The approach of Swedish practitioners to the principle of mutual recognition in criminal matters

Laura SURANO

1. Introduction

Although a general definition of mutual recognition in criminal matters is regarded as essentially a theoretical exercise, the main characteristics of the principle may be summarised by two essential concepts: equivalence and trust. In other words, the decision adopted by the issuing authority of a Member State should not be questioned and should be executed in the best and fastest way by the executing authority of another Member State.

According to the *explanatory memorandum* which accompanies the Swedish European Arrest Warrant bill (see *infra*), mutual recognition mainly means "acceptance" of a decision taken in another Member State. Also the Swedish Supreme Court points out that mutual recognition is based on a high level of trust and that room for refusal is so limited that there is an obligation to surrender apart from in cases where fundamental rights have been seriously and continuously violated [1].

This chapter seeks to give a brief overview as to how the principle of mutual recognition in criminal matters is perceived in practice by Swedish legal practitioners involved in the application of EU instruments. It is mainly based on interviews carried out with policymakers, judicial authorities and defence lawyers as part of the *study on the future of mutual recognition in criminal matters in the European Union* [2].

---

[1] Judgment no. 430-07 of 21 March 2007, *Miroslaw Jan Biszczak* case.

[2] The author would like to warmly thank for their time, openness and essential help all the experts interviewed, in particular: Lars Werkström, Ulf Wallentheim, Per Hedvall, Marie Skåninger, Cecilia Riddselius, Ola Löfgren, Annette von Sydow, Katarina Johansson Welin, Joakim Zetterstedt, Ida Kärnström, Johan Sangborn, Thomas Olsson. Special thanks go to Gisèle Vernimmen-Van Tiggelen for her indispensable support and contribution to this paper. The author apologises for the inherent limits of the exercise due to a lack of knowledge of the

After having outlined the state of play of the principle of mutual recognition in Sweden (2), the chapter deals with the transposition procedure of mutual recognition instruments, dwelling on specific issues related to the European Arrest Warrant (3). Some of the main issues encountered in the practical application of the instruments are then analysed (4).

2. State of play regarding mutual recognition in criminal matters in Sweden

A. Legislation implementing EU instruments

Sweden has so far transposed into domestic legislation two European Union instruments applying the principle of mutual recognition in criminal matters:

– the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (hereby EAW FD)[3], which was implemented by means of the Act on surrender from Sweden according to the European Arrest Warrant[4] and the Ordinance on surrender to Sweden according to the European Arrest Warrant[5] (both came into force on the 1st January 2004)[6];
– and the Framework Decision on the execution in the European Union of orders freezing property or evidence[7], which was implemented by means of the Act on recognition and execution of European Union freezing decisions[8] (which came into force on the 1st July 2005).

Concerning the implementation of the Framework Decision on the application of the principle of mutual recognition to financial penalties[9], consultation has taken place on the *second bill*[10] and the implementing law is due to be adopted by mid 2009.

Swedish language and inexperience with regard to this particular country, and she assumes sole responsibility for any gaps or inaccuracies in the text.

[3] Council Framework Decision 2002/584/JHA of 13 June 2002 (*OJ*, no. L 190, 18 July 2002, p. 1). The deadline for transposition expired on 31 December 2003.

[4] *Lag om överlämnande från Sverige enligt en europeisk arresteringsorder* (2003:1156) of 30 December 2003.

[5] *Förordning om överlämnande till Sverige enligt en europeisk arresteringsorder* (2003:1178) of 30 December 2003.

[6] The transitional provision concerning the non-applicability of the Swedish EAW Act in relation to a Member State which has not yet implemented the EAW FD (Chapter 8, point 1. of Act 2003:1156) was applied provisionally vis-à-vis Germany following the *Bundesverfassungsgericht* (Federal Constitutional Court of Germany) decision to suspend German law implementing the EAW FD. Nevertheless, that was not intended as an application of the reciprocity principle, but rather the law was constructed in such a way that an extradition request could not be handled as an EAW under those conditions. The result was the same even though the procedure longer.

