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PRESENTATION SWEDEN

RESEARCH SO FAR

&

CORRELATION BETWEEN INDEPENDENCE OF COMPETENT
AUTHORITY AND THE INVESTIGATIVE MEASURE



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STRUCTURE OF THE PRESENTATION

I – OUR RESEARCH SO FAR – A FEW POINTS OF INTEREST

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2. DIFFERENCES OF COMPETENT AUTHORITIES
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I – OUR RESEARCH SO FAR – A FEW POINTS OF INTEREST





1. DEMARCATION BETWEEN AUTHORISATION AND EXECUTION

ACTIVE EIO'S

- **Is there a distinction between authorisation and issuing of an EIO?**
 - In some cases there is a clear demarcation (either as a necessity, or a possibility) :
 - LEU 2:5 – In cases of retention of consignment, secret coercive measures or forensic examination of a deceased person the prosecutor **must** apply for the courts authorisation before issuing an EIO.
 - In case of searches, body searches and body inspections the prosecutor **may** apply for the court's authorisation before issuing an EIO.
 - With regards to challenging an EIO (in specific cases only, those listed above among others) there is a clear demarcation as well :
 - LEU 4:1 – Possibility of appeal on a decision to authorise, but no possibility of appeal of a decision to issue an EIO.



1. DEMARCATION BETWEEN AUTHORISATION AND EXECUTION

PASSIVE EIO's

- **Are recognition and execution of an EIO scrutinised together or must they be checked separately?**
 - It seems as though the decision on authorisation and the decision on execution is made at the same time. I cannot find any paragraph regulating them separately. On the contrary, they are always dealt with together, see LEU 3 kap. 1 §, 3 kap. 8 – 9 §§
 - To be clarified in interviews.





2. DIFFERENCES IN COMPETENT AUTHORITIES

- **For active & passive EIO procedures:**

- Mostly the same competent authorities
- Exceptions:
 - for measures that do not exist under Swedish law (temporary transfer of a person deprived of liberty)
 - kvarhållande av försändelse RB 17:9 (retention of consignment?) + forensic examination of a deceased person)
 - in national cases, the court only for RB 17:9 and mostly police for forensic examination)
 - but in EIO procedures the prosecutor can only issue an EIO after receiving an authorisation by the Court.

- **SPECIAL NOTE : Specifically stated for passive EIO procedures:**

- LEU 3:12 – Main rule : In the context of executing an EIO, the same laws/regulations shall apply as the ones applied when the corresponding measure is executed in a Swedish preliminary investigation or criminal trial.





3. CONTROL ACCORDING TO NATIONAL RULES (PASSIVE EIO'S)

- **In the context of judicial scrutiny, is there a control according to national rules?**
 - LEU 3:4 some measures **must** be examined against the conditions which concerns the corresponding measures according to national law :
 - Seizures, secret coercive measures, controlled delivery, assistance in a criminal investigation using a protective identity and, obtaining evidence held by an authority etc.
 - Effectively it means the national conditions need to be met for the measure to be recognised and executed.
 - **For other measures** than those listed in LEU 3:4, a decision on recognition and execution **rely only on the conditions laid out in LEU:**
 - is the EIO comprised under the definition found in LEU 1:3 2§?
 - does it concern a measure listed in LEU 1:4?



4. SÄKERHETS OCH INTEGRITETSSKYDDSNÄMNDEN

- The committee on the protection of security and integrity
- **Purpose:**
 - protect the **rule of law** and **personal integrity of individuals**
 - relevant in the context of the use of secret coercive measures
 - SIN manages the individuals possibility of control
- **What can it do?:**
 - exercise supervision over law enforcing agencies' uses of secret coercive measures
 - the committee may express itself on its perception of a need of changes in the operation and shall act to remedy cases where there are lacks in the law or other regulations.
 - The committee is also obliged, by request of an individual, to control whether he/she has been subject to a secret coercive measure, and to make sure whether or not the use was carried out in accordance to the law.



II – CORRELATION BETWEEN INDEPENDENCE OF THE AUTHORITY AND THE INVESTIGATIVE MEASURE



1. AVAILABLE LEGAL REMEDIES

ACTIVE EIO'S

- **EX ANTE** :
 - LEU 2:5 – In certain cases it is a prerequisite that a court has authorised that the measure may be issued, before a prosecutor can issue an EIO.
 - is LEU applicable?
 - possible grounds for refusal
 - proportionality
- **EX POST** :
 - Possibility of appeal of a court's decision is restricted to challenge the authorisation from the court to issue an EIO, not on the issuing itself (which cannot be appealed)
 - A prosecutor's decision to issue an EIO can be reviewed by a senior prosecutor, and his decision can in turn be reviewed by the prosecutor-general.
- For both active and passive EIO : General possibility to appeal the court's decision – RB 49:3



1. AVAILABLE LEGAL REMEDIES

PASSIVE EIO'S

- **EX ANTE** :
 - LEU 3:1 :
 - is the EIO comprised under the definition found in LEU 1:3 § 2 ?
 - for specific measures : if certain conditions listed in LEU 3 kap. 2–4 §§ are met,
 - are there are any hindrances in LEU 3 kap. 5 – 7 §§.
 - For other measures than those listed above there are no conditions that have to be met. They must be recognised and executed.
 - BUT! For **all** measures, recognition and execution must be refused if any of the grounds for refusal are applicable.
- **EX POST** :
 - Possibility of appeal of a court's decision is restricted to examine whether the conditions for the recognition and execution of an EIO have been met.
 - A prosecutor's decision to recognise and execute an EIO can be reviewed by a senior prosecutor, and his decision can in turn be reviewed by the prosecutor-general.
- For both active and passive EIO : General possibility to appeal the court's decision – RB 49:3





2. THE QUESTION OF CORRELATION

- Both the courts and the prosecutors are independent.
 - **Courts** – Courts are independent. Neither the Parliament, the Government nor any government agency may determine how a court is to rule in an individual case (RF 11:3)
 - **Prosecutors** – It is a wholly independent organisation, not dependent on the courts
 - Although organised under the Ministry of Justice, prosecutors operate independently and ministerial interference is always unconstitutional. (RF 11:3, 12:2)
- Correlation in that **the most restricting measures on an individual** must be authorised by the court (active & passive EIO procedures)
 - such as for secret coercive measures





3. ON THE NOTION OF JUDICIAL AUTHORITY

- Relevant for EAW :
 - Certification that a Swedish prosecutor is a judicial authority in accordance with Article 6.1 of the framework decision concerning a EAW and surrender between member states
 - Case C-625/19 PPU (Swedish Prosecution Authority) – The CJEU found that the Swedish system meets the requirements of effective judicial protection as it guarantees that the conditions for issuing an EAW, and its proportionality, are subject to judicial review.
 - Therefore, the Swedish Prosecution Authority also falls within the notion of “issuing judicial authorities.”

