CROSS BORDER ENFORCEMENT OF MONETARY CLAIMS - INTERPLAY OF BRUSSELS I A REGULATION AND NATIONAL RULES

NATIONAL REPORT: SWEDEN

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Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules

National report: Sweden

MARIE LINTON

Abstract The "National Report: The Sweden" systematically and comprehensively addresses the main features of the enforcement of monetary claims in the German legal system, focusing in particular on the analysis of legal remedies in the enforcement procedure. Said issues are approached from both national and cross-border perspectives. The issues discussed are profoundlytopical in light of the recent coming into effect of the Brussels IA Regulation (Recast) and its more or less successful implementation in the national systems of the Member States, which has raised a number of issues. The report critically reflects some of the controversial solutions covered by the Recast Regulation regarding the effectiveness and appropriateness of the Regulation's application in the legal system in question and related problems. It also deals with national specificities in the enforcement procedure, which still constitute an obstacle to cross-border procedures. The report was created as part of a study conducted under the auspices of the EU project BIARE ("Remedies on the Enforcement of Foreign Judgments according to Brussels I Recast") under the coordination of the Faculty of Law University of Maribor.

Keywords: • Brussels IA Regulation • cross-border enforcement procedure • enforcement of monetary receivables • legal remedies • Sweden •

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Foreword

This national report will refer to specific concepts, which are nationalistically tainted. Therefore, it is appropriate to explain them at the outset.

JO (*Riksdagens ombudsmän*) = Parliamentary Ombudsmen.

NJA (*Nytt juridiskt arkiv, avd. I och II*) = Periodical writing, reporting cases from the Supreme Court. *NJA* is divided in two sections: Sec. I, case law from the Supreme Court (1874-) covering all judgments and decisions issued by the Supreme Court. Some cases, of legal value, are reported in more detail, whereas others are reported as brief communications. Sec. II, writing for legislation (1876-) covering *inter alia* new laws and parts of *travaux prépartoires*.

Prop. (*proposition*) = Government Bill.

RH (Rättsfall från hovrätterna) = Case law from the Courts of Appeal.

s. (sida) = Page.

SOU (*Statens offentliga utredningar*): The Crown's Report.

Part 1: Main Features of National Enforcement Procedures

1.1 Domestic Legal Sources

The Swedish Enforcement Agency (hereinafter SEA) (*Kronofogdemyndigheten*) is responsible for actual enforcement. SEA is a single, nationwide public authority, administered by the Swedish State. SEA must act impartial and unbiased under Ch. 1 § 9 of the Instrument of Government (*regeringsformen*).[1]

SEA's activities are mainly governed by the Enforcement Code (*utsökningsbalken* [1981:774]), which includes 18 chapters. In addition, the Enforcement Code is supplemented by the Regulation on Enforcement (*utsökningsförordningen* [1981:981]) counting 19 chapters with detailed provisions on the enforcement procedure, the Code of Judicial Procedure (*rättegångsbalken* [1942:740]), and the Regulation with Instructions for SEA (*förordning* [2007:781] *med instruktion för Kronofogdemyndigheten*). The 2007 Regulation contains provisions, which give instructions on SEA's assignments: enforcement, collection (*indrivning*), payment orders (*betalningsföreläggande*) and judicial assistance (*handräckning*), debt rescheduling, supervision of bankruptcies, *etc.*, all according to § 1 of the 2007 Regulation.

[1] SEA is cooperating with the Swedish Tax Agency (*Skatteverket*).

Conferring Ch. 1 § 3 of the Enforcement Code, SEA is responsible for actual enforcement. Under Swedish law, enforcement entails some form of coercion laid down in a judgment or a decision from a court or other public authority (such as SEA for instance), for example seizure, sequestration *etc.* Enforcement presupposes a judgment or other enforcement title, which includes an obligation that is enforceable, see Ch. 1 § 1 of the Enforcement Code.[2]

Monetary claims are the most common obligation to be enforced. Monetary claims are enforced by foreclosure (*utmätning*), regulated in Ch. 4–7 of the Enforcement Code. According to Swedish law, foreclosure means that assets are 1) seized, 2) realized/sold (if need be), and 3) accounted for and distributed to the creditor(s). Assets or salary can be foreclosed.

The Consumer Credit Act (*konsumentkreditlagen* [2010:1846]) also contains special provisions that allow sellers to utilize SEA for the repossession of goods sold on credit. The Act on Hire-and-Purchase between Tradesmen (*lag* [1978:599] *om avbetalningsköp mellan näringsidkare*) also contains similar provisions. The selling company has the right, under the requirements specified in the Act, to request SEA to reclaim items sold on instalments.

1.2 Recent Reforms

In this context it is appropriate to mention a reform that took place in Swedish law in connection to the entry into force of the Brussels I Regulation No 1215/2012 (hereinafter B IA RE).

As of 10 January 2015, the Swedish *exequatur* proceedings was moved from second instance, *i.e.* the *Svea* Court of Appeal in Stockholm, to first instance, *viz.* 24 district courts (= the district courts that try appellate cases from SEA).[3]

The *Svea* Court of Appeal had traditionally been the only *exequatur* authority in Sweden. This appellate court used to be both first and second instance in *exequatur*

[2] If an execution title is repealed, enforcement shall immediately be cancelled, see Ch. 3 § 22 of the Enforcement Code.
[3] See *prop. 2013/14:219*, *Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 84–87.

proceedings, whereas the Supreme Court, after granting review permit, was the final instance.

This reform was launched in order to streamline the different instances' duties and to "decentralize" court dispute solution; the control -function of second instance should be more visible, not only in domestic cases, but also in *exequatur* proceedings.[4] The outcome of this reform is yet too early to evaluate.

1.3 Underlying Theoretical Framework

The Swedish Government has expressed objectives that SEA should follow. The underlying principles, which govern enforcement in Sweden, adhere to the rule of law. Enforcement should be swift, focusing on the best interests of the parties.[5] This means that enforcement shall be quick (so as to avoid that the debtor removes or destroys assets), simple and effective (access to easy and effective enforcement may bring about voluntary fulfillment of an obligation by the debtor), as well as efficient (for example, the assets, which are "easiest and cheapest" to seize should be foreclosed, see Ch. 4 § 3 second paragraph of the Enforcement Code).

The procedure in SEA is built on the principle of "dispositivity" (*dispositionsprincipen*). A decision is only based on pleas invoked by the parties. In consequence, it is the applicant that determines the "frames for the proceedings", see Ch. 2 § 2 of the Enforcement Code. Therefore, the applicant may withdraw the application wholly or partially, and SEA's possibility to act *ex officio* is limited.

Another fundamental principle is that SEA may not try substantive questions, which has already been adjudicated by a court, afresh.

Moreover, SEA has an overall mission given by the Swedish Government in the area of preventive communication concerning the work for high ethics in society for the payment of debts, to improve knowledge about people who are living beyond their means, and to give recommendations of improvements in law to make it easier for people to pay their debts.

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[4] See *prop. 2004/05:131, En modernare rättegång – reformering av processen i allmän domstol* p. 82.
[5] See *SOU 2003:97*, *En Kronofogdemyndighet i tiden* p. 140.

This mission is entrusted to a Preventive Communication section within SEA. The strategy for this communication is to provide citizens and companies with access to knowledge and information, in order to avoid over -indebtedness, and to provide the legislator, and other decision -makers with knowledge and information so that achievements can be made to simplify administration of debt payments.

To fulfil this strategy, information and statistics are gathered in dialogue with interested parties/"customers"; social networks are created and new trends concerning *e.g.* economy, social changes, are scrutinized in dialogue with debtors and creditors.

The most vital target groups for preventive work are young people and newly started companies. As the Preventive Communication section only constitutes a minor part of the activities of SEA, it is essential to cooperate with *e.g.* other authorities and to work through teachers, immigrant organizations, and interest organizations for companies *etc.*[6]

1.4 Different Enforcement Procedures

Swedish law contains different enforcement procedures depending on the claim and the circumstances.

Summary proceedings are a simplified and accelerated procedure for orders of payment (*betalningsföreläggande*). The purpose of summary proceedings is to deliver a decision that is directly enforceable.[7]

The fee for an application is 300 SEK (appr. € 30). The creditor may claim the fee in the application for the payment order, as well as 380 SEK (appr. € 38) for legal representation (or for the creditor's own work).

The creditor must apply to SEA for a payment order. A payment order can be used for most types of debts between private parties and/or professional parties, *inter alia*

[6] This information has been obtained from SEA on https://www.kronofogden.se/download/18.33cd600b13abbc8411c800020855/1371144370347/kronofogden_in_english.pdf (available 24 January 2017).
[7] See https://www.kronofogden.se/InEnglish.html (available 24 January 2017).

where the claim originates in a purchase of goods, services, or a financial loan. The procedure is for private individuals and enterprises alike, and both parties can stand as applicant or defendant. Normally, claims concern uncontested money orders, but they may well be non -monetary. Application for non -monetary orders can, for example, include requests for eviction, to shut off electricity or to move a fence.

Certain requirements must be met to use summary proceedings. The claim must be overdue, and conciliation allowed. The application must be in writing and signed by the applicant. The claim itself, as well as the grounds for the claim, must be complete. The applicant cannot add to the application during the process, only subtract from it. There is no upper or lower threshold of the financial claim due. A money order can also be combined with a non -monetary order. An applicant landlord can apply for eviction of a defendant, as well as collection of rent which has fallen due.

The proceedings are summary, as the applicant does not have to show the legitimacy of the claim. The applicant can employ SEA's standard form "Application for Payment Order" (*ansökan om betalningsföreläggande*) to apply for this measure. The form contains information about the debt and its substance. As long as the application does not have any obvious faults, and all obligatory information is included, the documents are automatically sent to the respondent. It is then for the respondent to react to the claim.

SEA will serve the debtor. A letter, an order, is sent to the debtor. The letter contains a receipt that should be signed by the debtor, and sent back to SEA. This is evidence to prove that the letter reached the debtor. After having been served, the respondent has a certain time frame within which he or she can object to the claim.

The respondent can act in different ways.

- Pay the debt. If the debt is paid, the creditor must immediately withdraw the application.
- Object to the claim by informing SEA. SEA will then inform the creditor that he or she has to decide whether the case should be transferred from SEA to a district court, which will handle the dispute.
    - If the creditor decides not to take the case to court, SEA will cancel the case, and terminate the process.
    - If the creditor wants to bring the case to court, an additional fee of 600 SEK (appr. € 60) or 2 500 SEK (appr. € 250) will be charged by the court. The amount charged will depend on the size of the debt, and how the court will try the case. The fee must be paid before the court handles the case.
- If the respondent is not heard from, SEA will decide the case in accordance with the original application. According to the decision, the debtor is ordered to pay the amount claimed. After that the debtor may challenge the decision and apply for a reopening of the case. That means that the case is transferred to a district court. If the fees mentioned above are not paid, the court will quash (*undanröja*) the decision. This means that the decision is no longer valid.

Neither the applicant nor the respondent needs representation during the process, all parties may represent themselves. Standard forms and written instructions are designed to be understood by non -professionals.

The summary process is not mandatory, and an applicant may take his or her claim directly to court instead. However, according to Ch. 18 § 3 a) of the Code of Judicial Procedure, the successful party that initiated the proceedings, even though the case could be handled according to the Act on Notice of Pay and Judicial Assistance (lagen [1990:746] om betalningsföreläggande och handräckning), faces limitations in the right to litigation costs.

On average the process takes two months from the application to a decision is delivered. A decision is delivered in 80 % of the incoming applications. A decision

is directly enforceable. All decisions resulting from summary proceedings can be appealed, *i.e.* contested by either party.[8]

When a payment order has been issued, SEA will start enforcing it. An additional fee of 600 SEK (appr. € 60) then has to be paid. As a main rule, SEA will try to obtain the fee from the debtor. If that is not possible, the creditor will get an invoice charging the amount.

If an applicant wants aid with an obligation to hand over or to remove certain property, SEA may also provide judicial assistance (*handräckning*). There are two types of judicial assistance – regular and particular. Sometimes the applicant can chose the type of assistance to be used. The validity of the claim is not tried by SEA. It is for the counterparty to object to the claim; if so the case will be handed over to a district court.

Regular judicial assistance can be used concerning eviction, return of movable property or removal of property. An application for regular judicial assistance can be combined with a payment order, for example, a claim for rent that has fallen due.

An application for particular judicial assistance can be used when somebody has taken an unauthorized action with someone else's property, or to prevent someone from using certain property.

In urgent cases, an application for particular judicial assistance may be granted immediately, in an *interim* decision.

[8] This information has been obtained from SEA on https://www.kronofogden.se/download/18.33cd600b13abbc8411c800020855/1371144370347/kronofogden_in_english.pdf (available 24 January 2017).

Other enforcement procedures could also be mentioned.

- Wage foreclosure (*löneutmätning*).
- Sale of tangible property.
- Sale of intangible property (real estate, including ships and registered aircrafts).
- Eviction (*avhysning*).
- Sequestration (*kvarstad*).
- Impoundment (*betalningssäkring*) concerning taxes, customs and fees.
- Readmission (*återtagning*).

Normally the following order of seizure is applicable: money, bank accounts and other financial assets which are at immediate disposal, attachment of earnings, shares and other securities, other tangible property, and real estate.

1.5 Centralized Enforcement System in Sweden

Sweden is an example of a centralized system as SEA is the only public authority responsible for actual enforcement according to Ch. 1 § 3 of the Enforcement Code. National grounds for refusal in Ch. 3 § 21 of the Enforcement Code are tried by SEA.

However, if a judgment debtor wants to raise one or several of the grounds for refusal in Art 45 of the B IA RE, he or she must file an application with a district court to have the ground(s) for refusal tried.

If a district court finds that there are reasons to refuse enforcement under Art 45 of the B IA RE, the court must inform SEA the same day, see § 3 of the Regulation on Recognition and Enforcement of Certain Foreign Decisions in Civil and Commercial Matters (*förordning* [2014:1517] *om erkännande och verkställighet av visa utländska avgörande på privaträttens område*).

1.6 Authorities/Bodies Involved in Enforcement

In the area of civil and commercial matters there are different actors. First, there are private collection companies. These companies can aid creditors trying to collect debts, which has fallen due. Private collection companies are under the supervision of the Swedish Financial Supervisory Authority (*Finansinspektionen*), and must follow certain rules, but have no power to enforce. If a private collection company fails to collect a debt, the case can be passed on to SEA. SEA is the only actor, which can enforce in Sweden. Civil courts can try appellate cases from SEA.

1.7 The Role of Individuals in the Enforcement Proceedings

SEA is responsible for actual enforcement of both public and private claims. Public matters are debts to central or local authorities (taxes, VAT, social security, television fees, *etc.*). Private matters are based on titles of execution, judgments of civil or administrative courts. Other titles may emanate from summary proceedings of SEA, such as repossessions and evictions, generally based on summary decisions.

Hence, according to Swedish law a distinction is made between individual cases (*enskilda mål/e -mål*) and public cases (*allmänna mål / a -mål*), *i.e.* cases where the public is the creditor. It could concern taxes, fees, *etc.*

In individual cases (*e -mål*), where an individual person or a legal person has a debt to collect, the creditor can turn to a number of different private collection agencies that will help the creditor to collect the debt. The agency will send a letter to the debtor informing that the case will be forwarded to SEA if the debt is not paid within a certain time. If the debt is not paid, the debt can be transferred to SEA.

The debtor can influence the process in part by contesting a debt in an individual case. Then it is for the creditor to decide whether or not a case should be handed over to a district court, or if the creditor should refrain from collecting the debt.

The debtor can act in different ways.

- Pay the debt. If the debt is paid, the creditor must immediately withdraw the application.
- Object to the claim by informing SEA. SEA will then inform the creditor that he or she has to decide whether the case should be transferred from SEA to a district court, which will handle the dispute.
    - If the creditor decides not to take the case to court, SEA will cancel the case, and terminate the process.
- If the respondent is not heard from, SEA will decide the case in accordance with the original application. According to the decision, the debtor is ordered to pay the amount claimed. After that the debtor may challenge the decision and apply for a reopening of the case. That means that the case is transferred to a court. If the required fees are not paid, the court will quash (*undanröja*) the decision. That means that the decision is no longer valid.

In public cases (*a -mål*), the enforcement authority has the main responsibility for the public authority's/creditors' actions. According to Ch. 2 § 30 second paragraph of the Enforcement Code, SEA is authorized to represent a public applicant. The meaning of this provision is that SEA does what an applicant does in an individual case (*e -mål*).

An important difference is that there are not the same options for SEA to abstain from collecting a debt in a public case, as an applicant has in an individual case.

A debt in a public case should be handed over from the public authority to SEA, no later than two months after it should have been paid.

If the public authority has information on the debtor's economic status that is of importance to the collection, the authority should inform SEA about it as soon as the application is filed, or shortly thereinafter.

It can also be noted that the Swedish Tax Agency (*Skatteverket*) may, in certain cases, act on behalf of an applicant, see Ch. 2 § 30 of the Enforcement Code.

1.8 Securing Future Enforcement

If there is a risk that a debtor removes or hide assets, or a risk that assets lose value, a court can decide to sequester property. There are two different forms of sequestration: sequestration for a claim, and sequestration for better right in certain property (SEA secures the property awaiting the court's decision).[9]

If there is a risk that someone – an individual or a company owing taxes, customs or fees – tries to avoid paying the debt, a court can decide to impound (*betalningssäkra*). The aim of impoundment is to secure future payment, and such a decision is immediately enforceable.

SEA enforces decisions to impound at the request of the Swedish Tax Agency. Impoundment is only concerned with the procedure, and no sale of the property or payment to creditors takes place. Impoundment is only a safety measure.

In most cases the debtor is not informed about the impoundment before SEA's enforcement. The court hands the decision to the Tax Agency that immediately requests SEA for enforcement. The debtor is notified and served by SEA in connection to enforcement.

When a decision to impound has been appealed, an administrative court can, at the debtor's request, decide to suspend enforcement.

If a decision to impound is cancelled, the property shall immediately be returned, if the administrative court has not stated otherwise.

[9] See *NJA 2002 s. 673*. In the case, the Swedish Supreme Court held that if a decision states that someone should hand over sequestrated movable property, sequestration shall normally remain in place until the decision has taken legal force or short thereinafter.

As a main rule, all assets can be impounded, see Ch. 4 § 2 of the Enforcement Code, unless otherwise stated. Assets impounded must be secured, see Ch. 6 of the Enforcement Code. There are different ways to secure assets.

- Money and bonds are taken, see Ch. 6 § 2 of the Enforcement Code.
- Bank accounts are secured by informing the debtor that he or she cannot dispose of the account, see Ch. 6 § 3 of the Enforcement Code.
- Movable assets are taken, or sealed, see Ch. 6 § 4 of the Enforcement Code.
- If the assets are situated at a third party, SEA can prohibit third party to hand over or dispose of the assets without SEA's approval, see Ch. 6 § 7 second paragraph of the Enforcement Code.

Impounded assets should be cared for in an orderly manner by SEA, so as to safeguard the applicant's rights, see Ch. 4 § 31 of the Enforcement Code.

1.9 Principles in Enforcement Procedure

SEA's "capacity" to enforce is mainly limited to the Swedish territory. The procedure in SEA is built on the principle of "dispositivity" (*dispositionsprincipen*). A decision can only be based on what the parties have pleaded. SEA's possibility to act *ex officio* is therefore limited. Consequently, it is the applicant that decides the "frames for the proceedings", see Ch. 2 § 2 Enforcement Code. During the procedure, the applicant may withdraw the application wholly or partially.

Another fundamental principle is that SEA may not try questions, which have already been adjudicated by a court, afresh.

The Swedish Government has expressed certain objectives that SEA should follow. The point of departure, which governs enforcement in Sweden, is that enforcement shall take place according to the rule of law. Enforcement should be swift, focusing on the best interests of the parties. This means that enforcement shall be quick (so as to avoid that the debtor removes or destroys assets), simple and effective (access

to easy and effective enforcement may bring about voluntary fulfillment of an obligation by the debtor), and efficient (for example, the assets, which are "easiest and cheapest" to seize should be foreclosed, see Ch. 4 § 3 second paragraph of the Enforcement Code. *Cf.* Ch. 5 § 5 of the same Code).[10]

The Enforcement Code contains provisions that may limit enforcement, so as to protect the debtor. The debtor can, to a limited extent, stop enforcement by invoking grounds for refusal, for example because of statutory limitation (see Ch. 3 § 21 of the Enforcement Code). Other practical examples to protect the debtor's needs relate to certain assets or means, so-called benefits or privileges. Benefits are exempted from enforcement. Benefits can concern an apartment that is the debtor's place of residence and money for the debtor's "bread and butter" for the near future. An amount is exempted from enforcement with reference to ordinary costs of living and housing.

1.10 "A Swedish Klausel"

According to Swedish law, a judgment can be enforced when it takes legal effect (*laga kraft*), see Ch. 3 § 3 of the Enforcement Code. However, certain judgments can be enforced directly without having taken legal effect, see Ch. 3 § 4 of the Enforcement Code that refers to §§ 5–9 (for example, default judgments and judgments ordering payment).[11]

At request, the Swedish court which delivered a judgment can issue a legal validity certificate (*ett lagakraftbevis*) separately, or just stamp the judgment. The legal validity certificate informs that the judgment (or decision) cannot be appealed with ordinary remedies because the time for appeal has run out. This could perhaps be compared to the German "Klausel". But there is an important difference; a legal validity certificate is not a mandatory phase or requirement for enforcement.