[7] Council Framework Decision 2003/577/JHA of 22 July 2003 (*OJ*, no. L 196, 2 August 2003, p. 45). The deadline for transposition expired on 2 August 2005.

[8] *Lag om erkännande och verkställighet inom Europeiska unionen av frysningsbeslut* (2005:500) of 17 June 2005.

[9] Council Framework Decision 2005/214/JHA of 24 February 2005 (*OJ*, no. L 76, 22 March 2005, p. 16). The deadline for transposition expired on 22 March 2007.

[10] See *infra* 3.A.1.

Finally, as to the Framework Decision on the application of the principle of mutual recognition to confiscation orders [11], a draft of the *second bill* has recently been launched for consultation.

While the Framework Decision on freezing orders has been implemented, it seems that this instrument does not apply in practice: up until now, the Ministry of Justice has not received any feedback on its application and it is perceived by practitioners as a rather complicated instrument. Therefore, the only mutual recognition instrument currently in application in Sweden is the EAW [12].

B. Mutual recognition and mutual trust: the Nordic cooperation model

Before proceeding with the analysis, it might be useful to briefly refer to the Nordic cooperation mechanisms Sweden is part of. The "Nordic agreements", discussed in an *ad hoc* body called the Nordic Council, are the fruit of many decades of legal and judicial cooperation among the Nordic Countries (Sweden, Denmark, Finland, Norway and Iceland). Particularly active as from the 1960s – and within the framework of a no-borders area with free movement of people since the 1970s – this close and successful cooperation is based on a common approach and shared mentality which fosters a high level of mutual trust among those States on a daily basis. Similar languages, legislation and legal traditions, regular and direct contacts between relevant authorities are the main ingredients of this Nordic cooperation. In particular, communication is an essential element. There is seldom a need for translation or interpretation (as Scandinavian languages, in written and oral form, can be broadly understood by fellow Scandinavians) and a high level of informal contact is ensured, while there is not much red tape.

With regard to the functioning of the Nordic Council, the different ministers usually meet once a year on the basis of a rotating presidency. Several working parties and some *ad hoc* committees (e.g. for the Nordic Arrest Warrant) [13] have been set up over the years, while decisions are prepared by the Steering Committee. Instead of drawing up common formal binding agreements, the Nordic countries are used to adopting similar legislation – following an exchange of drafts – on the basis of informal agreements. As an example, the agreement on enforcement of most final decisions which, as from 1963, does not provide any ground for refusal: despite the lack of obligation to enforce decisions, none of them has ever been refused. Moreover, the possible extension of the agreement to other sentences (e.g. community services) is currently under discussion, as well as new arrangements on pre-trial detention.

---

[11] Council Framework Decision 2006/783/JHA of 6 October 2006 (*OJ*, no. L 328, 24 November 2006, p. 59). The deadline for transposition expired on 24 November 2008.

[12] On 15 December 2005, the government submitted a Communication (skr 2005/06:62) to the *Riksdag* (Swedish Parliament) on how the Swedish government agencies concerned have applied and been affected by the new legislation on the EAW. In addition, the EU has decided to evaluate the practical application of the EAW by each Member State (so-called *peer evaluation*). This evaluation took place for Sweden in December 2007 and the report was issued on 28 May 2008 (doc. 9927/08 CRIMORG 79).

[13] Sweden has not yet implemented the Nordic Arrest Warrant.

Following the Nordic cooperation example, the same kind of reciprocal confidence and mutual understanding should be the basis on which EU cooperation in criminal matters can be gradually improved. For this purpose, Sweden would in principle agree to going further at EU level and policymakers are generally in favour of pursuing the path of "enhanced cooperation" among some Member States [14].

