

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings – safeguards for requested persons

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EXECUTIVE SUMMARY

This country report examines procedural safeguards for requested persons in European Arrest Warrant (EAW) proceedings in Sweden. The report consists of two components: small-scale desk research, including a legal and policy overview of the procedural rights of requested persons under the EAW framework; and small-scale social fieldwork research consisting of five semi-structured interviews with judicial authorities and defence lawyers engaged in issuing and executing EAWs.

In Sweden, the legal standards of the procedural rights of requested persons in EAW proceedings are regulated in the Act (2003:1156) on surrender from Sweden under a European arrest warrant,¹ the Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant² and the Ordinance (2003:1178) on surrender to Sweden under a European arrest warrant.³ In addition, the Code of judicial procedure (1942:740)⁴ and the Public notice of preliminary investigations (1947:948)⁵ contain legal standards applicable to EAW procedures.

The report aims to capture the essential information and findings gathered in the interviews in order to illustrate how the legal standards are implemented in practice. However, it is important to note that the interview material is small in scale and only reflects the opinions of a few practitioners.

The rights to information, translation and access to a lawyer (in Sweden's case a public defence counsel) are generally fulfilled and implemented in practice. All interviewees agreed that requested persons are provided with information on their procedural rights, the contents of the EAW and what consenting to their surrender entails. There is also a consensus among all interviewees that requested persons understand the information provided to them. The interviewees reported that requested persons are provided with interpretation when needed. There is also agreement among the interviewees that, even though not all documents are translated into every language, they are always translated orally by an interpreter.

The interviewees stated that the right to a state-funded defence counsel is generally fulfilled. However, findings show that some district courts have denied the appointment of a public defence counsel when Sweden is issuing an EAW for the purpose of the execution of a sentence. The principle of dual representation is not facilitated beyond the legal requirements, that is, the provision of a public defence counsel in Sweden, the explanation of this right to requested persons and the forwarding of requests of a public defence counsel. The prosecution authorities do not view the facilitation of contact between different legal teams or the provision of representation to be part of their mandate. Furthermore, communication between public defence counsels in the executing and issuing member state seems to be lacking. These aspects can be seen as preventing the full enjoyment of the right to dual representation and the effective defence of requested persons in practice.

Generally, most interviewees stated that the legal requirements and proportionality are taken into account when Sweden issues EAWs. Most interviewees confirmed that a proportionality assessment is conducted in relation to a detention decision when Sweden executes EAWs. Additionally, the principle of mutual trust seems to be very important to the reasoning of the judicial and prosecuting

¹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), 18 December 2003.

² Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), 18 December 2003.

³ Sweden, Ordinance (2003:1178) on surrender to Sweden under a European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), 18 december 2003.

⁴ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), 18 July 1942.

⁵ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \[1947:948\]](#)), 19 December 1947.

authorities. The prosecution authorities seem to rely on requested persons, or their legal representation, to make objections before judging conditions in other member states. The authorities also seem more or less reliant on the case law of EU bodies or the national courts if they are to seriously consider questions of proportionality, detention conditions, or procedural rights guarantees. This serves to constrain deeper considerations of proportionality and/or adverse conditions in other member states. It also entails a high burden of proof on the public defence counsels.

Finally, the prosecution authority's specialization in EAW proceedings puts them at an advantage compared to both the courts and the public defence counsels. This advantage is further increased by the principles of mutual trust and the short deadlines built into the legislation around the EAW itself.

INTRODUCTION

List of Interviews:

- Defence lawyer
- Defence lawyer
- Judge
- Prosecutor
- Prosecutor

The interviews were conducted either in face-to-face settings or via video calls. The average length of the interviews was one hour, some plus 15-20 minutes. In general, the participants were very forthcoming and relaxed during the interviews, indicating a high level of trust.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

In the identification and selection process for interviews with prosecutors and judges, we used a “snowball” sampling method, in which we identified appropriate candidates through our previous contacts with the Swedish Prosecution Authority (*Åklagarmyndigheten*) and Swedish National Court Administration (*Domstolsverket*). The snowball sampling method was employed specifically because the handling of EAW cases in Sweden is dealt with in a centralized agency at the prosecutor’s office, which we already had contact with. Also, the number of judges who have heard cases of EAWs is very limited, so we relied on the expertise of our contacts in the court authority to point us towards judges with experience in this area.

In both authorities, our contacts helped us identify possible participants who had previous experience with EAWs. In both cases the communication and identification of participants was quite easy, though both prosecutors and judges had limited time to participate. Both prosecutors and one judge were able to make time in their schedules for the interviews rather quickly, with the remaining judge indicating they would have time in April. This ended up not being the case, and despite repeated attempts to find a time that worked for this last judge, when we scheduled times in May and June that both had to be cancelled, we ended up not being able to schedule a zoom or in-person interview with this judge until September 2023.

The identification and selection process for interviews with lawyers was much the same, and we relied upon a “snowball” sampling method. Here our contacts with individual law firms were utilized, as were our previous interview subjects, especially the prosecutors, to help us identify appropriately experienced lawyers. Unfortunately, finding lawyers who would respond to our requests, even after repeated inquiries, was difficult. Most of the lawyers we contacted did not respond, and for the majority who did, a polite but short email indicating they had no time was all that we received. Of the two lawyers who did agree to participate, one came from our initial round of contacts with associated legal professionals in different firms, while the other was contacted through a recommendation from a prosecutor we had previously interviewed. We extended our net three different times, asking for recommendations from more distantly related legal professionals, all of whom graciously gave us the names of possible participants, none of which resulted in a willing interview participant. After exhausting all of our contacts, we were left with only two lawyers who agreed to be interviewed.

○ SAMPLE AND DESCRIPTION OF FIELDWORK

Defence lawyers:

Requested: 4, completed: 2

Judges/prosecutors:

Requested: 4, completed: 3

Table 1: Sample professionals

	Group	Experience in European Arrest Warrant proceedings	Gender
1	Defence lawyer	YES	Male
2	Defence lawyer	YES	Male
3	Judge	YES	Male
4	Prosecutor	YES	Male
5	Prosecutor	YES	Female

- **DATA ANALYSIS**

The data were analysed by means of a thematic coding of the finished interview templates, with special attention being paid to recurring themes and important quotes identified in the templates. This was done in collaboration between the interviewer, report writer and legal and social expert. It is important to emphasize that the interview material is small in scale and only reflects the opinions of five practitioners.

- **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

The report covers five different areas relating to the procedural safeguards for requested persons in EAW proceedings in Sweden. Chapters one and two cover the research findings on the right to information and the right to interpretation of requested persons in EAW proceedings. Chapter three addresses the research findings on the right to access to a lawyer and dual representation in EAW proceedings. Chapter four discusses research findings in relation to the issuing and execution of EAW proceedings. Finally, Chapter five covers the use of digital and technological tools in EAW proceedings.

Each chapter is introduced by a legal and policy overview. Thereafter, the responses given by the five interviewees are presented in tables and as text, including relevant quotes. Finally, a discussion of the findings is conducted to identify recurrent themes, particular challenges and potentially promising practices.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

[Legal standards regarding the right to information of requested persons in Sweden acting as an executing member state.](#)

The two main regulations applicable to surrender procedures from Sweden are the Act (2003:1156) on surrender from Sweden under the European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#))⁶ and the Ordinance (2003:1179) on surrender from Sweden under the European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)).⁷ The Act (2003:1156) contains provisions for prosecutors' and courts' handling of requests for surrender. The Act holds that the general provisions on preliminary investigations in criminal proceedings are to be applicable during an investigation and during deprivation of liberty in European arrest warrant (EAW) procedures.⁸ Similarly, the general provisions on criminal proceedings are applicable during court proceedings, unless otherwise stated in the Act.⁹ Consequently, the Swedish code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#))¹⁰ and the Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \[1947:948\]](#))¹¹ also contain standards applicable to EAW procedures.

In relation to legal standards on the right to information of requested persons when Sweden is acting as an executing member state, both the Ordinance (2003:1179) and, by reference, the Public notice of preliminary investigations are applicable.

According to the Ordinance, the requested persons must:

- be notified about the content in the EAW as soon as possible after they have been located.
- receive written information about their right to consent to surrender from Sweden in accordance with an EAW and to accept being prosecuted or sentenced for offences not covered by the EAW (speciality rule).¹² They must also receive information on the implications of such consent or acceptance.

⁶ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), 18 December 2003.

⁷ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), 18 December 2003.

⁸ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 3 and 6, 18 December 2003.

⁹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, 16 October 2012.

¹⁰ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), 18 July 1942.

¹¹ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \[1947:948\]](#)), 19 December 1947.

¹² Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 9, Paragraph 1, 18 December 2003.

- be notified about their right to appoint a public defence counsel or a legal counsel in the issuing member state. If the requested persons wish to exercise this right, the Swedish prosecutor must immediately notify the responsible authority in the issuing member state.¹³

If the EAW relates to the execution of a custodial sentence that has been imposed after a hearing at which the requested persons were not personally present, they can request a copy of the judgement. In such a case, the prosecutor should promptly notify the authority in the issuing member state of the request. The judgment must be provided to requested persons as soon as it is received from the issuing authority. This applies if the issuing authority has confirmed that the conditions in Article 4a. 1 d of the EAW Framework Decision are met.¹⁴ According to Article 4a. 1 d, the executing member state may refuse to execute the EAW if the requested persons were not personally present at the trial resulting in the decision. This applies unless the EAW explicitly states that (i) requested persons will be personally served with the decision without delay after the surrender and will be expressly informed of their right to a retrial or an appeal in which the requested persons have the right to participate, which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and (ii) requested persons will be informed of the timeframe within which they have to request such a retrial or appeal, as mentioned in the relevant EAW.

As mentioned above, the Act (2003:1156) holds that the general provisions on preliminary investigations in criminal proceedings when persons are deprived of their liberty apply to EAW procedures.¹⁵ This means, inter alia, that provisions on notifications and timeframes apply to requested persons in the same way as they do in Swedish preliminary investigations. Moreover, the provision in Chapter 24 Section 18 of the Code of judicial procedure on detention hearings also applies to EAW procedures.¹⁶ This means that when a decision to detain a requested person in their absence is issued by the Swedish authorities, the person must be questioned as soon as the decision has been enforced. The reference to the provisions on preliminary investigations in criminal proceedings further entails that requested persons have the right to information about their procedural rights as outlined in Section 12 of the Public notice of preliminary investigations.¹⁷ According to this provision, persons suspected on reasonable grounds shall, in connection with being notified of the suspicion, also be notified of their right to:

- appoint a public defence counsel in Sweden as the executing member state;
- receive information about any changes regarding allegations and take part of the investigative material to the extent that follows from Chapter 23 Section 18 of the Code of judicial procedure;
- if necessary, be assisted by an interpreter and have documents that are essential to be able to exercise their rights translated; and

¹³ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 4, Paragraphs 1-2, 27 November 2016.

¹⁴ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 4, Paragraph 3, 27 November 2016.

¹⁵ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 6, 18 December 2003.

¹⁶ Brunberg, J., 'Act on surrender from Sweden under a European Arrest Warrant', Commentary, Nordstedts Juridik, comment 47.

¹⁷ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '[Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar](#)', Nordstedts Juridik, Section II, Chapter 4.6.

- refrain from commenting on the suspicion or from otherwise participating in the investigation.¹⁸

The requested persons must receive the information in a language they understand.¹⁹

The Office of the National Police Commissioner (*Rikspolisstyrelsen*), in collaboration with the Swedish Prosecution Authority (*Åklagarmyndigheten*), has issued a letter containing the written information that must be provided to requested persons. The letter, headed 'The Police Authority's information to the person who is requested to be surrendered according to a European or Nordic arrest warrant' has been translated into around fifty different languages.²⁰

The letter includes information on requested persons' right to:

- be notified about the content in the EAW;
- refrain from commenting on the suspicion during questioning by the Police Authority or other authorities;
- appoint a public defence counsel in Sweden as the executing member state if requested or deemed necessary;
- appoint a public defence counsel or a legal counsel in the issuing member state;
- if necessary, be assisted by an interpreter and have essential documents translated; and
- receive information about the possibility to consent to surrender to the issuing member state and to accept being prosecuted or sentenced for offences not covered by the EAW.

In addition, the letter includes information about the requirement for requested persons to remain for questioning for a maximum of six hours and to be released as soon as possible after the hearing, unless the prosecutor requests a detention order.²¹

The letter also includes information on requested persons who have been provisionally detained, including:

- the right to have a third person informed of the deprivation of liberty and to communicate with the consular authorities while deprived of liberty;
- the right to food and rest, to daily outdoor access and, if necessary, to health care;
- the prosecutors' obligation to request the court to examine whether requested persons should be held on remand. The court must hold a hearing as soon as possible. As a general rule, a new hearing must be conducted every second week until a decision on surrender has been determined;
- the possibility to restrict requested persons' contacts with the outside world; and
- the prosecutors' obligation to check continuously whether there are grounds to continue to deprive the requested person of liberty.

In addition, the letter includes specific information to persons under the age of 18.²²

¹⁸ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \(\[1947:948\]\)](#)), Section 12, Paragraphs 1-2, 1 March 2021.

¹⁹ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \(\[1947:948\]\)](#)), Section 12, Paragraph 4, 1 March 2021.

²⁰ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2019) Legal Guidance, '[Misstänkta rätt till insyn vid frihetsberövande m.m.](#)', 2014:1, November 2019, annex 2, and; Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021, annex 13.

²¹ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2019) Legal Guidance, '[Misstänkta rätt till insyn vid frihetsberövande m.m.](#)', 2014:1, November 2019, annex 2, p. 1.

²² Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2019) Legal Guidance, '[Misstänkta rätt till insyn vid frihetsberövande m.m.](#)', 2014:1, November 2019, annex 2, p. 1-2.

The letter is drafted in an easily comprehensible manner and generally covers the information in the 'Indicative Model Letter of Rights' in Directive 2012/13/EU on the right to information. It also includes additional procedural rights applicable in Sweden, as briefly mentioned above.