It could be argued that national intermediate measures as a precondition to national enforcement is not compatible with the underlying ideology of the B IA RE, *i.e.* to do away with *exequatur*.

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[10] See *SOU 2003:97*, *En Kronofogdemyndighet i tiden* p. 140.
[11] See the Supreme Court decision, 23 June 2015, *HD* case No *Ö 904-15*.

1.11 – 1.12 Subject-Matter and Territorial Jurisdiction

The Swedish legal system is part of the Nordic branch of continental European legal families. It mainly builds on implemented legal rules and Swedish judges are somewhat reluctant to act as legislator, at least when it comes to private international law disputes.

The court system is divided into civil law courts (district courts, Courts of Appeal and the Supreme Court) and administrative courts (administrative courts, administrative Courts of Appeal and the Supreme Administrative Court).

Currently, there are also other courts.

- The Labor Court in Stockholm.
- Swedish Foreign Intelligence Court.
- Rent and Tenancy Tribunals.
- Migration Courts.
- Migration Court of Appeal.
- Land and Environment Courts.
- Land and Environment Court of Appeal.
- Patent and Market Court.
- Patent and Market Court of Appeal.
- Maritime Court.

According to Ch. 1 § 3 of the Enforcement Code, SEA handles cases of enforcement. SEA's jurisdiction to enforce is territorially limited to Sweden, with some exceptions concerning Swedish ships, aircrafts and real estate situated abroad.

As SEA is one single public authority, an application for enforcement can be handed in to any office of SEA. SEA then makes sure that the application is handed over to the correct office. An application for enforcement is usually handled by the office within the geographical area where the defendant has his or her habitual residence. Enforcement can also take place where assets are available or in any other suitable

place. Sale of real estate normally takes place where the property is geographically situated in Sweden.[12]

1.13 Conditional Claims

This question has been discussed with personnel at SEA, but it is difficult to relate to from a Swedish perspective, because only established debts can be enforced.

Other possible angles could be the following.

a) When SEA forecloses, the rules in Ch. 4 §§ 3–7 of the Enforcement Code apply. If the applicant has security for his or her claim, Ch. 4 § 4 states that the applicant has a right, but not an obligation, to attach enforcement to the property connected with priority right.

The Swedish Supreme Court has not delivered any precedents concerning this provision. However, there is a decision from *Göta* Court of Appeal.[13] The Court of Appeal found that if a creditor, with priority right in certain property, applies for foreclosure in other property, SEA must examine whether there are any hindrances to foreclose other property than the pledge, *i.e.* if foreclosing certain property may harm other creditors' interests. If no hindrances exist, SEA shall promptly foreclose other property as well.

Foreclosing other property than the one attached with a priority right may harm other creditors' interests, when the value of the property does not cover the whole claim. In that case, the applicant with priority right must "stick to" his or her property.

If it is uncertain whether that property will suffice, other assets may be foreclosed. However, payment shall first be taken from the property attached with a priority right.

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[12] See *KFM, Handbok Utmätning, Utgåva 7*, 2015 p. 21.
[13] *Göta* Court of Appeal's decision 13 April 1993, case no. *Ö 353/93*.

If the creditor with a priority right is not fully covered economically, other assets may be foreclosed. But the applicant then "competes" with other creditors, which lack security in property.

b) Ch. 5 § 5–12 of the Enforcement Code contain particular provisions concerning property that cannot be foreclosed because of the property's nature, following for example particular regulations in a gift or a will.

1.14 Legal Succession

According to Swedish law debts cannot be inherited. As of 2015 August 17, particular rules apply for Swedes abroad, as a consequence of the European Succession Regulation No 650/2012. Under this regulation, the law in the state where the deceased person was domiciled applies. From this follows that in certain cases debts, depending on the law applicable, may be inherited.[14]

When a person is deceased, an estate is created. The estate consists of the deceased's assets and debts. Most of the deceased's debts are taken over/transferred to the estate (see Ch. 4 §§ 1–3 in the Act of Income Tax). Foreclosure of the departed person's debts can be done in the estate's property. Exceptions are made, *inter alia*, concerning fines (see Ch. 35 § 7 of the Penal Code [*Brottsbalken* [1962:700]) and student loans (see Ch. 4 § 25 of the Act on Student Loans [*Studiestödslagen* [1999:1395]).

The estate is regarded as a legal person. There can be different parties to the estate. If the debtor is a party to an estate, his or her share can be foreclosed. If the estate is administered by an estate administrator, the property of the estate cannot be foreclosed for the debts of a party to the estate, until the administration is final.[15] Instead, SEA forecloses the right to inheritance.

In the case *NJA 1989 s. 452,* the Supreme Court stated additional principles concerning estates and foreclosure. In accordance with *NJA 1963 s. 192* it was held

[14] Information concerning the Succession Regulation is available on http://www.bmjv.de/SharedDocs/Publikationen/DE/Europaeische_Erbrechtsverordnung_englisch.pdf?__blob=publicationFile&v=1 (available 6 February 2017).
[15] *NJA 1963 s. 192.*

that foreclosure of a deceased person's property due to debts of a party to the estate cannot be completed until the administration is finished. If there are several parties to the estate, administration is usually concluded by a distribution of the estate (*arvskifte*). Only after the distribution, property inherited by a party to the estate can be foreclosed for his or her debts. If there is only one party to the estate, the administration is deemed final when the estate inventory (*bouppteckning*) is registered. Until that point in time, only the right of an heir can be foreclosed, not the property part of the estate.

An estate is dissolved when the deceased person's assets are divided between the heirs. Prior to this – if the deceased person was married – an estate division (*bodelning*) must be done. After dividing the estate, a distribution of the estate is completed.

A division of an estate may not take place before an estate division has been established, and the deceased person's all known debts have been paid.

The property of the surviving spouse's assets and debts shall be established in the estate inventory (*bouppteckning*). These assets cannot be foreclosed for the deceased person's debts.

SEA evaluates the property of the estate independently, see Ch. 6 § 9 and Ch. 12 § 3 of the Enforcement Code. Then the foreclosed property is sold. According to Ch. 8 § 6 of the Enforcement Code, foreclosed assets cannot be sold without the consent of the estate until a month has lapsed from the estate inventory was made. An estate inventory shall be made within three months of the deceased person's departure.

The parties to an estate are not personally liable for the estate's debts. An execution title against the deceased person or the estate cannot be used for enforcement against the parties to the estate (*dödsbodelägarna*).[16]

As stated earlier, debts shall be paid before distributing the estate. If an estate has been divided prior to payment of all the debts, the distribution of the estate shall, in principle, be reverted, see Ch. 21 § 4 first paragraph of the Inheritance Code (*Ärvdabalken* [1958:637]).

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[16] See *Svea* Court of Appeal decision 6 June 1979, case no. *Ö 686-79*, and *Hovrättens för Västra Sverige* decision 18 March 1986, case No. *Ö 1116-85*.

A partial reversion can be sufficient if the unpaid debt decrease the assets that have been distributed. If it turns out that the estate has been distributed, SEA sends a written claim where the estate is urged to pay the debt. The written claim is sent to all parties to the estate, but the claim is directed to the estate. The written claim shall inform that the distribution of the estate shall revert in parts necessary to pay the debt. To avoid unnecessary work, the parties to the estate can pay the debt.

If the parties to the estate refuse to pay the debt after the distribution of the estate, enforcement cannot take place against the estate as it was dissolved. As the debt belongs to the estate, enforcement cannot take place against the parties to the estate.

What the creditors can do is to apply to a district court that the estate's assets are handed over to an estate administrator (*boutredningsman*), see Ch. 19 § 1 of the Inheritance Code. The administrator files an action on behalf of the estate against one or several parties to the estate, which has/have not voluntarily returned assets to the estate.[17]

1.15 Enforcement Titles

Private enforcement matters are mainly based on court judgments, but also on other execution titles. Swedish enforcement titles are listed in Ch. 3 § 1 of the Enforcement Code. According to this provision the following titles are enforceable.

> 1. A court's judgment (*dom*), order (*utslag*) or decision (*beslut*). The concept of judgment includes judgements or decisions of civil and administrative courts.
> 2. A settlement confirmed (*stadfäst förlikning*) by a court, and a mediation agreement that has been declared enforceable by a court.
> 3. An approved order of penalty (*strafföreläggande*), an approved breach-of-regulations fine (*ordningsbot*), and an approved order of charge (*avgiftsföreläggande*).
> 4. Arbitral awards.
> 5. A contract concerning maintenance.

[17] More information on enforcement against estates can be found in *Kronofogdens handledning om dödsboindrivning dnr 832 9258-13/121*.

6. An administrative authority's decision that can be enforced according to particular instructions.
7. An act that can be enforced according to particular instructions.
8. SEA's order or decision in a case concerning an order to pay (*betalningsföreläggande*) or judicial assistance (*handräckning*), and a European Enforcement Order (*betalningsföreläggande*) which has been declared enforceable by SEA.

The provision in Ch. 3 § 1 of the Enforcement Code does not mean that a document mentioned therein is enforceable *per se*.[18] A main criterion for enforcement is that a document, for example a judgment, contains an obligation which is enforceable (most often an obligation to pay). This principle is also visible in Ch. 1 § 1 of the Enforcement Code.

A declaratory judgment is of course not enforceable.

Titles and judgments can be enforced when they have taken legal force, see Ch. 3 § 3 of the Enforcement Code. Certain titles and judgments specified in Ch. 3 § 4 of the Enforcement Code can, however, be enforced without having taken legal force. Ch. 3 of the Enforcement Code contains a more detailed account of this.

1.16 Steps to Obtain the Certificate

The Swedish legislator did not adopt any special rules so as to obtain the Art 53 -certificate of the B IA RE, but left it to the judiciary.

An interested party must request the certificate from the court of origin. According to § 4 of the 2014 Regulation, a court shall, at the request of a party, confirm that the judgment is authentic. The court of origin will issue the art 53 -certificate at the request of a party, see § 5 of the 2014 Regulation. Art 53 is mandatory, meaning that a national court cannot refuse to issue a certificate. If a precocious party requests a certificate already during the proceedings, the court can only issue the certificate after the judgment has been delivered. From a Swedish perspective this means that

[18] From case law, see for example *NJA 1987 s. 46*, *NJA 1985 s. 140*, *RH 1982:111*, *NJA 1986 s. 426*, and *NJA 1983 s. 362*.

the Courts Matters Act (*ärendelagen* [1996:242]) applies to certain questions concerning the certificate.

According to discussions with lawyers at the Swedish National Courts Administration (*Domstolsverket*), a decision not to certify an Art 53 -certificate is probably regarded as an administrative decision (*administrativt beslut*). Administrative decisions can be appealed to the Swedish National Courts Administration according to § 59 of the Regulation with Instructions for District Courts (*förordning* [1996:381] *med tingsrättsinstruktion*). However, there are no such known appeals, yet.

1.17 Service and Notifications of Documents

The purpose of service is to show/prove that the defendant/addressee has received the documentation or its contents, and when this has happened, so as to be able to account time for appeal *etc.* Generally, rules on service can be found in the Service of Process Act (*delgivningslagen* [2010:1932]), and the Service of Process Regulation (*delgivningsförordningen* [2011:154]).

The Service of Process Act provides rules on service so as to obtain correct service. Other acts provide rules on when service shall be performed, and what should be served. The Service of Process Act is subsidiary to other particular provisions concerning service.

Different Types of Services. There are different types of service in Swedish law. § 2 of the Service of Process Act lists the different forms of service.

It's the public authority, for example SEA, which decides the type of service that should be utilized according to 2 § of the Service of Process Regulation. Before deciding which type of service to employ, the authority must consider whether the type of service is meaningful in terms of content, scope, costs and ordeal, see 4 § of the Service of Process Act. The form of service used should not be unsuitable with regard to the circumstances of the case, § 4 second paragraph of the Service of Process Act.
This means that the principle of proportionality governs, *i.e.* the type of service most efficient in the particular case should be used. The most inexpensive and simple form of service should be employed as a main rule.

Regular Service implies that the documentation is sent or handed over to the addressee. The addressee is served when he or she receives the documentation.

Regular service can be used for serving all kinds of documents. In the average case the documentation is sent by regular mail or delivered by courier. As proof of service, the addressee returns an acknowledgment of service (a so -called "white card").

Public authorities can also serve documentation by electronic means, such as e-mail or a text message, if this is thought purposeful.[19] The addressee can confirm that he or she has received the documents in the same manner, or orally. The authority may send documentation electronically to the addressee if this serves a purpose with regard to the content, and it is not unsuitable with reference to the circumstances of the case.[20]

In order to utilize electronic service, the addressee should have stated an e -mail address in the case. As a main rule, documents containing sensitive information should not be sent electronically.

If the addressee has not confirmed the service within the required time, he or she should be reminded in a suitable way. If the addressee, in spite of that, does not return the acknowledgment of service, the addressee should be contacted by telephone. It must also be checked if the address is correct, and if there are any alternative addresses that can be used.

The documentation and a certificate of service can also be sent by a registered letter. The day after the addressee will get a postal notice to pick up the letter at the post office. In connection the addressee signs the certificate of service that the post office will return to the authority in question (a so -called "red card"). This is also deemed to be proper service in cross -border cases.

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[19] According to some Australian and English judgments, Twitter and Facebook can be used to serve documents.
[20] See *prop. 2009/10:237* p. 122.

It is important that the authority records the measures taken and provide correct information in their records.

Regular service has occurred when the addressee has received the documentation. No requirements of form are stipulated. If the addressee confirms by telephone, it is appropriate to control that the person is actually the addressee.

If it is questioned whether or not the addressee has been served, service must be proved.[21]

The addressee has been served when the act has be handed over in the way prescribed, see § 39 of the Service of Process Act. If the addressee refuses to take the act, the act is still regarded as served.

If a postal item has been collected by a courier, the documentation is served on the addressee when collected by the courier.

If the addressee requests that the documentation is sent to a particular address, the documents should be sent there.

Oral Service means that the *whole* content of an act is read to the addressee, see §§ 19 and 21 of the Service of Process Act. In connection to the oral service the addressee shall be informed that he or she has been served. Oral service cannot be used to serve an act to institute proceedings.

The addressee is served when a reading has taken place.

The authority must secure that the served person is the addressee, see § 8 of the Service of Process Regulation.

Oral service on telephone should only be used for short, uncomplicated messages.

[21] See *prop. 2009/10:237* p. 119 f., *NJA 2013 s. 364* and *NJA 2008 s. 890*.

After oral service, the act shall be sent or handed over to the addressee as soon as possible (unless it is deemed unnecessary), preferably the same or the following working -day.

Whether or not oral service can be employed depends on the addressee's ability to comprehend the content of the act. In cases or language difficulties or in cases of alcohol or drug abuse this kind of service should not be used.[22]

Simplified service can be used to serve a party in proceedings, or in a court matter. The addressee must have been informed that simplified service may be used, see § 22–24 of the Service of Process Act, and § 46 a) of the Courts Matters Act.

After the information on simplified service has been provided the act to be served is sent by regular mail, and the following working -day a control statement is sent informing that the act has been sent to the addressee's latest known address.

If this address is unknown, the documents will be sent to the addressee's place of registration. To provide extra service the authority may also notify the addressee by e -mail or a text message.[23]

The addressee is served two weeks after the act has been sent, if the control statement is sent the way prescribed. It is the addressee who stands the risk that the act is lost.[24] The typical example of simplified service not working is when the documents are returned due to an unknown address.

Simplified service can also be used to serve an addressee abroad, if this is not inappropriate due to the circumstances, according to § 3 of the Service of Process Act

However, according to *NJA 2006 s. 588*, certain precautions should be respected before using simplified service if the addressee is habitually resident abroad and is a "foreigner", as simplified service presupposes that the postal service works

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[22] See also *prop. 2009/10:*237 pp. 125, and 240.

[23] See also *RH 1999:7*, *NJA 1999 s. 376*, *NJA 1995 s. 601*, *NJA 1999 s. 376*, *NJA 2006 s. 588* and *prop. 1990/91:11* pp. 16 and 47, and *prop. 2009/10:237* p. 131 and 242.

[24] See *prop. 1990/91:11* p. 26.

expediently and reliably. This presumption does not necessarily apply to foreign postal service.

Simplified service may not be used to institute proceedings. Moreover, simplified service should not be used during holidays.

Particular service of legal persons can be used to serve legal persons registered in certain registers, such as the limited companies' register, the bank register *etc.*, see § 29 of the Service of Process Act.

This kind of service may only be used by public authorities, to serve all different kinds of acts, even applications for summons.

The addressee is served two weeks after the act was sent, see § 30 of the Service of Process Act. If the address available is not correct, the legal person may be served by public notice, and not through particular service of legal person.

Particular service of legal persons is used when it is difficult or can be foreseen to be difficult to serve a legal person, see § 29 of the Service of Process Act. Usually some other form of service has failed before. According to § 4 of the Service of Process Act, service shall be purposeful and cost -efficient, and may not be used if it is unsuitable due to the circumstances of the case.

The act to be served is sent by regular mail to the registered address of the legal person. The following working -day a control message is sent, informing that the act has been sent, see § 27 of the Service of process Act.[25]

Service by summoner means that an authorized person leaves an act or a message to the addressee, see § 40 of the Service of Process Act. Service by summoner is used when it is impossible to serve in another way, or when service is needed promptly. The summoner must thoroughly document measures taken, as these are to prove that service has taken place.

[25] Also see *NJA 1999 s. 113*.

Service by summoner means that the act to be served is handed over in one of the ways specified in §§ 32–38 of the Service of Process Act.

- Service when the addressee is encountered, see § 32. If the addressee refuses to accept the act, the act shall be left at the place, if it is not inappropriate due to the circumstances. Service is completed when the summoner has encountered the addressee and handed over the act, regardless if the addressee accepts to receive the service or not.
    - A prerequisite for service by summoner is that the addressee understands that it is an attempt to serve. Normally this implies some kind of contact between the summoner and the addressee.[26]
- Service by "surrogacy" means that the act is handed over to someone else than the addressee. The act may only be handed over to a person that agrees to it, and which is not a party to the same case, see § 34 of the Service of Process Act. This could be a person in the same household or an employer, see § 35 and 36 of the Service of Process Act.
    - A notification must be sent to the addressee, informing that service has taken place, and the person to whom the act was delivered, see § 34 of the Service of Process Act. The person who accepted the act is obliged to hand it over to the addressee as soon as possible, see § 37 of the Service of Process Act. If this person fails to hand over the act liability can occur.[27]
    - Service by "surrogacy" has followed when the act has been delivered, and a notification has been sent to the addressee concerning the service and the person who has accepted the act, see § 39 of the Service of Process Act.
    - Service by "surrogacy" cannot be used if it seems uncertain whether the act will be handed over to the addressee.
- So-called "nailing" (*spikning*) means that the act is left in, or in the vicinity of, the addressee's home, *if* the addressee has a known habitual residence but cannot be found there, *if* service cannot be performed under §§ 34–36, *if* the addressee's whereabouts are uncertain, and *if* there are reasons to believe that the addressee has absconded.

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[26] See *NJA 1978 s. 222*.
[27] *Prop. 1970:135* p. 224 f.

- It is the summoner that decides if "nailing" can follow or not. Service has taken place when the act has been left at the addressee's habitual residence or in any other suitable place in connection to that place, in the same way as regular mail, *i.e.* in a mailbox or "nailed" to the door. Service by "nailing" has followed when the act has been left at or in connection to the addressee's residence.

- Service by publication implies that a public authority makes an act accessible at a certain place, and a message concerning this is published in a prescribed way, see §§ 47–51 of the Service of Process Act.
  - A publication is issued in the Swedish digital paper *Post- och Inrikes Tidningar*, and if need be in a local paper. Publication must take place ten days after the decision on service by publication was made. The time of service is deemed to be two weeks after the decision on service by publication. Service by publication can only be employed in the following cases.
  - The addressee lacks known habitual residence, and his or her whereabouts are unknown.
  - If the addressee has a known habitual residence, but he or she cannot be found there, and service by "surrogacy" cannot be employed, the addressee's location cannot be identified and there are reasons to believe that the addressee is hiding.
  - If the addressee has changed postal address without informing the public authority handling the case, or to the Swedish Tax Agency, the Swedish Social Insurance Agency, or the postal service for national registration (*postbefordringsföretag för folkbokföring*).
  - If an unidentified number of persons shall be served.
  - If a great number of persons shall be served, and with regard to the circumstances it is not reasonable to serve each person individually.
  - If a legal person lacks a registered, competent representative, and no -one in Sweden can be served, and attempts to serve in other ways have failed or are believed to be result less.
  - If a legal person, against whom particular service by legal person can be used, lacks a known registered address.

As a main rule, service by summoner shall not be used if the rules on particular service by legal person apply.

Service by furnishing (*delgivning genom tillhandahållande***)** is used for serving very complex or hard to copy acts. A notification on where and when the act is available shall be served on the addressee.

The service has taken place when the addressee has been served the message and the act is available. The date for service is the day when the message on the availability is served, and the act became available.

The Swedish National Courts Administration employs the company *Svensk Delgivningsservice AB* for service. The fee for service ranges from 200 SEK (appr. € 20) to 694 SEK (appr. € 69) per assignment.