3. Transposition of mutual recognition instruments

A. Transposition procedure and competent authorities

1. Role of the Parliament and involvement of practitioners

The procedure by which EU Third Pillar instruments are transposed into national legislation is quite long and elaborate in Sweden. There are two main reasons for this: on the one hand, the broad and ongoing participation of the national Parliament right from the negotiation phase of the instrument at EU level; on the other, the involvement of practitioners at a certain stage.

The Swedish Parliament (the *Riksdag*) is closely associated with the transposition procedure.

Before Sweden lifts its reservation on an EU text at the Council, a *first bill* is sent to the Parliament. The bill is drafted by the government (i.e. the Ministry of Justice) and contains statements about the way they intend to implement the future EU legislation in Sweden. More specifically, it describes the context and impact of the EU instrument on Swedish legislation, the budgetary implications and a constitutionality assessment. The Parliament is asked to answer only one question, that is whether or not it approves the government's adoption of the EU instrument and therefore lifts the parliamentary reservation. It takes Parliament from ten to twelve weeks to reply. The *first bill* is also sent to practitioners for comments and opinions.

In a further stage, following the adoption of the instrument at EU level, the government submits a *second bill* to Parliament. This more extensive and comprehensive document contains the implementing law along with explanations and comments, and it is sent to the relevant stakeholders. All remarks are either taken on board or the reasons why they are not are explained in the *final bill* submitted thereafter to the Parliament. Furthermore, those *explanatory memoranda* can be then used by courts in individual decisions for interpretation purposes.

If the Lisbon Treaty enters into force, this procedure will be replaced by the faster one already in force at present under EU First Pillar matters. Parliament would then only be informed about the government's starting position on each new EU proposal and afterwards regularly updated about the ongoing decision-making process in Brussels.

As mentioned, all relevant stakeholders (i.e. courts, Prosecutor-General Office, Bar Association, etc.) are involved in the transposition procedure, being consulted on both bills.

[14] Some of those interviewed even argued that enhanced cooperation is rather a necessity, even though some obstacles could occur in practice.

As for judges, the International Division of Stockholm District Court is in charge of the examination of mutual recognition instruments and drafts written comments, which are taken into account by the Ministry of Justice later on.

When it is consulted, the Bar Association forwards the documents to one of its specialised members. Afterwards, a committee of three lawyers, chaired by a member of the board, is set up in order to deal with the specific matter and give an opinion [15].

Nevertheless, a defence lawyer interviewed complains about the legislative procedure in Sweden not being very transparent. In his opinion, the projects presented by the ministry are rarely accompanied by an exhaustive explanation about the context and aim of the proposal. As a result, this lack of information might have a negative impact on individual rights.

2. Central Authority and judiciary structure

Concerning the application of mutual recognition instruments, since decisions and communication take place directly between judicial authorities, the role of the Central Authority has declined [16].

In Sweden, the Central Authority is part of the Division for Criminal Cases and International Judicial Cooperation (BIRS) at the Ministry of Justice, which deals with matters related to international judicial cooperation.

The Central Authority assists Swedish and foreign authorities in such matters as international legal assistance in criminal matters, extradition for criminal offences, transfer of enforcement of sentences and transfer of criminal proceedings.

The Division for Criminal Cases and International Judicial Cooperation is also in charge of the legislation on international judicial cooperation in criminal matters and negotiations within the EU (and the Nordic Region, the Council of Europe and the UN) related to this field [17].

With respect to the Swedish judiciary structure, there are three specialised units for international matters in prosecution offices (in Stockholm, Göteborg and Malmö). Two thirds of the cases they deal with are international affairs. On the contrary, the Prosecutor-General Office is not involved daily on individual cases but is only informed about the most difficult ones. Instead, it provides guidance and administers the prosecution service all over the country. The International Unit in the Prosecutor-General Office is made up of five prosecutors and deals with extradition and EAW cases and, occasionally, with mutual legal assistance cases.

