



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 September 2011

14876/11

**CRIMORG 169
COPEN 259
EJN 128
EUROJUST 153**

NOTE

from:	Swedish delegation
to:	Delegations
No. prev. doc.:	9927/2/08 REV 2 CRIMORG 79 COPEN 102 EJN 39 EUROJUST 53
Subject:	Evaluation report on the fourth round of mutual evaluations "the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States"
	- Follow-up to Report on Sweden

Recommendation 1 - *Institute the necessary mechanisms to provide complete and reliable statistics on European Arrest Warrants issued, executed or rejected by the Swedish authorities*

A new statistics system has been inserted by the Swedish Prosecution Authority for all cases with regard to judicial cooperation, including European Arrest Warrant (EAW) cases. Sweden has annually provided the Council with statistics with regard to EAW-cases.

Recommendation 2 - *Adopt measures to ensure that appropriate training programmes are put in place, so that extensive and regular training on EAW is provided, mainly to judges and defence lawyers*

The Swedish National Courts Administration has published a new EAW-manual in 2010. This manual will assist courts and judges when dealing with EAW-cases.

As described in the evaluation report (7.1.10), meetings are also organized by the Ministry of Justice on a regular basis, in the framework of a coordination group on international judicial cooperation in criminal matters. This group involves all stakeholders who have a role to play in the EAW. In these meetings practical problems are discussed and best practices are shared between the authorities.

Recommendation 3 - Consider taking appropriate measures to ensure that EAW:s in conviction cases are issued either by a judicial authority or under the supervision of a judicial authority, in line with the provisions of the Framework Decision

Sweden would like to stress that when a judgment is final all subsequent decisions concerning the enforcement of the sentence in our legal system are taken by other authorities than the court. When implementing the Framework Decision on the EAW, we were of the opinion that the new legislation should be in line with the national system, *i.e.* it should be up to the enforcement authorities to decide if an EAW should be issued or not. In Sweden we have three different enforcement authorities and in order to coordinate the issuing of the EAW:s in these cases, the International Police Cooperation Division (IPO) was designated as the issuing authority.

When examining the role of the IPO as issuing authority, we have found no complaints, either from Swedish or other authorities. It should also be emphasized that IPO is staffed with qualified lawyers. Furthermore, the National Police Board has produced written guidelines to assist IPO when issuing an EAW.

To conclude, the existing system is the most effective and in line with our national procedure and no complaints has been put forward. Thus, Sweden has not found any convincing reason to change the current system.

Recommendation 4 - Produce written guidelines to assist those bodies and institutions entitled to request the issue of an EAW in conviction cases

The National Prison and Probation Service as well as the National Board of Health and Welfare and the National Board of Institutional Care have produced written guidelines to assist their authorities. Also the National Police Board has produced written guidelines in this matter (see rec. 2).

See also above about the meetings in the coordination group organized by the Ministry of Justice (rec. 2).

Recommendation 5 - Consider amending the legislation so that there is no need to summon the person concerned to appear in court when the detention order is requested with a view to further issuing an EAW

Sweden is not convinced that this recommendation would provide a solution to the problem described in 7.2.1.3. Before the court decides to detain a suspect there must, pursuant to national law, be a court hearing. The suspect will have the right to a defence lawyer, which has to be summoned to the court hearing and he or she cannot be denied to contact his or her client, which means that the risk of the court hearing serving as a warning remains.

Recommendation 6 - Amend the legislation so that the provisions of the Framework Decision on temporary surrender are made effectively applicable, by enabling the competent authorities to provide guarantees that the requested person will be sent back to the executing State

According to Chapter 8, Section 1 of the Swedish Act (2003:1156) on surrender from Sweden according to the European arrest warrant (the EAW Act), the police authority shall ensure that a person who has been temporarily surrendered to Sweden is returned to the executing Member State. A person to be returned who is at large may, if it is deemed necessary for the return, be apprehended and taken into custody by the police authority for a maximum of 48 hours. As stated in the report, this time-frame has, for some EAW-cases, proved to be too short.