The most common debts concern television fees, maintenance obligations, student loans, traffic insurances, debts concerning cellular telephones, internet connections, and quick loans (text message loans) (*SMS-lån*).

1.18 Division between Enforcement and Protective Measures

In general, coercive enforcement regarding a civil claim cannot be passed until a court has settled the issue. The provisions on protective measures (*säkerhetsåtgärder*) are an exception to this rule. Protective measures are measures aimed at securing executive objects, and to secure future enforcement. The aim is consequently to safeguard that the losing party fulfills his or her obligation under a future judgment.

Ch. 15 of the Code of Judicial Procedure contains provisions on protective measures in civil cases. The most common protective measure is sequestration (*kvarstad*). Sequestration or other protective measures under Ch. 15 of the Code of Judicial Procedure can be permitted even if a foreign court has jurisdiction to try the main issue, if the foreign judgment can be enforced in Sweden.

Sequestration means that the applicant can have the counterparty's assets seized or withdrawn from the counterparty's disposal. Sequestration is a temporary measure

decided by a court pending a court's decision, if there is a risk that the debtor disposes of money or assets.

There are different forms of sequestration.

Sequestration for a debt. According to Ch. 15 § 1 of the Code of Judicial Procedure, sequestration can be used to secure future enforcement of a decision concerning a debt, if it reasonably can be expected (*skäligen kan befaras*) that the counterparty will abscond, remove assets or act in another way to evade paying the debt.

Sequestration for "a better right" in certain property. According to 15 § 2 of the Code of Judicial Procedure sequestration can be used if it reasonably can be expected that the counterparty removes, essentially impairs or in another way dispose of the assets to the detriment of the applicant.

Suitable measures (*lämplig åtgärd*) can also be approved under certain conditions according to 15 § 3 of the Code of Judicial Procedure, if the counterparty acts or fails to act, or in any other way prevents or omits a certain act, or in another way prevent or aggravate the applicant's right, or substantially diminish its value. This provision applies to injunctions (*förbudstalan*) and declaratory claims (*fastställelsetalan*).

Similarly, in a case concerning better right to certain property, a court can order restoration of possessions according to Ch. 15 § 4 of the Code of Judicial Procedure.

As a main rule, a decision on sequestration shall be designed to include assets of the debtor, which covers the value of the debt. In exceptional cases, the decision may refer to certain specific assets. Sequestration is usually seen as a uniform concept, but consists of a judicial part handled by a court, and an executive part handled by SEA.

Measures under Ch. 15 § 1–3 of the Code of Judicial Procedure can only be approved if the main issue (*huvudfrågan*) can be settled in court or in any other similar procedure, for instance in arbitration.
In order to approve sequestration under Ch. 15 §§ 1–3 of the Code of Judicial Procedure, certain other conditions must be met.

The applicant must show that there is reasonable cause (*sannolika skäl*) for the claim. This is a lower degree of proof than required for an affirmative outcome in a subsequent trial in court. The meaning of reasonable cause is debated in Swedish literature. Some authors are of the opinion that the court only should perform a summary prediction of whether the applicant has reasonable cause for the claim, whereas others mean that the court should try the case in substance.[28] However, a rejection of an application for sequestration may entail irreversible damage, whereas an approval rarely does. Therefore there seems to be good reasons to be satisfied with a summary proceeding.

The applicant must also show that it reasonably can be expected that the counterparty will obstruct in paying the debt, *i.e.* that a risk of sabotage is plausible. The risk of sabotage is the reason for speedy processing of the application, and the reason to approve sequestration. The Swedish Supreme Court, however, has interpreted this condition restrictively.[29] The behavior of the defendant does not have to be intentional. In addition, the court should perform a proportionality assessment between the parties' interests. In *NJA 2007 s. 690*, the Supreme Court found that a decision on sequestration was proportional, as the harm that might be caused to the defendant due to the decision was purely economical, and the applicant had posed sufficient security.

Yet another condition must be met to approve sequestration. The applicant must deposit a security for damage that might be done to the counterparty, see Ch. 15 § 6 first paragraph and § 8 second paragraph of the Code of Judicial Procedure, in conjunction with Ch. 2 § 25 of the Enforcement Code. The security shall be deposited with SEA. If the applicant is unable to deposit security, but can show exceptional reasons (*synnerliga skäl*) for his or her claim, the court may exonerate the applicant from the obligation to deposit security.

Particular rules on protective measures also exist in certain fields of law, *inter alia* concerning patents.

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[28] See for example T. Gregow, *Kvarstad och andra säkerhetsåtgärder, Norstedts Juridik 2014 p. 57* and P.O. Ekelöf, T. Bylund, H. Edelstam, *Rättegång III, Norstedts Juridik*, 7th ed., 2006 p. 27–28.
[29] See *NJA 1983 s. 862* and *NJA 1994 s. 654*.

Normally, sequestration can only be issued after hearing the defendant in proceedings *inter partes*, see Ch. 15 § 5 third paragraph of the Code of Judicial Procedure. However, proceedings *ex parte* is possible concerning *interim* sequestration, regulated in Ch. 15 § 5 third paragraph p. 2 of the Code of Judicial Procedure. In order to approve a provisional measure, the condition of imminent danger (*fara i dröjsmål*) must be fulfilled.[30] This concept means that enforcement is at risk, if the measure is not approved instantly without hearing the counterparty. If the measure is approved, the decision shall be dispatched (*expedierat*) to the parties, and the defendant is requested to give his or her opinion concerning the decision. If such an opinion is filed with the court, the court shall immediately address the issue if the measure shall be upheld until a new adjudication.

Decisions on sequestration are issued by the court handling the case. If no court case is pending, the general rules on jurisdiction for civil cases apply (= Ch. 10 of the Code of Judicial Procedure).

The court cannot raise issues of protective measures *ex officio*. Hence, a party must file an action for sequestration. If a court case is not pending, the claim must be in writing.

There are certain assets that cannot be seized, such as benefits (*beneficier*). Benefits concern *inter alia,* clothes and other subjects for the debtor's personal use of reasonable value, furniture, kitchen appliances and other equipment necessary for a household, work tools and equipment necessary for the debtor's business or economical operations, personal belongings, which have a great personal value and it would be oppressive (*obilligt*) to distrain them.

Assets can also be "protected" by special legislation, for example damages.

Salary cannot be sequestered, before it has been paid.

What are the legal effects of protective measures? When property has been sequestered, the defendant cannot transfer the property. The defendant may not dispose of the property in any way to the detriment of the applicant. If there are

[30] See *NJA 2005 s. 29*.

particular reasons, SEA may grant an exception to the prohibition to dispose of the property (*förfogandeförbud*).

The aim of enforcement of a decision on sequestration of a claim is to seize assets of a certain value. However, the assets are not sold. Any assets, movable or immovable property, can be seized.

When a measure has been approved under Ch. 15 §§ 1–3 of the Code of Judicial Procedure, the applicant has, if proceedings have not already been instituted, one month to institute proceedings in court in the matter (unless the claim should be tried in any other way laid down).

If the measure is provisional, the decision shall be dispatched to the parties, and the defendant is requested to give his or her opinion concerning the decision.

If such an opinion is filed with the court, the court shall immediately address the issue if the measure shall be upheld until new adjudication.

A measure shall immediately be set aside/revoked if a security is deposited.

Can a protective measure be appealed? An issue concerning a protective measure shall be decided by a decision when it is raised as a question in the proceedings (*rättegångsfråga*) over the substantive matter and when the issue on protective measures is raised separately.

The decision can be appealed particularly (*överklagas särskilt*) in both situations, by the party adversely affected by the decision. The party who which to appeal a district court's decision shall do so within three weeks from the day the decision was issued. In certain cases, the time to appeal is counted from the day when the appellant got the decision. Appeals shall be addressed to the Court of Appeal but handed in to the district court.

If a district court has rejected a motion for protective measures under Ch. 15 of the Code of Judicial Procedure, or has set aside a decision for protective measures, the Court of Appeal may on appeal immediately grant a measure until further notice. If the district court has granted such a measure or declared a decision enforceable even

though it has not taken legal effect, the Court of Appeal may on appeal immediately decide that the district court's decision may not be enforced until further notice.

Legal representation is not a requirement.

The procedure in Swedish courts is connected to an application fee of 450 SEK (appr. € 45).

1.19 Weaknesses of the National Swedish Enforcement System?

According to SEA, the Swedish enforcement system is well functioning. SEA itself can take decision necessary to a large extent, and does not have to rely on courts. SEA has the right to obtain and request information; the agency has access to various records, and may use coercive measures.

Part 2: National Procedures for Recognition and Enforcement

2.1 The Swedish System

First some initial remarks on the Swedish system concerning recognition and enforcement of foreign judgments.

Main Rule. According to national Swedish law, *enforcement* of a foreign judgment can only take place if there are Swedish rules to that end, see Ch. 3 § 2 of the Enforcement Code.

Although not explicitly stated in that provision, the same is true for *recognition* of foreign judgments. This is derived from case law and *travaux prépartoires*.[31]

[31] *E.g. NJA 1986 s. 119*, *SOU 1968:40* p. 11 and *prop. 1980/81:8* pp. 290–291.

Swedish legal acts sanctioning recognition and enforcement of foreign judgments originate either in EU law or in international conventions concluded by Sweden (or the EU) and other States. These conventions are piecemeal, commending different ways of recognition and enforcement, in a wide range of different legal fields.[32]
Swedish law does not, contrary to *e.g.* German or French law, contain generally applicable rules for foreign judgments, outside the framework of EU law and international conventions. This means that if EU law or international conventions are not applicable, there are no provisions on recognition and enforcement of foreign judgments in Swedish law.

Consequently, foreign judgments do not have legal force in Sweden and cannot be enforced. At the most, the foreign judgment has evidential value in a new (second) Swedish proceeding. A judgment creditor must thus file a new action in a Swedish court to obtain a Swedish judgment that can be used for enforcement purposes.

The Exception. The only exception to the main rule has been elaborated in Swedish case law.[33]

If the court that delivered the judgment had jurisdiction according to an exclusive choice-of-court agreement between the parties, the foreign judgment will be recognized in Sweden without legal provisions to that end. A new Swedish judgment will be issued against the background of the foreign judgment. First, however, the Swedish court will check the foreign judgment. This summary check involves that 1) the judgment is final and conclusive, 2) the defendant has been properly served, 3) the judgment creditor has received the foreign judgment in time to be able to

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[32] See *e.g.* Art 30 of *lagen (1929:404) om giltighet här i riket av svensk-norska vattenrättskonventionen av den 11 maj 1929, 1 och 7 §§ lagen (1969:12) med anledning av Sveriges tillträde till konventionen d. 19 maj 1956 om fraktavtalet vid internationell godsbefordran på väg, 10 § i lagen (1974:752) om nordisk vittnesplikt m.m., 6 § lagen (1978:152) om svensk domstols behörighet i vissa mål på patenträttens område m.m., 11 och 12 §§ lagen (1983:1015) med anledning av Sveriges tillträde till konventionen den 6 april 1974 om en uppförandekod för linjekonferenser, 4–6 §§ lagen (1985:193) om internationell järnvägstrafik, 21 kap. 6 och 7 §§ sjölagen (1994:1009), 5–11 §§ lagen (1994:2087) med anledning av Sveriges tillträde till den reviderade internationella Eurocontrolkonventionen, lagen (1996:519) om verkställighet av domar och beslut som har meddelats enligt Förenta nationernas havsrättskonvention av den 10 december 1982, 5 och 6 §§ lagen (2005:253) om ersättning från de internationella oljeskadefonderna samt 60–63 §§ lag (2010:950) om ansvar och ersättning vid radiologiska olyckor.*

[33] *NJA 1973 s. 628.*

follow time limits for appeal, and 4) enforcement of the foreign judgment is not contrary to Swedish public policy.

This looks very much like *exequatur* proceedings, but it is not. It is not the foreign judgment itself that is declared enforceable, but a new, independent Swedish judgment is issued for enforcement purposes. The foreign judgment has evidential value, and is part of the reasoning in the Swedish judgment. The crucial thing here is that the underlying legal relationship of the foreign judgment is not tried again in the second Swedish proceeding.

This exception is explained by an aspiration to avoid *déni de justice*. If the foreign judgment cannot be enforced in Sweden, and the judgment creditor cannot have the case heard afresh in a Swedish court because the choice-of-court agreement is a procedural impediment to new Swedish proceedings, the judgment creditor will lose his or her legal rights, and end up in a legal vacuum.[34]

Third Country Judgments Not Covered by Swedish Legislation. Is the judgment creditor deprived of his or her rights under the foreign judgment because Swedish law lacks applicable provisions to recognize and enforce certain foreign judgments?

Swedish law is very reluctant to foreign judgments, perhaps more averse than any other European Member State, save Finland and Denmark. The judgment creditor must institute new proceedings in a Swedish district court to obtain a Swedish judgment that can be enforced in Sweden. The court examines the underlying legal relationship afresh, and the foreign judgment serves as evidence. The evidential value of the foreign judgment is decided in each case.

The scope of the proceedings is (most likely) determined by the parties' pleadings, as in a domestic dispute. This may suggest that a Swedish court is free to try the case a second time, both in terms of legal issues and evidence, *i.e.* a *révision au fond*.[35]

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[34] See also M. Bogdan*, Svensk internationell privat- och processrätt, Norstedts Juridik,* 8th ed., 2014 pp. 290–291.

[35] This idea is supported in Swedish *travaux prépartoires SOU 1932:2*, *Betänkande rörande erkännande och verkställighet av utländsk civildom* p. 5.

However, the parties' pleadings may also be more limited. In a recent judgment by the *Svea* Court of Appeal in Stockholm (the *Lans* -case[36]), the underlying legal relationship was controlled in a manner more equivalent to a limited control than a *révision au fond*. The Swedish courts examined three decisions issued by a Washington court. The decisions concerned litigation costs that a Swedish judgment debtor (claimant in the proceedings before the Washington court) was ordered to pay.

From this case, it appears that the courts examined the underlying legal relationship in respect of the foreign procedure, documentation and the foreign decisions. The courts scrutinized whether the foreign decisions were erroneous against the background of the legal material available to the Washington court that issued the decisions.

Moreover, alleged defects of the Washington decisions were also controlled against the law applicable (the law of District of Columbia). It may seem peculiar that a Swedish court controls whether or not a foreign court has applied its own law correctly.

Unfortunately, the Swedish Supreme Court did not grant review permit in this case. Consequently, the meaning and content of controlling the underlying legal relationship is still uncertain (for example if there are any mandatory elements).

One partial conclusion that can be drawn, however, is that the second Swedish proceeding is most likely governed by the parties' pleadings, and no elements are mandatory.

The Foreign Judgment's Evidential Value. In this context it is important to stress that a foreign judgment may have evidential value. In the *Lans* -case the courts underlined that there is a (strong) presumption that the foreign decisions are correct. The Swedish judgment debtor had to show that the foreign decisions were erroneous in order to prevent an affirmative Swedish judgment in favor of the American claimant. If the debtor fails to convince the court that the foreign judgment is defective, it will issue a new, independent Swedish judgment that is enforceable in

[36] *Svea* Court of Appeal case No *T 9674-13*, judgment 26th April 2014.

Sweden. But this case law only concerns litigation costs, and it is uncertain whether this would be applicable also to foreign judgments concerning other topics.

One problem with the Swedish case law referred to above, is that parts of it derives from lower instances and does not have the effect of precedent.

In general, the Swedish Supreme Court is very reluctant to grant review permit in private international law cases. As a result, the legal development in this field of law has reached a standstill.

Underlying Theories? Interestingly, there is no generally, commonly accepted theory of explanation in Swedish literature for the reluctant position towards foreign judgments that prevails in Sweden.

It appears that the negative Swedish approach basically derives from the principle of territoriality. It has been argued that a judgment (foreign or domestic) has a public character, and Swedish authorities should not be other states' "prolonged arm" in enforcing foreign judgments. Practical concerns have also been put forward to explain the negative approach. Cultural differences, nationalistic courts, and uncertainty as to whether the rule of law has been respected in the foreign proceedings, are arguments that have been expressed in defense of the Swedish system to foreign judgments.[37]

However, recent Swedish research suggests that an unwritten principle of reciprocity is probably a more correct underlying theory of explanation. Sweden only recognizes and enforces judgments originating in states that give Swedish judgments the same treatment because of EU law or international conventions.[38]

The principle of reciprocity is also prevalent in Chinese, Korean, Russian and German law.

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[37] See H. Karlgren, *Kortfattad lärobok i internationell privat- och processrätt*, 5th ed., 1979, p. 186.
[38] See M. Linton, *Den svenska inställningen till utländska domar. Är det dags för Sverige att ta sitt förnuft till fånga?* in *Förnuft, känsla och rättens verklighet. Vänbok till Maarit Jänterä-Jareborg*, Uppsala 2014, pp. 161–163.

2.2 The Concept of Recognition and Enforcement

From a national Swedish perspective, recognition means that

1) the matter is inadmissible in Swedish courts, and a party cannot re - litigate the cause of action. The concept of recognition entails the effect of *res judicata*; the negative side of legal force, and
2) it is decisive to the legal position in a Swedish court in a later Swedish proceedings. The foreign judgment may thus have a preliminary effect in a later Swedish procedure; the positive side of legal force,
3) moreover, a recognized judgment can be enforced, if it is an per se enforceable judgment.

The consequence of recognition is that the foreign judgment is treated as a domestic Swedish judgment, which is somewhat contrary to the position under the B IA RE and the doctrine of extension.

Besides, the concept of recognition implies that the judgment can be enforced if need be. A judgment may also have effects in precluding litigation of claims falling within the subject matter, although not specifically determined in the judgment.

2.3 Procedure to Obtain an Enforceable Judgment

Outside the scope of EU law and international conventions providing for recognition and enforcement, Swedish law is very reluctant to enforce foreign judgments; perhaps more averse than any other European Member States, save Finland and Denmark. The judgment creditor must institute new proceedings in a Swedish district court to obtain a Swedish judgment that can be enforced in Sweden. The court examines the underlying legal relationship afresh, and the foreign judgment serves as evidence. The evidential value of the foreign judgment is decided in each case.

The scope of the second Swedish proceedings is most likely governed by the parties' pleadings, according to ordinary rules for civil disputes.

2.4 Substantive and Territorial Jurisdiction

Swedish law contains two completely different systems concerning Swedish courts' international jurisdiction in civil and commercial matters. In the field of commercial law, one could say that Swedish law has two parallel systems; one system for EU and EEC Member States' judgments, and one system for other foreign (third country) judgments.

The **first system** consists of the Brussels and Lugano instruments, which in principle apply in relation to other EU Member States or EEC -States.

The B IA RE entails a rather complex situation for Swedish law when it comes to enforcement. As SEA is responsible for actual enforcement, the agency can try national grounds for refusal available in Ch. 3 § 21 of the Enforcement Code to stop enforcement. However, SEA cannot try the grounds for refusing recognition or enforcement in Arts 45 and 46 of the B IA RE. The judgment debtor who wants to invoke the grounds for refusal in the B IA RE must file an application with a district court as first instance. The reason for this unfortunate Swedish "dual track -system" is that SEA is not regarded as a court in the eyes of the B IA RE (except in cases of payment orders and judicial assistance covered by Art 3 B IA RE).[39]

In theory, this means that the judgment debtor may have cases pending in the state of origin, in SEA, and in a Swedish district court (however, Art 44 enables a court to limit enforcement under certain circumstances).

In national Swedish law, the B IA RE has been complemented by two Acts. The first one is the Act with Complementary Provisions regarding Courts' Jurisdiction and Recognition and International Enforcement of Certain Decisions (*lag* [2014:912] *med kompletterande bestämmelser om domstols behörighet och om erkännande och internationell verkställighet av vissa avgöranden*). The second is Regulation on Recognition and Enforcement of Certain Decisions of Foreign Judgments in the Area of Civil and Commercial Matters (*förordning* [2014:912] *om erkännande och verkställighet av vissa utländska avgöranden på privaträttens område*).

[39] See *prop. 2013/14*:219, *Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 73.

The provision in the first paragraph of § 4 of the 2014 Act states that an application to stop enforcement under the B IA RE shall be launched with the district court that the Swedish Government has prescribed.

According to the second paragraph of the same provision, an application for a declaration that there are no grounds to refuse recognition of a foreign judgment should be launched with the district court that the Swedish Government has prescribed.

What has the Swedish Government prescribed? The answer is found in the 2014 Regulation. This regulation also contains supplementary rules to the B IA RE, as well as other acts.

With reference to jurisdiction, § 2 p. 1 of the 2014 Regulation, states that an application according to the first paragraph of § 4 of the 2014 Act, *i.e.* an application that there are grounds to refuse recognition or enforcement of a foreign judgment, shall be launched with the district court in the jurisdictional area where the applicant has his or her domicile.

According to § 2 p. 2 of the Regulation an application that there are no grounds for refusing recognition of a foreign judgment shall be launched with the district court where the counterparty is domiciled.

If there is Swedish jurisdiction according to EU law or an international convention, but a locally competent court is missing, then the *Stockholm* district court is competent, see § 2 in the Act of 2014.

In order to identify the correct district court 2 § *in fine* contains a list with district courts in each jurisdictional area.

