be sent in conjunction with or as soon as possible after the transmission of the freezing order. However, this cannot be done until there is a judgment which has gained legal force<sup>1</sup>.

The execution of confiscation orders can only occur in relation to a state with which Sweden has entered an agreement, bilaterally or multilaterally, on the execution of such decisions<sup>2</sup>. Through new legislation that came into force on 01 July 2011 Sweden has incorporated the Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders into Swedish law. Orders from other EU MS may thus henceforth be executed in accordance with that legislation.

### **Circulation of a freezing order**

As regards the circulation of a freezing order, the preferred option is direct contact between competent authorities. The EJN and Eurojust are used to the same extent as for other forms of international legal assistance. Europol is not used as a first preference for transmission, although it can occur in individual cases. The central authority has no role in the handling of freezing cases in Sweden. Freezing orders are not transmitted via the ARO.

To locate an unknown competent authority in another EU state, Swedish prosecutors seek the help of Eurojust, the EJN and the ARO. The international contact prosecutors at the Economic Crime Authority are also able to provide assistance.

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<sup>1</sup> In Sweden the appeal period for a judgment from the district court is three weeks, and for a judgment from the Court of Appeal it is four weeks. During this stage the prosecutor has no role. However, if the confiscation case is dismissed and the court lifts the seizure or attachment, the prosecutor must act at once and inform the other state.

<sup>2</sup> Examples of agreements which might constitute grounds for the execution of a confiscation order include the European Convention on the International Validity of Criminal Judgments signed in the Hague on 28 May 1970, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and the European Convention of 8 November 1990 on confiscation etc.



**Possible difficulties**

Sweden has not come across any problems as regards for example the executing Member State questioning the appropriateness or the scope of the freezing order, nor has it had problems with the relevant time limits. It has also had no experience as regards executing MS requesting additional information in relation to a freezing order.

No actual cases have been identified in Sweden which have led to difficulties with the subsequent treatment of frozen property. In any case the incorporation of the Framework Decision 2006/783/JHA will have great advantages in the future.

**4.1.2.2. Experience when acting as an executing State****Mechanics of receipt**

A freezing order from another EU MS has to be sent directly to a Swedish prosecutor by post, courier or fax. In individual cases, transmission may also be accepted by other means by agreement. The certificate is accepted in Swedish, Danish, Norwegian or English. If the certificate is missing or if it is so defective that it cannot form the basis for examination, the prosecutor must give the issuing authority the opportunity to supplement it.

**Competent authorities**

If the freezing order concerns specifically financial/economic crime and falls under the geographic competence of the Economic Crime Authority, incoming freezing orders are handled by chief prosecutors, deputy chief prosecutors, or specifically appointed senior public prosecutors at the Authority. In other crime areas or geographic regions the public prosecutors at the relevant chambers (international or local, depending on the topic) are competent to deal with the freezing orders.

If a freezing order is executable in Sweden, a prosecutor must issue a declaration of execution. The order must then be executed rapidly. Prosecutors are responsible for dealing with cases relating to the recognition and execution of freezing orders. When a freezing order has been executed, the prosecutor must rapidly ask the court to examine the declaration of execution. Then, if there are grounds to do so, the court must ratify the prosecutor's declaration of execution and decide the period which the execution of the freezing order will last. The central authority and the ARO are not involved in this procedure.

### **Procedure when additional information is needed or order is refused**

According to the Swedish law transposing the Framework Decision 2003/577/JHA, the prosecutor must give the issuing authority the opportunity to provide additional information, if the certificate is missing, or is so defective that it cannot provide the basis for an examination of the question of execution. It is clear from the Framework Decision that the certificate must contain certain information, be drafted in a certain way, and be in the language(s) which the executing state has declared that it will accept.

From the preliminary work before the adoption of the Swedish law, it is evident that, because of the short deadlines which apply in cases of execution of freezing orders, the certificate may be assessed without a detailed investigation or inquiry by the prosecutor. Any failings in such respects must therefore be dealt with by the authority in the other MS.

The issue of what constitutes an essential difficulty must be assessed on a case-by-case basis, and additional information may be requested informally, for example by phone or email.

There is no formal procedure for checking the extent to which such a request for additional information is justified, and according to the Swedish authorities, there seems to be no need for such a procedure. Swedish prosecutors do not yet have any experience of the process mentioned above.

No cases have been reported where freezing has not been authorised.

### **Legal remedies**

As described above, a court always examines the prosecutor's decision to execute a freezing order (declaration of execution). An appeal against the district court's decision may then be made in accordance with the rules in the Swedish Code of Judicial Procedure which apply to equivalent national measures.