[Notification to the General Secretariat of the Council about the possibility of prosecution of other offences in accordance with Art. 27 p. 1 of the EAW Framework Decision.](#)

Sweden has not notified the General Secretariat of the Council about the possibility of prosecution of other offences in accordance with Art. 27 p. 1 of the EAW Framework Decision. Instead, Sweden has kept the 'speciality rule' as the main rule. The exception in Art. 27 p. 1 of the EAW Framework Decision therefore lacks significance in Sweden.²³

Sweden as the executing state

According to the Act (2003:1156), requested persons shall be given the opportunity to consent to surrender as soon as possible.²⁴ If such consent is given, requested persons shall also be asked if they accept (*medger*) being prosecuted or sentenced in the issuing member state for offences committed prior to the surrender, but which are not covered by the EAW (speciality rule). Requested persons must be informed about the meaning of consenting to surrender and accepting prosecution.²⁵ Requested persons may revoke a consent to surrender if it is requested and given before the Swedish court has issued a decision on surrender. An acceptance to be prosecuted for offences committed prior to the surrender may be revoked if it is requested before the decision on surrender is executed.²⁶ Thus, an acceptance to be prosecuted for other offences may be revoked at a later stage than a consent to the request for surrender.²⁷ Sweden submitted the following statement on the adoption of the EAW Framework Decision; "[c]onsent or renunciation within the meaning of Article 13(1) may be revoked by the party whose surrender has been requested. Revocation must take place before the decision on surrender is executed."²⁸

The Ordinance (2003:1179) specifies that such revocation of a consent to surrender or an acceptance to be prosecuted must be handed over to a prosecutor or a police officer.²⁹ Any such consent, acceptance, or revocation of the same must be noted in a document determined by the public prosecutor and, if possible, be written in the language normally used by the requested person. If another language is used, measures undertaken to check whether the requested person has

²³ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '[Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar](#)', Nordstedts Juridik, Section IV, Chapter 5.3.

²⁴ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 9, Paragraph 1, 18 December 2003.

²⁵ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 9, Paragraph 1, 18 December 2003.

²⁶ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 9, Paragraph 2, 18 December 2003.

²⁷ Brunberg, J., 'Act on Surrender from Sweden under a European Arrest Warrant', Commentary, Nordstedts Juridik, comment 58.

²⁸ [Statements made by certain member states on the adoption of the Framework Decision.](#)

²⁹ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 10, Paragraph 1, 16 October 2012.

understood the implications of a consent to surrender, an acceptance to be prosecuted, or a revocation must be noted in the document.³⁰

According to the Act (2003:1156), a decision on surrender may not be appealed if the requested person has consented to surrender.³¹ The District Court (*Tingsrätt*) does not have to conduct a hearing,³² but it must examine whether the request can be executed, even though the requested person consented to the surrender.

Sweden as the issuing state

The main regulation applicable to surrender procedures to Sweden is the Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)).³³ The Ordinance specifies that requested persons surrendered to Sweden can consent to being prosecuted or sentenced in Sweden for offences committed prior to the surrender. Such consent shall be submitted to the prosecutor and must be noted in a document determined by the public prosecutor.³⁴ The consent must, if possible, be written in the language normally used by the requested person. If another language is used, measures undertaken to check whether the requested person has understood the implications of such a consent must be noted in the document.³⁵ If surrender to Sweden has been granted or the requested person has been surrendered to Sweden, Sweden may request the executing member state's permission to prosecute for other offences or to surrender the requested person to yet another member state. Such a request for permission to prosecute or surrender must include information about the other offences and be translated to the language of the executing member state or into a language accepted by that state.³⁶

Safeguards in law to ensure that all the information is provided effectively.

As noted above, the information about requested persons' procedural rights must be provided in a language they understand.³⁷ Persons detained or held on remand should, without delay, receive written information about the rights outlined in Section 12 of the Public notice of preliminary

³⁰ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 10, Paragraph 2, 16 October 2012.

³¹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 9, 16 October 2012.

³² Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, Paragraph 2, 16 October 2012.

³³ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), 18 december 2003.

³⁴ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 16, 16 October 2012 and; Section 17, 19 December 2016.

³⁵ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 16, 16 October 2012.

³⁶ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 17, 19 December 2016.

³⁷ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \(\[1947:948\]\)](#)), Section 12, 1 March 2021.

investigations in a language they understand.³⁸ Detainees have the right to keep the written information as long as they are deprived of their liberty.³⁹

The Public notice of preliminary investigations contains detailed provisions on what a preliminary enquiry report should contain. Among other things, measures taken during the preliminary investigations should be noted, with time and place specified.⁴⁰ This means that a note must be entered in the preliminary enquiry report that the requested persons have been notified about the charges against them. According to the government inquiry on the implementation of Directive 2013/48/EU on the right to information,⁴¹ it also follows from this provision that the fact that requested persons have been informed about their rights must also be noted.⁴² The Parliamentary Ombudsman (*Justitieombudsmannen, JO*) has stressed that any information provided at any interrogation must be clearly documented.⁴³

As noted above, the Ordinance (2003:1179) specifies that both a consent to surrender and an acceptance to be prosecuted for other offences must be noted in a document determined by the public prosecutor.⁴⁴ The same is applicable for a revocation of such consent or acceptance. It must, if possible, be noted in the language normally used by the requested person. If another language is used, measures undertaken to check whether the requested person has understood the implications of a consent to surrender or an acceptance to being prosecuted must be noted in the document.⁴⁵ Corresponding provisions apply in relation to surrender to Sweden as the issuing state (see above).

The Prosecution Authority's legal guidance on surrender under an EAW includes several annexes and checklists for the Prosecution Authority and the Policy Authority.⁴⁶ Among other things, the legal guidance includes the Letter of Rights and a Consent and Acceptance form on Surrender.⁴⁷ In addition, the legal guidance includes checklists for the Police Authority and the Prosecution Authority in EAW

³⁸ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \(\[1947:948\]\)](#)), Section 12a, 11 June 2019.

³⁹ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \(\[1947:948\]\)](#)), Section 12a, 11 June 2019.

⁴⁰ Sweden, Public notice of preliminary investigations (1947:948) ([Förundersökningskungörelse \(\[1947:948\]\)](#)), Section 20, 1 July 2022.

⁴¹ [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142.

⁴² Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Genomförande av Europaparlamentets och rådets direktiv om rätten till information vid straffrättsliga förfaranden](#)', Ministry Publications Series, 19 March 2013, p. 88.

⁴³ See, for example, Sweden, Parliamentary Ombudsman (*Justitieombudsmannen, JO*) (2012), Criticism against a prosecutor and the Police Authority in Jönköping County, which did not respect a criminal suspect's right to a defence counsel, etc. ([Kritik mot en åklagare och mot Polismyndigheten i Jönköpings län, som inte respekterat en brottsmisstänkts försvararrättigheter, m.m.](#)), reference number 3577-2011, 30 November 2012.

⁴⁴ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 10, Paragraph 2, 16 October 2012.

⁴⁵ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 10, Paragraph 2, 16 October 2012.

⁴⁶ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021.

⁴⁷ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021, annexes 2 and 13.

cases.⁴⁸ The checklist for the Police Authority specifies that requested persons must be informed about, among other things, their right to appoint a public defence counsel in Sweden and in the issuing member state. The checklist also states that the Letter of Rights should be handed over to the requested person.

[Remedies available for a requested person in case they are not provided with information about the EAW and their rights during the proceedings.](#)

Requested persons who believe that they have not been properly informed about their rights during proceedings against them can take their complaints to a higher prosecutor.⁴⁹ Even though it is not possible to appeal (*överklaga*) to a prosecutor's decision, requested persons could still request a review (*överpröva*) of a decision by a prosecutor.⁵⁰ During a review, the prosecutor's decision is examined by a higher prosecutor (Director of Public Prosecution or Deputy Director of Public Prosecution). A review of the decision is handled through a written procedure.⁵¹ The review procedure is not regulated in law but has been developed through case law. The Prosecutor-General has developed guidelines for review.⁵²

Furthermore, there is a possibility for an individual to turn to the Parliamentary Ombudsman⁵³ or the Chancellor of Justice (*Justitiekanslern, JK*) in cases where a law enforcement authority has not properly fulfilled its obligations in these respects. A complaint to the Parliamentary Ombudsman or the Chancellor of Justice can be made by anybody who believes that they have been treated wrongly or unjustly by a public authority or an official employed by the civil service or local government. The individual does not have to be a Swedish citizen, nor to have reached a certain age to be able to submit a complaint.⁵⁴ When an investigation into a complaint by the Parliamentary Ombudsman is concluded, a decision is issued. Copies of the decision are sent to the complainant and to the public authority concerned. In their decision, the Parliamentary Ombudsman can direct criticism against a public authority, for example, regarding not respecting a criminal suspect's right to a public defence counsel.⁵⁵ The Chancellor of Justice can direct similar criticism against a public authority for not fulfilling its obligations to, for instance, appoint interpreters.⁵⁶ It also falls within the competence of

⁴⁸ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021, annexes 1 a and b.

⁴⁹ Sweden, Code of judicial procedure (1942:740) (*Rättegångsbalk [1942:740]*), Chapter 7, Section 5, 1 January 2005. This is also stressed in the government bill; Sweden, Ministry of Justice (*Justitiedepartementet*) (2014) '*Misstänkts rätt till insyn vid frihetsberövanden*', government bill, 11 March 2014, p. 14.

⁵⁰ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '*Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar*', Nordstedts Juridik, Section IV, Chapter 5.2.

⁵¹ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*), Review (*Överprövning*), official webpage, accessed 10 January 2023.

⁵² Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2013) Prosecutor General's Guidelines (*Riksåklagarens riktlinjer*), RÅR 2013:1, p. 6.

⁵³ Sweden, Ministry of Justice (*Justitiedepartementet*) (2014) '*Misstänkts rätt till insyn vid frihetsberövanden*', government bill, 11 March 2014, p. 14.

⁵⁴ Sweden, Parliamentary Ombudsman (*Justitieombudsmannen, JO*) '*How to complain*', official webpage, accessed 10 January 2023 and; Chancellor of Justice (*Justitiekanslern, JK*) 'Questions and answers' (*Frågor och svar om JK:s tillsyn*), official webpage, accessed 10 January 2023.

⁵⁵ See, for example, Sweden, Parliamentary Ombudsman (*Justitieombudsmannen, JO*) (2012), Criticism against a prosecutor and the Police Authority in Jönköping County, which did not respect a criminal suspect's right to a defence counsel, etc. (*Kritik mot en åklagare och mot Polismyndigheten i Jönköpings län, som inte respekterat en brottsmisstänkts försvararrättigheter, m.m.*), reference number 3577-2011, 30 November 2012.

⁵⁶ See, for example, statements about the Swedish Police Authority's use of interpreters; Sweden, Chancellor of Justice (*Justitiekanslern, JK*) (2019), The Position of the Chancellor of Justice regarding the engagement of interpreters by the Swedish Police Authority (*Justitiekanslern uttalar sig angående Polismyndighetens anlitande*

the Chancellor of Justice to reach out of court settlements on behalf of the state in actions for damages ('voluntary settlement of claim'). Individuals may therefore turn directly to the Chancellor of Justice with a written application for compensation regarding incorrect decisions issued by government authorities.⁵⁷

b. Right to information in practice

- Provision of information (when, how, by whom)

It seems to be standard practice for the requested person to be informed of their rights by the police officer either when they are arrested or during their first interrogation with the police officer or the prosecutor (where the public defence counsel is also present). One public defence counsel reported that information is provided during the first interrogation. Since the public defence counsel is not present during the arrest, they cannot comment on whether the requested person is provided with information at this time. Another public defence counsel reported that information is first provided by the police authority, but different police authorities differ in how meticulous they are when informing requested persons of their rights.

- Information about rights

The main finding is that the requirement to supply information to requested persons seems generally to be observed. All interviewees agreed that persons arrested on an EAW are informed of their procedural rights, of the contents of the EAW and of what consenting to their surrender entails. It seems to be standard that the information is provided both orally and in written form. However, one public defence counsel stated that information on the requested person's procedural rights is usually only given orally. All interviewees except this public defence counsel recognize the practice of issuing a 'Letter of rights' to inform requested persons by listing their rights.

(EN) There is a clear form that the police have developed, and which is at the back of [the Prosecution Authority's] handbook, which we have here at the Prosecution Authority, that [requested persons] should always be informed about when they are arrested, that is to say, their fundamental rights, their right to a lawyer... It's in there, and it should always be served in connection with their arrest and so-called 24/8 hearings. (Prosecutor, Sweden)

(SV) Där finns det en tydlig blankett som polisen har utformat, och som finns längst bak i [Åklagarmyndighetens] handbok som vi har här på åklagarmyndigheten, som [eftersökta personer] alltid ska informeras om vid gripandet, det vill säga deras grundläggande rättigheter, deras rätt till försvarare... Den finns med där, och den ska alltid delges i samband med att dom grips och så kallad 24/8 hörs.

Table 2: Are persons arrested on an EAW informed about their procedural rights?

	Lawyer 1	Lawyer 2	Judge 1	Prosecutor 1	Prosecutor 2	Total
YES	X	X	X	X	X	5

[av tolkar](#), reference number 3938-18-2.1., 4 June 2019, and; Sweden, Chancellor of Justice (*Justitiekanslern, JK*) (2019), Criticism against Kalmar District Court due to the fact that an unauthorised interpreter was appointed (*Kritik mot Kalmar tingsrätt med anledning av att man förordnat en icke auktoriserad tolk*), reference number 10091-17-2.1., 11 January 2018.

⁵⁷ Chancellor of Justice (*Justitiekanslern, JK*) 'Damages' (*Skadestånd*), official webpage, accessed 19 January 2023.

In writing (letter of rights)	-	-	-	-	-	0
Orally	-	X	-	-	-	1
In writing (letter of rights) and orally	X	-	X	X	X	4
NO	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	0
Did not answer	-	-	-	-	-	0

- Information about the EAW – content and procedure

It seems to be standard practice that requested persons are informed of the contents of the EAW against them. Most interviewees agreed that this information is first provided orally during the interrogation. Later on in the process, the requested person will also have access to the information in written form. The prosecutors reported that the information about the content of the EAW is not always provided at the time of the arrest or at the first hearing. However, it is provided as soon as the prosecution has received the EAW. Then a new interrogation is held, and requested persons are informed of the contents of the EAW against them. One prosecutor reported that the information in the EAW is usually given orally during the interrogation. After the investigation is finished, the requested person and their public defence counsel are given a written copy of the EAW.

Table 3: Are persons arrested informed of the contents of the EAW against them?