Finally, the Stockholm District Court is the only one to have a special division, made up of eight judges, which deals with international cases. Nevertheless, these cases represent no more than 20% of their total case law. For instance, in the past year they have only dealt with about ten cases of EAW.

---

[15] The Bar Association is consulted on about 120 draft legislations a year.

[16] *International judicial cooperation – the role of the Central Authority*, fact sheet of the Ministry of Justice, November 2007.

[17] The Division is made up of about 18 people, half of which deal with legislation issues and the other half of which act as a Central Authority.

B. Specific issues related to the EAW

1. Grounds for refusal

According to the Swedish EAW Act implementing the EAW FD, all grounds for refusal are mandatory. The national legislator opted for this solution because of concern about compliance with the principle of predictability. Moreover, it can be argued – and that was also done in the preparatory works leading to the EAW legislation – that the matter is quite new to Swedish practitioners and decisions are supposed to be taken within a limited period of time. It was then considered to be reasonable to simplify the courts' decision-making process by making all grounds for refusal in the EAW Act mandatory.

However, in practice it is up to the courts – on the basis of information provided by the prosecutor – to assess whether or not a given condition exists. A prosecutor has only a wide margin as to open or close a national case with regard to Art. 4(2) of the EAW FD [18]. For instance, in case of ongoing proceeding in Sweden, there is not automatic refusal, but rather a decision taken by the local prosecutor on whether or not to refuse executing the EAW and proceeding instead with the case. Furthermore, although in principle proceedings could be started after reception of an EAW, the prosecutor would not normally do it. Also, the enforcement of the sentence instead of surrender of the person requested is in practice usually subject to a request by the person concerned.

The impression is that, in general, Swedish practitioners are, on the one hand, troubled by the absence of "soft" grounds for refusal in EAW cases (*ordre public*, humanitarian reasons, etc.); but, on the other hand, they feel reassured by the fact that the Swedish EAW Act contains a full and comprehensive regulation of the grounds for refusal.

When asked about the reason why there are more grounds for refusal in mutual recognition instruments than in traditional mutual legal assistance conventions, a judge interviewed argued that the grounds for refusal expressed in mutual recognition instruments, directly or indirectly, are exhaustive. This enables the parties involved to foresee what elements will be relevant in the procedure and to take the steps necessary to act or argue in the case. The traditional mutual legal assistance instruments, on the contrary, leave a greater margin of discretion for the requested State. As a result, the process under that regime is less foreseeable.

As for the Framework Decision on the European Evidence Warrant [19], Sweden shall not make use of all the grounds for refusal in the future implementing law, or at least that was the intention indicated by the Ministry of Justice in the *first bill* submitted to the Parliament.

---

[18] "The executing judicial authority may refuse to execute the European Arrest Warrant: (…) where the person who is the subject of the European Arrest Warrant is being prosecuted in the executing Member State for the same act as that on which the European Arrest Warrant is based".

[19] Council Framework Decision 2008/978/JHA of 18 December 2008 on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (*OJ*, no. L 350, 30 December 2008, p. 72).

2. Status of nationals

According to the Swedish EAW Act, only Swedish citizens may benefit, on request, from the enforcement of the sanction in Sweden instead of the surrender (Art. 4(6) of the EAW FD), and the implementation of the return clause (Art. 5(3) of the EAW FD). Section 6, Chapter 2 of the Act 2003:1156 states that: "When the person whose surrender is requested for execution of a custodial sentence or detention order is a Swedish national, surrender may not be granted if the person concerned demands that the sanction be enforced in Sweden". And Section 2, Chapter 3 says that: "Surrender of a Swedish national for the purpose of conducting a criminal prosecution may, if the requested person demands execution in Sweden of any custodial sentence or detention order imposed after surrender, be approved only if the issuing judicial authority provides guarantees that the requested person will be returned to Sweden for such execution". Furthermore, the return clause is not conditioned by the way the sentence will be served and, up to now, has been accepted even if the sentence would have been lower in Sweden as the executing Member State.