#### **4.1.2.3. Overall evaluation of the added value of the Framework Decision 2003/577/JHA**

Before the Framework Decision was incorporated into Swedish law, it was already possible for Sweden to assist another MS by carrying out searches of premises, by seizure, or by deciding on attachment. These possibilities remain and can still be used to provide another MS with mutual legal assistance. The possibility of effecting a decision relatively quickly is found in several respects even without recourse to the rules on freezing, since a prosecutor may decide on a search of premises to look for objects and take property into custody pending a decision on attachment.

The examination, which takes place under the rules on mutual legal assistance, however, is more thorough than the examination within the framework of a freezing order, as regards both seizure and attachment. In practice this means that in relation to mutual legal assistance, more information is required about the foreign investigation and that the processing is more comprehensive.

To carry out a search of premises and execute seizure, there are no dual criminality requirements in relation to other EU MS. A search of premises may be carried out under the same conditions as would apply in a Swedish case. This means, amongst other things, that there are limits as to whose premises may be searched. Such restrictions, however, are not found in the case of execution of a freezing order.

As regards attachment, dual criminality is required, and there must also be reasonable suspicion that the person, who is reasonably suspected of an offence, might remove property or avoid payment. This requirement does not apply if a freezing order is used.

In summary, the decisive advantage is speed, since the Framework Decision has laid down time limits and the procedure is more effective.

As indicated above, the freezing procedure has not been used very much in Sweden, and it is therefore difficult to evaluate the existing measures and how they could be developed to increase the practical efficiency of the procedure. As mentioned, new legislation came into force in Sweden on 01 July 2011, through which Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders has been incorporated into Swedish law. It can be assumed that this will have the effect of increasing the issuing of freezing orders, as it will then be easier to have also the subsequent confiscation order executed.

## **4.2. Confiscation (including 2005/212/JHA and 2006/783/JHA)**

### *4.2.1. At national level*

#### **4.2.1.1. Legal basis**

General provisions on the *confiscation* of property are found in Chapter 36, Sections 1 to 7 and 11 to 17 of the Swedish Penal Code. Furthermore, there are provisions on confiscation in other legislation which contains rules on criminal procedure, for example on the confiscation of smuggled goods in Sections 16 to 18 of the Act on Penalties for Smuggling (2000:1225), on the confiscation of drugs in Section 6 of the Act on Penal Law on Narcotics (1968:64), and on the confiscation of vehicles etc. in Section 7 of the Act on Penalties for Certain Traffic Offences (1951:649).

Only proceeds of crime can be subject to confiscation. A confiscation can be value-based (*värdeförverkande*) or object-based (*sakförverkande*). Only in cases where the confiscation is object-based, the actual immovable property will be confiscated. Normally the estimated value of the proceeds of crime will be confiscated.

If, for example, the value of an immovable object that has been attached to secure the claim surmounts the amount to be confiscated, the excess will be paid to the defendant. If the compulsory sale brings in less than the amount to be confiscated, the defendant will still be liable to pay the missing amount.

It is possible for a court - in criminal proceedings and upon a claim from the prosecutor - to declare property or the value thereof to be confiscated without it being subject to attachment, but such a ruling will result in a mere demand upon the convicted to pay back the proceeds from crime.

The procedure is, in short, that the prosecutor makes a claim for confiscation in the criminal proceedings. In case of a conviction, the estimated value of the proceeds of crime, or the exact property found to be the proceeds or the instrumentalities of crime, will be confiscated unless this is considered manifestly unreasonable. If an object has been secured to cover the claim for confiscation, it will be sold at a compulsory sale under the Enforcement Code as soon as the sentence has gained legal force.

#### 4.2.1.2. Types of crime

The proceeds of crime or property used as a means to commit a crime under the Penal Code, or in relation to any crime punishable by imprisonment of more than one year, may be confiscated.

#### 4.2.1.3. Competent authority

According to the Swedish authorities, confiscation is a safeguard, or special legal effect of crime. This means that the question of confiscation must be considered within the framework of criminal proceedings. Thus the court is responsible for decisions on confiscation.

In the case of certain objects which by their very nature must be confiscated and cannot constitute legal possessions, such as drugs, the prosecutor may decide on confiscation in conjunction with an order of summary punishment.

#### 4.2.1.4. Enforcement

It is usually the court that decides on confiscation, which is then executed by the Enforcement Authority. As regards the type of confiscation mentioned under 4.2.1.3., second paragraph, above, decided by the prosecutor, the police/customs confiscate the property.

## 4.2.1.5. Legal remedies

Persons affected by the measure are informed in writing. A decision on confiscation is sent to the person affected by the decision.

Decisions made by the court or the prosecutor may be appealed against.

## 4.2.1.6. Role of ARO

The judicial ARO may be involved in handling the case during the investigation of the crime, if its assistance has been requested, but it does not have its own investigative or enforcement role.

4.2.2. *Possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.*

Chapter 36, Section 1b of the Penal Code governs *extended confiscation*, thereby implementing Article 3(2) of the 2005 Framework Decision. If a person is convicted of an offence which is punishable by six years of imprisonment or more, and if the offence was of such nature as to produce proceeds, other assets may also be declared confiscated, if it is *clearly more probable than not* that they are the proceeds of criminal activity.