	Lawyer 1	Lawyer 2	Judge 1	Prosecutor 1	Prosecutor 2	Total
YES	X	X	X	X	X	5
In writing	-	-	-	-	-	0
Orally	-	-	-	-	-	0
In writing and orally	X	X	X	X	X	5
NO	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	0
Did not answer	-	-	-	-	-	0

- Information on consenting to surrender

It also seems to be standard practice that requested persons are informed about what consenting to their surrender entails. All interviewees except one public defence counsel confirmed that requested persons are informed about the 'speciality rule', meaning that, if they consent to surrender, they might be prosecuted or detained for previous offences not specified in the current warrant. The prosecutors reported that a specific consent-form created by the Prosecution Authority is used during the consent hearing, in which the police officer, the public defender and the interpreter is present. If the requested person would like to consent to surrender, the prosecutor is also present.

(EN) [...] there is a specific consent form that the [Prosecution] Authority has created. This is then gone through by the police officer and the public defence counsel and maybe also if there is an interpreter present. And then if there is a desire on the part of the requested person to consent to surrender, then a prosecutor is also present, either via video-link or by telephone,

and goes through [the consent] even more carefully before the form is signed by the requested person, and [the prosecutor] explains what it means to actually consent to surrender. (Prosecutor, Sweden)

(SV) [...] då har vi också en särskild samtyckesblankett som [Åklagar]myndigheten har tagit fram. Som man går igenom då tillsammans med polisen och försvararen och kanske om det finns en tolk också. Och sen om det finns en vilja hos den eftersökte att samtycka till överlämning då är det också åklagare närvarande, antingen på videolänk eller på telefon och går igenom [samtycket] ännu mer noggrant innan den blanketten skrivs under av den eftersökte, och [åklagaren] förklarar vad det innebär att faktiskt samtycka till överlämning.

Table 4: Are the requested persons informed about what consenting to their surrender entails?

	Lawyer 1	Lawyer 2	Judge 1	Prosecutor 1	Prosecutor 2	Total
YES	X	X	X	X	X	5
NO	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	0
Did not answer	-	-	-	-	-	0

- Understanding of information

All interviewees confirmed that requested persons understand the information provided to them. All interviewees except one public defence counsel who declined to answer stated that there are multiple actors who try to make sure that the requested person understands the information provided. The prosecutors reported that they make absolutely sure that the requested person understands the information. The prosecutor is not present at every interrogation, but if there is an interrogation where consent to surrender will be discussed, a prosecutor is always present. If there are uncertainties regarding consent or the specialty rule, and if the prosecutor cannot be sure that the requested person understands them, they do not take it as consent.

c. Additional best practices or challenges

One promising practice has been identified, and that is the use of a specific consent-form developed by the Prosecution Authority to be used during the consent hearing.

d. Discussion of findings

The findings demonstrate that the law is implemented in practice, as all interviewees stated that the requested persons are provided with information on their procedural rights, on the contents of the EAW and on what consenting to their surrender entails. As highlighted above, the main finding throughout the interviews is that the provision of information to requested persons generally seems to be observed. There was also a strong consensus among all interviewees that requested persons understand the information provided to them, and that this is ensured by multiple actors.

2. Right to interpretation and translation

a. Legal overview

[Legal standards relating to the provision of interpretation and translation to requested persons.](#)

As highlighted above in Chapter 1, the Act (2003:1156) considers the general provisions on preliminary investigations in criminal proceedings⁵⁸ and criminal proceedings in court⁵⁹ as applicable to EAW proceedings unless otherwise stated in the Act. With regard to the legal standards relating to the provision of interpreters and translations to requested persons, the Swedish code of judicial procedure is therefore relevant.⁶⁰ Following the implementation of Directive 2010/64/EU on interpretation and translation,⁶¹ a number of legislative amendments were introduced on interpretation and translation regarding both preliminary investigations in criminal proceedings and criminal court proceedings. The bill preceding these amendments confirms the applicability of the provisions in relation to EAW proceedings.⁶²

According to the Code of judicial procedure, an interpreter must be appointed during court sessions if requested persons⁶³ or victims in a criminal proceeding are 'not proficient in the Swedish language' (*inte behärskar svenska*).⁶⁴ According to the bill implementing Directive 2010/64/EU on interpretation and translation,⁶⁵ the aim of this provision is to ensure that requested persons have the opportunity to follow the court proceedings and defend themselves in a language they speak and understand.⁶⁶ If this is not the case, an interpreter must be appointed. The court decides on the necessity of interpretation on a case-by-case basis.⁶⁷ The same provision of the Code of judicial procedure⁶⁸ applies during the questioning of requested persons who have been notified that they are suspected on reasonable grounds of an offence. In this case, it is the person in charge of the investigation who decides on the necessity of interpretation.⁶⁹

The Code of judicial procedure also states that an interpreter must be appointed 'during court sessions' (*vid sammanträden inför rätten*).⁷⁰ According to the bill implementing Directive 2010/64/EU

⁵⁸ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 3, 18 December 2003.

⁵⁹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, 16 October 2012.

⁶⁰ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), 18 July 1942.

⁶¹ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

⁶² Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, pp. 44-45.

⁶³ Also includes a defendant (*misstänkt*), according to the government bill; Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013.

⁶⁴ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 6, Paragraph 1, 1 November 2015.

⁶⁵ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

⁶⁶ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, pp. 49-50.

⁶⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 50.

⁶⁸ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 6, Paragraph 1, 1 November 2015.

⁶⁹ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 16, 1 October 2013.

⁷⁰ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 6, Paragraph 1, 1 November 2015.

on interpretation and translation,⁷¹ the interpreter's assignment is to assist requested persons with interpretation during the entire session before the court. The provision is applicable at every meeting before the court to which requested persons have been summoned.⁷² The interpretation requirement is likewise applicable to any questioning of requested persons during the preliminary investigation and until the preliminary investigation has been completed.⁷³

Furthermore, the Code of judicial procedure regulates the translation of documents in court proceedings.⁷⁴ The court is obliged to translate a document, or the most important parts of it, for requested persons in criminal proceedings if a translation is of essential importance (*väsentlig betydelse*) in order for them to exercise their rights.⁷⁵ 'Essential importance' refers to the fact that the content of the document must have a significant role in the case. The translation itself can also be essential for requested persons to be able to understand the content of the document.⁷⁶ The document must have been submitted to the court or produced by the court to be covered by the translation requirement. The court is responsible for examining the need for translation and decides which documents must be translated on a case-by-case basis.⁷⁷ According to the provision, translation may be conducted orally if it is not inappropriate in light of the content of the document or the case or any other circumstance.⁷⁸ A written translation should be conducted if, for example, there is reason to assume that requested persons have difficulties in understanding an oral translation.⁷⁹ The same provision of the Code of judicial procedure⁸⁰ is applicable to translations of documents during preliminary investigations.⁸¹ The mandatory translation requirement applies from the time persons have been notified that they are suspected on reasonable grounds of an offence and throughout the preliminary investigations.⁸² Normally, the Swedish Police Authority is responsible for translating such materials.⁸³

⁷¹ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

⁷² Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 50.

⁷³ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 51.

⁷⁴ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 33, Section 9, 1 November 2015.

⁷⁵ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 33, Section 9, Paragraph 1, 1 November 2015.

⁷⁶ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 54.

⁷⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 54.

⁷⁸ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 33, Section 9, Paragraph 2, 1 November 2015.

⁷⁹ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 54.

⁸⁰ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 33, Section 9, 1 November 2015.

⁸¹ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 16, 1 October 2013.

⁸² Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 16, 1 October 2013.

⁸³ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 51.

[Rules governing the provision of live interpretation: in person or via digital tools and including verification of the quality of interpretation.](#)

According to the Code of judicial procedure, the main rule is that parties and others who participate in a court session must appear in person in the courtroom or where the session is held.⁸⁴ However, the court may decide that a particular party or other person should participate in a court session by audio transmission or audio and image transmission. Participation through audio transmission or audio and image transmission may not take place if it is inappropriate in light of the purpose of the person's participation and other circumstances.⁸⁵ The bill implementing Directive 2010/64/EU on interpretation and translation⁸⁶ stresses that the provision applies to everyone participating in court sessions, including interpreters.⁸⁷ According to the Swedish National Courts Administration's (*Domstolsverket*) guidelines for the use of interpreters in court, interpretation via video is normally regarded as a sufficient alternative to on-site interpretation. For cost-saving reasons, interpretation via video is therefore preferable to on-site interpretation. As for telephone interpretation, this is recommended only as a last resort.⁸⁸

The Code of judicial procedure states that the court shall, if possible, appoint an authorised interpreter to act as an interpreter in the court proceedings.⁸⁹ If no authorised interpreter is available, another suitable person must be appointed.⁹⁰ The court must, however, make efforts to appoint an authorised interpreter.⁹¹ Even in cases where the court appoints a non-authorised interpreter, it is important that the person is as competent as possible for the assignment.⁹² If there is an interpreter linked to the court in the language needed, that interpreter must be appointed.⁹³ The Swedish National Courts Administration's guidelines for the use of interpreters in court emphasize that video interpretation enables a more efficient use of authorised interpreters, which in turn leads to their increased availability.⁹⁴ According to the bill implementing Directive 2010/64/EU on interpretation and

⁸⁴ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 10, 1 July 2019. This provision is applicable by reference to; Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, 16 October 2012.

⁸⁵ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 10, Paragraph 4, 1 July 2019. In the assessment, the court must, among other things, consider the type and nature of the case and the role of the person attending the court session, see Fitger, P., Sörbom, M., Eriksson, T., Hall, P., Palmkvist, R., Renfors, C. (2022) '[Rättegångsbalken – En kommentar](#)', Nordstedts Juridik, Comment on Chapter 5, Section 10.

⁸⁶ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

⁸⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, pp. 45-46.

⁸⁸ Sweden, Swedish National Courts Administration (*Domstolsverket*) (2020) Guidelines for the use of interpreters in court ([Riktlinjer för tolkanvändning i domstol](#)), June 2020.

⁸⁹ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 6, Paragraph 2, 1 November 2015.

⁹⁰ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 6, Paragraph 2, 1 November 2015.

⁹¹ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 50.

⁹² Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Tolkning och översättning i brottmål](#)', government bill, 21 March 2013, p. 50.

⁹³ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 6, Paragraph 2, 1 November 2015.

⁹⁴ Sweden, Swedish National Courts Administration (*Domstolsverket*) (2020) Guidelines for the use of interpreters in court ([Riktlinjer för tolkanvändning i domstol](#)), June 2020.

translation,⁹⁵ it is desirable that the authorised interpreter has specialist competence for interpretation within the legal system (so-called authorised legal interpreter).⁹⁶ However, this is not a requirement.

Questions about authorisation are regulated in the Ordinance (1985:613) on the authorisation of interpreters and translators ([Förordning \[1985:613\] om auktorisation av tolkar och översättare](#)) and examined by the Legal, Financial and Administrative Services Agency (*Kammarkollegiet*).⁹⁷

[Remedies available to requested persons in cases where they are not provided with interpretation or translation services during the EAW proceedings.](#)

If circumstances indicate that the interpretation or translation is incorrect during an ongoing preliminary investigation or court proceeding, the responsible authority has a mandate to replace the interpreter or order a new translation. The bill implementing Directive 2010/64/EU on interpretation and translation⁹⁸ stresses that in practice this is the most common way to solve problems with the interpretation or translation. If the authority decides not to comply with a complaint, requested persons can resort to an appeal procedure.⁹⁹

As mentioned under Chapter 1 above, there is a right to request a review of a decision by a prosecutor.¹⁰⁰ In addition to this, there is a right to request a court examination regarding deficiencies in the preliminary investigation under Chapter 23, Section 19, of the Code of judicial procedure.¹⁰¹ The bill implementing the Directive on a right to interpretation explicitly states that this includes any complaints with regard to interpretation and translation.¹⁰²

Decisions on interpretation or translation decided by a court can be appealed in connection with an appeal against a judgment or a final decision.¹⁰³ In the case of complaints regarding interpretation or translation, the higher court must examine whether a decision or the procedure in the lower court has entailed a procedural error. If this is the case, the higher court may quash the judgment or decision¹⁰⁴ and refer the case back to the lower court¹⁰⁵ for a retrial, or alternatively ‘heal’ the procedural error in the higher court.¹⁰⁵

⁹⁵ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

⁹⁶ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) [‘Tolkning och översättning i brottmål’](#), government bill, 21 March 2013, p. 50.

⁹⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) [‘Tolkning och översättning i brottmål’](#), government bill, 21 March 2013, p. 31; Sweden, Ordinance (1985:613) on the authorization of interpreters and translators ([Förordning \[1985:613\] om auktorisation av tolkar och översättare](#)), 13 June 1985.

⁹⁸ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

⁹⁹ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) [‘Tolkning och översättning i brottmål’](#), government bill, 21 March 2013, pp. 67-68.

¹⁰⁰ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) [‘Tolkning och översättning i brottmål’](#), government bill, 21 March 2013, pp. 67-68.

¹⁰¹ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 19, 1 April 2017.

¹⁰² Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) [‘Tolkning och översättning i brottmål’](#), government bill, 21 March 2013, pp. 67-68.

¹⁰³ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 49 and 51.

¹⁰⁴ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 59, Section 1, 1 October 1994.

¹⁰⁵ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) [‘Tolkning och översättning i brottmål’](#), government bill, 21 March 2013, pp. 67-68.

There is also the possibility for a requested person to turn to the Parliamentary Ombudsman or the Chancellor of Justice¹⁰⁶ if a law enforcement authority fails to fulfil its obligations properly in relation to translation and interpretation (see Chapter 1 a above).¹⁰⁷

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

It seems to be standard practice for the requested person to be provided with interpretation when needed. Most often the police authority assesses the need for interpretation during the first interrogation. However, the need to appoint an interpreter can be brought up by any of the parties involved in the proceedings, including the prosecutor, the public defender, the requested person and the court. All interviewees confirmed that, if an interpreter is requested, this is also granted. The prosecutors reported that it is usually not a problem to find a suitable interpreter. However, one judge stressed that authorised legal interpreters (*rättstolk*) are not always available. As mentioned under section 2 a above, according to the Code of judicial procedure, an authorised interpreter should be appointed to act as an interpreter in the court proceedings.¹⁰⁸ According to the bill implementing Directive 2010/64/EU on interpretation and translation,¹⁰⁹ it is desirable that the authorised interpreter has specialist competence in interpretation within the legal system (so-called authorised legal interpreter).¹¹⁰ However, this is not a legal requirement.