Therefore, residents in Sweden are generally excluded from the different treatment allowed to Swedish nationals. Despite the general openness of Sweden on the matter, this issue seems to be sensitive more from a political point of view than from a legal one. Nevertheless, the competent Swedish authorities are aware of possible future developments in European Court of Justice case law on this matter and keep a close eye on it.

Nordic citizens are also not formally assimilated as Swedish nationals. In fact, Sweden has never implemented the declaration annexed to the 1957 Council of Europe Convention on Extradition which provided for an equal treatment of all Nordic citizens. This question was raised again in the context of the 1996 European Union Convention on Extradition (ratified by Sweden in 2000), but Swedish authorities opted not to incorporate this provision in an EU context.

3. Proportionality check and mutual recognition of pre-trial decisions

Although in Sweden the legality principle applies, a proportionality check shall be carried out by the Swedish judicial authorities before issuing a warrant. In accordance with Section 5 of the 2003:1178 Ordinance implementing the EAW FD in the matter of surrender to Sweden, "A Swedish arrest warrant may only be issued if it appears justified to do so in view of the nature and seriousness of the crime and the circumstances in general, and when the harm to the individual and the delay and costs that can be expected in the case are taken into account".

In practice, there is a double proportionality test. The first one is made by the court when the person is summoned before getting a detention order, and the second one is made by the prosecutor before issuing an EAW. Though summonses are regarded as related to a fundamental right, they are effectively conceivable only when a known address abroad exists. Otherwise the detention order is issued *in absentia* and a defence lawyer, designated by the judge, attends the hearing before the court decision. However, Sweden is also in a position to execute an EAW where no summons was made in the issuing State.

As far as the execution of EAW for *de minimis* cases is concerned, Sweden is used to executing all the warrants without any distinction since no ground for refusal refers to this question. Nevertheless, several experts interviewed consider that some Member States should reduce the issuing of EAW for old and/or petty crimes [20].

Moreover, Sweden does not seem to encounter any particular problem on mutual recognition of pre-trial decisions. Although final decisions are more easily recognised, an EAW issued – even by a non-judicial authority (i.e. police) – at an early stage of investigation when no formal charge or summons have been issued yet is usually recognised and executed by Swedish authorities.

Sweden has indeed understood the principle of mutual recognition as leaving it to the issuing State to determine whether or not there is a reason to issue an EAW. The decision to issue may be taken at a very early or a very late stage of the issuing State's proceedings and, in that opinion, also in proceedings after appeal and where the requested person is subjected to a new trial. The important issue here is whether the issuing State might produce a decision in accordance with Art. 8 (1)(c) of the EAW FD [21].

4. Practical application of the EAW and other judicial cooperation instruments

Formally considered as an adversarial system, the Swedish criminal proceeding is rather a "mixed system": on the one hand, the trial phase is mostly adversarial while, on the other hand, the inquisitorial aspects are still prominent in the investigation phase where the defence has limited powers. Investigations are generally held by the police, unless for serious crimes or as soon as a suspect is identified where the police acts under the prosecutor's control.

Prosecutors have quite wide powers. They may take all the decisions related to the investigation phase except for issuing detention orders, where the court must decide. Nevertheless, measures ordered by prosecutors (e.g. search, seizure, freezing, etc.) might be challenged before the court, which is responsible for remedies.

In the following paragraphs, some particular issues regarding the practical application of the EAW and other judicial cooperation instruments will be briefly presented.

A. EAW: grounds for refusal, dual criminality and supervision instead of detention

Despite the fact that the grounds for refusal are mandatory, under some circumstances a margin of discretion is still applied. For instance, following a request from a Member State, in the event that the same facts are already being investigated in Sweden, the local leading prosecutor would decide whether to pursue the matter in Sweden or drop the proceeding in favour of the issuing State.