Extended confiscation is a relatively recent introduction into Swedish law presenting, according to the Swedish authorities, a totally new kind of legal philosophy. The practical implications of the legislation are that, under strict rules, it is now possible to confiscate criminal assets if there is good evidence suggesting that assets are related to unknown criminal activity. If the prosecutor can show that it is *considerably more probable* that the assets derive from criminal activities than not, extended confiscation under normal circumstances is possible.

Even though there are no overall statistics of the extended confiscation cases and their success rate, especially in the urban areas there have been several organised crime-related investigations where the prosecutor has been successful in applying it. Since the legislation is relatively recent, there is still work to do in identifying and finding the right methods to conduct investigations that feature extended confiscation. Financial investigators can help with this providing also support to “ordinary” police who is maybe more concentrated on traditional or organised crime cases.

Instead of the property, its *value* may be declared confiscated. This also applies for certain offences not punishable by six years of imprisonment, including trafficking in human beings, which according to the fourth paragraph of Chapter 4, Section 1a, of the Penal Code may be seen as less grave, and procuring under Chapter 6, Section 12 of the Swedish Penal Code.

Thus confiscation under Chapter 36, Section 1b does not require a link between the confiscated assets and a particular offence, nor does the link between the assets and the criminal activity need to be fully proven.

Furthermore, according to the information provided by the Swedish authorities, the civil part of an injured party claim is possible under Swedish national law, whilst non-conviction based confiscation is not.

#### 4.2.3. *Possibility to 'pierce the corporate veil'*

The question of to whom the property actually belongs is naturally of significance for the investigation. Property or the value of such property may therefore be confiscated, as a consequence of crime, not only from the perpetrator but *also from other natural or legal persons*, for example a person who acquired the property after the crime and had knowledge of the crime, or who had reasonable cause to assume that the property was connected to criminal activity.

Moreover, property can be confiscated from a person in whose place the perpetrator was acting. Thus property may be confiscated for example from an employer if an employee commits a crime. Property may also be confiscated from a person who has obtained a profit by means of the crime, from a person who has acquired the property through division of the joint property of a husband and wife, or by inheritance or as a gift, or from an entrepreneur who has obtained financial advantage from a crime committed in the course of his business (Chapter 36, Section 5, of the Swedish Penal Code).

Under extended confiscation, as well as confiscation from the perpetrator (or other participant), property may also be confiscated from a person who has acquired the property through division of the joint property of a husband and wife, or by inheritance or as a gift, or from a person who acquired the property in some other way and then knew, or had reasonable cause to assume, that the property was connected to criminal activity (Chapter 36, Section 5a, of the Penal Code).

### 4.3. **Cooperation at the European level - implementation of Framework Decision 2006/783/JHA**

The Framework Decision was implemented in Sweden through the Act on recognition and execution of confiscation orders within the European Union (2011:423) and the Ordinance on recognition and execution of confiscation orders within the European Union (2011:578). The legislation came into force on 01 July 2011.

#### 4.3.1.1. Competent authorities

The Swedish Enforcement Authority is the competent authority, whether Sweden is the issuing or executing state.

#### 4.3.1.2. Practical guidance

Information material and new processing instructions have been drawn up within the Enforcement Authority, in conjunction with the entry into force of the new legislation. Confiscation cases will be handled by a small number of lawyers within the Authority. A number of training opportunities will be arranged for its staff.

#### 4.3.1.3. Practical experience

The Enforcement Authority takes a positive view of the new arrangements for the execution of confiscation orders provided by the Framework Decision, and anticipates that it will be possible to have confiscation orders executed more rapidly. The Authority also sees an advantage in that the judgment/decision will not itself need to be translated, and that cooperation will be based on the principle of mutual recognition.

The Enforcement Authority has complained about a number of problems with incoming certificates in relation to the Framework Decision on financial penalties. According to the Enforcement Authority, the most common reasons for unsuccessful attempts to execute confiscation orders are: the lack of assets to execute the order, or the fact that the assets have already been requisitioned for other debts. The Authority has also stated that it is much more difficult to secure assets for execution in cases where the confiscation order has not been preceded by a freezing order.

#### 4.3.1.4. Current legal basis for cooperation in the execution of a confiscation order

Due to the new legislation incorporating the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders into Swedish law, orders from other EU states may henceforth be executed in accordance with that legislation.

Furthermore, under Section 1 of the Act on international cooperation in the enforcement of criminal judgments (1972:260), the Swedish government may - on the basis of an agreement with another state - order that confiscation which has been ordered in another state following a trial in a criminal case, or confiscation which has been imposed or decided upon by some other authority, may be executed in Sweden. Under the same provision, the government may, in accordance with an

agreement with another state, order that the execution of a Swedish confiscation order shall be entrusted to an authority in another state. Various international agreements apply in this area, and Sweden has acceded to the majority of the multilateral conventions.