District court	**Jurisdictional Area**
Nacka tingsrätt	Stockholms län
Uppsala tingsrätt	Uppsala län
Eskilstuna tingsrätt	Södermanlands län
Linköpings tingsrätt	Östergötlands län
Jönköpings tingsrätt	Jönköpings län
Växjö tingsrätt	Kronobergs län
Kalmar tingsrätt	Kalmar län
Gotlands tingsrätt	Gotlands län
Blekinge tingsrätt	Blekinge län
Kristianstads tingsrätt	Bromölla, Båstads, Hässleholms, Klippans, Kristianstads, Osby, Perstorps, Simrishamns, Tomelilla, Åstorps, Ängelholms, Örkelljunga och Östra Göinge kommuner
Halmstads tingsrätt	Hallands län
Göteborgs tingsrätt	Göteborgs, Härryda, Kungälvs, Lysekils, Munkedals, Mölndals, Orusts, Partille, Sotenäs, Stenungsunds, Strömstads, Tanums, Tjörns, Uddevalla och Öckerö kommuner
Vänersborgs tingsrätt	Ale, Alingsås, Bengtsfors, Bollebygds, Borås, Dals-Eds, Färgelanda, Herrljunga, Lerums, Lilla Edets, Marks, Melleruds, Svenljunga, Tranemo, Trollhättans, Ulricehamns, Vårgårda, Vänersborgs och Åmåls kommuner
Skaraborgs tingsrätt	Essunga, Falköpings, Grästorps, Gullspångs, Götene, Habo, Hjo, Karlsborgs, Lidköpings, Mariestads, Mullsjö, Skara, Skövde, Tibro, Tidaholms, Töreboda och Vara kommuner
Värmlands tingsrätt	Värmlands län
Örebro tingsrätt	Örebro län
Västmanlands tingsrätt	Västmanlands län
Falu tingsrätt	Dalarnas län
Gävle tingsrätt	Gävleborgs län
Ångermanlands tingsrätt	Västernorrlands län
Östersunds tingsrätt	Jämtlands län
Umeå tingsrätt	Västerbottens län
Luleå tingsrätt	Norrbottens

The **second system** consists of provisions applicable in relations to all other countries. The point of departure is Ch. 10 of the Code on Judicial Procedure. This chapter contains rules originally designed to distribute national jurisdiction between Swedish courts. However, these jurisdictional rules can be interpreted analogous to determine Swedish courts' international jurisdiction.

Ch. 10 § 1 lays down that the defendant can be sued in the courts of his or her domicile. This rule has been overrun by Art 4 of the B IA RE, when a person is domiciled in Sweden.

In particular, some provisions should be mentioned that are of interest in a cross - border setting.

Ch. 10 § 3 of the Code of Judicial Procedure contains an important provision, which has rendered a lot of case law. A party without a known domicile in Sweden may, in a dispute regarding payment be sued where he or she has property (in Sweden).[40] If the dispute concerns property, the action may be filed where the property is located. In an EU context, this is a "prohibited" jurisdictional provision as it is regarded as *exorbitant*.

A person without known domicile in Sweden may be sued in a Swedish *forum contractus* according to Ch. 10 § 4 of the Code of Judicial Procedure.[41]

Disputes concerning rights in rem and usufruct in real estate are governed by Ch. 10 § 10 of the Code of Judicial Procedure. Actions shall be brought to the court where the real estate is situated. According to Ch. 10 § 17 first paragraph p. 4) of the Code of Judicial Procedure, a court not designed in Ch. 10 § 10 shall not have jurisdiction.

2.5 Type of Procedure and Decision

According to § 5 of the 2014 Act, the handling of § 4 -applications (that there are grounds for refusal under Art 45), the Court Matters Act (1996:242) applies, unless

[40] See for example *NJA 1981 s. 386*, *NJA 1988 s. 440*, and *NJA 1998 s. 361*.
[41] See for example *NJA 1980 s. 340*, *NJA 2001 s. 800*.

the B IA RE states otherwise. The procedure under the Court Matters Act is mainly written.

There are different kinds of judgments, issued under different circumstances and in different phases of the proceedings.

Judgment (*dom*). A court's decision of the matter in substance.

Decision (*beslut*). A court's decision that does not concern the substantive matter, but usually a formal issue, for example inadmissibility.

Intermediate Judgment (*mellandom*). A final decision – before the decision in substance – of a particular objection or a part of the case that concerns a preliminary question. In private international law disputes, Swedish courts frequently use this kind of decision to settle jurisdictional or choice of law controversies.

Partial Judgment (*deldom*). A final decision of a court concerning certain claims in the dispute (for example two claims for damages, where one claim is undisputed), which are settled before the case as a whole is settled.

"*Decree/decision*" (*utslag*). Means certain decisions by a court or a public authority.

All the above must be seen in the light of Art 2 and the B IA RE's definition of judgment.

Part 3: Recognition and Enforcement under the B IA RE

3.1 Art 53 –certificate

3.1.1 A Critical Evaluation

In Swedish law, Art 53 is supplemented by § 5 of the 2014 Act. This provision states that it is the court of origin that issues the certificate. A certificate concerning an order (*utslag*) is issued by SEA in conformity with § 6 of the 2014 Act.

The main problem with Art 53 is that it gives rise to a number of unanswered questions. What are the legal effects of the certificate under Swedish procedural law? Is the concept "interested party" an EU autonomous concept or is this determined under national law? When can an interested party request a certificate – during proceedings and/or only after a judgment has been issued? Are there any time limits imposed on an interested party to apply for the certificate? What time-period does a court have to issue and complete a requested certificate? Can a certificate be appealed? Can a decision by the court not to issue a certificate be appealed? Can an interested party request a Swedish court to issue the certificate in one of the official languages in the EU? Can a certificate, which contains defects or deficiencies, be rectified or withdrawn? Can a fee be charged for issuing the certificate? Can other court personnel, beside the judge(s), issue the certificate?

It seems that some of these questions have been left to national laws. Thus, there is a risk that seemingly uniform rules in the B IA RE may be applied under different circumstances in the Member States.

Greater clarification is therefore needed.

3.1.2 Legal Remedies to Challenge the Certificate in Sweden as the Member State of Origin

First some initial remarks should be made. According to § 10 of the 2014 Regulation, a Swedish court or SEA, does not have to accept a foreign certificate issued under Art 53, unless the certificate is issued in or translated to Swedish, Danish or English. The need for translations may extend enforcement procedures, contrary to the principle of effectiveness.

The question concerning legal remedies available in Sweden to challenge a certificate still appears to be unanswered. There are different ways of solving the issue under Swedish law.

It is probably not possible to appeal a certificate, as the certificate is not seen as "a carrier of rights". It's simply a document to replace the *exequatur* proceeding, a means to speed up enforcement.

In connection to the decision in *Trade Agency*, and with reference to the continuity[42] between the Brussels instruments, the CJEU held that the court in the Member State of enforcement has jurisdiction to verify that the information in the certificate is consistent with the evidence. Moreover, the CJEU held that "the function ascribed to the certificate is specifically to facilitate, …, the adoption of the declaration of enforceability of the judgment given in the Member State of origin…" The information contained in the certificate consequently has *prima facie* value, rather than conclusive evidence. Furthermore, there is nothing in the B IA RE prohibiting a review of the certificate. Art 52 only prohibits that a judgment given in a Member State is reviewed as to its substance.

[42] See indent (34).

This corresponds with the development seen in regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters. According to Art 5(2), no appeal shall lie against the issuing of the certificate.

A certificate is not served, but sent by regular mail to the interested party.

Another way of looking at it, is that issuing the certificate is an administrative decision that can be appealed to the Swedish National Courts Administration in accordance with § 59 of the Regulation (1996:381) with instructions for district courts (*förordning med tingsrättsinstruktion*). A decision *not* to issue an Art 53 -certificate is namely regarded as an administrative decision that can be appealed to the Swedish National Courts Administration in accordance with § 59 of the 1996 Regulation.[43] However, as Swedish judges are pragmatic, a requested certificate will most likely be issued.

3.1.3 Possibilities to Repeal, Cancel, Withdraw or Rectify a Certificate Issued by a Swedish Court

According to Art 41(2) of the B IA RE, this issue is governed by national law. As a national court probably does not have to issue a certificate until after it has delivered its judgment (see p. [4] of the certificate), a Swedish court would apply the Court Matters Act (where the procedure is mainly in writing).[44]

From a Swedish point of view, objections regarding errors of the certificate must be raised with the court that issued the certificate.

The provision in § 33 of the Court Matters Act could seemingly be used to some extent to correct or amend a certificate. Swedish law thus appears to have some tools for correcting errors in a certificate, but only if issuing the certificate is regarded as a(n administrative) decision.

[43] According to the lawyer Karin Hageus at the Swedish National Courts Administration, January 2017.
[44] The Code of Judicial Procedure can only be used in connection to main proceedings.

According to § 33 of the Court Matters Act a decision, which contains a clear irregularity due to the court's or someone else's clerical error, miscalculation or other similar oversight, may be corrected by the court.

If the court has failed to take a decision that should have been issued in connection with a decision due to an oversight, the court may supplement the decision within two weeks after the decision was issued. Before correcting or amending the decision, the parties shall be heard, unless it is obviously unnecessary. Corrections or amendments shall, if possible, be made on each copy of the decision.

The provision § 34 of the Court Matters Act concerns review (*omprövning*). The review is available if a district court finds that an issued decision is clearly improper because of new circumstances or any other reason. The court shall then change the decision, if this can be done swiftly and simply, without disadvantages to any of the parties.

§ 33 could be compared to Ch. 17 § 15 first paragraph of the Code of Judicial Procedure. Under this provision, a court may decide to correct a judgment or decision if it contains a clear irregularity (objectively ascertainable) due to the court's or someone else's clerical error, miscalculation or some other similar oversight.[45]

The second paragraph of this provision contains a rule concerning the completion of court decisions. The provision provides that if the court due to an oversight has failed to issue a decision not part of the substantive matter that should have been issued in connection to a judgment or a final decision, the court may supplement the decision within six months after the decision acquired legal force. It may, for example, concern a forgotten issue, such as a decision on provisional measures or litigation costs.

[45] See *NJA 2014 s. 29*.

Before correcting or amending the decision, the parties shall be heard, unless it is apparently unnecessary. If possible, a decision to correct or amend shall be recorded on each copy of the decision in question.

The purpose of the rules is to afford a swift and simple way to correct obvious errors without having to appeal or, in cases where the decision has acquired legal force, use particular remedies.

Due to the principle of legal force, corrections should be used restrictively.[46] Additionally, in *NJA 1988 s. 104* the Supreme Court laid down that flaws which have occurred due to an oversight of certain legal rules, case law or wrongful application of the law cannot be corrected.

Another plausible solution could be that it is not possible to repeal, cancel or withdraw an issued certificate as the certificate is not seen as a "carrier of rights". In the *Trade Agency*- case[47], the CJEU found that a national court in the Member State of enforcement has jurisdiction to verify that the information in that certificate is consistent with the evidence. This could imply that no remedies are required or foreseen, but that the certificate can be checked afresh in the Member State of enforcement.

3.1.4 How does Swedish Law Handle Unlawfully Issued Certificates?

In criminal law.

3.1.5 Legal Effects and Nature of the Certificate in Sweden

The use of the certificate is mandatory, and a Swedish court (being the court of origin) shall issue the certificate, see § 5 of the 2014 Regulation.

Under Swedish law, it is not quite transparent if the task of issuing the certificate can be delegated to other administrative court personnel.

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[46] See *NJA 1990 s. 208*.
[47] C-619/10, *Trade Agency Ltd* v *Seramico Investments Ltd*, ECLI:EU:C:2012:531.

According to § 6 second paragraph of the 2014 Regulation, SEA shall issue a certificate under Art 53 concerning its decision (*utslag*).

The question of the legal effects of the certificate was discussed during the Swedish legislative work with the 2014 Act, which contains complementary rules to B IA RE. According to the Swedish legislator, and in accordance with the *Trade Agency* -case[48], the effects of the certificate are not determined by national law, but by EU law.

In connection to the decision in *Trade Agency*, and with reference to the continuity[49] between the Brussels instruments, the CJEU held that the court in the Member State of enforcement has jurisdiction to verify that the information in the certificate is consistent with the evidence. Moreover, the CJEU held that "the function ascribed to the certificate is specifically to facilitate, …, the adoption of the declaration of enforceability of the judgment given in the Member State of origin…" The information contained in the certificate consequently has *prima facie* value, rather than conclusive evidence. Furthermore, there is nothing in the B IA RE prohibiting a review of the certificate. Art 52 only prohibits that a judgment given in a Member State is reviewed as to its substance.

In conclusion, the certificate has *prima facie* value. Swedish judges regard the certificate as an instrument to speed up and simplify enforcement, replacing the former *exequatur* procedure, not as a "carrier of rights".

This corresponds to the development seen in Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters. According to the Regulation's Art 5(2), no appeal shall lie against the issuing of the certificate.

3.1.6 Control and Corrections

See above under Secs. 3.1.3–3.1.5.

[48] C-619/10, *Trade Agency Ltd* v *Seramico Investments Ltd*, ECLI:EU:C:2012:531.
[49] See indent (34).

3.1.7 Plurality of Certified Documents

At the request of an interested party, an Art 53 -certificate will be issued. There seems to be no restrictions in the number of certificates that can be issued by a Swedish court of origin; it is regarded as a public service. Consequently, several certificates can possibly be issued as long as the requesting party is a "concerned party".

How a certificate shall be dispatched is not clear, *i.e.* the question of to whom the task of issuing the certificate may be delegated is not transparent under Swedish law.

3.1.8 Legal Nature of the Certificate

See above Sec. 3.1.5.

3.1.9 Cancelation or Withdrawal of the Certificate

See above Sec. 3.1.3.

3.1.10 Service of the Certificate to Defendant in the Member State of Origin?

If issuing the certificate is regarded as an administrative decision the Regulation on Timeframes to Provide Judgments and Decisions *etc.* (*förordning* [2003:234] *om tiden för tillhandahållande av domar och beslut m.m.*) contains provisions. A court decision shall normally be sent by mail, the same day it was issued, see §§ 2 and 9 of the Regulation. If another public authority, for example SEA, has issued a decision, § 4 of the Regulation lays down timeframes up to a week. If suitable, an act can be sent by electronic means according to § 10 of the Regulation.

Under § 29 of the Court Matters Act, a decision shall be sent to the parties the same day, if issuing a certificate is regarded as an administrative decision. If the decision is issued at a meeting, the decision shall be sent to the parties within a week of the meeting.

Ch. 17 § 9 paragraph 7 of the Code of Judicial Procedure provides that when a case has been settled by court the parties shall be notified in writing (usually by mail) of the outcome.

According to § 30 of the Court Matters Act, the parties shall be informed of the possibilities to appeal the decision.

3.1.11 Service of Declaration of Enforceability under the Former B IA

According to Art 42(1) of the former B IA an application for a declaration of enforceability shall be brought to the notice of the applicant in accordance with national law of the Member State of enforcement. Regular mail will usually be used in Sweden.

However, Art 42(2) provides that an affirmative declaration of enforceability shall be served on the debtor. The B IA does not contain a provision on service or notification of the debtor if the application for a declaration of enforceability has been rejected.

The fact that the decision is served on the debtor is in the interests of the judgment creditor. The period available to the debtor to appeal a declaration of enforceability, starts running from the time the declaration was served, see Art 43(5) of the B IA. Before this time has lapsed no other measures for enforcement can be taken, but protective measures, see Art 47(3).

3.1.12 Protective Measures – A Critical Assessment

With regard to this question, I hope I have not misunderstood it, as Art 43 is not applicable to protective measures in Art 40.

Art 40 concerns measures to secure enforcement. It attaches the automatic right to proceed to protective measures to the fact that there is an enforceable judgment within the meaning of Art 39. Art 39 enables a party to instantly proceed to all measures of enforcement.

According to Swedish *travaux prépartoires*, Art 40 is deemed to be of little practical importance.[50] If a decision is enforceable it is possible to foreclose assets, and there is no need to apply for protective measures.

But in cases service has not been performed, or if a translation has been requested according to Art 43, there may be reason to apply for protective measures.

According to Swedish *travaux prépartoires* no particular decision is required to proceed to security measures under Ch. 15 of the Swedish Enforcement Code.[51] Thus, the foreign judgment is in itself sufficient to proceed to security measures. This equals foreign judgment with domestic judgments.

National procedural law must be compatible with the objective of Art 40, and it could therefore be argued that national law may not impose further requirements, such as a prerequisite for a call for prompt action. National rules requiring security *etc.*, before protective measures can be granted, are probably not compatible with Art 40. It could be held that courts have no discretion in this regard. Greater clarification is desirable.

In conclusion, it's important to emphasize that only protective measures of an *inter partes* -character are accepted by the Brussels instruments.[52] The fact that the debtor has to be served prior to the first enforcement measure in accordance with Art 43(1) could be regarded as a question of legal certainty flowing from CJEU case law. Service could be seen as necessary in order to give the debtor some time to decide whether or not to invoke national grounds for refusal or the ground of refusal in the B IA RE, and beneficial to the creditor as well.

Ex parte -measures are governed by the Regulation No 655/2014 establishing a European Account Preservations Order.

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[50] See *prop. 2013/14:219 , Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 69; compare *prop. 2010/11:120*, *Kompletterande bestämmelser till EU:s underhållsförordning* p. 27 and following.

[51] See *prop. 2013/14:219*, *Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* pp. 69–70.

[52] See case 125/79 *Denilauler*, ECLI:EU:C:1980:130.

3.1.13 Interest – Problems and Solutions

I concur with the comments and conclusions made in the questionnaire. Swedish law on the matter appears to match the Slovenian. The interest rate is determined according to the Act on Interest (räntelagen [1975:635]), and may change every six months in accordance with the Swedish Central Bank's decision.

Certifying interest by resorting to national laws seems to be non-transparent for enforcement agents or authorities, as well as time -consuming and costly.

Moreover, this means that different national laws may need to be taken into account for the purpose of enforcing a judgment. Apart from being expensive and inefficient, this exposes the authorities of the Member States to all uncertainties associated with the application of foreign law.

3.1.14 Party Succession

Ch. 13 § 7 of the Code of Judicial Procedure contains a provision that could be of relevance. The successor comes into the plaintiff's position without further ado, also with reference to litigation costs. The defendant may, however, only be succeeded by another party if the claimant agrees.

According to Ch. 14 § 9 of the Code of Judicial Procedure, a part not party to the case who claims that the cause of action concerns that part's right and which shows reasonable cause (*sannolika skäl*) has the right to intervene in the case. The provision provides for the main principle that the right to intervene demands a necessary interest to interfere.

The provision in Ch. 14 § 11 of the Code of Judicial Procedure provides that the intervention can be ordinary or independent. Ordinary intervention only entails the power to proceed to legal acts, which can be performed by the party to whom the intervener joins. There are some limitations, though. The intervener cannot change the party's cause of action or act contrary to the party's interests. An independent intervener, on the other hand, is seen as a party to the proceedings. A condition for an independent intervention is that a judgment would be effective against the

intervener if the judgment had been issued in a procedure where the intervener was a party.

According to Ch. 13 § 2 of the Code of Judicial Procedure, a declaratory claim (*fastställelsetalan*) can be tried in court if the legal relationship is surrounded by uncertain, and this is to the detriment of the plaintiff.

3.2 Recognition and Enforcement in Member State of Enforcement

3.2.1 The Concept of Recognition in Art 36(1)

The automatic recognition and the free circulation of judgments within the EU have been motivated by mutual trust.[53] Mutual trust and recognition of foreign judgments mean that the principle of territoriality of each EU Member State has been limited, and replaced by "EU regional governance".

Recognition of a judgment issued in another Member State can be defined as giving authority and effectiveness to the foreign judgment in the legal system/territory of another Member State.

Under Art 36(1) of the B IA RE, recognition is automatic without any special procedure required; as soon as the judgment is issued in the Member State of origin it has *res judicata* also in the other Member States (as a main rule).

There are two sides to *res judicata*; a positive and a negative side. The positive side implies that the foreign judgment is determinative in a later Swedish proceeding between the parties, and the negative side means that the foreign judgment is a bar to new Swedish proceedings.

Recognition and enforcement have been held to be separate concepts under the B IA RE, because the rules on recognition and enforcement are found under different sections.[54] However, there is a connection between the two concepts. It appears from Art 46 read in conjunction with Art 45, that the concepts *do* have a bond. If a Swedish court finds that there are grounds to refuse enforcement according to Arts

[53] See indent (26).
[54] See A. Dickinson & E. Lein *The Brussels I Regulation Recast*, Oxford University Press 2015 p. 375–377.

45 and 46 (in a declaratory decision), it follows that the foreign judgment is neither enforced nor recognized in Sweden. This possibly means that the parties are free to re-litigate the dispute in Sweden.

3.2.2 The Scope and Effectiveness of a Foreign Judgment

According to the *Hoffmann v.* Krieg -case[55], a foreign judgment produces the same effects in the enforcing Member State as it does in the Member State of origin (the doctrine of extension). The doctrine of extension deviates from what was previously held in Swedish doctrine.[56] Prior to the *Hoffmann v. Krieg*- case, the scope and effectiveness of a foreign judgment was believed to be decided under the law of the Member State of enforcement, *i.e.* a recognized foreign judgment was equal to a Swedish judgment. Hence, the foreign judgment produced the same effects in Sweden as a Swedish judgment.