Amendments to the legislation with regard to deprivation of liberty is always a complex task, which needs thorough consideration. However,

Sweden is aware of the problem described and is considering different solutions that will expand the time-frame, in which a person could be apprehended and put into custody before he or she is transferred back to the executing State.

Recommendation 7 - Amend the implementing legislation in order to ensure that renunciation of the entitlement to the speciality rule will be valid only if it is given before a judicial authority and after consultation with a legal counsel

The Government has, in a bill submitted to the Parliament in June 2011, proposed the ratification of the Convention on the surrender between the Nordic countries (the Nordic Arrest Warrant). The bill also includes some amendments to the EAW Act. When the bill has been passed, the Swedish Government plans to amend the ordinances supplementing the EAW Act. Recommendation 7 will be dealt with in this context. The amendments will be finalised in the beginning of 2012 and the Council will be informed in due time.

Recommendation 8 - Take the necessary steps to ensure that existing SIS alerts based on International arrest warrants are replaced with SIS alerts based on EAW:s

When the report on Sweden was issued, Sweden had about 50 SIS alerts based upon International arrest warrants that could be replaced by SIS alerts based on EAW:s. Whenever there is a hit on such an International arrest warrant, an EAW is immediately issued and filed. Today the number of International arrest warrants in question is less than 20 and decreasing.

Recommendation 9 - Reconsider the current practice of adding restrictive validity flags to SIS-alerts without prior consultation of a judicial authority

The Swedish legislation concerning validity flags will be amended in connection with the Swedish implementation of SIS II. The amendments have been passed by the Parliament and the entry into force is now pending the entry into force of the Council decision on SIS II. Validity flags will then be decided by a prosecutor.

Recommendation 10 - Update the information on the national authorities competent to receive an EAW provided in the EAW Atlas and the Fiches Françaises, as well as in the notifications to the General Secretariat of the Council

The information in question has been updated (see doc. 10401/09 COPEN 102 EJM 32 EUROJUST 34).

Recommendation 11 - Amend the implementing legislation in order to ensure that consent to surrender and renunciation of the entitlement to the speciality rule will be valid only if it is given by the requested person before a judicial authority and after consultation with a legal counsel, in line with Article 13 of the Framework Decision

Please see the answer to Recommendation 7.

Recommendation 12 - Clarify the deadline for the prosecutor to refer the case to the court for a decision on surrender, in order to enable the latter to meet the required time-limits in accordance with Article 17 of the Framework Decision

The prosecutor should, according to Chapter 4, Section 3 of the EAW Act handle the case with dispatch and take the time limit for the court into consideration.

During the work on the ratification of the Nordic Arrest Warrant the matter of statutory time-limits for prosecutors in EAW-cases has been reconsidered and it has been found that the Swedish prosecutors, with the current legislation, do refer EAW-cases to the courts in time for the courts to meet the required time-limits. In cases where the time-limits have not been met, it has generally been due to the statutory time-limits for appeal (see further rec. 13).

Recommendation 13 - Consider amending the implementing law so that the statutory time limits for appeal do not lead to a breach of the time-limits stipulated in Article 17 of the Framework Decision

In the bill proposing the ratification of the Nordic Arrest Warrant, submitted to the parliament in June 2011, some amendments to the EAW Act has been proposed in which leave to appeal will be required for the Court of appeal to review a decision to grant surrender. This is expected to give Swedish courts better opportunities to meet the time-limits stipulated in the Framework Decision.

Recommendation 14 - Take the measures considered necessary (e.g. through an addition to the Prosecutors' Manual) to ensure that the provisions of the implementing law on competing EAW:s are fully complied with

The Swedish legislation is clear in this respect (Chapter 5, Section 4 of the EAW Act). However, the Prosecutor General is working on an update of the Prosecutors' Manual and the manual will thereafter include information also concerning the legislation on multiple EAW:s.