Sweden has also concluded bilateral agreements which contain provisions on the execution of confiscation orders, for example with Great Britain and Northern Ireland, and with Australia. Moreover, within the Nordic region, it is possible to execute judgments and decisions in criminal cases in countries other than that where the judgment was delivered, through uniform Nordic legislation.

#### 4.4. Conclusions

- The Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence is implemented and applicable under Swedish law since 01 July 2005. Sweden was therefore one of the few Member States being able to comply with the implementation date set out by the Framework Decision.
- Although, generally speaking, the Framework Decision 2003/577/JHA is considered by the Swedish judicial authorities as a valuable instrument, it seems that the new legislation implementing it is actually seldom, if ever, used in practice.
- On the basis of the Swedish coercive measures, it seems that similar provisions concern attachment, seizure, freezing and distraint, but the application order and its conditions are somewhat unclear. Attachment is a special law institute that is connected with and dependent on the fine imposed by the court.
- When acting as an issuing state, seizure may only relate to *movable property*, which is *accessible* to such a measure. Immovable assets cannot be seized but can be the object of a decision on attachment.
- When acting as an executing state, the seizure of movable assets is carried out by the police whilst the attachment of immovable assets is executed by the Enforcement Authority. It is unclear why in one and the same investigation two different authorities are required to handle the seizure or attachment of property.
- As indicated in the answers to the questionnaire and information provided during the visit, practical experience of issuing freezing orders is limited in Sweden, which impedes any general assessment of the instrument. However, arrangements have been made in order to allow public prosecutors to issue a declaration of the execution of the freezing order within the 24-hour limit.



The order must then be executed rapidly. The decision needs to be confirmed by a court within five days.

- It appears, based on the discussions during the visit, that the partial withdrawal of the dual criminality requirement, the use of a standardised form, as well as in particular the short delay of execution of the freezing order were seen as the main advantages of the instrument in Sweden. Certainly the relatively slow process of implementation of the instrument in other Member States partially explains its lack of practical use, but primarily it appears that relevant judicial authorities simply prefer to use long-established mutual legal assistance instruments instead.
- This situation is however not specific to Sweden, as many other EU and international reports have shown similar situations throughout the Member States.
- The expert team was concerned to learn that while executing a freezing order, the interested party may issue an appeal and challenge the merits of the facts in the executing state.
- The Framework Decision 2006/783/JHA on the execution of confiscation orders has been implemented into Swedish law through a new legislation which came into force on 01 July 2011. Sufficient experience of the use of the instrument has thus not been gathered so far.
- The legal basis for extended confiscation has been introduced recently under Swedish law. Extended confiscation (Chapter 36, Section 1b, of the Swedish Penal Code) may be applied once a person has been sentenced for an offence for which there is a mandatory sentence of six years or more, and provided that the crime or criminal activities for which the person has been sentenced, are likely to produce proceeds. Following those conditions, other assets may be confiscated, provided that there are sufficient grounds to believe that those assets are also related to criminal activities. It is to be noted that no real reversal of the burden of the proof has been introduced, but instead the level of proof for the prosecution has been considerably lowered. Since its entry into force, this new legislation has been frequently applied, and, based on the discussions during the evaluation mission, it is regarded as a successful reform by the judicial authorities. However, the lack of relevant statistics makes it impossible for the expert team to evaluate the overall success of this instrument.
- Extended confiscation may also apply to third parties that have acquired proceeds of a crime, provided that they should have reasonably known the illicit origin of the assets. Swedish judicial authorities complained about the lack of harmonisation under EU law in this respect.

- There are no statistics available on mutual legal assistance requests (including requests relating to freezing, seizing and confiscation) that are made or received, as regards money laundering, the predicate offences, including the nature of the request, whether the request was granted or refused, and the time that was required to respond.

**5. PROTECTION OF THE FINANCIAL INTERESTS OF THE EU - AVAILABLE MECHANISMS, PARTICULARLY COOPERATION WITH OLAF**

**5.1. Proactive transmission of information and transmission of information on request to OLAF**

No special instructions exist on how information is to be transmitted; usually it happens by email. The Swedish Economic Crime Authority, the contact authority for matters relating to OLAF, has good knowledge of OLAF, its role and its need for information. The Authority has organised awareness events concerning OLAF, and has also been visited by OLAF representatives, and vice versa. The Authority has also seconded national experts to OLAF in the past, and since December 2011 another national expert has been seconded to OLAF.

In the cases which OLAF has handed over to the Economic Crime Authority, the Authority has informed OLAF of the outcome. There are no internal rules on how this should occur, but, given the number of cases, the head of the unit handling EU fraud has been entirely familiar with their development and contacts with OLAF.