- Translation of documents

It also seems to be standard practice that not all written documents are translated into the language of the requested person. For certain languages, documents are translated orally by the interpreter. This is to make sure the requested person understands the content of these documents. The Letter of Rights has been translated into a number of languages. In cases where a specific language is missing, the document is translated into the language of the requested person by the interpreter.

(EN) No, we do not translate all documents into all languages or languages that the requested person speaks, but we always have an interpreter present who goes through all documents in an interrogation (orally) while the police officer and the public defence counsel are present. So, the documents are gone through in a language that the requested person understands, but that person does not get the documents translated into a specific language in written form. [...] the 'letter of rights' is translated into a few different languages but similar to the

¹⁰⁶ See, for example, statements about the Swedish Police Authority's use of interpreters; Sweden, Chancellor of Justice (*Justitiekanslern, JK*) (2019), The Position of the Chancellor of Justice regarding the engagement of interpreters by the Swedish Police Authority (*Justitiekanslern uttalar sig angående Polismyndighetens anlitan av tolkar*), reference number 3938-18-2.1., 4 June 2019, and; Sweden, Chancellor of Justice (*Justitiekanslern, JK*) (2019), Criticism against Kalmar District Court due to the fact that an unauthorised interpreter was appointed (*Kritik mot Kalmar tingsrätt med anledning av att man förordnat en icke auktoriserad tolk*), reference number 10091-17-2.1., 11 January 2018.

¹⁰⁷ Sweden, Parliamentary Ombudsman (*Justitieombudsmannen, JO*) 'How to complain', official webpage, accessed 10 January 2023 and; Chancellor of Justice (*Justitiekanslern, JK*) Questions and answers (*Frågor och svar om JK:s tillsyn*), official webpage, accessed 10 January 2023.

¹⁰⁸ Sweden, Code of judicial procedure (1942:740) (*Rättegångsbalk [1942:740]*), Chapter 5, Section 6, Paragraph 2, 1 November 2015.

¹⁰⁹ [Directive 2010/64/EU](#) of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280.

¹¹⁰ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '*Tolkning och översättning i brottmål*', government bill, 21 March 2013, p. 50.

answer to the previous question, we have an interpreter present in hearings who translates orally for the requested person if necessary. (Prosecutor, Sweden)

(SV) Nej, vi översätter inte handlingar till alla språk eller språk som den eftersökte pratar men vi har ju alltid en tolk som går igenom handlingarna i förhör muntligen när polisen och försvararen är närvarande. Så att handlingarna går igenom på ett språk som den eftersökte förstår men den personen får inte dom handlingar översätta till ett särskilt språk i skriftlig form. [...] rättighetsblanketterna är översatta till några enstaka språk men det är samma svar där egentligen som på förra frågan att vi har en tolk som översätter muntligen i förhör till den eftersökte om det behövs.

- Interpretation of consultations with lawyers

It also seems to be a standard practice for the state to be responsible for the costs of interpreting consultations with public defence counsels. However, one public defence counsel and one judge reported that the state is not responsible for appointing interpreters in such cases.

c. Additional best practices or challenges

As mentioned above, one participant highlighted that authorised legal interpreters are not always available. Otherwise, no other challenges have been identified in the desk research or in the interview findings.

d. Discussion of findings

The findings demonstrate that the law is implemented in practice, as all interviewees agree that the requested person is provided with interpretation when needed. The main finding throughout the interviews is that the provision of interpretation and translation to requested persons generally seems to be observed. All interviewees confirmed that, if an accused person requests an interpreter, one is appointed here too. There was also agreement among the interviewees that, even though not all documents are translated into the language of the requested person, they are translated orally by the interpreter.

3. Right of access to a lawyer

a. Legal overview

[Legal provisions governing access to a lawyer, including legal aid in the EAW proceedings.](#)

Sweden as the executing state

The Act (2003:1156) contains provisions for accessing a public defence counsel.¹¹¹ The Act states that a public defence counsel should be appointed if requested persons request it, are under the age of 18 or are otherwise deemed to need a public defence counsel.¹¹² Thus, the basic principle is that a public defence counsel must be appointed. For all persons under the age of 18 suspected of crimes in Sweden, the appointment of a public defence counsel is mandatory.¹¹³ According to the Act, a defence counsel must be appointed under the circumstances outlined above regardless of whether the EAW is issued for prosecution or for enforcement of a custodial sentence. The prosecutor must report the need for a public defence counsel to the court.¹¹⁴

If a request for surrender is granted, requested persons have the right to be assisted by a public defence counsel until a decision on surrender has been executed.¹¹⁵ Thus, the right also applies after a decision on surrender has entered into force. This may be relevant in cases where a renewed hearing is requested on the matter of detention or if humanitarian reasons are invoked in support of a postponement of the execution of the decision on surrender.¹¹⁶ This provision was introduced in 2019¹¹⁷ as a result of Article 5(1) of Directive 2016/1919/EU on legal aid.¹¹⁸ The Act also specifies that the state covers the costs for the public defence counsel.¹¹⁹

If an EAW has been granted under the Act (2003:1156) and a judicial authority in the issuing member state requests permission to prosecute or punish the requested person for offences not covered by that EAW or to surrender the requested person to yet another member state, Chapter 2-5 of the Act is applicable.¹²⁰ This means that the rules regarding the EAW apply to permission to prosecute for other offences and to surrender to yet another member state.¹²¹ In such cases, a public defence

¹¹¹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), 18 December 2003.

¹¹² Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 8, 1 May 2019.

¹¹³ Brunberg, J., 'Act on Surrender from Sweden under a European Arrest Warrant', Commentary, Nordstedts Juridik, comment 54.

¹¹⁴ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 5, 1 July 2018.

¹¹⁵ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 8, 1 May 2019.

¹¹⁶ Brunberg, J., 'Act on Surrender from Sweden under a European Arrest Warrant', Commentary, Nordstedts Juridik, comment 54.

¹¹⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) (2019) '[Genomförande av rättshjälpsdirektivet](#)', government bill, 31 January 2019.

¹¹⁸ [Directive \(EU\) 2016/1919](#) of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297.

¹¹⁹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 8, 18 December 2003.

¹²⁰ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 6, Section 8, Paragraph 1, 16 October 2012.

¹²¹ However, provisions on coercive measures and timeframes are not applicable.

counsel must be appointed for the requested person.¹²² Requested persons must be given the opportunity to give their opinion on the request. The District Court examines whether there is reason to hold an oral hearing.¹²³

As mentioned in Chapter 1 above, the Ordinance (2003:1179) states that requested persons should be notified of their right to appoint a public defence counsel or a legal counsel in the issuing member state.¹²⁴ If requested persons wish to exercise this right, the Swedish prosecutor must immediately notify the responsible authority in the issuing member state.¹²⁵ The Ordinance was amended following [Directive 2013/48/EU on the right of access to a lawyer](#).¹²⁶

Requested persons' right to meet and communicate with their lawyers is regulated in the Code of judicial procedure and the Remand prisons act ([Häkteslag \[2010:611\]](#)).¹²⁷ According to the Code of judicial procedure, persons deprived of liberty have a right to meet with their public defence counsel in a private room.¹²⁸ Under the same provision, the public defence counsel must be summoned to any hearing before the court. Requested persons also have the right to have their public defence counsel present in any questioning during the preliminary investigation.¹²⁹ According to the Remand prisons act, electronic communications between requested persons on remand and their public defence counsel may not be refused or intercepted.¹³⁰

Sweden as the issuing state

According to the Code of judicial procedure, a public defence counsel must, on request, be appointed if requested persons are arrested or detained. Public defence counsels must also be appointed for persons who are suspected of a crime for which imprisonment for six months or more is stipulated.¹³¹ This means that when Sweden is acting as the issuing member state, a public defence counsel is appointed as part of the detention hearing (in absentia).

¹²² Sweden, Act (2003:1156) on Surrender from Sweden under a European Arrest Warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 6, Section 8, Paragraph 2, 16 October 2012.

¹²³ Sweden, Act (2003:1156) on Surrender from Sweden under a European Arrest Warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 6, Section 8, Paragraph 2, 16 October 2012.

¹²⁴ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 4, 27 November 2016.

¹²⁵ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 4, 27 November 2016.

¹²⁶ [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294.

¹²⁷ Sweden, Remand Prisons Act ([Häkteslag \[2010:611\]](#)), 10 June 2010.

¹²⁸ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 21, Section 9, 27 November 2016.

¹²⁹ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 10, 1 July 2022.

¹³⁰ Sweden, Remand Prisons Act ([Häkteslag \[2010:611\]](#)), Chapter 1, Section 2, 1 October 2022; Chapter 1, Section 3, 10 June 2010; Chapter 3, Section 4, 27 November 2016.

¹³¹ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 21, Section 3a, 1 January 2013.

The Ordinance (2003:1178) also contains provisions on access to a public defence counsel.¹³² The Ordinance outlines that the prosecutor must as soon as possible give requested persons information enabling them to appoint a public defence counsel or a legal counsel in Sweden. This applies if the executive authority in the executing member state has informed the Swedish prosecutor that the requested person wishes to appoint a public defence counsel or a legal counsel in Sweden.¹³³ If the requested person has a public defence counsel appointed in Sweden, the prosecutor must inform the requested person.¹³⁴ This obligation to provide information about the right to a public defence counsel was introduced following [Directive 2013/48/EU on the right of access to a lawyer](#).¹³⁵

When a requested person is transferred to Sweden, the Code of judicial procedure applies as in any national case where a detention order has been issued in the absence of the person concerned.¹³⁶ This means that, as soon as the requested person is present in Sweden, this shall be reported to the court.¹³⁷ The court must, without delay, hold a hearing in the presence of the requested person.¹³⁸

[Legal provisions and accompanying guidance regulating cooperation between lawyers dealing with a case in an executing and issuing member state.](#)

The Act (2003:1156), the Ordinance (2003:1178) and the Ordinance (2003:1179) contain no provisions regulating cooperation between public defence counsels in an executing and issuing member state. In the bill implementing [Directive 2013/48/EU on the right of access to a lawyer](#)¹³⁹ the Swedish government stressed that the public defence counsel in Sweden should be able to assist a lawyer in the executing member state without this requiring any special provisions.¹⁴⁰

General information about the role of the public defence counsel in the issuing member state to assist public defence counsel in the executing member state can be found in the Swedish Prosecution

¹³² Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 11a, 19 December 2016.

¹³³ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 11a, 19 December 2016.

¹³⁴ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 11a, 19 December 2016.

¹³⁵ [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294.

¹³⁶ Sweden, Swedish Prosecution Authority (Åklagarmyndigheten), '[Facts about extradition and surrender](#)', official webpage, accessed 10 January 2023.

¹³⁷ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 24, Section 17, Paragraph 3, 1 February 1996.

¹³⁸ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 24, Section 17, Paragraph 4, 1 February 1996.

¹³⁹ [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294.

¹⁴⁰ Sweden, Ministry of Justice (Justitiedepartementet) (2016) '[Genomförande av EU:s försvarardirektiv](#)', government bill, 2 June 2016, p. 41.

Authority's legal guidance on surrender under a European arrest warrant.¹⁴¹ The guidelines specify that the public defence counsel in the issuing member state should assist the public defence counsel in the executing member state by providing information and advice to enable requested persons to exercise their rights under the EAW Framework Decision.¹⁴²

[Remedies that are available in your country when requested persons are not informed about their right to dual legal representation or access to a lawyer is delayed or denied.](#)

As noted in Chapter 1 above, measures taken during the preliminary investigations must be noted in the preliminary enquiry report.¹⁴³ According to the government inquiry on the implementation of the Directive 2012/13/EU on the right to information,¹⁴⁴ this entails noting that requested persons have been informed about their rights.¹⁴⁵ The bill implementing [Directive 2013/48/EU on the right of access to a lawyer](#)¹⁴⁶ stresses that requested persons who have not been properly informed of their right to legal representation during the proceedings can express their complaints to a higher prosecutor.¹⁴⁷ For further information on the review of a prosecutor's decision, see Chapter 1 above.

In addition to this remedy, there is a possibility for requested persons to request a court examination regarding deficiencies in the preliminary investigation under Chapter 23, Section 19, of the Code of judicial procedure.¹⁴⁸ As highlighted under Chapters 1 and 2 above, there is also a possibility for requested persons to turn to the Chancellor of Justice or the Parliamentary Ombudsman with a complaint.

The court appoints the public defence counsel. If the court rejects a request to appoint a public defence counsel or a legal counsel, the decision can be appealed under Chapter 49, Section 5, of the

¹⁴¹ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021, pp. 30, 43.

¹⁴² Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021, pp. 30, 43.

¹⁴³ Sweden, Public notice of preliminary investigations (1947:948) (*Förundersökningskungörelse ([1947:948])*), Section 20, 1 July 2022.

¹⁴⁴ [Directive 2012/13/EU](#) of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142.

¹⁴⁵ Sweden, Ministry of Justice (*Justitiedepartementet*) (2013) '[Genomförande av Europaparlamentets och rådets direktiv om rätten till information vid straffrättsliga förfaranden](#)', Ministry Publications Series, 19 March 2013, p. 88.

¹⁴⁶ [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294.

¹⁴⁷ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 7, Section 5, 1 January 2005. This is also stressed in the government bill; Sweden, Ministry of Justice (*Justitiedepartementet*) (2014) '[Misstänkta rätt till insyn vid frihetsberövanden](#)', government bill, 11 March 2014, p. 14.

¹⁴⁸ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 23, Section 19, 1 April 2017.

Code of judicial procedure.¹⁴⁹ Decisions and judgements can also be quashed by a higher court when examining whether a decision or the procedure in a lower court has entailed a procedural error.¹⁵⁰

Table 5: Dual representation (in law)

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing member state and has been informed of this right?		
Sweden	YES	

Table 6: Cost-free legal assistance (in law)

Free of cost lawyer provided in law	When your country is an executing state	When your country is an issuing state (e.g. to assist the lawyer in the executing state)
Sweden	YES	YES

b. Right of access to a lawyer in practice

- Information about legal assistance (including on dual representation)

It seems to be a standard practice that the requested person is always informed and provided with a public defence counsel when arrested in Sweden on an EAW issued by another EU member state. All interviewees confirmed that the starting point in EAW cases is that requested persons are appointed a public defence counsel. Not all interviewees described how the requested persons are informed about this right. However, the judges/prosecutors reported that requested persons are informed orally by the police officer when they are apprehended, or through written information setting out their procedural rights. Moreover, all interviewees confirmed that the public defence counsel is a cost borne by the state, and in cases of EAW the state is always the financially responsible party.