It seems that Art 54 B IA RE has "softened" the doctrine of extension, providing a possibility to adapt a foreign measure to measures existing in the Member State addressed. This appears wise as there are practical problems in giving a foreign measure the same effect in the Member State addressed as it has in the Member State of origin, if no such measures exist in the Member State of enforcement.

Under § 7 of the 2014 Act, SEA is the competent authority to adjust according to Art 54 of the B IA RE.

Criticism. The doctrine of extension can be questioned. It does not find support in indent (26) saying that a "judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed". This indicates an intention to assimilate the foreign judgment to a domestic judgment.

Besides, the CJEU seems ambivalent. In *Apostilides*[57] and *Prism Investments*[58], the CJEU held that "although recognition must have the effect, in principle, of

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55 Case 145/86, *Hoffmann* v. *Krieg*, ECLI:EU:C:1988:61.
56 See L. Pålsson*, Brysselkonventionen, Luganokonventionen och Bryssel I-förordningen, Norstedts Juridik* 2008 p. 270 and 271.
57 See C-420/07, *Apostolides*, ECLI:EU:C:2009:271.
58 C-139/10, *Prism Investments*, ECLI:EU:C:2011:653.

conferring on judgments the authority and effectiveness accorded to them in the Member State in which they were given, there is however no reason for granting to a judgment, when it is enforced, rights which it does not have in the Member State of origin or effects that a similar judgment given directly in the Member State in which enforcement is sought would not have."

In *Gothaer*[59], the CJEU observed that recognition must have the result of conferring on foreign judgments the authority and effectiveness accorded to them in the State in which they were given. Therefore, a recognized judgment must in principle have the same effects in the State in which recognition is sought as it does in the State of origin. The Court also held that "the concept of *res judicata* under European Union law does not attach only to the operative part of the judgment in question, but also attaches to the *ratio decidendi* of that judgment, which provides the necessary underpinning for the operative part and is inseparable from it".

Swedish Case Law. Cases of interest in this context are *NJA 1995 s. 6* and *495*. At the request of an Italian company (P), an Italian court had appointed a *sequestro giudiziario* (something similar to Swedish sequestration) on certain assets belonging to P's counterparty in Sweden, under the 1988 Lugano Convention. P was appointed administrator for the assets under the Italian decision. *Svea* Court of Appeal declared the Italian decision enforceable in Sweden. P requested that SEA handed over the assets to P for administration, in accordance with the Italian decision.

SEA and higher instances found that this was not possible, and that the assets should be administered by SEA. According to Swedish law and Ch. 15 of the Code of Judicial Procedure and the provisions on sequestration, only SEA can dispose of foreclosed assets.

The majority of the Swedish Supreme Court found that the Italian decision (stating that the administration of the assets should be carried out by P) concerned actual enforcement, and the Italian decision was not, in this part, binding on the enforcing state. As the provisions of the Enforcement Code should be applied, only SEA could administer the assets, not P.

[59] C-456/11, *Gothaer Allgemeine Versicherung and Others*, ECLI:EU:C:2012:719.

In summary, the Swedish Supreme Court held that the Italian legal institute *sequestro giudiziario* was deemed to be equivalent to a Swedish sequestration. The Supreme Court hence found that enforcement could not include an appointment in the Italian decision stating that the assets should be administered by the judgment creditor.

3.2.3 Service of the Certificate – a Requirement to Proceed to Enforcement

In order for SEA to proceed to enforcement, the Art 53 -certificate must be served on the judgment debtor prior to the first enforcement measure.

The purpose of serving the certificate under Art 43(1) is to safeguard the right to a fair trial, and also to safeguard the requirement that the Brussels instruments only accept judgments originating in *inter partes* -proceedings, in order for the uniform enforcement rules to apply.

In Sweden, a foreign judgment, which is enforceable in the Member State of origin is sufficient to proceed to protective measures.

3.2.4 Service of Certificate

Art 43(1) states that the certificate must be served prior to the first enforcement measure. This presupposes a national intermediate "service-condition" set by EU law, which is mandatory before the first enforcement measure can take place.[60]

One consequence of the provision in Art 43(1), from a Swedish perspective, is that this provision does not treat domestic and cross -border judgments alike. The enforcement of a foreign judgment requires service of a certificate, whereas enforcement of a domestic judgment does not need any equivalent service of a certificate. The effect in cross -border cases may well be that the enforcement procedure is elongated.

In this context, it seems proper to mention another peculiar Swedish problem. National law supplements the B IA RE according to Art 41(1). According to Ch. 4

[60] According to Swedish law "enforcement measure" is something else than "enforcement of a protective measure" as foreseen in Art 43(3).

§ 12 of the Swedish Enforcement Code, the debtor shall be notified by mail or by other means before foreclosure takes place.[61] The notification contains information about the case, the applicant, the debt *etc.*, and a final date for payment. The final date may vary, but in the average case the debtor has a fortnight to pay. During this time, SEA does not foreclose, and the debtor has some time to decide whether or not to invoke grounds for refusal in national law and/or in the B IA RE, or to invoke measures under Art 44 (suspending enforcement).

A notification is normally sent on SEA's standard forms, by mail. The notification can also be sent by e-mail to an address that the debtor has provided, or in urgent cases, be given orally.

A possible consequence of Swedish law is that the Art 53 -certificate, and if needed the foreign judgment, is served on the debtor at a certain time, whereas the notification arrives at the debtor at another time. It may seem confusing to an average debtor.

Furthermore, Ch. 4 § 12 second paragraph of the Enforcement Code provides that a notification is not necessary at all times. If there is a risk that the debtor will remove or destroy assets there is no need for a notification. In that case only the Art 53 -certificate, and possibly the foreign judgment, will be served on the debtor.

In the name of legal certainty, one may ask if the debtor is sufficiently protected by Swedish law in such a case. Does a regular debtor understand that enforcement measures are pending on account of a certificate, and that he or she must act expediently to invoke grounds for refusal? According to Swedish *travaux prépartoires,* the debtor should assume that enforcement measures are pending after the certificate has been served, and that he or she should act promptly to preserve his or her rights.[62] SEA has taken the position that the debtor's interests are adequately protected, as SEA notifies the debtor about the case and serves the acts after

[61] A standard form issued by SEA is used for notifications under Ch. 4 § 12 of the Enforcement Code. Notications can be oral if it's appropriate, but must have the same contents as the standard form, see Ch. 6 § 1 of the Enforcement Regulation.
[62] See *prop. 2013/14:219*, *Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 68.

enforcement has taken place. Then the debtor has the possibility to appeal or invoke grounds for refusal.[63]

However, it could be argued that the debtor may in fact lose the right to invoke grounds for refusal in the right time, because he or she doesn't know the time limits available under Swedish law in the particular case. The right to a fair trial could be jeopardized.

The protection in Art 43(2) B IA RE may also have to yield, if no notification is sent. The provision in Art 43(2) states that the person against whom enforcement is sought, has the right to have the judgment translated if it is delivered in another language than the person understands, or if the judgment is in a language which is not the official language(s) of the Member State where that person is habitually resident. If a translation has been requested, no enforcement measures besides security measures may be taken. If SEA decides not to notify the debtor, but only to serve the certificate on the debtor, the debtor may lose the possibility to request a translation of the foreign judgment.

An additional remark concerns recital (32), which states that service, must be done in "reasonable time". What reasonable time means is not clear. Is it an EU autonomous concept or is it decided by national law? The crucial point of departure seems to be that Member States safeguards that the service is done in such a time frame that the debtor gets enough time to secure his or her interests.

3.2.5 Residual Stage

The judgment creditor must turn to SEA with the foreign judgment and the Art 53 -certificate for actual enforcement, if the judgment debtor is reluctant to pay. SEA will serve the certificate on the judgment debtor, and normally send a notification. If the judgment debtor claims that he or she has already paid or has a set -off, such objections (national grounds for refusal) can be raised at, and tried by, SEA according to Ch. 3 § 21 of the Enforcement Code. SEA's decision can be appealed to a district court.

[63] Information obtained from SEA October 2016.

However, SEA cannot try the grounds for refusal in Art 45 of the B IA RE, because (with the exception in Art 3) SEA is not regarded as a court in the eyes of the Regulation. If the judgment debtor invokes one or several of the grounds in Art 45 at SEA, the agency must immediately notify the judgment debtor that an application must be made to a court. This is provided for in § 8 of the 2014 Act.

To access the grounds for refusal in Art 45, the debtor must thus apply to a district court (Arts 46 and 47). Appeals against decisions are also tried by the district court as second instance. The court of appeal, after granting leave, is third instance, and the Supreme Court, if granting review permit, is the fourth and final instances. Contrary to domestic cases, the grounds for refusal in the B IA RE can be tried four times![64]

Yet another question is if the judgment debtor may institute proceedings in a Swedish court concerning grounds for refusal under the B IA RE, even though no enforcement case is pending with SEA.[65] This would mean that it is for the judgment debtor to decide – even for preventive purposes – to apply for the grounds of refusal in the B IA RE, despite the fact that the judgment debtor has not taken any measures to enforce the foreign judgment in Sweden. The consequence would be that the judgment creditor is forced into new proceedings in Sweden even though he or she may not have any plans to enforce the judgment in Sweden.[66]

Art 46 states that "on the application of the person against whom enforcement is sought". This indicates that a case must be pending with SEA before the grounds for refusal in Art 45 are accessible to the judgment debtor. If the judgment debtor would be allowed to institute separate proceedings against the judgment creditor, it could be argued to be contrary to the ideology and spirit of the B IA RE – to speed up enforcement, and do away with national intermediate measures.

The most proper way to tackle this issue is probably to refer the judgment debtor to institute proceedings under Arts 45(1) and 45(4), *i.e.* to apply that there are grounds

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[64] See *prop. 2013/14:219, Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 76.
[65] See *prop. 2013/14:219*, *Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 76.
[66] On this matter see also A. Dickinson & E. Lein, *The Brussels I Regulation Recast*, Oxford University Press 2015 p. 481.

to refuse *recognition*. An interested party, for example the judgment debtor, can apply that the foreign judgment shall not be recognized. According to recital (30) second paragraph recognition of a judgment should only be refused if one or more grounds for refusal provided for in the B IA RE is/are present to the exclusion of national grounds to refuse recognition. Hence it is not possible for the judgment debtor to prevent enforcement, but only recognition, if no case is pending with SEA.[67]

[67] Besides, Art 36 allows an interested party to apply for a decision that there are *no* grounds for refusal.

Part 4: Remedies

4.1 Brief Overview

Remedies are tools to re-try a court judgment so as to maintain legal certainty. The legal effects of remedies mean that a judgment's legal force and enforceability are suspended.

Ordinary remedies are appeals against district courts' judgments (*överklagande*) or decisions (*besvär*), and re-opening (*återvinning*). Default judgments are appealed by re-opening.

Particular remedies can only be used under certain, strictly limited, conditions and only when the appeal deadline has expired, and the judgment has acquired legal force. The particular remedies are a new trial (*resning*), appeal against grave procedural errors (*besvär över domvilla*), and restoration of time lost (*återställande av försutten tid*).

4.2 Remedies in Enforcement Procedure

4.2.1 and 4.2.2 Description and Characteristics

Issues concerning amendments, appeal and damages may arise during the whole enforcement procedure. It might happen that SEA's decision in the enforcement procedure turns out to be wrong, for example because the decision was founded on incorrect information, or because certain circumstances were not known until after enforcement was concluded.

Therefore, the Enforcement Code contains provisions to revoke a foreclosure and amend errors in a swift way without having the issue tried in court, see Ch. 4 §§ 33–35. In addition, SEA can correct clerical errors according to Ch. 2 § 2 of the Enforcement Code. If there are reasons, SEA shall correct or change a decision *ex officio*, see Ch. 3 § 17 of the Enforcement Regulation. Corrections and changes can also take place on account of a party's claim or because of an appeal.

Amendments can only be made when a decision or measure is incorrect.

The provisions in Ch. 4 §§ 33–35 of the Enforcement Code also apply to decisions on sequestration for a claim, and decisions and impoundment, see Ch. 16 § 13 of the Enforcement Code.

Enforcement of other obligations than imbursement cannot be amended.

Ch. 4 § 35 of the Enforcement Code states that the applicant shall be heard before SEA amends, unless there are particular reasons. Normally, the applicant does not have to be served. If SEA decides not to amend the decision, this decision cannot be appealed according to Ch. 18 § 5 of the Enforcement Code, in order to avoid amendments developing into a specific procedure beside the original case. On the other hand, a decision to amend can be appealed.

In a decision not to amend, SEA shall state the reasons not to amend the decision. In the decision, SEA should inform that a decision to foreclose can be appealed to a district court.

A question of amendment shall be handled expediently, in particular when the time for appeal is running out. The appellate time for the debtor is three weeks, after service of the decision to foreclose. If the debtor invokes amendments during this time, SEA should decide on the matter quickly in order for the debtor to appeal the decision to foreclose, if no amendment is made.

Amendments can also be made after appeal. SEA must decide if a party requests amendment or appeal. If uncertain, the party should be asked.

NJA 1982 C 104 concerned impoundment. The defendant had requested amendments. SEA declined to amend, and transferred the case to court as if it had been appealed. According to the Supreme Court this was wrong

If SEA already has transferred the acts to court, without amendments, SEA should not amend at a later stage as the case will be tried by court.

Concerning the rights to litigation costs, there is a difference if SEA or a court tries the matter in substance. SEA cannot award a party to pay litigation costs, but a court can.

Reasons to amend. A foreclosure *can be* revoked

- if it turns out that the property belongs to a third person,
- if a sale of the foreclosed property will not bring a surplus.

A foreclosure *shall be* amended

- if the foreclosed property for some reason should not have been foreclosed.

See Ch. 4 § 33 and § 3 of the Enforcement Code.

There is no limit in time to amend.

According to Ch. 4 § 34 of the Enforcement Code, a foreclosure shall be corrected if it is incorrect for any other reasons than what has been provided above, for

example if the property was part of the debtor's benefit, or for some other reason should have been exempted from foreclosure, or if the foreclosure is the result of wrongful application of the execution order (*utmätningsordningen*). In that case a correction shall be made within two weeks from the day the decision was made. This provision makes it possible to adjust (*jämka*) a foreclosure, for example if seized goods should have been foreclosed with a reservation for a third party's rights.

Other changes. Some of SEA's decisions are not binding but can continuously be changed when required.

An issue that has been discussed is to what extent an executive decision is binding, when an application for enforcement has been rejected, but the application for enforcement is later renewed. A new application is not barred by a previous application if there are new circumstances. But even if there are no new circumstances, a previous application does not prevent a new application where the same claim is tried. In generally it suffice, that SEA refers to the former decision, and states that there are no reason to deviate from its previous standpoint. If the former decision is thought erroneous a new decision with a different content can, however, be issued.

Some examples of decisions or measures that can be changed by SEA itself.

- SEA can postpone the time for proceedings.
- SEA can, if appropriate, seize assets of the debtor.
- SEA can change ways of selling assets, if the result is believed to be better.

A decision or measure creating a right or another obligation for a party cannot be changed without legal support in the Enforcement Code. Some examples follow of such measures or decisions.

- Decisions to foreclose.
- Decisions on executive sale and distribution or payment of monetary means.
- Enforcement of other obligations than payment.

With the applicant's consent, SEA can revoke a foreclosure wholly or partially. A foreclosure can be revoked also in other circumstances, for example if SEA has held an auction but the assets have not been sold, and no new sale has been planned, see Ch. 9 § 6, Ch. 10 § 21, and Ch. 12 § 42 of the Enforcement Code. If SEA finds that there are grounds for refusal (Ch. 3 § 21 of the Enforcement Code), or if an execution title is revoked (Ch. 3 § 22 of the Enforcement Code), the foreclosure expires, as well as the decisions on enforcement taken after enforcement.

Enforcement is barred if the applicant withdraws the case, or if the debtor pays the debt, and the costs for the proceedings, see Ch. 8 § 17 of the Enforcement Code. The foreclosure has then lapsed. All concerned shall be notified. In case of withdrawal, or in any other case, when enforcement shall seize, SEA shall try to obtain the costs from the defendant or the applicant. When the costs have been covered, the proceedings are terminated. If the foreclosure is revoked, measure taken to secure seizure shall be neutralized. The point of departure is that assets shall be returned. If assets belong to a third party, the assets shall be returned. If SEA fails to return the assets, the agency has an obligation to take care of the assets. SEA cannot sell such assets or destroy them.

Appeals. By and large, a main principle is that most decisions delivered by SEA can be appealed according to the Enforcement Code. According to Ch. 2 § 21 of the Enforcement Code, this also includes measures taken by SEA, which affects the right of a party or a third party.

Appeals of SEA's decisions are tried by a district court as first instance. The district court with jurisdiction is listed in Ch. 17 § 1 of the Enforcement Regulation, and is dependent on the habitual residence of the defendant. If the defendant is not habitually resident in Sweden, SEA's decision is appealed to *Nacka* district court in Stockholm, in accordance with the same provision. According to Ch. 17 § 2 of the Enforcement Regulation, SEA's decision to dismiss an appeal shall be served on the applicant.

The appeal procedure in district courts, appellate courts and the Supreme Court are principally governed by the Court Matters Act or the Code of Judicial Procedure. The Enforcement Code only contains provisions, which deviate, or that contain specific rules, see Ch. 18 § 1 third paragraph of the Enforcement Code.

A district court's decision can be appealed to a Court of Appeal, and, finally, to the Supreme Court. In order for an appellate court or the Supreme Court to try a case, a review permit is always required, see §§ 39–40 of the Court Matters Act.

According to Ch. 2 § 18 first paragraph of the Enforcement Code, SEA's decision shall contain reasons, if necessary. The reasoning shall be short, but state the reasons for the outcome. Decisions that can be appealed shall contain information thereof.

A decision on foreclosure or enforcement of sequestration concerning a debt contains information on how to appeal, the decision shall also inform on the possibility to request amendment or change, see Ch. 3 § 16 of the Enforcement Regulation.

On the word of Ch. 18 § 2 of the Enforcement Code, a party negatively affected by the decision has the right to appeal. An applicant or claimant may also appeal decisions concerning third parties' rights. SEA tries if the appeal was handed in on the right time.

The following parties have the right to appeal.

- Applicants who claim that their rights have not been considered.[68]
- Right -owners who claim that they have been impaired by a foreclosure.
- According to case law, a third party who has acquired a foreclosed real estate from the debtor's friend, who in turn had acquired the real estate from a creditor in an insolvency proceeding.[69]
- A party who left a bid not accepted at an executive auction.[70]

A party which is not negatively affected by SEA's decision cannot appeal, as he or she is deemed to lack an interest in the matter, as the decision does not concern him or her.

[68] See *RH 1990:27*.
[69] *NJA 1981 s. 448*.
[70] *NJA 1987 s. 457*.

Examples of where there is no right to appeal.

- A creditor cannot appeal because the debtor's economy has deteriorated due to foreclosure.
- SEA cannot appeal a district court's decision to revoke or change a certain measure. However, the Swedish Tax Agency has this capability in certain case.
- A bank cannot appeal the foreclosure of a debtor's bank account.[71]
- A party who owns the debtor money cannot appeal a foreclosure.[72]
- An employer cannot appeal a foreclosure of an employee's salary. However, an alleged employer can appeal and claim not to be the employer.[73]
- No -one but the debtor can claim that foreclosed assets are part of the debtor's benefits.[74]
- When assets have been sequestrated in a case concerning better right, a third party cannot appeal and claim that her or she own the assets.[75]

According to Ch. 18 § 1 third paragraph p. 2 of the Enforcement Code, SEA is not part in court proceedings, and cannot appeal court decisions. However, if costs for the proceedings are appealed, and the district court decides against SEA, the agency should be able to appeal the decision according to § 36 of the Court Matters Act.[76]

Decisions, which cannot be appealed. The main principle is that decisions or measures in executive proceedings can be appealed. There are some exceptions to this principle listed in Ch. 18 §§ 5–6 of the Enforcement Code.

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[71] *RH 2006:51.*
[72] *NJA 1999 s. 622.*
[73] *NJA 1975 s. 64.*
[74] *NJA 1983 s. 410* and *NJA 1985 C 82.*
[75] *RH 1991:4.*
[76] See *Kronofogdens beslut om uttagande av förrättningskostnader m.m. (dnr 832 37685-14/121).*

The following decisions cannot be appealed.

- Certain decisions not to amend a foreclosure or sequestration concerning debts.
- Decisions not to reserve a right at an executive sale.
- A decision declaring a SEA officer disqualified (*jävig*).
- A decision to exonerate costs for the proceedings according to Ch. 17 § 4 first paragraph of the Enforcement Code.
- An order to institute proceedings against an arbitral award according to Ch. 3 § 16 of the Enforcement Code.
- A decision of notice on questioning, see Ch. 18 § 6 first paragraph of the Enforcement Code.
- A "preparatory" decision for a later decision not concerning a third party's rights, see Ch. 18 § 6 second paragraph of the Enforcement Code. A preparatory decision could for example concern evaluation of property. On the other hand, preparatory decision relating to a third party's right can always be appealed. A decision can be appealed if the case is unnecessarily extended by the decision. The district court's decision after appeal cannot be appealed according to Ch. 18 § 17 of the Enforcement Code.