*5.1.1. The SEFI Council*

Furthermore, the Swedish Council for the protection of the European Union's financial interests (the SEFI Council) has its secretariat at the Economic Crime Authority. The SEFI Council is responsible for coordinating measures in Sweden to combat fraud and other improper use of EU-related funds.

The SEFI Council consists of the representatives of:

- Economic Crime Authority
- National Financial Management Authority
- Board of Fisheries
- Board of Agriculture
- Västerbotten County Administrative Board

- Migration Board
- National Police Board
- Council for the European Social Fund in Sweden
- Agency for Economic and Regional Growth
- Customs

The authorities themselves notify OLAF regarding irregularities, thus this is not the task of the SEFI-Council. When a possible fraud is discovered, the authority contacts or files a criminal report to the Economic Crime Authority, and the case is devoted to the relevant prosecutor for further considerations/decision.

Since the Council is placed at the Economic Crime Authority, which is also the contact point for OLAF investigators, it is possible for the secretariat of the Council to collect information and views from OLAF on how the Swedish authorities collaborated with OLAF and possible problems in this regard. In view of solving these possible difficulties, the secretariat arranges seminars and workshops for the relevant authorities in order to identify best practices and to share experiences.

The case-related cooperation with OLAF is however dealt with by the prosecutor selected for the case, who is independent in his/her work throughout the criminal investigation. The secretariat of the Council contributes to a better national cooperation with OLAF by highlighting specific problematic issues to the authorities (when necessary), and also by addressing the relevant ministries concerning for example legislative issues, such as cooperation in relation to administrative investigations in Sweden.

The Council also collects and publishes analysis regarding the protection of the financial interests in Sweden every three years. The report describes the handling of EU finances in Sweden; what the Council has done to improve efficient and correct handling of the funds; what coordinating measures have been taken regarding the relevant authorities; what progress the Council has made; and the intentions and priorities for the following three years. The report also includes statistics regarding notified irregularities during the latest reporting period.

One of the findings of the Council has been identifying differences in the reporting between the relevant authorities. In order to adjust this and to inspire similar reporting, a shared reporting policy has been produced in February 2011. The policy states, among other things, that suspected EU fraud cases should be reported to the Economic Crime Authority. The policy is also intended to function as an aid for government authorities in their work.

## **5.2. Role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities**

The Swedish prosecutor may pursue the injured party's plea for a separate claim within the framework of the criminal proceedings. However, if the plea is complicated in nature, it is usually separated for a continued handling under civil law, so as not to burden the criminal procedure unnecessarily. To date OLAF has not put forward any separate claims through the prosecutor.

## **5.3. Possibility for OLAF agents to take part in a criminal investigation**

OLAF employees have appeared as witnesses in proceedings, acting as experts. The experience has been satisfactory. Furthermore, prosecutors and forensic accountants at the Economic Crime Authority have approached OLAF for additional information and have also visited OLAF to develop a particular case further, and for additional information after the case had been handed to the Authority by OLAF. On the other hand, OLAF employees have not taken part in the Authority's investigative work itself, for example by sitting in on interviews etc. Also, if OLAF were also to be a party to the case as the injured party, this would not be appropriate.

## **5.4. Possibility for OLAF agents to take part in a joint investigation team**

Under the Act on Joint Investigation Teams for Criminal Investigations (2003:1174), a prosecutor leading a preliminary investigation in progress in Sweden may agree to set up a joint investigation team for a particular purpose and for a limited period. The agreement must make clear which officials are members of the joint investigation team. The Economic Crime Authority has not formed any joint investigation teams with OLAF.

Sweden has also not participated in any joint investigation team dealing with fraud against the financial interests of the EU. However, since 2002, the Economic Crime Authority has dealt with cases which refer to Chapter 9, Sections 1 to 3, of the Penal Code and which affect the financial interests of the EU through a national investigation team specially set up for this task consisting of prosecutors, police and economists. Its tasks have included criminal investigations and taking proceedings to court. For practical reasons OLAF has thus far not participated in any investigation team, but in some investigations it has provided support and valuable information in the form of documents and other data which have been important for the investigations.

In line with the discussions during the evaluation mission, the Act on Joint Investigation Teams for Criminal Investigations (2003:1174) does not currently define the role of OLAF agents in a JIT.

However, this could be defined in practice so that OLAF representatives would participate, not as criminal investigators, but as experts/technical assistants.

#### **5.5. Coordinating body for contacts with OLAF**

The Economic Crime Authority is the contact authority in questions relating to OLAF and it is also the authority that takes over cases from OLAF as regards *criminal investigations*, for example when a preliminary investigation is launched. The responsible authority for providing practical assistance to OLAF is the police, insofar as it is permitted to do so under national law.

The customs has well-established and regular contacts with OLAF, based primarily on Council Regulation (EC) No 515/97, that include the exchange of information and mutual assistance in cases concerning administrative investigations. Moreover, the customs participates in the special working group which OLAF has established to combat cigarette smuggling.