---

[20] In order to discuss in particular the proportionality problem in issuing EAW, a delegation of Swedish prosecutors met their Polish colleagues in Warsaw at the beginning of 2008.

[21] (Content and form of the EAW): "The EAW shall contain the following information (…): evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2".

The territorial clause does not seem to be applied in practice very often as a ground for refusal. None of those interviewed gave any example of a case where it had been applied.

On the contrary, an example of refusal was provided regarding the expiry of the time limit for prosecution. That is the case of a Swedish citizen requested by Germany for facts committed more than 25 years before. As Sweden had competence, the prosecutor informed German authorities that surrender would not be granted. He also recommended the withdrawal of the EAW, since the person would otherwise be informed, if the case was pursued up to the District Court. If he did not know, and travelled outside Sweden, Germany could have a chance of having him surrendered from another Member State.

As for dual criminality, in case of "listed" offences, in principle Swedish authorities do not check the consistency between the facts and the ticked box: often it is not yet possible to have a definitive view about the offence at this stage of the procedure. Nevertheless, when the offence is not a criminal offence in Sweden (e.g. participation in a criminal organisation), the description of facts in the EAW will be looked at in order to consider whether the person sought could be guilty of another offence (e.g. direct participation in criminal activities).

According to the EAW legislation, only in specific cases may detention be avoided, i.e. when it should be almost obvious that the requested person will not escape or that his or her release would not jeopardise the investigation in the issuing State. Since judges are quite uneasy when facing the commitment of that provision to detain the requested person, the impression is that courts use supervision to a much greater extent than the legislator had in mind. And this is in particular true when it comes to nationals, even though no distinction in respect of nationality should be made according to non discrimination rules.

B. Fundamental rights and procedural guarantees

With regard to the protection of fundamental rights, the experts interviewed share concerns regarding the lack of procedural safeguards. Sweden would be definitely in favour of the approximation of procedural guarantees and individual rights at EU level[22]. In fact, in order to improve cooperation in criminal matters and enhance mutual trust, the EU should start having a common system with common basic rules, a balance between mutual recognition and approximation being essential.

A good example in this direction is the recently adopted Framework Decision *in absentia*[23], which is likely to lead to changes in domestic law in order to avoid a risk of non-recognition of decisions rendered in the absence of the person concerned at the

[22] To this purpose, during the Swedish EU Presidency in the second semester 2009, there is a plan to endorse a new text following the latest version of the Framework Decision discussed in June 2007 which did not succeed (Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the EU, last version doc. 10287/07 DROIPEN 56 of 5 June 2007).

[23] Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle

trial (so-called "harmonisation by the back door"). However, the difficulties related to the said approximation – due to the considerable differences among Member States' legal systems – are not negligible according to several experts interviewed.

As far as the EAW application in Sweden is concerned, only in two cases have fundamental rights been challenged before the court up to now. In general, practitioners complain about the narrow space provided for human rights control in mutual recognition instruments.

Defence lawyers highlighted in particular the question of compliance with fundamental rights and the rule of law by the executing State, and support the idea of creating a European ombudsman in charge of monitoring the respect of fundamental rights by Member States and delivering opinions on both EU instruments and national laws implementing those instruments.

As far as cross-border cases are concerned, there are no mechanisms in place to ensure continuity of defence, but direct contacts on a case by case basis are facilitated by the respective Bar Associations [24].

Another issue that concerns some Swedish practitioners is the (assumed) lower level of protection of fundamental rights in the new Member States of the EU. However, no concrete sources or examples which could justify this mistrust towards new Member States' judicial systems were produced.

C. Transfer of proceedings and conflicts of jurisdiction

In Sweden, provisions on the transfer of proceedings are given in the Act on international cooperation in criminal proceedings (1976:19). The application of the Act is restricted to the States that have acceded to the 1972 European Convention on the Transfer of Proceedings in Criminal Matters and, as only a few States have ratified it, relatively infrequent use of this Convention is made in practice.