If SEA has rejected an appeal because it was too late, this decision can be appealed, see Ch. 18 § 7 final paragraph of the Enforcement Code, in conjunction with Ch. 17 § 2 of the Enforcement Regulation.[77]

Time limits. As stated by Ch. 18 § 7 of the Enforcement Code, SEA's decision on seizure under Ch. 7 can be appealed without time -limits. Other decisions should be appealed within three weeks after the decision was served according to the same provision.[78]

Early Swedish case law stated that an appeal of foreclosure could not be tried after payments had taken legal force, and could not be changed.[79]

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[77] See also *NJA 2000 s. 575, RH 1993:123*, and *RH 1993:131*.

[78] All decisions are not served, because it is not practically motivated.

[79] *NJA 1990 s. 166*.

In *NJA 1982 s. 808* the debtor appealed a decision to foreclose, after means had been accounted for, but before the decision to pay the means had taken legal force. In reference to Ch. 18 § 7 third paragraph of the Enforcement Code, the Supreme Court found that the debtor had the right to have the appeal tried.

NJA 1990 s. 166 confirms this principle. SEA had foreclosed currency, and accounted for it. That decision took legal force three weeks after the payment was made. When the debtor was served and appealed the foreclosure within three weeks of service, the decision to pay the currency had already taken legal force. Therefore, the debtor's appeal could not be tried.[80]

However, the European Court of Human Rights laid down in *Olsby v. Sweden*[81] that this was contrary to the right to a fair trial in Art 6(1) of the European Convention on Human Rights. This decision has had the effect that Swedish courts nowadays try appealed foreclosures that have taken legal force.[82]

Appellate Procedure. According to § 7 of the Court Matters Act, an appeal shall enclose information on

- the appealed decision,
- what part of the decision is appealed, and the change sought,
- the cause of action, and why it should be changed,
- evidence referred to, and what the evidence shall prove.

The appeal must be in writing. According to Ch. 18 § 9 of the Enforcement Code, the appeal shall be handed into SEA, which will examine if the appeal is made in the right time. However, SEA shall not try if there are any bars to appeal.[83] The time for appeal runs from the time when service was performed; SEA must try if service has occurred according to the provisions of the Service of Process Act. If the appeal is handed into a district court in the right time, it shall be deemed to have reached SEA

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[80] See also *RH 1999:93*.
[81] *Olsby* v. *Sweden*, 36124/06.
[82] See for example *RH 2012:82, RH 2013:35* and *Svea* Court of Appeal's decision 11 March 2013 in case *ÖÄ 9930-12*.
[83] See for example *RH 1993:131* and *Hovrätten över Skåne och Blekinge*'s decision 12 November 1990 in case *Ö 1103/90*.

in the right time, too. If the appeal is handed in too late, the appeal shall be rejected by SEA. A decision to dismiss can be appealed.[84] If the appellant shows the existence of a lawful excuse, before the time for appeal has run out, SEA shall appoint a new time, see Ch. 18 § 9 third paragraph of the Enforcement Code.

When an appeal is handed into SEA in the right time, SEA shall as soon as possible (*så snart som möjligt*), send the appeal and other documents to the district court, see Ch. 18 § 10 of the Enforcement Code. SEA shall enclose its opinion on the appeal, see Ch. 17 § 3 of the Enforcement Regulation.

According to the Parliamentary Ombudsmen an appeal and the opinion shall be sent to the district court within one to two weeks from the point in time when the appeal was handed in.[85] If more time is needed for the opinion, all other acts shall be sent to the district court, and SEA shall ask for an extension in time to hand in the opinion. This is especially important when the applicant has requested the court to immediately stay (*inhibera*) enforcement. The appeal should then directly be sent to the district court according to the Parliamentary Ombudsmen.[86]

Amendments? In connection to an appeal, SEA shall always try if there are reasons to amend (*självrättelse*). If SEA, after a decision has been appealed, issues another decision in the same case before the appeal has been tried, SEA shall notify the district court, or, if the district court's decision has been appealed, higher instances according to Ch. 17 § 4 of the Enforcement Regulation. It should be emphasized that an appeal must be handed over to a district court even if SEA has amended the appealed decision.

[84] See for example *NJA 2000 s.* 575, *RH 1993:123*, and *RH 1993:131*.
[85] See *JO 2000/01* p. 229.
[86] See *JO 2006/07* p. 160.

As already stated, the appeal is supplemented by SEA's opinion. However, SEA is not regarded as a party in the court proceedings. The opinion shall, for example, include the following information.

1. If the appeal was handed in on the right time.
2. The reason why SEA has perceived the plea as an appeal and not as a request for amendment.[87]
3. If a sale is forthcoming.
4. If means have been paid to the applicant, and if so, when.
5. The applicant's relationship to the debtor.
6. Where the foreclosure was made.
7. The legal cause for foreclosing. Has assets been foreclosed according to Ch. 4 § 17, § 18 or § 19 of the Enforcement Code?
8. If the facts of the appeal are correct.
9. If foreclosure has taken place according to Ch. 4 § 7 of the Enforcement Code: What kind of investigations has been made before and after foreclosure?
10. If the provisions in Ch. 5 concerning benefits of the Enforcement Code have been applied, an account shall be provided.
11. Appels of a foreclosure in salary, new circumstances may lead to a change in favor of the debtor. If a decision is changed, a district court shall be informed about the new decision, see Ch. 17 § 4 of the Enforcement Regulation.

An appeal of SEA's decision, does not affect enforcement, see Ch. 2 § 19 second paragraph of the Enforcement Code. Only if a district court suspends enforcement, SEA cannot take further measures in the case, see Ch. 18 § 12 of the Enforcement Code. The district court can also directly order SEA to cancel measures already taken, but only if there are particular reasons (*synnerliga skäl*).

The district court's decision. The district court's decision is valid immediately according to Ch. 18 § 16, in connection with Ch. 2 § 19 of the Enforcement Code. However, the provision in Ch. 18 § 6 second paragraph contains an important exception. Measures of foreclosure already taken by SEA shall not be reverted until

[87] See for example *NJA 1982 C 104*.

the district court's decision has taken legal force, unless the district court has decided otherwise.

If the district court approves an appeal concerning a decision on distribution, the decision is also valid for a party, which has not appealed the distribution, see Ch. 18 § 15 of the Enforcement Code.

Litigations costs in appellate cases. In court, appealed cases of foreclosure are handled according to the Court Matters Act. A court may order a party to cover the other party's litigation costs, see § 32 of the Court Matters Act. This rule applies only when an appeal is tried in court. When a third party or a debtor requests SEA to cancel the foreclosure according to Ch. 4 §§ 33 and 34 of the Enforcement Code, no remuneration of litigation costs can be ordered by SEA.

Hence, there is a significant difference if SEA cancels a foreclosure or if the issue is settled by court. If SEA cancels a foreclosure an applicant does not have to pay the other party's costs. But if a district court cancels a foreclosure the applicant may have to pay the costs.

When a third party appeals a foreclosure, claiming that certain assets belong to him or her, the debtor is normally not regarded as counterparty in the case.[88]

The particular remedies in the Code of Judicial Procedure can be applied to SEA's decision in cases of foreclosure, see Ch. 18 § 20 of the Enforcement Code.

Damages. According to Ch. 3 § 2 of the Tort Liability Act, the Swedish State can be liable to pay damages for injury caused in exercise of public authority (*myndighetsutövning*). This also covers damages caused by SEA, see Ch. 3 § 3 of the Tort Liability Act. Particular reasons due to the circumstances of the case must exist, in order for liability to occur.

An individual party must institute proceedings for damages in a civil court against the Swedish State. Ordinary rules for civil disputes are applicable, unless special provisions apply. The applicant has the burden of proof. However, if SEA has seized

[88] See *NJA 2014 s. 578*.

property in connection to a foreclosure or a sequestration the burden of proof is reversed (*omkastad bevisbörda*).[89]

4.2.3 Objections in a Separate Procedure

A judgment debtor can raise objections in the enforcement procedure, as well as in a separate court procedure depending on which grounds for refusal the debtor wants to invoke.

According to Art 47(2) of the B IA RE the debtor may invoke national grounds for refusal. They are found in Ch. 3 § 21 of the Enforcement Code. Objections are raised in, and tried by, SEA as first instance; appeals are tried by a district court as first instance.

SEA cannot try the grounds for refusal in B IA RE, because SEA is not regarded as a court in the eyes of the Regulation. If the debtor invokes the grounds for refusal in Art 45 of the B IA RE, SEA must – without delay – inform the debtor that he or she can invoke the ground by applying to court, see § 8 of the 2014 Act.

The debtor must apply with a district court that will try the "Brussels -grounds for refusal" in contradictory proceedings.

Accordingly, Swedish law involves a "dual track -system". In theory this means that the debtor may have cases pending in the state of origin, in SEA and in a Swedish district court. In general, the dual track -system requires closer cooperation between SEA and civil courts.

The Swedish system is not attuned to indent (30) of the B IA RE, which states that is shall be possible to invoke all grounds of refusal in the same procedure, to the extent possible.

[89] See *NJA 1989 s. 191*.

4.3 Opposition in Enforcement

4.3.1 Options to Challenge Enforcement

The debtor can invoke formal objections; *inter alia* that the applicant is not the creditor under the execution title[90], or substantive objections as referred to in Ch. 3 § 21 of the Enforcement Code. A judgment debtor may object to enforcement at SEA by pleading Ch. 3 § 21 of the Enforcement Code. This provision contains national grounds for refusal. According to Ch. 3 § 21 first paragraph, enforcement may not take place if the defendant has paid the debt or fulfilled any other obligation that the application for enforcement concerns. Enforcement may not take place if the debtor has a set -off established in an execution title that is enforceable, or if the claim is based on a bond (*skuldebrev*), or some other written claim, and the legal conditions for set -off are at hand.[91]

According to the second paragraph of this provision, enforcement may not follow if the debtor claims other circumstances that concern the parties' dealings, and the objection cannot be disregarded. Examples of "other circumstances" are claims, which are time -barred (*preskriberad*), or if extension in time has been granted.

SEA does not *ex officio* investigate matters of fact or evidence concerning the objection. The parties' pleas are communicated if necessary. When a debtor objects to execution it is most often appropriate also to hear the counterparty before SEA decides on the matter. Sometimes the debtor must also be heard regarding the counterparty's plea. Usually, a couple of weeks will pass before SEA finally can try the objection. Objections that clearly are unjustified are dismissed without communication.

[90] According to the Swedish Supreme Court, SEA must check that the obligations under the execution title can be applied. See *HD* decision 23 June 2015 No *Ö 904-15*.
[91] See *NJA 1986 s. 539* that concerns conditions for set -off according to 3 § 21 of the Enforcement Code.

4.3.2 Substantiating Objections[92]

By and large, an objection must relate to circumstances, which have occurred *after* the execution title was issued.[93] A fundamental principle is that SEA should not try matters already settled in an execution title.

Circumstance that occurred *before* the execution titled was issued can only be handled by SEA in exceptional cases as such issues normally are precluded by the judgment's legal force. The question seems to be solved somewhat differently in the area of administrative law.[94]

According to Swedish *travaux prépartoires*, the debtor must prove the objection directly, or else enforcement will take place. If the debtor claims that payment has been made to an authorized person, and the claim cannot be disregarded, enforcement may commence at the same time as the debtor gets time to prove the objection. If the objection is proven after enforcement has commenced, the measure shall go back, if possible.

In other cases there may be reasons to let enforcement wait some time, so the debtor gets time to prove the objection.

There are no particular rules governing SEA's actions during the time a national ground for refusal is handled.

However, the purpose of this rule can give some guidance. The aim of Ch. 3 § 21 is to protect the defendant's interests against unjustified applications for enforcement (see also Ch. 3 § 17 of the Enforcement Regulation). This protection is resilient; SEA may decide that a national ground for refusal exists and that an enforcement measure already taken shall go back. The conclusion is therefore that SEA may disengage further execution during the time the objection is handled. Generally, no means are paid during the time the objection is handled.

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92 The information contained in this section can be found in SEA's *Ställningstagande 2013-09-09, 4/13/VER, Dnr 832 6511-13/121.*

93 See *NJA 2006 s.* 657 and *HD* decision 15 December 2015, case No *Ö 266-15*. There are some decisions in administrative law that deviates from this, see for example *NJA 1984 s. 602*, *NJA 1991 s. 188* and *NJA 2011 s. 849*.

94 See for example *RH 1990:126* and *NJA 1988 s. 205*.

The "authority" of the defendant's objection is decisive for SEA's measures. The defendant's and the plaintiff's interests of legal losses in continuing or suspending enforcement must be balanced against each other. An enforcement measure already taken cannot go back unless a decision on the existence of ground for refusal is present.

An *unjustified objection*, not substantiated by evidence, is not sufficient to suspend enforcement. Causeless objections can be dismissed straight away.

If the objection *cannot be regarded as unjustified*, SEA should suspend enforcement in such a way that means paid should not be distributed to the applicant.

If the defendant's objection is *justified*, but SEA finds that a decision cannot be issued before the applicant has been heard, SEA should wait with measures, which are potentially harmful to a party. In balancing the defendant's and the applicant's interests, SEA can foreclose assets while the objection is being tried. If it turns out that the objection was justified, the foreclosure goes back. If, on the contrary, it turns out that the objection was unjustified, the State may be held liable in tort for not foreclosing. As a result, SEA should not abstain from foreclosing, but should wait with distribution until its decision has been issued.

The settings for SEA to try objections, provides the agency with quite a large leeway.

4.3.3 National Grounds for Refusal: Categories and a General Clause

According to Ch. 3 § 21[95] first paragraph, enforcement may not take place if the defendant has paid the debt or any other obligation that the application for enforcement concerns. Enforcement may not take place if the debtor has a set -off

[95] "*Visar svaranden att han har fullgjort betalningsskyldighet eller annan förpliktelse som ansökningen om verkställighet avser, får verkställighet ej äga rum. Detsamma gäller om svaranden till kvittning åberopar fordran, som har fastställts genom exekutionstitel vilken får verkställas eller som grundas på skuldebrev eller annat skriftligt fordringsbevis, och i övrigt förutsättningar för kvittning föreligger. Gör svaranden gällande att annat förhållande som rör parternas mellanhavande utgör hinder mot verkställighet och kan invändningen ej lämnas utan avseende, får verkställighet ej heller äga rum.*"

established in an execution title that is enforceable or if the claim is based on a bond, or some other written claim and the legal conditions for set -off are at hand.[96]

Problems connected to the application of this provision mainly concern evidence. What are the evidentiary requirements? According to the provision, the debtor has the burden of proof. Usually some kind of written evidence (a receipt) is required unless the creditor has certified the payment. If the debtor's objection is dismissed, the objection can be tried in court.

According to *RH 2004:80*, the Court of Appeal found that Ch. 3 § 21 of the Enforcement Code only requires that the debtor show that the payment was made. The debtor does not have to show that the payment concerned anything else than the creditor's debt. If the creditor claims that, the burden of proof shifts to the creditor.[97]

According to the second paragraph[98] of this provision, enforcement may not occur if the debtor claims "other circumstances" that concern the parties' relations, which cannot be disregarded.

Other circumstances may concern objections for statutory limitations. This is the most common objection raised in SEA. There are three statutory limitations in Swedish law: ten years (the general period), five years (tax debts), and three years (consumer debts). If the debtor has pleaded statutory limitation, the applicant must prove an interruption of the statutory limitation.[99]

Extension of time (*anstånd*) is also covered by "other circumstances" according to the provision's second paragraph. This is only a temporary postponement of enforcement. Extensions in time are normally few, and short.

NJA 1989 s. 243 concerned the question whether a debt under a confirmed conciliation (*stadfäst förlikning*) could be denied enforcement, because certain

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[96] See *NJA 1986 s. 539* that concerned conditions for set -off according to 3 § 21 of the Enforcement Code.
[97] See *RH 2005:44*.
[98] *"Gör svaranden gällande att annat förhållande som rör parternas mellanhavande utgör hinder mot verkställighet och kan invändningen ej lämnas utan avseende, får verkställighet ej heller äga rum*."
[99] See *NJA 1996 s. 809*, *NJA 1998 s. 750* and *NJA 2007 s. 157*.

contracts had not been handed over to one of the parties in accordance with the conciliation. This objection was not regarded as a bar to enforcement.

NJA 1984 s. 25 concerned enforcement of a Finnish decision of maintenance issued under Finnish law under a Nordic Convention. The question was if Swedish rules on statutory limitation applied as a bar to enforcement. The Supreme Court found that statutory limitation was governed by the Finnish applicable law. The question of statutory limitation was thus part of the substantive question, and not a procedural question.

If the circumstances in the first or second paragraph of the provision in Ch. 3 § 21 of the Enforcement Code are present, and measures of enforcement have already taken place, the measure shall go back – if possible.

4.4 Remedies in Swedish Private International Procedure

4.4.1–4.4.3 Lack of Generally Applicable Rules outside the Framework of EU Law

Swedish lacks generally applicable rules concerning foreign judgments outside the framework of EU law or international conventions.

4.5 Remedies Concerning B IA RE

4.5.1 Do Remedies in the Member State of Origin have a Spill -Over Effect in the Member State of Enforcement?

Cases of interest in this context are *NJA 1995 s. 6* and *495* concerning the 1988 Lugano Convention. At the request of an Italian company (P), an Italian court had appointed a "*sequestro giudiziario*" (something similar to Swedish sequestration) on certain assets belonging to P's counterparty in Sweden. According to the Italian decision, P was appointed administrator of the assets. *Svea* Court of Appeal declared the Italian decision enforceable in Sweden. P requested that SEA handed over the assets to P for administration, in accordance with the Italian decision.

SEA and higher instances found that according to Swedish execution laws this was not possible, as only SEA can administer foreclosed assets. Consequently, the majority of Swedish Supreme Court found that the Italian decision concerned actual enforcement, and was not binding on the enforcing state. The provisions of the Enforcement Code should be applied instead, with the consequence that the assets could not be administered by P. According to this ruling, foreign remedies do not influence enforcement in Sweden as Swedish law governs actual enforcement. The scope and effectiveness of a foreign judgment is determined under the law of the Member State of enforcement, *i.e.* a recognized foreign judgment is equal to an equivalent Swedish judgment. Hence, the Italian judgment produced the same effects in Sweden as a Swedish judgment.

The minority of the Supreme Court was of a different opinion, and advocated that the administration of assets, where part of the substance, and for that reason the Italian decision should be accepted.

Now, Art 54 of the B IA RE provides a more flexible solution to adaptation of foreign decisions. An unknown foreign measure can be adjusted to a known measure in the law of enforcement. Under § 7 of the 2014 Act, SEA is the competent authority to adjust according to Art 54 of the B IA RE.

4.5.2 Proceedings for Refusal of Enforcement

The Swedish enforcement system has become rather complex and non -transparent after the entry into force of the B IA RE.

A judgment creditor can turn directly to SEA with the required documentation (Art 42) to have a foreign judgment enforced directly. As SEA is responsible for actual enforcement, the agency can only try national grounds for refusal in Ch. 3 § 21 of the Enforcement Code to stop enforcement, not the grounds for refusing recognition or enforcement in Arts 45 and 46 of the B IA RE. These hindrances to enforcement can only be tried by courts. The judgment debtor, who wants to invoke the grounds for refusal in the B IA RE must file an application with a district court as first instance.

The B IA RE has been supplemented by national legislation.

The provision in the first paragraph of § 4 of the 2014 Act states that an application to stop enforcement under the B IA RE shall be launched with the district court that the Swedish Government has prescribed.

According to the second paragraph of the same provision, an application for a declaration that there are no grounds to refuse recognition of a foreign judgment should be launched with the district court that the Swedish Government has prescribed.

In addition, the Swedish Government has issued supplementary provisions to B IA RE in the autonomous Regulation 2014: the Act with Complementary Provisions regarding Courts' Jurisdiction and Recognition and International Enforcement of Certain Decisions (*lag* [2014:912] *med kompletterande bestämmelser om domstols behörighet och om erkännande och internationell verkställighet av vissa avgöranden*), and the Regulation on Recognition and Enforcement of Certain Foreign Decisions in Civil and Commercial Matters (*förordning* [2014:1517] *om erkännande och verkställighet av vissa utländska avgörande på privaträttens område*).

With reference to jurisdiction, § 2 p. 1 of the Regulation lays down that an application according to the first paragraph of § 4 of the 2014 Act, *i.e.* an application that there are grounds to refuse recognition or enforcement of a foreign judgment shall be launched with the district court in the jurisdictional area where the applicant has his domicile.

According to § 2 p. 2 of the 2014 Regulation an application that there are no grounds for refusing recognition of a foreign judgment shall be launched with the district court where the counterparty is domiciled.

If there is Swedish jurisdiction according to EU law or an international convention, but a locally competent court is missing, then the *Stockholm* district court is competent, see § 2 in the 2014 Act.

In order to identify the correct district court 2 § *in fine* contains a list with district courts in each jurisdictional area.[100]

[100] See above Sec. 2.4.

The control of the grounds for refusal in Art 45 is performed by a district court as first and second instance. The district court's decision can be appealed to a Court of Appeal and the Supreme Court, if a review permit is granted.

The Court Matters Act apply to the procedure, see § 11 of the 2014 Act. The applicant must pay a court fee. Complete information on fees in courts can be found in Regulation on Fees Levied by Public Courts (*förordning* [1987:452] *om avgifter vid de allmänna domstolarna*). Application fees are payable in connection with a lawsuit filed with the court. For cases involving a claim less than half a base amount (22 150 SEK for 2016, appr. € 2 215), the application fee is regularly 900 SEK (appr. € 90). In cases involving claims exceeding half a base amount (22 150 SEK for 2016, appr. € 2 215), the application fees is regularly 2 800 SEK (appr. € 280).