#### **5.6. Expectations regarding OLAF support**

In cases where OLAF has reported cases of suspected crime involving EU funds, the Economic Crime Authority expects to receive all the relevant documents concerning the investigation.

OLAF is not only expected to support in solving practical cases and problems regarding EU fraud, but also to provide early warnings and trend alerts and analysis proactively. OLAF could be even more proactive and inform the MS in advance about problematic issues. It could also have an even stronger role in providing relevant training.

#### **5.7. Conclusions**

- Sweden has a well-organised system of authorities which ensures a high level of protection of the financial interest of the EU. However, a more formalised set up of coordination among these authorities might be beneficial.
- In general terms the cooperation between the Swedish authorities and OLAF is functioning well and Swedish authorities are aware of the role of OLAF and how it can support in the financial crime/financial investigations context.
- In the absence of a formalised protocol of best practice regarding the cooperation between the national judicial authorities and OLAF, direct contacts and information exchange between the parties has been facilitated by Swedish legal advisors seconded to OLAF.

- As regards the protection of the financial interests of the Communities, during the visit of the expert team there were no case statistics available and the team received only basic information about the topic.
- For practical reasons OLAF has not participated in any investigation team to date, even though information provided by the Swedish authorities suggests that this is legally possible.
- The appropriate communication of judicial decisions could be further improved if clearer rules were set out providing for a direct flow of information from the Economic Crime Authority to OLAF.

## **6. RECOMMENDATIONS**

The overall system as regards conducting financial investigations and the fight against financial crime in Sweden is robust and comprehensive. The Swedish approach acknowledges the role of all law enforcement authorities in this work and even integrates, to a certain extent, authorities that do not have a specific law enforcement status. For example, they way the tax crime units at the Swedish Tax Agency proactively work in fighting economic and financial crime, committing resources to intelligence and analysis work directed to identifying and targeting biggest problems that are then tackled either within the authority or through regional cooperation in the RICs, is highly appreciated by the expert team and identified as a clear best practice.

The multi-agency platforms provide a practical context to the government's strategies on a multi-disciplinary approach to fighting organised crime. Especially the work done at the RICs makes cooperation with all relevant authorities also outside the law enforcement environment part of an everyday practical approach to this work. The drawback of a multi-disciplinary approach is always the increased need to coordinate, prioritise and plan the joint activities. The structures created for this purpose should also not become too cumbersome or complex stripping off the flexibility and clarity of the cooperation which is a pre-requisite for its successfulness.

Joint fight against crime means also joint successes - and measuring them. This, however, is not a very clear objective in the Swedish system, especially as regards common statistics indicating the role of each authority in issues such as asset recovery and the overall success of the multi-agency cooperation. In order to assess the success of this integrated approach, a move towards providing common statistical data in the cooperation areas would be extremely important, not only for law enforcement use, but also for the political legitimisation of the cooperation between relevant authorities.

The legislative framework provides all the basic tools that are required for the work against financial crime and to conduct financial investigations. In this respect, the provisions on extended confiscation seem to be relatively progressive and to work quite well. However, it is still early days to evaluate how well this instrument supports for example the important task of asset recovery also prioritised by the government.

There are certain shortcomings in the use of some relatively recent EU tools in the area of financial crime and financial investigations. In many cases more traditional and well-known instruments are preferred, such as the Mutual Legal Assistance Convention as well as bilateral and multilateral tools. Addressing these issues would further strengthen the work in this field.

Even though the expert team found the Swedish structures to be well-organised and set up for the purposes of financial investigations and the fight against financial crime, there are certain topics which the team would like to recommend for the further development of the system.

The Swedish system is characterised by a lot of specialisation in the relevant agencies with experts commanding a variety of skills and knowledge in their specific fields of fighting economic and financial crimes. However, in practical terms many cases in the broader sense of economic and financial crimes might never come to the attention of the specialised agencies, but will instead be dealt with by “regular” law enforcement and prosecution authorities. It is unclear to what extent the specific skills and knowledge in the fight against financial crimes and possibilities/methods of asset recovery can be found amongst regular police forces or prosecutors and to which extent they have the resources to use those instruments, especially outside the urban areas.

#### **6.1. Recommendations to Sweden**

1. Consider expanding the geographical competence of the Economic Crime Authority to encompass the whole country.
2. Establish one integrated ARO in line with the Council Decision 2007/845/JHA and link this competent authority to the SIENA system in order to facilitate data exchange and analysis.
3. Consider criminalising money laundering offences in line with the FATF recommendations and other relevant international conventions in this area as separate and specific criminal offences. In line with this, also consider encouraging investigations into autonomous money laundering and self-laundering.