With regard to information on dual representation when a person is arrested in Sweden on an EAW issued by another state, experiences differ among the interviewees. The prosecutors reported that requested persons are informed about their right to dual representation as part of the provision of information about their procedural rights. One public defence counsel reported that the requested person is not informed about the right to dual representation and another public defence counsel stated that information on assistance from a public defence counsel in issuing states is lacking. Both public defence counsels highlighted that different regulations regarding the provision of public defence counsel in other member states complicates the contact with the requested person's legal counsel in the other country, for example, over whether legal counsels are state-funded. One public defence counsel reported a lack of communication between public defence counsels when Sweden is the issuing member state. The same public defence counsel reported that they never had any case where they had contact with the requested persons in the executing member state.

¹⁴⁹ Sweden, Ministry of Justice (*Justitiedepartementet*) (2016) '[Genomförande av EU:s försvarardirektiv](#)', government bill, 2 June 2016, p. 51. See also; Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 49, Section 5.1., 30 November 2018.

¹⁵⁰ Sweden, Ministry of Justice (*Justitiedepartementet*) (2016) '[Genomförande av EU:s försvarardirektiv](#)', government bill, 2 June 2016, p. 51. See also; Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 59, Section 1, 1 October 1994.

(EN) [...] but I can say that if Sweden is the issuing state, it means that I am appointed for the client in Sweden. In order for a Swedish prosecutor to be able to issue an arrest warrant, there must be a detention order from a court, and for a detention order, the requested person shall have the right to a public defence counsel, so I will, in principle, always be appointed when Sweden is the issuing country. So that means that in Sweden the requested person has a public defence counsel. And I do not know if the [the requested] person knows in the executing country when he or she is arrested in the executing country, that there is a public defence counsel in Sweden. And I can see that this communication could, quite simply, be clarified for the individual because there is a contact, so to speak, between the different authorities in the different countries so that in that contact, in the exchange of information, it would also be possible to pass on information about, as in this example, the public defence counsel to the person concerned in the executing state. So, there is a question that I think, based on the insight I have, the experience I have, there is a shortcoming there. (Lawyer, Sweden)

(SV) [...] men jag kan ju säga om Sverige är utfärdande stat då innebär ju det att jag är förordnad då för klienten i Sverige. För att en svensk åklagare ska kunna få utfärda en arresteringsorder så förutsätter ju det att det finns ett häktningsbeslut av en domstol, och inför ett häktningsbeslut så ska ju den misstänkta ha rätt till en offentlig försvarare så att jag kommer ju att förordnas, i princip alltid, när Sverige är utfärdande land. Så det innebär att i Sverige så har den berörda personen en offentlig försvarare. Och det vet jag inte om den [eftersökte] personen känner till i verkställandelandet när han eller hon grips i verkställandelandet. Att det finns en försvarare i Sverige. Och den kommunikationen ser jag väl att, skulle, ganska enkelt, kunna klargöras för den enskilde eftersom det finns en så att säga kontakt mellan de olika myndigheterna i de olika länderna så att i den kontakten vid den informationsväxlingen skulle även uppgifter om försvararen som i det här exemplet då den svenska försvararen kunna vidareförmedlas till den berörda personer i verkställande staten. Så att det är en fråga som jag tycker att utifrån den insyn jag har den erfarenhet jag har så är det väl en brist där.

Table 7: Are persons informed of their right to access a lawyer?

	Lawyer 1	Lawyer 2	Judge 1	Prosecutor 1	Prosecutor 2	Total
YES	X	X	X	X	X	5
In writing	-	-	-	X	-	1
Orally	-	-	X	-	X	3
In writing and orally	-	-	-	-	-	0
NO	-	-	-	-	-	0
Don't know/remember	-	-	-	-	-	0
Did not answer	-	-	-	-	-	0

Table 8: Information on dual representation, interview findings

Are persons arrested on an EAW informed by authorities of their right to have the assistance of a lawyer in the issuing member state?						
	Lawyer 1	Lawyer 2	Judge 1	Prosecutor 1	Prosecutor 2	Total
YES	-	-	-	X	X	2
NO	X	-	-	-	-	1

Don't know/remember	-	X	-	-	-	1
Did not answer	-	-	X	-	-	1

- Legal assistance in executing state (access, consultations, lawyer's tasks)

As stated above, all interviewees confirmed that the starting point in EAW cases is that requested persons are always appointed a public defence counsel. It seems to be standard practice that the requested persons can choose their public defence counsel if they wish, otherwise the court will appoint one for them. One public defence counsel reported that the authorities do not provide requested persons with a list of public defence counsels, nor are they given access to a phone or the internet to contact public defence counsels. One prosecutor reported that, if requested persons do not have the name of the public defence counsel they would like to use, they are usually not given access to a computer to find one. Rather, the court appoints a public defence counsel for them.

Most interviewees also confirmed that, after a public defence counsel is appointed, the public defender and the requested person have contact on their own. One public defence counsel stressed that the requested person is detained and most often subject to 'restrictions', which means that they cannot get in touch with a public defence counsel themselves. However, they can request the Police Authority or the Swedish Prison and Probation Service's (*Kriminalvården*) personnel to contact a public defence counsel. Once a public defence counsel has been appointed, they may call or meet them as the 'restrictions' do not cover contact with the requested person's public defence counsel.

All interviewees reported that requested persons are always able to meet with their public defence counsels privately. Even when requested persons have so-called 'restrictions' regarding contact with the outside world, they are never restricted in their contact with their public defence counsel. Also, requested persons always have the right to have their public defence counsel present at hearings, without limitations. None of the interviewees mentioned any major challenges in these regards. However, one prosecutor stated that the public defence counsel must provide assistance until the requested person is extradited, and not only after the court has made its decision to extradite. According to the prosecutor, it used to be fairly common that the court's decision would also specify the amount to be paid to the public defence counsel, in essence ending their assignment. This was not legally correct, as the requested persons are guaranteed legal representation until the decision is carried out.

One public defence counsel reported that it can be quite frustrating being a person's public defence counsel in EAW proceedings when Sweden is the executing state. This is because, in essence, there is very little they can do at this point.

(EN) [The assistance provided by a public defence counsel in EAW proceedings where Sweden is the executing state are] [...] to inform and develop what rights [the requested persons] have. To give them advice regarding consent to surrender or similar questions. And to give them information on the likelihood of their being released from detention in a detention hearing and the advantages and disadvantages of consent in a system; [at least] you can say this. In essence there is very little a public defence counsel can do, and that is the point. But it can be quite frustrating as a person's legal counsel not being able to - that you realise that this is completely wrong, but there is no point in [discussing] it, but it is just to play the game, sort of. (Lawyer, Sweden)

(SV) [Den hjälp som ges av ett offentligt biträde i EAW-förfaranden där Sverige är verkställande stat är att] [...] informera om, och utveckla vilka rättigheter de [eftersökta personerna] har. Ge dom råd när det gäller medgivande och liknande. Och så ge dom information om vilka

sannolikheterna är för dem att bli försatta på fri fot vid en häktningsförhandling och för och nackdelar med medgivande i ett system, så kan man väl säga. I sak är det väldigt lite man kan göra och det är väl liksom meningen. Men det kan vara ganska frustrerande som ombud att inte kunna, att man inser att det här är helt fel, men det är ingen idé att käfta om det utan det är bara spela spelet liksom.

Most interviewees reported that the national authorities do not provide any assistance in facilitating communication with, or the appointment of, a public defence counsel in the issuing state. However, one prosecutor reported that, if they have information that legal representation in the issuing state has been requested, they forward that information to the member state in question. If or when such legal representation is found in the issuing state, the prosecutor forwards this information to both the requested person and the public defence counsel in Sweden. The same prosecutor reported that, as prosecutors, they do not look up individual public defence counsels in other member states. Another prosecutor reported that they do not have any contact details for lawyers in other member states. One public defence counsel highlighted that the Swedish system of ‘restrictions’ for requested persons detained under an EAW hampers their own ability to find or contact a public defence counsel in the issuing member state. The same public defence counsel experienced one case where the requested person’s family contacted a lawyer in the issuing state on behalf of the requested person.

Table 9: Facilitating dual legal representation, interview findings (executing MS)

Is assistance provided in appointing a lawyer in the issuing member state when execution proceedings are ongoing? (When your country is an executing state)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1		X	
Lawyer 2		X	
Judge 1		X	
Prosecutor 1		X	
Prosecutor 2	X		
Total	1	4	0

- Legal assistance in the issuing state (access, consultations, lawyer’s tasks)

As stated above, all interviewees confirmed that requested persons are always appointed a public defence counsel, including when Sweden is the issuing member state. One prosecutor reported that, when an EAW is issued for prosecution, the prosecutor petitions the court for a detention order in absentia. There is always a hearing where the person is appointed a public defence counsel. However, the same prosecutor stated that, in the most recent requests for public defence counsels in EAW cases issued for the execution of sentencing, this has been denied by the District Court. The court denied the request for a public defence counsel because the requested person was being returned to Sweden to serve a sentence that had already been decided on by the courts in a trial where they had legal representation. The prosecutor reported that some district courts have continued to appoint public defence counsel in these cases, but some have decided that this should not be the case.

As stated above, when Sweden is the issuing member state, the public defence counsels are appointed as part of the detention hearing (in absentia). This means that the public defence counsel is already assigned to the case when an EAW for prosecution is issued. Both public defence counsels reported that they can only be of limited help in these cases, as they are usually not in contact with their clients. One public defence counsel reported that they experience poor communication and a lack of contact with the lawyer in the executing member state. This means that they usually do not have direct contact with their clients and can only objectively assume the wishes of the requested person. Another public defence counsel reported that they experienced no contact with anyone in the executing state

(lawyers or authorities) and are not usually in contact with the requested persons until they are present in Sweden. According to the same public defence counsel, they do not gather additional evidence themselves, but are given what the prosecutor has put forward.

- Communication between lawyers in the two states

As stated in the sections above, the public defence counsels reported that they experience poor communication and/or a lack of contact with the lawyer in the executing/issuing member state.

- Free of cost access to a lawyer (or legal aid)

All interviewees confirmed that the appointed defence counsel is funded by the state whether Sweden is acting as an issuing or an executing member state.

c. Additional best practices or challenges

Most interviewees reported that you are always assigned a public defence counsel and that there are no major problems regarding this right. Most interviewees stated that, in practice, there are no remedies available when requested persons are not informed about their rights, or this is delayed or denied. This is because the requested person is always appointed a public defence counsel in Sweden. Both public defence counsels indicated that they have a hard time seeing what legal avenues requested persons have if they are not informed about or can access dual representation. One public defence counsel stated that an objection to an EAW because the right to dual representation had been denied would probably not be taken into account by the court. The public defence counsel reported that the courts do not seem to care about formal issues as long as there are no ECHR violations. The public defence counsel reported that the whole idea of mutual trust makes it very difficult to object to formal issues in an EAW.

Another challenge not mentioned above is presented by the prosecutors and refers to when Sweden issues an EAW for purposes of prosecution. Before such an EAW is issued, the prosecutor petitions the court for a detention order in absentia, and there is always a hearing where the person is appointed a public defence counsel. This brings up a problem in Sweden that is not present in other countries, which is the public nature of the detention decision. The decision includes, among other things, the reasoning of the court, including in relation to the arrest warrant. This can become a problem when it comes to coordinating raids in combating organized crime in Europe because the public defence counsel, or any member of the public, can inform the requested person of the arrest warrant. The requested person may in turn inform the person who may be targeted by this law enforcement measure.

d. Discussion of findings

It can be seen from the foregoing description of practice that the right of access to a state-funded defence counsel is generally fulfilled. All interviewees agreed that there are no major challenges in this regard. However, the findings revealed that some District Courts have denied the appointment of a public defence counsel when Sweden is issuing an EAW for the purpose of the execution of a sentence.

The principle of dual representation is not normally facilitated beyond the legal requirements, that is, the provision of a public defence counsel in Sweden, the explanation of this right to requested persons and the forwarding of a request to appoint a public defence counsel. The prosecution authorities do

not view the facilitation of contact between the two legal teams or the provision of representation as a part of their mandate. Furthermore, communication between public defence counsels in the executing and issuing member state seems to be lacking. These aspects can be seen as preventing the full enjoyment of the right to dual representation and the effective defence of requested persons in practice.

Moreover, the principle of mutual trust means that the prosecuting authorities rely on requested persons, or their legal representation, to make objections before judging conditions in other member states that might otherwise raise proportionality concerns.

4. Issuing and Execution of the EAW

a. Legal overview

[Legal provisions or accompanying guidance governing the issuing of the EAW by Sweden.](#)

The Ordinance (2003:1178) governs the issuing of an EAW in Sweden.¹⁵¹ The Ordinance states that a Swedish EAW, i.e. a request that a person be arrested and surrendered from another member state to be prosecuted or to carry out a custodial sentence in Sweden, is issued by prosecutors.¹⁵² Sweden has notified the General Secretariat of the Council that prosecutors are authorised to issue an arrest warrant in relation to prosecution under Swedish law.¹⁵³ The Prosecutor-General (*Riksåklagaren*) decides which prosecutors are authorised to issue a Swedish arrest warrant.¹⁵⁴

According to the Ordinance, a Swedish EAW for prosecution may be issued for offences for which requested persons are held on remand (in absence) suspected of the offence on probable cause and for which imprisonment of one year or more is prescribed.¹⁵⁵ An EAW may also be issued for the execution of a custodial sentence that has been determined by a final judgment. An EAW may be requested for the enforcement of imprisonment, forensic psychiatric care and the institutional care of young persons.¹⁵⁶

Sweden has introduced a proportionality rule in the Ordinance (2003:1178) governing the issuing of an EAW.¹⁵⁷ The provisions are applicable both in relation to the issuance of an EAW for the purposes of conducting a criminal prosecution and for the purposes of executing a custodial sentence.¹⁵⁸ A Swedish EAW may only be issued if, taking into account the ‘consequences for the individual’ (*men för den enskilde*), as well as the length of time and the costs that can be assumed to be incurred in the case, this appears to be justified with regard to the nature and seriousness of the offence, as well as to other circumstances.¹⁵⁹ Thus, the length of time, costs and negative consequences for requested

¹⁵¹ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), 18 december 2003.

