Sweden

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1.	**What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?**
	Depending on where the judgment originates from the basic criteria and enforcement procedure varies. This article aims to explain the possibility to enforce a foreign judgment in civil and commercial matters in Sweden (excluding criminal law, family law, insolvency law and arbitration awards). Enforcement of foreign judgments in Sweden are made possible mainly through different bilateral agreements, conventions and through the membership in the European Union, as will be discussed below. **Judgments from other European Union member states** According to the EU Regulation 1215/2012 of the European Parliament and of the Council on 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, any judgments from a European Union member state which is enforceable in that member state shall be enforceable in the other member states without any requirements as to declaration of enforceability or exequatur (*article 39*). This means that a judgment from any other EU member state should be enforced in Sweden in the same way that a Swedish judgment would. By means of clarity the regulation defines a judgment as any judgment given by a court or tribunal of a member state, whatever the judgment may be called, including decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court (*article 2*). However, the creditor seeking enforcement in Sweden, could be required to produce: (a) a copy of the judgment to establish authenticity (b) the standardized certificate prescribed in article 53, certifying that the judgment is enforceable in the original member state (c) a translated version of the judgment. Given that the judgment of another EU member state shall be enforceable in Sweden, as if it was given in Sweden there are but a few grounds to refuse enforcement. According to article 46 of the Regulation, enforcement of a judgment shall only be refused if; (a) the judgment is manifestly contrary to the public policy (*ordre public*) in Sweden (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or that the defendant has not been served the document in a way that permits him to, within sufficient time, arrange his defense, unless the defendant when given the possibility to commence proceedings to challenge the judgment failed to do so (c) the judgment is irreconcilable with a judgment given between the same parties in Sweden (d) if the judgment is irreconcilable with an earlier judgment given in another member state or in a third state involving the same cause of action and between the same parties, on the condition that the earlier judgment is in accordance with the requirements for recognition of that

judgment (e) the judgment is in conflict with exclusive grounds for jurisdiction as described in the regulation.

Judgments from Switzerland, Norway and Iceland (that fall within the scope of the Lugano Convention)

As such there are several resemblances between the EU Regulation 1215/2012 mentioned above and the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Lugano Convention is in force between Switzerland, Norway, Iceland and the member states of the EU on the other hand. One of the main differences is that the Lugano Convention requires an exequatur procedure for enforcement. The Lugano Convention defines a judgment as any judgment given by a court or tribunal in a state bound by the Convention, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (*article 32*).

The exequatur is an ex-parte procedure that is initiated by the applicant to the relevant district court in the state where enforcement is sought. The applicant must provide (a) a copy of the judgment to verify its authenticity (b) a standardized certificate from the court where the judgment originates from (c) upon request; a translated version of the documents. In the first step of the enforcement procedure the court must declare the judgment enforceable if the above-mentioned formalities has been fulfilled without any consideration as to the defendants views or grounds for refusal.

Only after the judgment has been declared enforceable in Sweden is the defendant to be served with the decision from the Swedish court. Only in the event of an appeal from the defendant can any grounds for refusal be examined. After an appeal from the defendant the Swedish court may never review the foreign judgments as to its substance. It may however revoke the enforcement decision based on the given grounds for refusal in the Convention, should they prove to be relevant.

The grounds for refusing enforcement is limited to those defined in the Convention, articles 34 and 35. A Swedish court may revoke the enforcement decision if; (a) the judgment is manifestly contrary to the public policy (*ordre public*) in Sweden (b) the judgment was given in default of appearance, and the defendant was not served with the documents which instituted the proceedings or that the defendant has not been served the document in a way that permits him to, within sufficient time, arrange his defense, unless the defendant when given the possibility to commence proceedings to challenge the judgment failed to do so (c) the judgment is irreconcilable with a judgment given between the same parties in Sweden (d) the judgment is irreconcilable with an earlier judgment given in another Convention state or in a third state involving the same cause of action and between the same parties, on the condition that the earlier judgment is in accordance with the requirements for recognition of that judgment (e) the judgment is in conflict with exclusive grounds for jurisdiction as described in the Convention.