4.5.3 Required Documents

In SEA, the judgment creditor must produce a copy of the judgment and an Art 53 -certificate in accordance with Art 42. SEA may, if necessary, require a translation or a transliteration of the certificate, see Art 57 of the B IA RE and § 8 of the 2014 Regulation. No other documents can be requested.

In a district court, the applicant must produce a copy of the judgment, and if necessary a translation or a transliteration of it in accordance with Art 47 (compare Ch. 33 § 9 of the Code of Judicial procedure). The court has the discretion to dispense with the production of these documents under Art 47 of the B IA RE, if, for example, the court already has access to the documentation.

National Swedish procedural law contains certain requirements: an application to court must comprise certain information as foreseen in Ch. 33 § 1 of the Code of Judicial Procedure: information about the court, the names of the parties and their habitual residence, social security numbers, addresses, phone -numbers, email -addresses *etc.* If the requirements have not been met, the applicant can be ordered to supplement the application, see Ch. 33 § 10 of the Code of Judicial Procedure.

However, national law must yield to the B IA RE, and cannot call for any additional or extra information.

4.5.4 Service of Documents

The certificate, and if needed the judgment, will be served on the debtor. A notification issued under Ch. 4 § 12 of the Enforcement Code, is sent by mail.

The purpose of service is to show/prove that the defendant/addressee has received the documentation or its contents, and when this has happened, so as to be able to account time for appeal *etc.* Generally, rules on service can be found in the Service of Process Act (*delgivningslagen* [2010:1932]), and the Service of Process Regulation (*delgivningsförordningen* [2011:154]).

The Service of Process Act provides rules on service so as to obtain correct service. Other acts provide rules on when service shall be performed, and what should be served. The Service of Process Act is subsidiary to other particular provisions concerning service.

Different Types of Services. There are different types of service in Swedish law. § 2 of the Service of Process Act lists the different forms of service.

It's the public authority, for example SEA, which decides the type of service that should be utilized according to 2 § of the Service of Process Regulation. Before deciding which type of service to employ, the authority must consider whether the type of service is meaningful in terms of content, scope, costs and ordeal, see 4 § of the Service of Process Act. Service should not be unsuitable with regard to the circumstances of the case, § 4 second paragraph of the Service of Process Act.

This means that the principle of proportionality governs, *i.e.* the type of service most efficient in the particular case should be utilized. The most inexpensive and simple form of service should be employed as a main rule.

Regular Service implies that the documentation is sent or handed over to the addressee. The addressee is served when he or she receives the documentation.

Regular service can be used for serving all kinds of documents. In the average case the documentation is sent by regular mail or delivered by courier. As proof of service the addressee returns an acknowledgment of service (a so-called "white card").

Documentation can also be served by electronic means, such as e-mails or text messages, if this is thought effective. The addressee can confirm that he or she has received the documents in the same manner, or orally. The authority may send documentation electronically to the addressee if this serves a purpose with regard to the content, and it is not unsuitable with reference to the circumstances of the case.[101]

In order to employ electronic service, the addressee should have stated an e -mail address in the case. As a main rule, documents containing sensitive information should not be sent electronically.

If the addressee requests that the documentation is sent to a particular address, the documents should be sent there.

If the addressee has not confirmed the service within the required time, he or she should be reminded in a suitable way. If the addressee, in spite of that, does not return the acknowledgment of service, the addressee should be contacted by telephone. It must also be checked if the address is correct, and investigated if there are any alternative addresses that can be used.

The documentation and a certificate of service can also be sent by a registered letter. The day after the addressee will get a notice to pick up the letter at the post office. In connection the addressee signs the certificate of service that the post office will return to the authority in question (a so -called "red card"). This is also deemed to be proper service in cross -border cases.

It is important that the agency records the measures taken, and provide correct information in their records.

Regular service has occurred when the addressee has received the documentation. No requirements of form are stipulated. If the addressee confirms by telephone, it is suitable to control that the person is actually the addressee.

A confirmation by e -mail requires that the message is sent from a known address, or can be controlled afterwards by an internet supplier.

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[101] See *prop. 2009/10:237*, *Ny delgivningslag* p. 122.

If it is questioned whether or not the addressee has been served this has to be proved.[102]

The addressee has been served when the act has be handed over in the way prescribed, see § 39 of the Service of Process Act. If the addressee refuses to take the act, the act is still regarded as served.

If a postal item has been collected by a courier, the documentation is served on the addressee when collected by the courier.

Oral Service means that the content of the documents are read to the addressee. Oral service on telephone should only be used for short, uncomplicated messages. Oral service cannot be used to serve an act to institute proceedings.

The addressee is served when a reading has taken place.

The authority must secure that the served person is the addressee, see § 8 of the Service of Process Regulation.

Oral service means the *whole* content of an act is read to the addressee, see §§ 19 and 21 of the Service of Process Act. In connection to the oral service the addressee shall be informed that he or she has been served.

After oral service, the act shall be sent or handed over to the addressee as soon as possible (unless it is deemed unnecessary), preferably the same day or the following working -day.

Whether or not oral service can be employed depends on the addressee's ability to embrace the content of the act. In cases or language difficulties or in cases of alcohol or drug abuse this kind of service should not be used.[103]

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[102] See *prop. 2009/10:237 Ny delgivningslag* pp. 119 and following, *NJA 2013 s. 364,* and *NJA 2008 s. 890*.

[103] See also *prop. 2009/10:*237, *Ny delgivningslag* pp. 125 and following, and 240.

Simplified service can be employed to serve a party in proceedings or in a matter. The addressee must have been informed that simplified service may be used, see § 22–24 of the Service of Process Act, and § 46 a) of the Courts Matters Act. Simplified service may not be used to institute proceedings. Moreover, simplified service should not be used during holidays.

After the information on simplified service has been provided the act to be served is sent by regular mail, and the following working -day a control statement is sent informing that the act has been sent to the addressee's latest known address.

If this address is unknown the documents will be sent to the addressee's place of registration. To provide extra service the authority may also notify the addressee by e -mail or a text message.[104]

The addressee is served two weeks after the act has been sent, and the control statement is sent the way prescribed. It is the addressee that stands the risk that the act is lost. The typical example of simplified service not working is when the documents are returned due to an unknown address.

Simplified service can also be used to serve an addressee abroad, if this is not inappropriate due to the circumstances according to § 3 of the Service of Process Act

However, according to *NJA 2006 s. 588*, certain precautions should be respected before using simplified service if the addressee is a habitually resident abroad and a "foreigner", as simplified service presupposes that the postal service works expediently and reliably. This presumption does not necessarily apply to foreign postal service.

Particular service of legal persons can be used to serve legal persons registered in certain registers, such as the limited companies' register, the bank register *etc.*, see § 29 of the Service of Process Act.

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[104] See also *NJA 1995 s. 601*, *NJA 1999 s. 376*, *NJA 1999 s.* 376, *NJA 2006 s. 588*, *RH 1999:7*, and *prop. 2009/10:237*, *Ny delgivningslag* p. 131 and 242.

This kind of service may only be used by public authorities, to serve all different kinds of acts, even applications for summons.

The addressee is served two weeks after the act was sent, see § 30 of the Service of Process Act. If the address available is not correct, the legal person may be served by public notice, but not by particular service of legal person.

Particular service of legal person is used when it is difficult or can be foreseen to be difficult to serve a legal person, see § 29 of the Service of Process Act. Usually some other form of service has failed. According to § 4 of the Service of Process Act, service shall be appropriate and cost -efficient, and may not be used if it is unsuitable due to the circumstances of the case.

The act to be served is sent by regular mail to the registered address of the legal person. The following working -day a control message is sent, informing that the act has been sent, see § 27 of the Service of Process Act.[105]

Service by summoner means that an authorized person leaves an act or a message to the addressee, see § 40 of the Service of Process Act. Service by summoner is used when it is impossible to serve in another way, or when service is needed promptly. The summoner must thoroughly document measures taken, as these are to prove that service has taken place.

[105] See *NJA 1999 s. 113*.

Service by summoner means that the act is handed over in one of the ways specified in §§ 32–38 of the Service of Process Act.

- Service when the addressee is encountered § 32. If the addressee refuses to accept the act, the act shall be left at the place, if it is not inappropriate due to the circumstances.
    - Service is completed when the summoner has encountered the addressee and handed over the act, regardless of whether the addressee accepts the service or not.
    - A prerequisite for service by summoner is that the addressee understands that it is an attempt to serve. Normally this implies some kind of contact between the summoner and the addressee.[106]
- Service by "surrogacy" means that the act is handed over to someone else than the addressee. The act may only be handed over to a person that agrees, and which is not a party to the same case, see § 34 of the Service of Process Act. This could be a person in the same household or an employer, see § 35 and 36 of the Service of Process Act.
    - A notification must be sent to the addressee, informing that service has happened and the person to whom the act was delivered, see § 34 of the Service of Process Act. The person who accepts the act is obliged to hand it over to the addressee as soon as possible, see § 37 of the Service of Process Act. If a person does not hand over the act, he or she may be held liable.
    - Service by "surrogacy" has followed when the act has been delivered, and a notification has been sent to the addressee concerning the service and the person accepting the act, see § 39 of the Service of Process Act.
    - Service by "surrogacy" cannot be used if it seems uncertain whether the act will be handed over to the addressee.
- So-called "nailing" in § 38 of the Service of Process Act means that the act is left in or in the vicinity of the addressee's home, if the addressee has a known habitual residence but cannot be found there, and service cannot be performed under §§ 34–36, and the addressee's whereabouts are uncertain, and there are reasons to believe that the addressee has absconded.

[106] See *NJA 1978 s. 222*.

  - It is the summoner that decides if "nailing" can follow or not. Service has taken place when the act has been left at the addressee's habitual residence or in any other suitable place in connection to that place, in the same way as regular mail, *i.e.* in a mailbox or "nailed" to the door. Service by "nailing" has followed when the act has been left at, or in connection to, the addressee's domicile.

- Service by publication implies that a public authority makes an act accessible at a certain place, and a message concerning this is published in a prescribed way, see §§ 47–51 of the Service of Process Act.
  A publication is issued in the Swedish digital paper *Post- och Inrikes Tidningar*, and if need be in a local paper. Publication must take place ten days after the decision on service by publication was made. The time of service is deemed to be two weeks after the decision on service by publication. Service by publication can only be employed in the following cases.

  - The addressee lacks a known habitual residence, and his or her whereabouts are unknown.
  - If the addressee has known habitual residence, but he or she cannot be found there, and service by surrogacy cannot be employed, the addressee's location cannot be identified and there are reasons to believe that the addressee is "hiding".
  - If the addressee has changed postal address without informing the public authority handling the case, or to the Swedish Tax Agency, Swedish Social Insurance Agency, or the postal service for national registration (*postbefordringsföretag för folkbokföring*).
  - If an unidentified number of persons shall be served.
  - If a great number of persons shall be served, and with regard to the circumstances, it is not reasonable to serve each person separately.
  - If a legal person lacks a registered, competent representative, and no-one in Sweden can be served and attempts to serve in other ways have failed or are believed result -less.
  - If a legal person, against whom particular service by legal person can be used, lacks a known registered address.

As a main rule, service by summoner shall not be used if the rules on particular service by legal person apply.

Service by furnishing (*delgivning genom tillhandahållande***)** is employed for serving very complex or hard to copy acts. A notification on where and when the act is available shall be served on the addressee.

The service has taken place when the addressee has been served the message and the act is available. The date for service is the day when the message on the availability is served, and the act became available.
The Swedish National Courts Administration employs the company *Svensk Delgivningsservice AB* for service. The fee for service ranges from 200 SEK (appr. € 20) to 694 SEK (appr. € 69) per assignment.

See also the Act on Authorization of Service Companies (*lag* [2010:1933] *om auktorisation av delgivningsföretag*).

4.5.5 Opposition by the Defendant

Swedish law prescribes a separate procedure to access the grounds for refusal of Art 45 of B IA RE. The debtor must apply to a district court as first instance. The district court is also second instance. The Courts of Appeal are third instance, and the Supreme Court is the fourth and final instance. Contrary to other proceedings in Sweden, grounds for refusal in the B IA RE can be tried four, and not three, times! The possibility to obstruct seems apparent.

In connection to an application for refusal of enforcement with a district court, the debtor may also invoke that the enforcement procedure should be limited to security measures, that enforcement is conditional upon the provision of security; or that the enforcement is suspended wholly or partially. SEA cannot cancel/inhibit enforcement.

4.5.6 The Use of Appeal

Code of Judicial Procedure. A district court's judgment or decision can be appealed according to Ch. 50 § 1 and Ch. 52 § 1 of the Code of Judicial Procedure within three weeks from the day it was issued. The appeal is handed in to the district court, and then transferred with other relevant documents to a Court of Appeal, see Ch. 50 § 5 and Ch. 52 § 4 of the Code of Judicial Procedure.

The Court of Appeal decides whether to grant leave (*prövningstillstånd*), see Ch. 49 § 12 and 50 § 7 a) of the Code of Judicial Procedure.

According to Ch. 49 § 14 of the Code of Judicial Procedure, a Court of Appeal shall grant a review permit if

1. there are reasons to doubt the accuracy of the district court's findings[107],
2. it is not possible to determine the accuracy of the district court's findings without a leave[108],
3. it is of importance to adjudication that the appeal is tried by a higher instance[109], or
4. there are other exceptional reasons to try the appeal[110].

According to Ch. 49 § 14 a) of the Code of Judicial Procedure, a leave can be limited to certain parts of a judgment or decision.

A Court of Appeal's judgment or final decision can be appealed, see Ch. 54 § 1 and § 3 of the Code of Judicial Procedure. A review permit is required before the Supreme Court will try the appeal, see Ch. 54 § 9 of the Code of Judicial Procedure.

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107 P. 1 "*Det finns anledning att betvivla riktigheten av det slut som tingsrätten kommit till.*"
108 P. 2 "*Det inte utan ett sådant tillstånd meddelas går att bedöma riktigheten av det slut som tingsrätten har kommit till.*"
109 P. 3 "*Det är av vikt för rättstillämpningen att överklagandet prövas av högre rätt.*"
110 P. 4 " *Det annars finns synnerliga skäl att pröva överklagandet.*"

According to Ch. 54 § 10 of the Code of Judicial Procedure, a review permit will only be granted by the Supreme Court if

1. it is important for the adjudication that the appeal is tried by the Supreme Court[111], or
2. there are exceptional reasons for a trial, reasons exist for a new trial or grave procedural errors have occurred, or that the Court of Appeal's findings obviously depends on a gross oversight or mistake[112].

The Supreme Court's review permit may be limited to a certain question, or certain parts of a case, see Ch. 54 § 11 of the Code of Judicial Procedure.

The Court Matters Act. § 39 of the Court Matters Act states that a district court's decision can be appealed to a Court of Appeal if a leave has been granted. § 40 of the same Act states that a decision by a Court of Appeal can be appealed to the Supreme Court if a review permit is granted. The reasons to grant review permit in the Court Matters Act mirror the ones in the Code of Judicial procedure already mentioned just above.

4.5.7 Party Eligible to Apply

Only the person against whom enforcement is sought, *i.e.* the judgment debtor, has the standing to apply for a refusal of enforcement according to Art 46 of the B IA RE (the same is true for Art 44). This is a narrower group of parties than the parties referred to in Arts 36(2), 45(1) and 53 – "any interested party".
The provision in § 36 of the Court Matters Act explicitly states that only the party that the decision adversely affect may appeal.

4.5.8 Suspension and Limitation

Only courts can apply Art 44; SEA does not have the power to suspend or limit the enforcement procedure because of an application for refusal of enforcement. SEA is notified about a court decision that affects the enforcement procedure according

111 P. 1 "*Det är av vikt för ledning av rättstillämpningen att överklagandet prövas av Högsta domstolen*."
112 P. 2 "*Det finns synnerliga skäl till sådan prövning, såsom att det finns grund för resning eller att domvilla förekommer eller att målets utgång i hovrätten uppenbarligen beror på ett grovt förbiseende eller grovt misstag.*"

to the Regulation on the Obligation for Courts and SEA to Leave Notifications Concerning Certain Enforceable Decisions (*förordningen* [1981:967] *om skyldighet för domstol och Kronofogdemyndighet att lämna underrättelser om vissa beslut av exekutiv betydelse*).

According to § 6 first paragraph of the 2014 Act, a foreign decision is enforced according to the Enforcement Code, in the same manner as a Swedish judgment with legal force (even if the foreign decision has not acquired legal force), *unless B IA RE states otherwise*. The possibility to request that enforcement is limited to protective measures; conditional on provision of security or suspended are governed by Arts 44 and 51. In this situation B IA RE's provisions supersede Swedish national provisions in the Enforcement Code.[113]

4.6 Protective measures

4.6.1 Swedish Protective Measures according to Art 40 of the B IA RE

The concept of protective measures under Art 40 is not yet defined by the CJEU. But probably it includes any measure aiming at securing enforcement.[114] Art 40 only refers to protective measures, and does not include provisional measure, see Art 35.

According to the Swedish *travaux prépartoires* no particular decision is required to proceed to security measures. The Swedish legislator deems Art 40 to be of little practical importance. If a judgment creditor has an enforceable judgment he or she would preferably enforce the judgment, rather than to seek protective measures. In other words, if a decision is enforceable, it is possible to foreclose assets and there is no need to apply for protective measures under Ch. 15 of the Code of Judicial procedure.[115] Thus, the foreign judgment is in itself sufficient to proceed to security measures. This equals foreign judgment with domestic judgments.

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113 See *prop. 2013/14:219, Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* p. 103.
114 See Magnus & Mankowski, *ECPIL. Brussels Ibis Regulation*, selp 2016 p. 843.
115 See *prop. 2013/14:219 Nya regler för erkännande och verkställighet av utländska domar på civilrättens område* pp. 69 and 70.

Consequently, Art 40 has lost most of its significance compared to the situation under the former Brussels I Regulation. With an elongating *exequatur* procedure the need for protective measure was greater than now.

But if the preconditions for enforcement, such as service of the Art 53 -certificate or the provision in Art 43(2) securing translation of the judgment, have not yet been met there may be reason to apply for protective measures to prevent the debtor from disposing of property.

Protective measures and other provisional measures in cross -border disputes are debated in Swedish doctrine. According to § 6 second paragraph of the 2014 Act, enforcement of protective measures are governed by the provisions in the Enforcement Code. Protective measures are mainly measures equivalent to measures in Ch. 15 of the Code on Judicial Procedure, *i.e.* sequestration, restoration, and other measures to secure the applicant's right. According to Ch. 15 § 1 of the Code of Judicial Procedure, sequestration aims at securing future enforcement of a judgment concerning a claim. As a main rule, a decision on sequestration under this provision shall be designed to include assets, which covers the value of the debt. In exceptional cases, the decision may refer to certain specific assets.

Sequestration can also be used to secure future enforcement of a judgment concerning a better right to property, see Ch. 15 § 2 of the Code of Judicial Procedure. One example is a judgment declaring that the claimant is the owner of certain company -shares, and that the defendant is liable to deliver the shares.

Ch. 15 § 3 of the Code of Judicial Procedure contains a general provision under which a court may order a suitable measure to secure the applicant's right. This provision applies to injunctions (*förbudstalan*) and declaratory claims (*fastställelsetalan*).

Similarly, in a case concerning better right to certain property, a court can order restoration of possessions according to Ch. 15 § 4 of the Code of Judicial Procedure.

Under certain circumstances a protective measure can be issued provisionally (*interimistiskt*) according to Ch. 15 § 5 third paragraph of the Code of Judicial Procedure.

The foreign protective measure is enforced according to the Enforcement Code.[116]

A motion for protective measures is tried by the court where the case is pending, see Ch. 15 § 5 first paragraph of the Code of Judicial Procedure. If the motion is brought before a case has been instituted, the same provision states that the competent court is determined by the general rules on jurisdiction for civil cases (= Ch. 10 of the Code of Judicial Procedure). Interestingly, the B IA RE has left the jurisdictional issue to autonomous, national rules on jurisdiction and not to the B IA RE.

Courts will not *ex officio* raise issues concerning protective measures. A party must apply for such measures. If a court case is not pending, the application must be in writing.

The procedure in Swedish courts is connected to an application fee of 450 SEK (appr. € 45).

Outside the scope of the Brussels/Lugano instruments, Swedish law lacks provisions granting enforcement of foreign protective measures.

4.6.2 Prerequisites for Protective Measures

Measures under Ch. 15 §§ 1–3 of the Code of Judicial Procedure can only be approved if the main issue (*huvudfrågan*) can be settled in court or in another similar procedure, for instance in arbitration.

The Swedish Supreme Court has declared that sequestration or other protective measures under Ch. 15 of the Code of Judicial Procedure can be approved even if a foreign court has jurisdiction to try the main issue, if the foreign judgment can be enforced in Sweden. This requirement was developed in case law, and can be regarded as self -evident.[117] If a foreign judgment cannot be enforced in Sweden

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[116] See 26 § of the Court Matters Act: *"Om det är av synnerlig vikt, får domstolen för tiden intill dess att ärendet har avgjorts besluta om sådana åtgärder som säkerställer det som ärendet gäller. Den som åtgärden rör skall dessförinnan ha fått tillfälle att yttra sig, om det inte är fara i dröjsmål. Beslutet får när som helst ändras.*
En domstol som skall pröva ett överklagande får besluta att det överklagade beslutet tills vidare inte får verkställas och även i övrigt besluta tills vidare rörande saken"

[117] See *NJA 1983 s. 814*.

there are no reasons to grant protective measures in order to protect future enforcement.