4. Increase awareness and knowledge about the relevant EU legal framework, relevant EU agencies in the JHA field, such as Europol, Eurojust and OLAF, and available legal/cooperation instruments among judges, prosecutors and law-enforcement authorities. These topics should be duly reflected in the curricula of the relevant training institutions.
5. Maintain and further develop appropriate continuous training related to financial crimes and financial investigations directed specifically to judges. The establishment of chambers specialised in economic and financial crimes within the courts could also be considered.
6. Ensure a necessary level of awareness and training as regards in specific financial crime and financial investigations with a particular focus on asset recovery within all structures of relevant law enforcement authorities, and especially outside the urban cities.
7. Consider setting up a centralised register of bank accounts or any other mechanism in view to helping the swift identification of an unknown bank account belonging to a specified person, as well as introducing a specific legal basis allowing the monitoring of bank accounts in real time also in the context of international cooperation.
8. Consider defining the Swedish Tax Agency or the tax crime units thereof as a law enforcement authority. Research any needs to change the formal position and role of the Enforcement Authority.
9. Look into the possibility to directly connect the Swedish Customs Service to the Europol SIENA System.
10. Consider improving the collection and assessment of coherent statistical data in order to provide number on, for example, overall criminal offences, and the ratio of economic crimes and asset recovery on yearly basis. This should also be accomplished in a joint way in relation to the multi-agency cooperation in the fight against organised serious crime (*GOB*).
11. Give attention to how Eurojust can provide the best support possible and in which cases, also taking into account the comparative advantages of the European Judicial Network.
12. Consider establishing a national policy or action plan in the field of asset recovery in order to improve the effectiveness of asset recovery and the proportion of assets recovered in criminal cases.



13. Consider extending the role and competences of relevant law enforcement agencies as regards coercive measures (for example issuing orders) in the freezing, seizing and confiscation of assets. For example, the FIU should be provided with provisional freezing powers which would help avoid the dissipation of criminal assets.
14. Consider harmonising rules on seizure/attachment of property. There seem to be some differences in approaches to seizing/attaching movable property and real estate, and these rules should be harmonised as far as possible.
15. Inform the Council Secretariat within 18 months of adoption of this report of the action Sweden has taken on these recommendations. The information will be submitted to, and if necessary discussed by, the relevant working group.

## **6.2. Recommendations to the European Union, its Member States, institutions and agencies**

The European Union, its Member States, institutions and agencies, where relevant, are recommended to study and consider certain best practices identified in the Swedish system.

1. Member States are invited to study the experience of the National Intelligence Centre and the Regional Intelligence Centres and the added value they can provide at the operational level.
2. Member States are invited to study the possibilities to take advantage of the extensive knowledge and experience of financial and tax experts in investigating tax crimes such as found in the tax crime units of the Tax Agency.
3. Member States are invited to look into the possible advantages of establishing a unified way and a dedicated authority to enforce claims in line with the role of the Swedish Enforcement Authority.
4. Member States are invited to study the approach of the Swedish authorities to support law enforcement staff by providing concise basic information and guidelines on financial investigations (e.g. handbooks, check-lists, fact-sheets).
5. Member States are invited to study the practical application of extended confiscation in Sweden.

6. The EU institutions are invited to ensure a proactive approach to help the Member States to effectively implement, enforce and evaluate the existing instruments on mutual recognition. This could be done for example by providing a forum for discussions and exchange of best practices, supporting and enhancing the EU dimension in training of judicial and police authorities, and so on.
7. The European Commission is invited to conduct an evaluation of the current instruments in this field, especially as regards the Framework Decision 2003/577/JHA in light of the current state of the negotiations on the draft Directive on the European investigation order as well as the announcement by the Commission of an upcoming comprehensive package on confiscation of assets. As these instruments, if adopted, intend to repeal and replace the 2003/577/JHA Framework Decision on freezing orders for what concerns respectively evidence and property, it is of utmost importance that a proper evaluation of the instrument and its use be made and be taken into account during negotiations. Specific attention should be paid to this in the impact assessment to be presented by the Commission.
8. European Commission, via the upcoming confiscation package, is encouraged to strive towards a better harmonisation throughout the EU Member States as regards extended powers of confiscation, third-party confiscation, and related appropriate safeguards with a view to facilitating international cooperation between the Member States.
9. OLAF is encouraged to play a more proactive role in the field of fraud prevention and provide analytical assistance, early warnings and training in its area of competence.