Judgments from states bound by the 2019 Hague Convention

For clarification the 2019 Hague Convention on the recognition and enforcement of foreign judgments in civil or commercial matters enters into force the 1st of September

	2023 in Sweden. Currently multiple non-EU member states have signed the convention, but it remains to be ratified in the respective state. For a complete list see the following link: https://www.hcch.net/en/instruments/conventions/status-table/?cid=137 However, Ukraine has signed and ratified the Convention which is to be in effect from the 1st of September 2023. The Hague Convention of 2019 defines judgment as any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court, provided that the determination relates to a decision on the merits which may be recognized or enforced under the Convention. An interim measure of protection is not a judgment. A foreign judgment from another contracting state shall be enforced in Sweden according to the Convention, provided that at least one of the conditions in article 5 is met. For example, a judgment from a contracting state shall be enforced in Sweden if the person against whom recognition or enforcement is sought was habitually resident in the state of origin at the time when the person became a party to the proceedings in the court of origin, or if the defendant has explicitly consented to the jurisdiction of the court of origin in the proceedings in which the judgment was given. The process of obtaining enforcement in Sweden for a foreign judgment under the 2019 Hague Convention, requires the party seeking enforcement to file an ex-parte application to the relevant district court. The party seeking enforcement must provide the court with the following documents: (a) a complete and certified copy of the judgment (b) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party (c) any documents necessary to verify that the judgment is enforceable in the state of origin (d) if the judgment is a judicial settlement the party seeking enforcement must also provide a certificate verifying that the settlement is enforceable in the state of origin. If the formalities are in order the Swedish court should declare the judgment enforceable in Sweden and give the defendant notice of its decision. Only after an appeal will the Swedish court examine any possible grounds for refusal. The grounds for refusal according to article 7 in the Convention are not mandatory which allows the court to exercise discretion on whether to refuse. The grounds for refusal include, among others, public policy, due process and inconsistent judgments. **Other countries outside of the EU and not party to the Lugano or Hague conventions** Judgments with origin from a state outside of the EU, and which is not a party to either the Lugano or the Hague conventions cannot as a rule be enforced in Sweden. This also applies to states that are a part of the conventions if the judgment falls outside of the scope of the respective convention. Ultimately, a legal basis is required for foreign judgments to be enforced in Sweden, according to chapter 3, section 2 of the Swedish Enforcement Code (1981:774).

	To summarize, a judgment cannot be enforced in Sweden if the state from which the judgment originates is not a party to any of the aforementioned conventions or have some other bilateral agreement with Sweden.
2.	**What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?**
	There are no express provisions regarding the notice provisions against a state. The Swedish Enforcement Agency is however obliged to notify the Swedish Ministry of Foreign Affairs whenever a matter arises which might impact Sweden's relations with another state, pursuant to chapter 10, section 12 of the Instrument of Government (1974:152). The Swedish Enforcement Agency has interpreted this to mean that whenever enforcement proceedings against a state are initiated in Sweden the Enforcement Agency will notify the Ministry of Foreign Affairs. (See; The Swedish Enforcement Agency's Handbook – Internationell verkställighet, p. 37). Upon notification to the Ministry of Foreign Affairs, the ministry may submit its observations but may never intervene in the proceedings.
3.	**What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?**
	Sweden does not have any domestic legislation regarding immunity of foreign sovereign states and its connected persons (There are however certain aspects that have been regulated in Swedish law, such as the status of foreign ships and aircrafts). Swedish courts have instead considered sovereign immunity as a principle of public international law and applied it accordingly. Sweden has ratified the UN Convention on jurisdictional immunities of states and their property, and this Convention has been incorporated into Swedish law. However, neither the UN Convention nor the Swedish Act is yet in force. The Swedish Supreme Court has despite this ruled that the Convention and the Swedish Act may be relevant in so far as its provisions highlight the content of customary international law. (NJA 2021 s. 850 p. 16). A sovereign state may according to this international principle claim immunity from jurisdiction and enforcement in Sweden. Yet, this immunity is not unlimited and generally Sweden has made exceptions from the sovereign state immunity for certain actions relating to commercial transactions by a state (commonly referred to as *acta jure gestionis*) especially when it comes to jurisdiction. In Sweden, immunity from enforcement is upheld more restrictively than immunity from jurisdiction (SOU 2008:2 s. 47). Regarding immunity from enforcement, the view has traditionally been that exceptions to this requires a clear and manifested waiver of the right to immunity. However, the development in Sweden and other northern-European countries has gradually changed towards a more restricted (or qualified) form of immunity, in contrast to absolute immunity. This development has mainly taken place in the Supreme Court's case law over the last decades, where the court has