However, domestic legislation of the other country concerned permitting, a transfer of proceedings can occur even in the absence of a convention and without any particular condition. In such cases only the customary rules for criminal proceedings apply.

The Central Authority at the Ministry of Justice has been appointed to send and receive requests for the transfer of proceedings. In cases involving transfers between Nordic countries, which are based on the Nordic cooperation agreement, the public prosecution offices in the countries concerned communicate directly with one another.

In this respect, it must be pointed out that Sweden applies very broad jurisdiction criteria and it even has universal jurisdiction for very serious crimes (where the lowest level of sentence is at least 4 years). But the Prosecutor-General has to agree on the interest in exercising the jurisdiction in the specific case.

---

of mutual recognition to decisions rendered in the absence of the person concerned at the trial (*OJ*, no. L 81, 27 March 2009, p. 24).

[24] Although, for instance, a Swedish lawyer would be able to defend Swedish citizens in some parts of Finland where Swedish is spoken, in most of the cases a Finnish lawyer shall be preferred.

Asked about the conflicts of jurisdiction issue, the experts interviewed found that a possible solution at EU level on this matter could complement other mutual recognition instruments (including EAW), but should not be in the form of binding arbitration (e.g. from a supranational body such as Eurojust). Improvement of existing mechanisms could be considered since at the present time they are not aimed at solving all cases [25].

D. Transfer of enforcement of sentence

The transfer of enforcement of sentence is regulated in Sweden in the Act on international cooperation in the enforcement of criminal judgments (1972:260) [26]. A special Act contains provisions on the transfer of enforcement of sentence to and from the Nordic States: the procedure provided between those countries is particularly informal and fast.

In principle, a transfer of enforcement of a sentence to Sweden may take place even though the imposed term of imprisonment is more severe than would have been imposed for a similar offence in Sweden. When foreign sentences of this kind are transferred, the Swedish rules for the enforcement of sentences apply, which, among other things, means that a person serving a prison sentence for a set term cannot be conditionally released before two-thirds of the term have been served. The sentence is neither converted (unless it is unknown in Sweden, such as for some measures for mentally ills) nor reduced to the maximum applicable in Sweden. Nevertheless, dual criminality is required.

In the context of an EAW, the EAW Act provides an autonomous legal basis for the transfer back of the sentenced person (Chapter 7).

E. Admissibility of evidence and approximation of rules regarding evidence gathering. The Swedish experience on Joint Investigation Teams

In domestic proceedings, according to the Swedish legal system, the principle of free admissibility and assessment of evidence by the courts applies. Although some forms of gathering evidence are regulated, the principle is interpreted in a very broad sense (insomuch as even illegally obtained evidence could be used in theory). For this reason, the majority of the experts interviewed agree that an approximation of rules regarding evidence gathering at EU level – which would restrict domestic rules – would be very "unfamiliar" to Sweden. In that respect, they rather support the application of the assimilation principle: in fact, in this area, there is not much chance of getting true mutual recognition meant as an obligation or agreement to transfer evidence.

---

[25] The Council of the EU recently reached agreement on a general approach for a Member States' initiative on the matter (Proposal for a Council Framework Decision on prevention and settlement of conflicts of jurisdiction in criminal proceedings, general approach on 6 April 2009 (8478/09, Press 83), last version doc. 5208/09 COPEN 7 of 20 January 2009).

[26] The Act on international cooperation in the enforcement of criminal judgments (1972:260) is based on Sweden's accession to the 1970 European Convention on the International Validity of Criminal Judgments and the 1983 Convention on the Transfer of Sentenced Persons.

General concerns emerged with regard to the practical implementation of the European Evidence Warrant: even if prosecutors shall be obliged to apply it in certain cases, the problem of the excessive fragmentation of the instruments will still remain [27].