¹⁵² Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 2, 19 December 2016.

¹⁵³ Sweden, Government Offices (*Regeringskansliet*) '[Frågor och svar om överlämnande enligt en europeisk arresteringsorder](#)' official webpage, accessed 10 January 2023.

¹⁵⁴ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 2, 19 December 2016.

¹⁵⁵ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 3, 19 December 2016.

¹⁵⁶ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 4, 19 December 2016.

¹⁵⁷ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 5, 18 December 2003.

¹⁵⁸ When issuing a request for surrender for the execution of a custodial sentence, the examination may be carried out in consultation with the authority requesting the issuance, i.e. the Swedish Prison and Probation Service (*Kriminalvården*), the National Board of Health and Welfare (*Socialstyrelsen*) or the Swedish National Board of Institutional Care (*Statens institutionsstyrelse*): Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '[Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar](#)', Nordstedts Juridik, Section IV, Chapter 4.

¹⁵⁹ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant ([Förordning \[2003:1178\] om överlämnande till Sverige enligt en europeisk arresteringsorder](#)), Section 5, 18 December 2003.

persons must be considered when an EAW is issued. Such negative consequences must be balanced against the nature and seriousness of the offence. In addition, other circumstances can also be considered. In the academic legal commentary, ‘Surrender to Sweden under the European or Nordic Arrest Warrant’ (*Överlämnande enligt en europeisk eller nordisk arresteringsorder*), the authors assume that, for requested persons, the judgement or the detention order constituting the foundation of the EAW as such constitutes negative consequences. The proportionality examination may therefore be assumed to consider any additional consequences for requested persons following a surrender. The examination must therefore be conducted on a case-to-case basis. Other circumstances to consider may be related to the executing state or be attributable to requesting persons.¹⁶⁰ The prosecutor examines whether an issuance of an EAW is proportionate.

The proportionality rule in the Ordinance (2003:1178) includes a specific reference to persons under the age of 18 years old. Under such circumstances, an EAW can be issued only if it concerns serious criminality, the young person has strong ties to Sweden, or there are otherwise special reasons for requesting surrender to Sweden.¹⁶¹ In the commentary ‘Surrender to Sweden under the European or Nordic Arrest Warrant’, the authors stress that the requirements in Swedish law for issuing a detention order or a custodial sentence of a certain length for a person under the age of 18 mean that the requirement of serious criminality in the proportionality rule will in practice always be met.¹⁶² It is the requested person's age at the time the EAW was issued that determines whether the conditions set out in the provision should be considered. In addition to this specific reference to persons under the age of 18, the main rule regarding proportionality is also applicable to them.¹⁶³

When a requested person is transferred to Sweden, the Code of judicial procedure applies, as in any national case where a detention order has been issued in absence.¹⁶⁴ As soon as the requested person is present in Sweden, the court will, without delay, hold a hearing in the presence of the requested person.¹⁶⁵

[Legal avenues in place to effectively challenge the issuing of the EAW or request its withdrawal.](#)

As mentioned above, a Swedish EAW may only be issued based on a detention order or a judgement. The EAW is issued by the prosecutor,¹⁶⁶ who also considers whether the measure is proportional. The question of proportionality is examined in connection with the detention order.

It is not possible for the requested person to appeal against a prosecutor's decision to issue an EAW. However, as stressed in previous sections, a prosecutor's decision may be subject to review.¹⁶⁷ This

¹⁶⁰ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) *‘Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar’*, Nordstedts Juridik, Section IV, Chapter 4.1.

¹⁶¹ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant (*Förordning [2003:1178] om överlämnande till Sverige enligt en europeisk arresteringsorder*), Section 5, 18 December 2003.

¹⁶² Friman, H., Wallentheim, U., Zetterstedt, J. (2022) *‘Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar’*, Nordstedts Juridik, Section IV, Chapter 4.1.

¹⁶³ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) *‘Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar’*, Nordstedts Juridik, Section IV, Chapter 4.1.

¹⁶⁴ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*), *‘Facts about extradition and surrender’*, official webpage, accessed 10 January 2023.

¹⁶⁵ Sweden, Code of judicial procedure (1942:740) (*Rättegångsbalk [1942:740]*), Chapter 24, Section 17, 1 February 1996.

¹⁶⁶ Sweden, Ordinance (2003:1178) on surrender to Sweden under the European arrest warrant (*Förordning [2003:1178] om överlämnande till Sverige enligt en europeisk arresteringsorder*), Section 2, 19 December 2016.

¹⁶⁷ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) *‘Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar’*, Nordstedts Juridik, Section IV, Chapter 5.2.

means that a prosecutor's decision to issue an EAW can be examined by a higher prosecutor (Director of Public Prosecution/Deputy Director of Public Prosecution). Such a review may lead to a decision being changed if it is considered incorrect. A review of a decision is handled through a written procedure.¹⁶⁸ The review procedure is not regulated in law but has been developed through case law. The Prosecutor-General has developed guidelines for review.¹⁶⁹

Even though the decision to issue an EAW cannot be appealed, the requested person is considered to have the ability to challenge the issuing of the EAW through the right to appeal against a detention order or the judgement on which the EAW has been issued.¹⁷⁰

In a case concerning surrender from the Netherlands to Sweden, the Court of Justice of the European Union was asked to consider whether a Swedish prosecutor's decision to issue an EAW must be subject to challenge before a court, or whether the Swedish system to challenge an EAW is compatible with EU law.¹⁷¹ According to the Swedish system, the court is required to carry out an examination of proportionality when assessing whether it is necessary to issue a detention order. To establish that it is necessary to issue a detention order, the court must also assess the proportionality of other possible measures, such as the issuing of an EAW. If the decision to issue a detention order is annulled, the EAW is automatically invalid, since it was issued on the basis of that decision. Any higher court hearing an appeal against a detention order also assesses the proportionality of the decision to issue the EAW.¹⁷² The Court held that the requirements are met if the conditions for issuing an EAW, and in particular its proportionality, can be subject to judicial review in the issuing member state. According to the Court, the 'conditions for issuing that warrant and, in particular, its proportionality, may be subject to judicial review in [Sweden] not only before or at the time of its adoption, but also thereafter.'¹⁷³ Thus, even in the absence of a separate remedy against a public prosecutor's decision to issue an EAW, the Court held that the Swedish system meets the requirement of effective judicial protection.¹⁷⁴

[Legal and accompanying guidance governing the execution of the EAW by Sweden.](#)

The Act (2003:1156)¹⁷⁵ and the Ordinance (2003:1179)¹⁷⁶ are applicable in relation to the execution of an EAW in Sweden. The Act and the Ordinance contain regulations for prosecutors' and courts' handling of and decisions on surrender from Sweden. Surrender can be requested for two purposes: prosecution, or execution of a custodial sentence in the issuing member state.¹⁷⁷

¹⁶⁸ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*), Review (*Överprövning*), official webpage, accessed 10 January 2023.

¹⁶⁹ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2013) Prosecutor General's Guidelines (*Riksåklagarens riktlinjer*) RÅR 2013:1, p. 6.

¹⁷⁰ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '*Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar*', Nordstedts Juridik, Section IV, Chapter 5.2.

¹⁷¹ Court of Justice of the European Union (CJEU), *C-625/19 PPU*, Rechtbank Amsterdam, 12 December 2019.

¹⁷² Court of Justice of the European Union (CJEU), *C-625/19 PPU*, Rechtbank Amsterdam, 12 December 2019, pp. 46-53.

¹⁷³ Court of Justice of the European Union (CJEU), *C-625/19 PPU*, Rechtbank Amsterdam, 12 December 2019, p. 52.

¹⁷⁴ Court of Justice of the European Union (CJEU), *C-625/19 PPU*, Rechtbank Amsterdam, 12 December 2019.

¹⁷⁵ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant (*Lag [2003:1156] om överlämnande från Sverige enligt en europeisk arresteringsorder*), 18 December 2003.

¹⁷⁶ Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant (*Förordning [2003:1179] om överlämnande från Sverige enligt en europeisk arresteringsorder*), 18 December 2003.

¹⁷⁷ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant (*Lag [2003:1156] om överlämnande från Sverige enligt en europeisk arresteringsorder*), Chapter 2, Section 1, 18 December 2003.

When an EAW for surrender from Sweden has been received, the prosecutor must, as a general rule, detain requested persons either after they have been apprehended or arrested in absence.¹⁷⁸ When the requested person has been arrested or detained, the same rules apply as for a corresponding measure during a Swedish preliminary investigation, with a few exceptions.¹⁷⁹ The prosecutor is responsible for investigating whether the conditions for surrender have been met.

It is the District Court that examines the question of surrender from Sweden to another member state.¹⁸⁰ The regulations on court proceedings in criminal cases are applicable in relation to these decisions, unless otherwise stated in the Act.¹⁸¹ Before issuing a decision, the Court must hold a hearing to which the prosecutor and the requested person are summoned. However, a hearing does not need to be held if it is clear that a surrender should not be granted, if requested persons consent to surrender or if they request that the case should be decided on the basis of the documents.¹⁸² A decision by the District Court to surrender persons against their will can be appealed to the Court of Appeal (*Hovrätten*) and to the Supreme Court (*Högsta domstolen*). Decisions where requested persons consented to surrender may not be appealed.¹⁸³

The Act specifies the conditions under which surrender can be executed.¹⁸⁴ Among other things, a request for surrender in accordance with an EAW for prosecution can only be executed if the offence prescribes imprisonment of one year or more in the issuing member state. A request for surrender in accordance with an EAW for the execution of a custodial sentence presupposes that the requested person has been sentenced to imprisonment of four months or more. As a general rule, the requirement of double criminality also applies.¹⁸⁵

The Act contains a list of situations when an EAW may not be executed.¹⁸⁶ Such situations can be that requested persons have already been convicted of the offence in Sweden or in another member state, that a pardon or waiver of prosecution for the offence has been granted in Sweden, or that the offence has been committed in Sweden and does not constitute an offence in Sweden.¹⁸⁷

¹⁷⁸ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 5, 16 October 2012.

¹⁷⁹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 6, 18 December 2003. Exceptions relate to coercive measures, decisions on detention and timeframes for commencing a prosecution.

¹⁸⁰ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 1, 18 December 2003.

¹⁸¹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, Paragraph 1, 16 October 2012.

¹⁸² Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, Paragraphs 2-3, 16 October 2012.

¹⁸³ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 9, 16 October 2012.

¹⁸⁴ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 2, Section 2, 1 August 2015.

¹⁸⁵ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 2, Section 2, Paragraphs 1 and 4, 1 August 2015.

¹⁸⁶ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 2, Sections 3-6, 18 December 2003.

¹⁸⁷ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 2, Sections 3-6, 18 December 2003.

The Act explicitly states that a surrender from Sweden may not be executed if it would conflict with the European Convention on Human Rights (ECHR) and its additional protocols.¹⁸⁸ The ECHR and its additional protocols constitute, as part of Swedish law, the substantial provisions regulating the examination of the EAW. In the academic legal commentary, 'Surrender to Sweden under the European or Nordic Arrest Warrant', the authors stress that, even the Charter of Fundamental Rights of the European Union (EU Charter) must be considered independently in Swedish courts as a ground for non-execution of the EAW.¹⁸⁹ This holds regardless of the fact that the EU Charter is not explicitly mentioned in the Act.¹⁹⁰ An applicable situation where this provision may be actualised is if there are reasons to believe that requested persons would be at risk of being subjected to torture or other inhuman or degrading treatment or punishment in the issuing member state.¹⁹¹ In this regard, the *Aranyosi judgment* has influenced Swedish case law regarding cooperation in relation to certain countries, among others Romania.

Swedish courts have refused to surrender requested persons to Romania by referring to a serious risk of their being subjected to inhuman and degrading treatment due to the conditions during deprivation of liberty in Romania.¹⁹² However, in the case 'The Romanian arrest warrant' (*Den rumänska arresteringsordern*), the Swedish Supreme Court examined a request for surrender for the execution of a custodial sentence and found that surrender to Romania could be executed.¹⁹³ The key legal question for the Swedish Supreme Court to assess was whether the conditions of detention in Romania were so deficient that there were grounds for the refusal (non-execution) of the EAW with reference to Article 3 of the ECHR or Article 4 of the EU Charter. In this case, the Romanian prison authority declared that the conditions for the convicted person during the execution period would correspond to the minimum requirements that follow from the European Court of Human Rights' case law. The Swedish Supreme Court found that there was a general risk that the surrender of the requested person to Romania would be incompatible with these requirements. However, in light of the assurance provided via the Romanian Ministry of Justice, the Court found that there was no strong presumption that a surrender would constitute a violation of Article 3 of the ECHR or Article 4 of the EU Charter. Based on the foundational approach of mutual recognition and trust between EU member states, the Swedish Supreme Court found that there was no reason to question the assurance given and that surrender to Romania should be executed.¹⁹⁴

In the Swedish Prosecution Authority's guidelines on surrender in accordance with an EAW, the authority highlights the prosecutor's obligation to investigate in cases where objective information exists about deficiencies regarding substandard detention conditions. With reference to the

¹⁸⁸ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 2, Section 4.2., 18 December 2003. This explicit provision was included by recommendation of the Council on Legislation (*Lagrådet*); see Sweden, Ministry of Justice (*Justitiedepartementet*) (2003) 'Lag om överlämnande från Sverige enligt en europeisk arresteringsorder', government bill, 25 September 2003, p. 348.

¹⁸⁹ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '[Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar](#)', Nordstedts Juridik, Section II, Chapter 2.4.

¹⁹⁰ According to the Ordinance (2003:1179), the court must notify the Ministry of Justice if a request for surrender has been refused on this ground; see Sweden, Ordinance (2003:1179) on surrender from Sweden under a European arrest warrant ([Förordning \[2003:1179\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Section 16, 18 December 2003.

¹⁹¹ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '[Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar](#)', Nordstedts Juridik, Section II, Chapter 2.4.

¹⁹² See for example: Sweden, Swedish Court of Appeal (*Svea Hovrätt*), Case number Ö 5368-16 and Ö 5372-16, 14 September 2016. The cases can be accessed by request to the Swedish Court of Appeal.