	allowed certain enforcement actions of assets pertaining to commercial transactions, while it has upheld immunity for sovereign acts (*acta jure imperii*) and confirmed the theory of qualified immunity. (SOU 2008:2 s. 47). The most significant cases are NJA 1999 s. 821, NJA 2009 s. 905 and NJA 2021 s. 850 where the court has clarified the difference between commercial transactions (*acta jure gestionis*) and sovereign acts (*acta jure imperii*), which is central to the question if enforcement measure may be taken against a foreign state in Sweden. According to the ruling of 2021 the Supreme Court confirmed its earlier case-law, which states that if a transaction is deemed to be of a commercial nature, and not for sovereign use the foreign state may not invoke sovereign immunity. To distinguish if something is of a commercial nature or a sovereign one, there are different methods that can be used. According to a method commonly known as the objective method, the distinction is to be made on the basis of the nature of the act as either private or public. According to another method, known as the subjective method, the distinction is made by identifying the purpose of the act as either *acta jure imperii* or *acta jure gestionis*. These methods have been used in the Supreme Court's case law, which refers to article 2 of the UN Convention, as the Convention is deemed to be a codification of general international law (NJA 2009 s. 905).
4.	**What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?**
	Currently, there is no legal basis in Sweden for an exception to the sovereign immunity based on breaches of public international law, such as wars of aggression.
5.	**What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?**
	The due process standards are the same for any defendant in enforcement proceedings in Sweden whether the defendant is a state or a private entity. In short, the following can be said about the due process requirement. Initially, one of the common grounds for refusal of enforcement in the conventions (as discussed above under 1.) is the public policy and due process requirements. If a foreign judgment does not meet the Swedish requirements in regard to due process, the Swedish court may/should (depending on the legal basis) refuse enforcement of the judgment based either on public policy, or that the defendant was not given sufficient time to prepare his defense. The main purpose of the court's examination of whether the requirement of due process is fulfilled is to ensure that the defendant had the opportunity to prepare his defense and that he was given a reasonable time to do so. This examination of due process will be made according to Swedish procedural law. With that said, it does not mean that the foreign judgment must apply the same standard of due process as the Swedish, but that it must make sure that the foreign proceedings respected the defendant's rights, as it is

	interpreted in The Swedish Code of Judicial Procedure (1942:720). Sweden is also bound by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which is set to guarantee each individual a right to a fair trial, which amongst other requirements entails adequate time to prepare one's defense.
a.	***What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?***
	The Swedish legal system does not have any specific rules regarding the service requirements to states, other than those that apply to everyone else. Therefore, the requirements are the same whether the defendant is a state or a private entity. A fundamental principle in Sweden is that individuals in cases and matters should be given the opportunity to express their opinion and thereby be able to influence decision-making in matters concerning them. Courts and other authorities therefore have a far-reaching obligation to allow parties to access information in a case or matter. The Swedish Service Act (2010:1932) states that the method of service must be chosen on the basis that it is appropriate to the content and scope of the document and involves the least possible cost and inconvenience (See section 4 of the Act). As with due process, the Swedish courts will review the proceedings in the foreign judgment, to make sure that the defendant was served in a correct way, and that the time given after the defendant was served was sufficient for him to prepare his defense. Regarding the means of serving the documents to the defendant there is not a means that must be complied with. Serving a document can be done in multiple ways, so long as the defendant receives the documentation in a way that enables him to take part in the proceedings in a fair way.
b.	***What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?***
	There are no express provisions for this in Swedish law.
c.	***What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?***
	The Swedish legislation does not contain any specific rules regarding the situation where a state is the defendant. As applies to anyone in a civil proceeding in Sweden, there is no legal obligation for a defendant to be represented by a legal representative. However, there is a right for a defendant to be represented if the defendant so wishes according to the Swedish code of Judicial procedure (1942:740) Chapter 12, section 1.