**ANNEX A: PROGRAMME FOR THE ON-SITE VISIT**

<b>Time</b>	<b>Activity</b>	<b>Place</b>
<b>Monday 10 October</b>		
Morning	Arrival in Stockholm Check in at your Hotel	Scandic Continental Stockholm Klara Vattugränd 4 (opposite central station)
14.30	Escort to Ministry of Justice	The lobby of your hotel
15.00-17.00	Welcome meeting	Ministry of Justice Rosenbad 4
<b>Tuesday 11 October</b>		
08.40	Departure from your hotel	
09.00-12.00	Visit at the Swedish Economic Crime Authority	Hantverkargatan 15
12.00-13.30	Lunch hosted by Swedish Economic Crime Authority	
14.00-16.30	Visit at the Swedish Prosecution Authority	Östermalmsgatan 87 C, 3 tr
18.30	Departure from your hotel	
19.00	Dinner hosted by the Ministry of Justice	
<b>Wednesday 13 October</b>		
8.40	Departure from your hotel	
9.00-12.00	Visit at the Swedish National Police Board and National Bureau of Investigation	Polhemsgatan 30
12.00-13.30	Lunch hosted by the National Police Board	
14.00-16.30	Visit at the Swedish Tax Agency	Magnus Ladulåsgatan 67
<b>Thursday 13 October</b>		
10.00-13.00	Round-up meeting with participation from each of the visited authorities	Ministry of Justice Rosenbad 4

**ANNEX B: LIST OF PERSONS INTERVIEWED/MET**

Ministry of Justice

Lars Werkström, Ambassador, Director General for International Affairs

Anna-Carin Svensson, Director, Division for Police Issues

Julia Mikaelsson, Deputy director, Division for Police Issues

Markus Grundtman, Special advisor, Division for Police Issues

Jenny Karlsson, Special advisor, Division for Prosecution

Ministry of Finance

Roger Ghiselli, Legal advisor, Tax and Customs department

Martin Stjernström, Desk officer, EU Budget Division

Economic Crime Authority

Fredrik Holmberg, Director of Planning and Coordination

Per Lindqvist, Chief Public Prosecutor

Christer Åström, Detective Superintendent

Torbjörn Rosén, Detective Superintendent (Intelligence)

Staffan Edlund, Head of the Proceeds of Crime Unit (also Swedish ARO)

Niclas Forsberg, Forensic Accountant

Linalotta Petrelius Ndisi, Senior Legal Advisor

Jan Tibbling, Senior Public Prosecutor

Prosecution Authority

Leif Görts, Senior Public Prosecutor and deputy National member of Eurojust, International Public Prosecutor Unit in Stockholm,

Ewa Nyhult, Deputy director of Public Prosecution, Prosecution Development Centre, Stockholm,

Mats Jansson, Public Prosecutor, Office of the Prosecutor-General,

Björn Blomqvist, Director of Public Prosecution, Office of the Prosecutor-General

Ola Löfgren, Head of International Unit, Office of the Prosecutor-General

National Bureau of Investigation

Rikard Henriksson, Detective Superintendent, Deputy head of Financial police  
Carina Stenberg, Detective Inspector, responsible for strategic matters at Financial police  
Stefan Andersson, Detective Inspector, Group leader Money Laundering, Financial police  
Stefan Holm, Detective Inspector, Asset Recovery Office, Financial Police  
Sara Jakobsson, Financial investigator, Asset Recovery Office, Financial Police  
Karolina Kral, EU Coordinator

Tax Authority

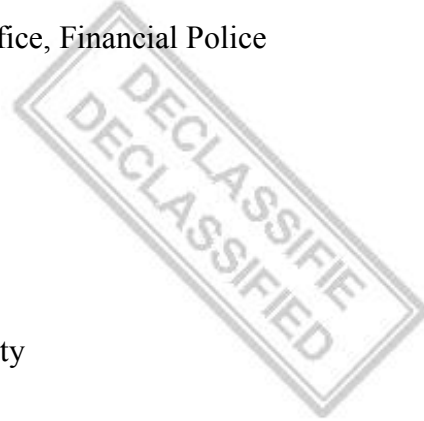
Lars Åke Larsson, Tax director, Swedish Tax Authority  
Efwa Gollbo, Head of Section, Swedish Tax Authority  
Heidar Hilmarsson, Head of Section, Swedish Tax Authority

Customs Authority

Tuomas Liikavainio, Customs inspector

Enforcement Authority

Sven Kihlgren, Enforcement Director



## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
ARO	-/-	Asset Recovery Office
AWF MTIC	-/-	Europol Analysis Work File - Missing Trader intra Community Fraud
AWF SUSTRANS	-/-	Europol Analysis Work File - Suspicious Financial Transactions
EJN	-/-	European Judicial Network
EU	-/-	European Union
FIU	-/-	Financial Intelligence Unit
GOB	<i>Grov Organiserad Brottslighet</i>	Cooperation on Organised and Serious Crime
MDG	-/-	Multidisciplinary Group on Organised Crime
MoU	-/-	Memoranda of Understanding
MS	-/-	Member-State
NIC	-/-	National Intelligence Centre
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
RIC	-/-	Regional Intelligence Centres
ROCTA	-/-	Russian Organised Crime Threat Assessment
SAR	-/-	Suspicious Activity Report
SIENA	-/-	Europol Secure Information Exchange Network Application
STR	-/-	Suspicious Transaction Report