¹⁹³ Sweden, Swedish Supreme Court (*Högsta domstolen*) Case number Ö 6598-19, The Romanian arrest warrant ([Den rumänska arresteringsordern](#)), 8 April 2020.

¹⁹⁴ Sweden, Swedish Supreme Court (*Högsta domstolen*) Case number Ö 6598-19, The Romanian arrest warrant ([Den rumänska arresteringsordern](#)), 8 April 2020. P. 42-51.

judgments by the Court of Justice of the European Union and the Swedish courts, the guidelines stress the importance of conducting an *ex officio* investigation as regards member states such as Romania and Hungary.¹⁹⁵

Another example of a situation when surrender from Sweden may not be executed is if the EAW relates to the execution of a custodial sentence that has been imposed after a hearing where the requested person has not been personally present. This applies if the issuing authority has not confirmed that any of the conditions in Article 4a. 1 d of the EAW Framework Decision have been met.¹⁹⁶ The application of this provision was examined in a recent judgment by the Swedish Supreme Court. The case 'The Greek judgment in absentia' (*Den grekiska utevarodomen*) concerned an EAW for surrender to Greece for the execution of a custodial sentence. Neither the requested person nor his defence counsel had been present at the final hearing in Greece. However, Greece had noted in the EAW that the requested person had been notified of the time and place of the hearing in such a way that it could be unequivocally established that he had knowledge of the hearing, as well as that the sentence could be issued even if he was not personally present. The Swedish Supreme Court stressed that, in accordance with the practice of the Court of Justice of the European Union, it is required that the Swedish court conduct an examination of whether the requested person had been notified or not, irrespective of claims to this effect by Greece. In their examination, the Supreme Court found that the Greek authorities had not, in contrast to the notification in the EAW, notified the requested person of the time and place in such a way that it could be unequivocally established that he had knowledge of the hearing. The Supreme Court therefore concluded that the conditions for surrender to Greece had not been met and the request for surrender was refused.¹⁹⁷

b. Issuing and Execution of an EAW in practice

- Factors considered when issuing an EAW

Legal requirements and proportionality

All interviewees confirmed that the formal and legal requirements are taken into consideration by the national authorities when deciding on the issuing of an EAW. It also seems to be standard practice that proportionality is considered before issuing an EAW, both for issuing an EAW for prosecution and for the execution of sentencing in each individual case. One prosecutor reported that a proportionality concern in the case of executing an EAW for the purposes of sentencing could arise if the requested persons have already been in custody for a long time. Then they might no longer fulfil the basic criteria for extradition if they were to be extradited at this point, since the sentence may have been served already. The prosecutor also reported that, in issuing an EAW for prosecution, a typical proportionality concern would be if there are less coercive measures that could fulfil the needs of the issuing state. Another prosecutor reported that the practical and personal situation of the requested person is considered as part of the proportionality assessment. One public defence counsel highlighted that they were not sure how proportionality is taken into consideration. Their impression was that, even though proportionality should be observed, it does not matter much in practice. One judge reported that, when the formal legal requirement to issue an EAW has passed, the Swedish courts only rarely reject the EAW on the grounds of proportionality to the benefit of the requested person .

¹⁹⁵ Sweden, Swedish Prosecution Authority (*Åklagarmyndigheten*) (2021) Legal Guidance, Surrender under a European Arrest Warrant (*Rättslig vägledning, Överlämnande enligt en europeisk arresteringsorder*), 2021:16, November 2021, pp. 19-20.

¹⁹⁶ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 2, Section 3.6., 1 January 2022.

¹⁹⁷ Sweden, Swedish Supreme Court (*Högsta domstolen*) Case number B 4080-22, The Greek judgment in absentia ([Den grekiska utevarodomen](#)) 13 December 2022.

(EN) You [the prosecutor] have to make a proportionality assessment based on the individual case and look at the actual circumstances, and the personal circumstances, of the relevant person. What is the expected sentence for this current offence, is it worthwhile, do you think that the investigation could proceed to prosecution by issuing an arrest warrant, and so on. You take into consideration all the circumstances that you can before going to court to get a detention order and then issue an EAW. (Prosecutor, Sweden)

(SV) Man [åklagaren] måste göra en proportionalitetsbedömning utifrån det enskilda ärendet och se till de faktiska omständigheterna, och dom personliga omständigheterna, till den här personen som det gäller. Vad är det förväntade straffet för den här aktuella gärningen, är det lönt, tror man utredningen kommer kunna gå vidare till lagföring genom att utfärda arresteringsorder, och så vidare. Man tar hänsyn till alla omständigheter som man kan innan man går till domstolen och får ett häkningsbeslut och sen utfärdar en EAW.

Other possible factors

Most interviewees confirmed that the authorities consider the individual situation of a requested person to be part of the proportionality assessment before issuing or executing an EAW. However, one public defence counsel reported that the Swedish authorities consider the individual situation of a requested person only in truly exceptional circumstances.

Challenging the issue

All interviewees confirmed that a requested person can challenge the issuing of an EAW because of proportionality concerns. The prosecutors highlighted that it is always possible to request a review of the prosecutor's decision to issue an EAW. It is also possible to appeal or challenge the detention order for prosecution based on proportionality concerns. One public defence counsel pointed out that this is one part of the proceedings where the importance of dual representation is greatest. However, as highlighted under previous questions, the public defence counsel reported that they do not often have contact with their client, which makes it difficult to act upon the client's wishes other than to request a review of the decision to issue an EAW.

- Factors considered when executing the EAW

Proportionality

When Sweden is acting as the executing state, the prosecutors stated that they do not make judgments on the proportionality of a request to execute an EAW issued by another member state. However, the prosecutors conduct a proportionality assessment in relation to the decision to detain, for example, if other methods can be used instead of detention, such as travel bans or obligations to report. An obligation to report means that the requested person must report to the police authority at a certain location and at certain times. One judge confirmed that a proportionality assessment is conducted in relation to the detention hearing. After this stage the court does not usually investigate proportionality concerns if this is not brought to the court's attention by the requested person and their public defender. One public defence counsel reported that they have never experienced a court assessing proportionality concerns. The prosecutors reported that they can get in touch with the authorities of the issuing member state to discuss the use of other measures than detention, or if the person cannot be surrendered due to illness. Most interviewees, however, experienced such contact as very rare.

(EN) [...] [the court] examines the concerns raised about proportionality, absolutely, and you include it in your reasons for the decision, but [the court] doesn't investigate proportionality concerns on your own initiative, but it presupposes objections from the requested persons.

And that is also why we have the public defence counsel system, so that he or she can articulate objections then [...] The court [examines proportionality grounds], but based on objections, I would say. (Judge, Sweden)

(SV) [...] [domstolen] gör prövningen, absolut, man ta in det i sina beslutsskäl men [domstolen] eftersöker inte själv va, utan försätter invändningar ifrån den eftersökte. Och det är också därför vi har systemet med offentlig försvarare, så att han eller hon kan ge dom invändningarna då [...] Domstolen [prövar proportionalitet] men det bygger på invändningar skulle jag säga.

Conditions of detention

Both prosecutors confirmed that detention conditions in the issuing member state are considered when deciding whether to execute an EAW. Both prosecutors reported that they have created a routine for some countries where the case law from the European Court of Human Rights (ECtHR) or the Swedish Supreme Court raises detention concerns, as with Romania and Hungary. The prosecutors then ask for specific information or 'guarantees' about fundamental rights standards and where and how requested persons will be deprived of their liberty. The prosecutors then make judgements based on this information and on whether the detention conditions are good enough to execute an EAW. However, in countries where no such concerns have been raised, it is unusual to request more information. The judge reported that the court does not take the initiative to research these conditions itself, but relies on the prosecutors and public defence counsels to bring up detention conditions and then take into consideration relevant reports etc. Both public defence counsels confirmed that, unless the requested person and their defence counsel bring up detention conditions, the Swedish authorities do not take the detention conditions of the issuing member state into account.

Both prosecutors and the judge reported that they have sufficient and reliable information regarding the conditions of detention in other member states. One public defence counsel reported that they experienced a lack of sufficient and reliable data regarding the issue. One prosecutor experienced the case law of the ECtHR as the most useful source in assessing detention conditions. The same prosecutor stated that they have a hard time making sense of the specific information in, for example, the FRA's database on detention conditions and whether it fulfils the necessary criteria with regard to Article 3. It would be more useful to have a summary of the ECtHR's decisions in this regard. Three of the interviewees reported that they have not heard about the FRA database on detention conditions.

Right to a fair trial (rule of law)

Most interviewees referred to the principle of mutual trust and stated that the authorities rely on the information and formal criteria provided in the EAW with regard to the procedural rights of the requested person in the issuing state. One judge reported that the courts do not really consider how the procedural rights of the requested person are judged in the issuing state. Regarding the right to a fair trial, the courts do consider questions of proportionality. When a person is convicted in absentia (in another member state) the Swedish courts make sure that the person was served and chose not to attend, or at least that the person will receive a new trial when they are extradited. One prosecutor reported that they do consider issues regarding a fair trial in Article 6 of the ECHR using Swedish and ECtHR case law. Both prosecutors reported that cases of judgements in absentia are very strictly controlled in Sweden. If the member state does not fulfil the requirements for the framework decision on Article 4a. 1, the prosecutors will request more information. One prosecutor reported that they do not usually send out requests to the issuing member state where case law concerning Article 6 has not already been established. Another prosecutor reported that they do not look for more general

information about procedural rights in the issuing member state, though they might investigate the issue if it is brought up by the requested person.

(EN) [...] we mostly rely on the information provided in the EAW, as it is the mutual trust in each other's legal systems that applies as the baseline assumption in cases with the EAW. But if there is something specific that we need more information about, we would ask [the issuing state] about it. But we might do not look for any general information about procedural rights in the other state. Rather, we assume that everything has been conducted correctly unless something specific is brought up by the requested person [...]. (Prosecutor, Sweden)

(SV) [...] vi går ju på det som står i arresteringsordern eftersom det är en ömsesidig respekt för varandras rättssystem som gäller i dom har ärendena som utgångspunkt. Men om det är någonting särskilt som vi behöver få mer information om så frågar vi ju [den utfärdande staten] om det. Men vi tar nog inte in någon generell information om processuella rättigheter i det andra landet. Utan vi utgår ifrån att allt har gått korrekt till, om det inte är någonting särskilt som den eftersökte påtalar [...].

One public defence counsel reported that, as far as they knew, the national authorities in Sweden do not consider the procedural rights of requested persons in the issuing state. Another public defence counsel was unsure about whether the national authorities in Sweden consider the procedural rights of requested persons in the issuing state. However, the public defence counsel reported that there are decisions in relation to the right to a fair trial in Article 6 of the ECHR. The public defence counsel emphasised that the principle of mutual trust and the presumption that all member states fulfil the requirements creates a very steep uphill battle to show indications, or concrete evidence, that a person might be subject to an unfair trial. This, combined with the short deadlines, creates a situation in which individual objections become more difficult to make. The public defence counsel is also then expected to find additional information in the issuing state, which presupposes that there is dual representation. Another public defence counsel reported experiencing that the only time it can be worth fighting an EAW is when the other lawyer in the issuing state needs time to gather evidence, otherwise it is in principle meaningless to fight an EAW.

(EN) [...] the only time there might be any advantage to fighting [an EAW] is if there is contact with any legal representative on the ground [in the issuing state], [and] that person needs time to gather evidence or so [...]. But otherwise, it is in principle meaningless to fight [...]. (Lawyer, Sweden)

(SV) [...] den enda gången som det kan vara någon fördel att kämpa emot [en EAW] är om det är så att det finns en kontakt med något ombud på plats i [det utfärdande landet], [och] att den personen behöver ha tid för att plocka fram bevisning eller så [...]. Men annars är det ju är det ju i princip meningslöst att bestrida [...].

(EN) [...] I mean, this whole system is based on mutual trust, and [...] in this there is a presumption that, when we have this system, the presumption is that we have a minimum sufficient threshold in all different countries – that is, that all EU states meet the basic requirements as a presumption. And that in itself poses a problem when you object because then you have quite a long uphill battle to show that there are indications and even concrete circumstances that indicate that the client would be subjected to an 'unfair trial'. (Lawyer, Sweden)

(SV) [...] jag menar hela det här systemet bygger ju på ett ömsesidigt förtroende och [...] i det ligger en presumtion att när vi har det här systemet så är den presumtion att vi har en lägsta tillräcklig tröskel i alla olika länder - det vill säga att alla EU stater uppfyller de grundläggande

kraven som en presumtion. Och det innebär ju i sig ett problem när du ska invända därför att då har du en ganska lång uppförsbacke att visa att det finns indikationer och till och med konkreta omständighet som talar för att klienten skulle utsättas för en "unfair-trial" då.

Individual situation

One judge reported that the Swedish courts would consider the situation of the requested person, and the individual would be treated the same way as any Swedish citizen would be in an equivalent position. The Swedish courts are very unlikely to make generalized decisions regarding certain conditions in any member state. Rather, the courts come to an individual decision based on whether the requested person can be shown to endure specific hardships. Regarding a requested person's family situation or illness, it would very much depend on the situation: it would not at all be certain that this would influence the court's decision. The prosecutors reported that they consider the circumstances of each individual case. One prosecutor reported that this more or less becomes part of the proportionality assessment, whether a person can be extradited or if there are circumstances that hinder extradition. Another prosecutor reported that, as an executing state, they consider the individual situation of a requested person, especially regarding the need for coercive measures. In the actual extradition, there are possibilities to delay but not refuse extradition for health reasons or other humanitarian grounds. However, this is used sparingly, and one prosecutor reported that they never experienced such a case. One public defence counsel reported that, when Sweden is the executing state, humanitarian considerations can hinder the execution of an EAW. However, the public defence counsel did not state the likelihood of such considerations. Another public defence counsel stressed that they think that the Swedish authorities only consider the individual situation of a requested person in truly exceptional circumstances. In most cases the individual situation does not matter.

c. Additional best practices or challenges

One aspect explicitly highlighted as a challenge by both prosecutors and one public defence counsel is the prosecutor's specialization in EAW proceedings. This puts the prosecutors at an advantage compared to both the courts and the public defence counsels, as them being specialized gives them more resources and more experience than the courts and public defenders in EAW cases. The prosecutors stated that this can affect the fairness of the 'playing field' in some cases. One prosecutor reported that there is a lack of experience and knowledge among the courts and the public defenders in some individual EAW cases. Another prosecutor reported that the defence sometimes become stuck on irrelevant details and that their lack of knowledge tends to make their arguments weak, ultimately hurting their clients. One public defence counsel reported that the prosecutors always have an advantage over the public defence counsel and have all the resources, while the public defence counsels have none. However, the same public defence counsel reported that it would not matter how specialized the public defence counsels are, given the current formulation of the legislative framework of EAWs.