	When the Swedish courts are to assess whether the right to representation requirements have been fulfilled, it will do so according to the respective convention's requirements and the national procedural law. (Prop 2014/15:93 s. 11 f.). The court will not assess whether the defendant had legal representation or not, but rather assure that the defendant during the original proceedings could take part in them, in a way that guarantees his rights.
d.	***What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?***
	As mentioned above under c, there are no obligations to be represented in a Swedish court. Each individual has the right to represent himself. There are no express provisions regarding the situation that the foreign state cannot find legal representation. Likely it will be a question of whether or not the defendant's right to a fair trial is in jeopardy if he cannot find legal representation.
6.	**What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?**
	As discussed above under 3. There is a general distinction to be made between assets that is of a commercial, non-state nature and assets that have a direct connection to the foreign states acts as a sovereign nation. The main rule is that assets belonging to a foreign state is protected by immunity. However this rule is not without exceptions, and assets relating to commercial, non-state nature have been excepted from immunity in Swedish case law. Naturally a sovereign state may also waive its claim to immunity for certain assets, which will also allow the assets to be attached in an enforcement proceeding. In the Supreme Court case of NJA 2021 s. 850 ("Ascom") Several investors requested enforcement in Sweden of, among other things, listed shares that Kazakhstan had in a custody account with a Swedish bank and that were part of a fund managed by the National Bank of Kazakhstan. The question in the Supreme Court was whether Kazakhstan had immunity under international law from enforcement in the said assets. According to customary international law, coercive measures, such as seizure, may not, as a rule, be taken against a state's property. The Supreme Court described the exceptional rule according to which enforcement may be authorized in state-owned property that is used or intended to be used for commercial purposes. With reference to previous practice, the Supreme Court emphasized that the assessment of purpose must be based on the actual use of the property at the time of seizure. Since financial assets on the capital market are rarely subject to actual use, the Court stated that the assessment of purpose may be made in another way. The Supreme Court emphasized, among other things, that the purpose may be reflected in the chosen investment strategy. With regard to listed shares and similar securities, the Supreme Court stated that immunity must require that there are qualified purposes of a sovereign nature, such as the state's monetary policy, which are concretely and clearly expressed in the state's regulation of how the property is to be used. At the time of seizure, the foreclosed shares were part of a savings portfolio with customary management, which appeared to be normal asset management rather than an instrument for exercising the National Bank's currency and monetary policy function.

	The Supreme Court therefore held that the possession had a commercial element. The Court went on to examine whether the property could nevertheless be considered to have a concrete and clear link to a qualified purpose of a sovereign nature and thus be covered by immunity. In this part of the assessment, the Supreme Court took into account, among other things, that there had been no decision prior to the seizure that the seized property would be used for a specific state purpose. The Supreme Court found that the link between the property and qualified purposes of a sovereign nature was not concrete enough and that the property could therefore not be covered by state immunity. The Court also made a general statement that long-term state savings for future but unspecified needs cannot in itself be regarded as an act of state sovereignty. The assets were therefore seized. The key take away is that for listed shares and similar securities to be covered by international law immunity from enforcement, there must be a concrete and clear link between the assets and a qualified purpose of a sovereign nature at the time of seizure. It is not sufficient that the purpose of the holding is to increase the wealth of a state in the long term for future use. Another Supreme Court case is the NJA 2011 s. 475 where the court had to assess whether the state immunity would prevent the attachment of a Russian property in Sweden. The Supreme Court stated that the use of the property was the deciding factor, since assets held for sovereign use is protected through immunity. The Court found, based on several circumstances, that the property mainly was used for commercial, not-state transactions and concluded that the Russian Federation therefore could not invoke state immunity against the enforcement. To summarize, it is therefore the assets' main use that needs to be examined when determining if a foreign state's assets can be attached in an enforcement. If the assets in question are used for a qualified purpose of a sovereign nature the foreign state may invoke immunity. If the assets however, are of a commercial non-state nature, then the foreign state may not invoke immunity and the assets can therefore be attached.