The Framework Decision on Joint Investigation Teams (JIT) [28] was implemented in Sweden by means of the Act on joint investigation teams for criminal investigations (in force since 1st January 2004) [29]. This Act regulates certain forms of cooperation used within the framework of international legal assistance and also in international police work [30].

Notwithstanding Sweden was in favour of the adoption of this instrument, in practice very few JIT (with Finland) have been set up so far directly on the basis of the 2000 EU Convention on mutual legal assistance [31]. The constitution of a team with Germany and Slovenia failed because those countries could not accept that the Swedish part would have been composed of policemen (but the JIT worked anyhow between Germany and Slovenia). However, there is beneficial informal cooperation among Nordic countries. In particular, some permanent teams of police, customs and prosecutors were set up at the border with Norway and meet on a monthly basis. According to a prosecutor interviewed, even though they are not exactly specialised JIT – but rather regional crossborder mechanisms of cooperation where methods, operations and the exercise of jurisdiction are discussed – those teams were also envisaged by Eurojust and Europol in the framework of cooperation among EU Member States.

F. Training for practitioners and feedback on application of the EAW

Notwithstanding the intensive initial training required to practise legal professions (such as judge, prosecutor and defence lawyer), Swedish practitioners ask in general for a more specific initial and continuous training in EU judicial cooperation matters.

In particular, as cases rarely have international connections, defence lawyers are generally not specialised in these matters. The lack of information can be also caused by the lack of a perceived need for information.

On the other side, a special effort is being made to assess the functioning of the EAW.

---

[27] In Sweden, the provisions on international legal assistance in criminal matters are mainly contained in the International Legal Assistance in Criminal Matters Act (2000:562). For further details, see the Ministry of Justice website: http://www.regeringen.se/sb/d/2710/a/15268. Supplementary provisions on legal assistance in certain cases are contained in the Act on Joint Investigation Teams for Criminal Investigations (2003:1174), see *infra*.

[28] Council Framework Decision 2002/465/JHA of 13 June 2002 (*OJ*, no. L 162, 20 June 2002, p. 1).

[29] *Lag om gemensamma utredningsgrupper för brottsutredningar* (2003:1174) of 30 December 2003.

[30] The forms of cooperation regulated in the Act are joint investigation teams, controlled deliveries and crime investigations and use of protected identities. For further details, see the Ministry of Justice website: http://www.regeringen.se/sb/d/2710/a/15268.

[31] In 2005, Sweden ratified the EU Convention of 29 May 2000 on mutual assistance in criminal matters and its supplementary Protocol of 2001 (government bill 2004/05:144).

The Ministry of Justice meets three times a year with a group of practitioners, made up of judges, defence lawyers, prosecutors and also police and probation officers, in order to discuss outcomes and problematic issues on the matter.

The Prosecutor-General Office issued a handbook on the practical application of the EAW, which is addressed to legal professionals. This useful tool is regularly updated, pulling together information and experience from the local level. Moreover, some courts have also been working on the drafting of a practical handbook focused on the EAW.

5. Conclusions

The general perception of Swedish practitioners towards the principle of mutual recognition is rather positive.

Judges and prosecutors consider that the main elements of smoothly functioning judicial cooperation in criminal matters are speediness and efficiency. In other words, the measure requested should be effectively and quickly executed by the relevant authority. That is exactly what mutual recognition stands for.

Even though experience is limited to the application of the only instrument fully used in practice, i.e. the European Arrest Warrant, the good results are encouraging and may lead to judicial cooperation being pursued on the same path.

On the other hand, the attitude of defence lawyers seems to be more critical, especially with regard to EU intervention in criminal matters in general. This intervention is often seen as a loss of democratic control in a sensitive and traditionally national issue such as criminal law.

Finally, the majority of practitioners agree that the right balance between mutual recognition and approximation of basic rules should be found in order to improve cooperation in criminal matters and enhance mutual trust within the European Union.