In order to approve sequestration under Ch. 15 §§ 1–3 of the Code of Judicial Procedure, certain other conditions must be met.

The applicant must show that there is reasonable cause (*sannolika skäl*) for the claim. This is a lower degree of proof. The meaning of reasonable cause is debated in Swedish literature. Some authors are of the opinion that the court only should perform a summary prediction of whether the applicant has reasonable cause for the claim, whereas others mean that the court should try the case in substance.[118]

However, rejection of an application for sequestration may entail irreversible damage, whereas an approval rarely does. Therefore, there seems to be good reasons to be satisfied with a summary proceeding.

The applicant must also show that it reasonably can be expected that the counterparty will obstruct in paying the debt, *i.e.* that a risk of sabotage is plausible. The risk of sabotage is the reason for speedy processing of the application, and the reason to approve sequestration.

The Swedish Supreme Court, however, has interpreted this condition restrictively.[119] The behavior of the defendant does not have to be intentional. In addition, the court should perform a proportionality assessment between the parties' interests. In *NJA 2007 s. 690*, the Supreme Court found that a decision on sequestration was proportional, as the harm that might be caused to the defendant due to the decision was purely economical, and the applicant had posed sufficient security.

Yet another condition must be met to approve sequestration. The applicant must deposit a security for damage that might be done to the counterparty, see Ch. 15 § 6 first paragraph and § 8 second paragraph of the Code of Judicial Procedure, in conjunction with Ch. 2 § 25 of the Enforcement Code. The security shall be deposited with SEA. If the applicant is unable to deposit security, but can show

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[118] See for example T. Gregow, *Kvarstad och andra säkerhetsåtgärder, Norstedts Juridik* 2014 p. 57 and P.O. Ekelöf, T. Bylund, H. Edelstam, *Rättegång III, Norstedts Juridik*, 7th ed., 2006 p. 27–28.
[119] See *NJA 1983 s. 862* I and II and *NJA 1994 s. 654*.

exceptional reasons (*synnerliga skäl*) for his or her claim, the court may exonerate the applicant from the obligation to deposit security.

Particular rules on protective measures also exist in certain fields of law, *inter alia* concerning patents.

Normally, sequestration can only be issued after hearing the defendant in proceedings *inter partes*, see Ch. 15 § 5 third paragraph of the Code of Judicial Procedure. However, proceedings *ex parte* is possible concerning *interim* sequestration, regulated in Ch. 15 § 5 third paragraph p. 2 of the Code of Judicial Procedure. In order to approve a provisional measure, the condition of imminent danger (*fara i dröjsmål*) must be fulfilled.[120] This concept means that enforcement is at risk, if the measure is not approved instantly without hearing the counterparty. If the measure is approved, the decision shall be dispatched (*expedierat*) to the parties, and the defendant is requested to give his or her opinion concerning the decision. If such an opinion is filed with the court, the court shall immediately address the issue if the measure shall be upheld until a new adjudication.

Decisions on sequestration are issued by the court handling the case. If no court case is pending, the general rules on jurisdiction for civil cases apply (= Ch. 10 of the Code of Judicial Procedure).

The court cannot raise issues of protective measures *ex officio*. Hence, a party must file an action for sequestration. If a court case is not pending, the claim must be in writing.

There are certain assets that cannot be seized, such as benefits (*beneficier*). Benefits concern *inter alia* clothes and other subjects for the debtor's personal use for reasonable value, furniture, kitchen appliances and other equipment necessary for a household, work tools and equipment necessary for the debtor's business or economical operations, personal belongings, which have a great personal value, and it would be oppressive (*obilligt*) to distrain them.

Assets can also be "protected" by special legislation, for example damages.

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[120] See *NJA 2005 s. 29*.

Salary cannot be sequestered, before it has been paid.

It should be noted that a Swedish court, according to Ch. 15 § 5 first paragraph of the Code of Judicial Procedure, has jurisdiction to decide on protective measures even though the defendant does not have assets in Sweden or even though the decision cannot be enforced in Sweden.[121] This could be the case if the court has jurisdiction under Ch. 10 § 4 of the Code of Judicial Procedure, *i.e. forum contractus*. It's another question whether this is practical or not.

4.6.3 Duration Period of Protective Measures

When a protective measure has been approved under Ch. 15 §§ 1–3 of the Code of Judicial Procedure, the applicant has, if proceedings have not already been instituted, one month to institute proceedings in court in the matter according to Ch. 15 § 7 of the Code of Judicial Procedure.[122] The duration of one month reflects Swedish conditions. It has been criticized in literature to be too short in international disputes.[123]

If the measure is provisional, the decision shall be dispatched to the parties, and the defendant is requested to give his or her opinion concerning the decision. If such an opinion is filed with the court, the court shall immediately address the issue if the measure shall be upheld until new adjudication.

A measure shall immediately be set aside/revoked if a security is deposited.

4.6.4 Legal Effects of Protective Measures

When property has been sequestered, the defendant cannot transfer the property. Moreover, the debtor may not dispose of the property in any way to the detriment of the applicant (*förfogandeförbud,* in German *Verfügungsverbot*). If there are particular reasons, SEA may grant an exception to the prohibition to dispose of the property. If the debtor has disposed of assets he or she may be held accountable.

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[121] L. Pålsson*, Säkerhetsåtgärder och andra interimistiska åtgärder i internationella tvister, SvJT 1996* p. 391.
[122] Unless the claim should be tried in any other way laid down in law. See also *NJA 2002 s. 673*.
[123] *See* L. Pålsson*, Säkerhetsåtgärder och andra interimistiska åtgärder i internationella tvister, SvJT 1996* p. 385.

A decision on protective measures has unlimited territorial reach, and it is for the enforcing state to decide whether or not a Swedish decision can be enforced.[124]

A question concerning protective measures is decided in a decision, when it is raised as a question in the proceedings (*rättegångsfråga*) over the substantive matter, or when the issue on protective measures is raised separately.

Such a decision can be appealed particularly (*överklagas särskilt*) in both situations by the party adversely affected by the decision. The party who wish to appeal a district court's decision shall do so within three weeks from the day the decision was issued. In certain cases, the time to appeal is counted from the day when the appellant got the decision. Appeals shall be addressed to the Court of Appeal but handed in to the district court.

If a district court has rejected a motion for protective measures under Ch. 15 of the Code of Judicial Procedure, or set aside a decision for protective measures, the Court of Appeal may immediately grant a measure until further notice. If the district court has granted such a measure or declared a decision enforceable even though it has not taken legal effect, the Court of Appeal may immediately decide that the district court's decision may not be enforced until further notice, see Ch. 15 §§ 8 and 9 of the Code of Judicial Procedure.

Legal representation is not required.

4.6.5 Accessibility of Protective Measures during the Control of Grounds for Refusal

To access grounds for refusal in Art 46, in conjunction with Art 45, the judgment debtor must file an application with a Swedish district court. During the control of the grounds for refusal, the court may, on the application of the judgment debtor, limit enforcement proceedings to protective measures; make enforcement conditional on the provisions of such security as it shall determine; or suspend, wholly or in part, the enforcement proceedings. This follows from Art 44 of the B

[124] L. Pålsson*, Säkerhetsåtgärder och andra interimistiska åtgärder i internationella tvister, SvJT 1996* p. 391.

IA RE. As a consequence protective measures are available during the control of B IA RE's grounds for refusal.

If a Swedish district court should find that one, or several, of the grounds for refusal is present, the court will issue a particular decision (*särskilt beslut*) according to which the foreign judgment is declared not enforceable (a declaratory decision), because the presence of a ground for refusal in Art 45.

To a certain extent, one could argue that the Swedish decision has a constitutive effect, at least in Sweden. As the foreign judgment is not enforced in Sweden, it will neither be recognized (see Art 46, in conjunction with Art 45). However, the particular decision is most likely limited to the Swedish territory. The foreign judgment's effect in other Member States is for each state to decide.

This explanation can be compared to *exequatur* -decisions issued under the former Brussels I Regulation. A decision on *exequatur* was limited to the state where it was issued, and it could not be given effect outside that state of enforcement.[125]

4.7 Grounds for Refusal

4.7.1 Most Frequently Used Ground for Refusal

In *exequatur* proceedings it was not uncommon that the judgment debtor appealed a decision that declared a foreign judgment enforceable in Sweden. In the appellate procedure it was common that a party pleaded that one or several ground/s for refusal existed.

The most frequently invoked ground for refusal was the public policy -ground. However, Swedish courts have been very reluctant to apply the public policy -exception. The "most successful" ground for refusal has instead been the exception for certain default judgments.[126]

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[125] See L. Pålsson, *Brysselkonventionen, Luganokonventionen och Bryssel I-förordningen, Norstedts Juridik 2008* p. 300 and 301.
[126] See L. Pålsson, *Brysselkonventionen, Luganokonventionen och Bryssel I-förordningen, Norstedts Juridik* 2008 p. 276.

In this context, it should again be mentioned that outside the framework of the Brussels/Lugano instruments and international conventions, Swedish law lacks generally applicable rules concerning third country judgments. Such judgments are not recognized (have no legal force), and cannot be enforced in Sweden. The judgment creditor must institute new proceedings in a Swedish court.

4.7.2 Maintaining Grounds for Refusal

It could be argued that some or possibly all defenses included in the B IA RE are not compatible with the idea of a mutual trust between EU Member States, or a duty for mutual recognition of judgments within the EU. Foreign judgments are not treated equally to domestic judgments. As soon as the opposing party decides to apply for non -enforcement we are very close to the old Brussels I enforcement order, although in a new procedure initiated by the party who which to contest enforcement. As soon as the debtor objects it is a new ball game, which may in fact entail elongated enforcement procedures.

In spite of all talk to the contrary, the level of mutual trust between the Member States' judicial and administrative systems has not reached a sufficient "depth" to eliminate the desire for grounds for refusal. At most, the B IA RE has limited the scope of the European *exequatur*.

4.7.3 Most Problematic Grounds for Refusal

No reported problems.

4.7.4 Irreconcilable Judgments

The rules concerning irreconcilable judgment do not seem to have had any practical impact in Swedish case law. In part this might be explained by the negative Swedish approach to foreign judgments. Furthermore, the rules on *lis pendens* seem to have worked quite well.

Part 5: Critical Evaluation

5.1 Is the B IA RE an Improvement?

Does the B IA RE improve the free movement of judgments, or are the changes marginal in comparison to the former Brussel I Regulation, meaning in essence a confirmation of a *status quo*?

It could be argued that the B IA RE is an improvement in being more efficient for parties and businesses seeking transnational enforcement on the internal market. In a straightforward case, the abolition of intermediate measures regarding enforcement reduces costs and delays, while still ensuring the continuity of enforcement for anyone who has obtained a favorable judgment. Hence, in the average case the B IA RE is probably a simplification.

In contrast, it could be argued that some or possibly all defenses included in the B IA RE are not compatible with the idea of a mutual trust between EU Member States, or with a duty to mutually recognize judgments within the EU. Foreign judgments are not treated equally to domestic judgments. As soon as the opposing party decides to apply for non -enforcement we are very close to the old Brussels I enforcement order, although in a new procedure initiated by the party who wish to contest enforcement. As soon as the debtor objects it is a new ball game, which may in fact entail elongated enforcement procedures.

In spite of all talk to the contrary, the level of mutual trust between the Member States' judicial and administrative systems has not reached a sufficient "depth" to eliminate the desire for grounds for refusal. At most, the B IA RE has limited the scope of the European *exequatur*.

Moreover, the B IA RE has not been able to wholly assimilate foreign and domestic judgments (presuming this is an EU objective). Intermediate measures are still required, for example in the form of service prior to the first enforcement measure (see Art 43).

It could also be stressed that several provisions and concepts of the B IA RE are undefined or unclear to the detriment of the judiciary, and involved parties.

Another problematic issue is of a more general character. It concerns the general development of EU law in the field of enforcement. Previously, by and large, there was one way to enforce a foreign judgment: after an *exequatur* proceeding in the enforcing Member State. Now, in the area of private international law, EU law provides at least five different ways to enforce foreign judgments depending on the applicable instrument.[127] This "patchwork" development is a danger to predictability.

Finally, from a Swedish perspective, the B IA RE has resulted in the implementation of a "dual track system" in Swedish law. In order for the judgment debtor to access the B IA RE's grounds for refusal, he or she must invoke the grounds in court, whereas national grounds for refusal are invoked and tried by SEA. This is a complex, and a non -transparent system, which will require closer cooperation between Swedish authorities.

[127] *See* M. Linton, *Abolition of Exequatur – All in the name of Mutual Trust! EU Civil Justice. Current Issues and Future Outlook*, Swedish Studies in European Law Vol. 7, Hart Publishing 2016 p. 257–282.

5.2 Convenient Debt Collection

Probably, without statistical information, the most convenient, and expedient way for cross -border debt collection in Sweden is Regulation No 805/2004 creating a European Enforcement Order for Uncontested Claims or Regulation No 1896/2006 creating a European Order for Payment Procedure. Both regulations severely limit the judgments debtor's possibility to object to enforcement, now replaced by a new regulation.[128]

The problem is that these regulations are not very well known in Sweden, and judges and practitioners in general are unaware of their existence.

5.3 Language

The Swedish court of origin will issue the Art 53 -certificate, see § 5 of the 2014 Regulation. The provision in § 10 of the Language Act (2009:600) (*språklagen*) requires that the language of courts, administrative authorities, and other bodies that fulfill public assignments, is Swedish. § 13 of the Language Act states that Swedish is the official language in international settings.

Hence, a Swedish court will only issue the certificate in Swedish. A Swedish court does not have to accept an Art 53 -certificate in another language than Swedish, English or Danish consistent with § 10 of the 2014 Regulation.

In conclusion, it is probably not practicably feasible to issue the certificate in the language of the debtor. Let's assume that the court of origin is sitting in Sweden, and the judgment debtor is of Greek nationality with assets in Greece. The court would not, could not, issue the certificate in Greek – the language of the debtor. That would be too costly and time -consuming to transliterate, and most likely not compatible with the provisions concerning translation in the B IA RE.

[128] New EU Regulation.

5.4 National Procedural Autonomy

The B IA RE already affects national procedural and national enforcement laws because of supremacy of EU law. For example, national laws must be compatible with EU law, according to Art 41(2) of the B IA RE.

Later EU regulations in the field of private international law, B IA RE included, are melting pots of various provisions of different origin (EU law and national law). EU law, private international law, national procedural law and national enforcement laws can no longer be seen as isolated islands, but confluence. The "new" legal landscape could perhaps be described as inter -disciplinary; rules originating from different legal areas flow together and must interact. This confluence will entail difficulties, inconsistencies, and clashes. But it also holds potential for "co-operation" between legal fields.

5.5 Costs

In the average case, B IA RE will probably be more cost effective, compared to the former Brussels I Regulation, if no legal representation is needed. Nevertheless, bearing in mind the different official languages in the EU, the need for legal representation – both in the Member State of origin and in the Member State of enforcement – will most likely still be inevitable. The costs of cross -border enforcement of foreign judgments will prevail in comparison to enforcement of domestic judgments.

Lawyers' Fees. There are no fixed fees for all Swedish lawyers. The fees depend on a variety of factors, such as time, and complexity of the case. According to generally accepted legal practice (*god advokatsed*) a lawyer's fee must be reasonable. Swedish lawyers' fees in commercial disputes generally range from 1 342 SEK (appr. € 130) + VAT to 3 000 SEK (appr. € 300) + VAT per hour. Certain lawyers charge more.

SEA's Fees. FesSEA will levy fees to cover some of the costs of a case. The fees are determined by the Swedish Government.

An application for a payment order (*ett betalningsföreläggande*) costs 300 SEK (appr. € 30). The applicant will receive an invoice of the amount, but can thereinafter demand that the debtor pay the fees.

Fees concerning enforcement are added to the dues of the debtor. The main fee is 600 SEK (appr. € 60). If foreclosure takes place later, the fees will be imposed that way. Under certain circumstances, an applicant may be requested to pay the fee in advance.

There are some exceptions to the main rule in cases of damages or maintenance where the applicant does not have to pay a fee.

Sometimes costs occur, for example costs following a sale, which are not covered by the fees. If the costs cannot be charged the debtor, the applicant may be responsible for them.

Below follows a summary of the fees levied by SEA[129].

	Fee	Method of Application	Amount
-	Payment order (SEA determines a debt)	Payment order European payment order	300 SEK 300 SEK (appr. € 60)
-	Foreclosure and similarmeasures	Enforcement	600 SEK/year (appr. € 60)
		Encroachment (intrångsundersökning)	5 000 SEK (appr. € 500)
-	Judicial assistance	Ordinary assistance	300 SEK (appr. € 30)
-	Particular assistance		300 SEK (appr. € 30)
-	Sale of real estate	Preparation fee	1 % of taxable value, or 0,75 % of the real estate's estimated value
		Sales fee	2 % of taxable value, or 1,5 % of the real estate's estimated value
-	Sale of movable property	Sales fee	4% of the price at an auction
-	Other assignments		375–625 SEK (appr. € 37--)

[129] This information has been obtained from SEA's website: https://www.kronofogden.se/Avgifter.html (available February 2017).

Court Fees. *Below are the fees for a number of common cases in district courts, and the Land and Environment courts. Complete information on fees in courts can be found in Regulation on Fees Levied by Public Courts (förordning [1987:452]* om avgifter vid de allmänna domstolarna).

Application fees are payable in connection with a lawsuit filed with the court. On the website Sweden's Courts there is an electronic payment service that can be used by the applicant. If the fees are not paid, the court will not consider the application.

Application for summons. Cases involving a claim less than half a base amount (22 150 SEK for 2016, appr. € 2 215), the application fee is regularly 900 SEK (appr. € 90). In cases involving claims exceeding half a base amount (22 150 SEK for 2016, appr. € 2 215), the application fees is regularly 2 800 SEK (appr. € 280).

Fees for an application for divorce are 900 SEK (appr. € 90).

Fees for applications for custody, residence and access of children (family law) are 900 SEK (appr. € 90).

Fees concerning general court cases are 900 SEK (appr. € 90). These may, *inter alia*, concern applications in respect of adoption, name cases, testament witnesses, the appointment of an administrator, division, registrar or divider, or appointment of a trustee under a joint ownership or on the sale by co -ownership law.

Fess for bankruptcy and cases concerning reconstruction of companies are 2 800 SEK (appr. € 280). A fee will not be levied on a company's own application for bankruptcy.

Surcharges. A district court will charge an additional fee for applications concerning payment orders (*betalningsföreläggande*) and ordinary assistance (*handräckning*) undertaken by SEA, which has been submitted to the court for further action. The surcharge is 600 SEK (appr. € 60) or 2 500 SEK (appr. € 250) depending on how the case will be dealt with in court. The surcharge shall be paid to the district court. The court will send a payment request to the person who was the applicant in SEA. The court will not have any payment claims against the applicant if he or she does

not pay. If the surcharges are not paid, the case will not be handled by the court, and SEA's decision (*utslag*) will be eliminated (*undanröjt*).

The Land and Environment Court. Application fees for cases under the Act on Public Water Services that concerns claims decreasing half a price base amount (22 150 SEK for 2016, appr. € 2 21) are 900 SEK (appr. € 90).

Fees for other objectives at the Land and Environment Court initiated by a summons application are 2 800 SEK (appr. € 280), and matters at the Land and Environment Court are 900 SEK (appr. € 90).

Surcharges. The Land and Environment Court levy a surcharge for cases under the Act on Public Water Services that have been transmitted from SEA under the act on summary proceedings. The surcharge is 600 SEK (appr. € 60) or 2 500 SEK (appr. € 250) depending on the economic value of the case.

Patent and Market Courts. Application fees in cases involving half a price base amount (22 150 SEK for 2016, appr. € 2 215) are regularly 900 SEK (appr. € 90). Application fees in cases above half a price base amount are regularly 2 800 SEK (appr. € 280). Fees in the Patent and Market Court are 900 SEK (appr. € 90).

Surcharges. The Patent and Market Court charges a surcharge for a case of administrative revocation of the registered trade name or trademark that has been submitted from the registration authority for the firm or the Swedish Patent and Registration Office. The surcharge is 2 350 SEK (appr. € 235). An additional fee is also levied on cases that have been submitted from SEA under the act of summary proceedings. The surcharge is 600 SEK (appr. € 60) or 2 500 SEK (appr. € 250) depending on the value of the case.

Charges for Public Documents. Costs are governed by the Fees Ordinance (*avgiftsförordningen* [1992:191]). In general, it is most cost efficient to collect documents by e -mail, which in many cases are free when ordering a single document. Document can also be obtained on CD or DVD. To get the exact price the applicant must contact the relevant court.

Hard copies in paper, pages 1–9 are free, hard copies in paper 10 pages are 50 SEK (appr. € 5), hard copies in paper, more than 10 pages are 50 SEK (appr. € 5) + 2 SEK (appr. € 0,2) per page. In addition, any postage of freight cost will be levied.

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