(EN) It is like any other advantage: the prosecutor always has an advantage. You talk about 'equality of arms': there is none. [The prosecutors] have all the resources: we have none. [The prosecutors] become specialists, yes, so be it. I can say that it would not matter even if we were specialists: as the legislation works currently, we have no chance anyway. [...] Rather, I think it is an advantage, [the prosecutors] do not do this to fight either, but I have nothing against the fact that there are specialist prosecutors. Because it's a rather complicated process, if I may say so, and then it is good that there is someone who knows all the deadlines, and I just think it is good that we have specialist prosecutors actually. (Lawyer, Sweden)

(SV) *Det är så som alla andra övertag, åklagaren har alltid övertag, man talar om "equality of arms": det finns ingenting. [Åklagarna] har ju alla resurser: vi har inga. [Åklagarna] blir specialister, ja, må så vara. Jag kan säga att det inte skulle spela någon roll även om vi var*

specialiste: så som lagstiftningen ser ut så har vi ingen chans ändå. [...] Jag tycker snarare att det är en fördel, så att [åklagarna] gör ju inte detta för att jävlas heller, utan jag har inget emot att det finns en specialisering av åklagare. För det är en ganska klurig process om jag säger så och då är det bra att det är någon som kan alla tidsfristerna och jag tycker bara det är bra att vi har specialiserade åklagare faktiskt.

(EN) What can be said is that we prosecutors, when it comes to incoming arrest warrants, that is to say, surrender from Sweden, we have it centralized. It is only us at (RIO), the unit against international and organized crime that handles these cases, which gives us the knowledge and experience of handling the arrest warrants in a way that the courts or the public defence counsels do not get. That is to say, the courts are general courts around Sweden: there is no special destination for incoming arrest warrants in relation to the courts, and not for public defence counsels either. I have not experienced it as a major problem, but there are occasional cases when it has been noticeable that experience in this type of case is lacking at a particular court (which do not handle these cases). This is understandable because they do not handle so many of these cases, and also with the public defence counsels, they do not have the specialization and knowledge. And in some individual cases this may impact on the playing field, so to speak. (Prosecutor, Sweden)

(SV) [...] Det som kan framföras det är väl lite så att vi åklagare är i den benämningen när det gäller inkommande arresteringsorder, det vill säga överlämnande från Sverige, så har vi ju det centraliserat. Det är bara vi på (RIO) riksenheten mot internationell och organiserad brottslighet som handlägger dom har ärenden vilket gör att vi får en kunskap och en erfarenhet av att hantera dom här arresteringsorden på ett sätt som inte domstolarna eller försvararna får. Det vill säga att domstolarna är allmänna domstolarna runt om i Sverige: det finns igen speciell destinerings av arresteringsorder när det gäller domstolar och inte heller när det gäller försvarare. Jag har inte upplevt det som någon större problem men det kan finnas enstaka ärenden när man har märkt att erfarenheten av dom har typen av ärendena hos en viss domstol (som inte handlägger det). Vilket är förståeligt eftersom dom inte handlägger så många av dom ärenden och även hos försvararna, att dom inte heller har samma specialisering och kunskap. Och i vissa enskilda ärenden ha en inverkan på spelplanen om man säger så.

One prosecutor reported one promising practice: the Prosecution Authority's well-established routines, handbooks, guides and templates for EAW cases, as well as their case management system with automated reminders of deadlines etc.

(EN) Success factors [...] are just that we have well established routines in different handbooks, guides and checklists within the authority that all prosecutors can access, and these are updated when needed, very often by the head office, which has an international unit there that works on this. And we have templates for, in principle, all of our decisions that need to be made in these cases, as well as all notifications to be sent, so that we do not miss something, but there are ready-made templates for everything that you can then use. Then, we have our case-management system, which is also very good, where we input everything and has automated reminders in these cases so that no deadlines are exceeded. (Prosecutor, Sweden)

(SV) Framgångsfaktorer [...] är just att vi har välutarbetade rutiner i handböcker, lathundar och checklistor på myndigheten som alla åklagare kan ta del av, och dom uppdateras också när det behövs, väldigt ofta från huvudkontorets sida som har en internationell enhet där som jobbar med det. Och vi har ju mallar för i princip alla våra beslut som ska fattas i dom här ärenden och alla underrättelser som ska skickas, så att de ska inte bli så att man missar någonting utan de finns färdiga mallar för allt som man då kan använda sig av. Sen har vi ju vårt ärendehanteringssystem som är väldigt bra också, där vi lägger in allting och har bevakningar i dom här ärendena så att man inte överskrida några frister.

d. Discussion of findings

Generally, the law is implemented in practice, as most interviewees agreed that the legal requirements and the issue of proportionality are taken into account when Sweden issues EAWs. Most interviewees confirmed that a proportionality assessment is conducted in relation to a detention decision whenever Sweden executes an EAW. Most interviewees stated that detention conditions are not taken into account by the Swedish authorities unless the requested person and their public defence counsel bring this to their attention. This also seems to be standard practice in relation to the right to a fair trial in the issuing member state. However, prosecutors reported that the detention conditions are considered for certain countries, such as Romania and Hungary. The prosecutors also reported that cases concerning judgements in absentia in other member states are strictly controlled.

To sum up, the principle of mutual trust seems to be very important in the reasoning of both judicial and prosecuting authorities. This serves to restrict deeper considerations of proportionality and/or adverse conditions in other member states. The authorities also seem more or less reliant on the case law of EU bodies or national courts if they are to seriously consider questions of proportionality, detention conditions, or guarantees over procedural rights. This places a very high burden of proof on the defence. Moreover, the prosecuting authority's specialization in EAW proceedings puts them at an advantage compared to both the courts and the public defence counsels. This advantage is increased further by the principle of mutual trust and the short deadlines built into the legislation around the EAW itself.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

Legal standards governing the use of digital tools (such as on-line questioning or the digital transfer of documents) during EAW proceedings, including cooperation between the lawyers in both countries.

There are no specific provisions governing the use of digital tools in the Act (2003:1156) or the Ordinances (2003:1178 and 2003:1179) regulating an EAW. As mentioned in previous chapters, the general provisions on preliminary investigations in criminal proceedings¹⁹⁸ and criminal proceedings in court¹⁹⁹ are applicable to EAW proceedings, with reference to the Act (2003:1156).

According to the Code of judicial procedure, the main rule is that parties and others who participate in a court session must appear in person in the courtroom or wherever the session is being held.²⁰⁰ However, the court may decide that a party or other person who must participate in a court session can participate by audio transmission or audio and image transmission. When examining whether there are grounds for participation through audio transmission or audio and image transmission, the court must consider any costs or inconveniences for the person to appear in person in the courtroom; whether the person feels afraid being present in the courtroom; whether it can be assumed that the person is exposed to pressure; and whether participation by transmission is necessary for security reasons. Participation through audio transmission or audio and image transmission may not take place if it is inappropriate²⁰¹ when considering the purpose of the person's participation and other circumstances.²⁰² Anyone participating in a court session through audio transmission or audio and image transmission should be treated as having appeared before the court.²⁰³

When Sweden acts as the issuing member state, and if the requested person is going to be questioned in the executing member state, the requested person can be questioned through audio and image transmission, in accordance with the Act (2017:1000) on the European Investigation Order ([Lag \[2017:1000\] om europeisk utredningsorder](#)).²⁰⁴ However, such questioning requires that the requested person consents to it.²⁰⁵

¹⁹⁸ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 4, Section 3, 18 December 2003.

¹⁹⁹ Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, 16 October 2012.

²⁰⁰ Applicable through; Sweden, Act (2003:1156) on surrender from Sweden under a European arrest warrant ([Lag \[2003:1156\] om överlämnande från Sverige enligt en europeisk arresteringsorder](#)), Chapter 5, Section 2, 16 October 2012.

²⁰¹ In the assessment, the court must, among other things, consider the type and nature of the case and the role of the person attending the court session; see Fitger, P., Sörbom, M., Eriksson, T., Hall, P., Palmkvist, R., Renfors, C. (2022) '[Rättegångsbalken – En kommentar](#)', Nordstedts Juridik, Comment on Chapter 5, Section 10.

²⁰² Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 10, Paragraph 4, 1 July 2019.

²⁰³ Sweden, Code of judicial procedure (1942:740) ([Rättegångsbalk \[1942:740\]](#)), Chapter 5, Section 10, 1 July 2019.

²⁰⁴ Sweden, Act (2017:1000) on European Investigation Order ([Lag \[2017:1000\] om europeisk utredningsorder](#)), 9 November 2017, Chapter 2, Section 10.

²⁰⁵ Friman, H., Wallentheim, U., Zetterstedt, J. (2022) '[Överlämnande enligt en europeisk eller nordisk arresteringsorder – En kommentar](#)', Nordstedts Juridik, Section IV, Chapter 5.3.

As mentioned above, the Act and the Ordinances on the EAW contain no provisions regulating cooperation between public defence counsels in the executing and issuing member states. In the bill implementing [Directive 2013/48/EU on the right of access to a lawyer](#)²⁰⁶ the Swedish government stressed that the public defence counsel in Sweden should be able to assist a lawyer in the executing member state without this requiring any special provisions.²⁰⁷

Table 10: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing member state (when an executing state)	Facilitating access to a lawyer in the executing member state (when an issuing state)
Country	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
Sweden	NO	YES	NO	NO	NO	NO	NO
TOTAL							

b. Interview findings

None of the interviewees certainly experienced digital tools having played a role in enabling access to information on the appointment of a lawyer in the issuing state. One public defence counsel experienced that it has not. Another public defence counsel reported that they cannot answer. One prosecutor mentioned the lack of a digital platform that works across member states with lists of lawyers, but highlighted the European Judicial Network (EJN) contact points in different countries. However, the contact points are not publicly available, and therefore not that useful for requested persons.

The prosecutors mentioned the use of digital tools in interrogations, though in relation to European investigation orders, and not arrest warrants. One prosecutor reported that the use of digital tools in interrogations requires the consent of the requested person under the Act on the European Investigation Order. If the requested person does not consent, then the issuing of an EAW for prosecution is the point of departure. One public defence counsel and one judge highlighted the risks

²⁰⁶ [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294.

²⁰⁷ Sweden, Ministry of Justice (*Justitiedepartementet*) (2016) '[Genomförande av EU:s försvarardirektiv](#)', government bill, 2 June 2016, p. 41.

with hearings held digitally, for example, if the client and the public defender are not in the same room as that where the negotiation is primarily taking place, or if the process becomes too speedy.

One prosecutor mentioned that they are limited to sending sensitive personal information via the postal service or fax to foreign authorities. The same prosecutor suggests a common platform be established in the EU for sending electronic letters and other similar information to enable a speedier and safer process.

Most interviewees did not think that digitalization per se is what may lead to fewer EAWs being issued. One public defence counsel reported that the focus needs to be on the regulatory framework in order to change how the EAW is used. One judge reported that the regulatory framework around interrogation etc. needed to change before digitalization had any impact on the amount of issued EAWs.

One judge reported that during COVID-19 all cases were dealt with over digital links. The advantage was that the process was able to continue without delay. However, the challenges were that the quality of the work suffered more generally. For example, the contact between the requested person and their public defence counsels was more limited, the work of translators was more difficult, and the quality and appropriateness of the requested person's digital connection could become an issue. Moreover, the judges themselves are less accustomed to using these digital tools. The prosecutors reported that they had already made good use of video-conferencing and similar tools before the pandemic. The real problems were related to issues outside digitalization, such as the ability to extradite requested persons physically.

a. Discussion of findings

The use of digital tools seems to be the exception rather than the rule among the interviewees. The prosecutors mentioned interrogation via digital tools under the Act on European Investigation Order. One prosecutor suggested a common platform be established in the EU for sending electronic letters and other, similar information containing sensitive personal information, to enable a speedier and safer process.

CONCLUSION

This country report has examined the procedural safeguards for requested persons in EAW proceedings in Sweden. The report includes a legal and policy overview of the procedural rights of requested persons under Swedish national law. It also includes interviews with five judicial authorities and defence lawyers engaged in issuing and executing EAWs. The report strives to capture the essential information and findings gathered by the interviews to illustrate how the relevant legal standards are implemented in practice. However, it is important to emphasise that the interview material is small in scale and only reflects the opinions and experiences of a few practitioners.

Generally speaking, the legal standards underpinning the procedural rights of requested persons in EAW proceedings seems to be adhered to by the national authorities. The strongest recurring themes throughout all the five interviews is that the right to information, the right to interpretation and the right to access to a public defence counsel are strong in Sweden. However, the findings show that some district courts have denied the appointment of a public defence counsel when Sweden is issuing an EAW for the purpose of the execution of a sentence.

The principle of dual representation is not facilitated beyond the legal requirements, that is, the provision of a public defence counsel in Sweden, the explanation of this right to requested persons and the forwarding of requests of a public defence counsel. The prosecution authorities do not view the facilitation of contact between the respective legal teams or the provision of representation as a part of their mandate. Furthermore, communication between public defence counsels in the executing and issuing member states seems to be lacking. These aspects can be seen as preventing the full enjoyment of the right to dual representation and the effective defence of requested persons in practice.

Additionally, the principle of mutual trust seems to be very important to the reasoning of the judicial and prosecuting authorities. The prosecution authorities seem to rely on requested persons, or their public defence counsels, to make objections before judging conditions in other member states. The authorities also seem more or less reliant on the case law of EU bodies or national courts if they are to seriously consider questions of proportionality, detention conditions, or guarantees of procedural rights. This serves to constrain deeper considerations of proportionality and/or adverse conditions in other member states. It also places a very high burden of proof on the defence.

Finally, the prosecution authority's specialization in EAW proceedings puts them at an advantage over both the courts and the public defence counsels. This advantage is further increased by the principles of mutual trust and the short deadlines built into the legislation around the EAW itself.