

Third Study Commission Questionnaire 2024

Sweden

Sample questions:

1. Does your country have legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year – chemical substances and essential equipment possibly used in illicit drug manufacturing and trafficking, including importing, exporting, for domestic distribution and use and private sector due diligence.

Please explain:

Sweden has approved and ratified all major international conventions on narcotics from the last century. Most recently the 1988 UN-convention “International Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances”, commonly known as The Vienna-convention. Through that convention and the following domestic legislation rules on international cooperation regarding money-laundering, hearings, the extinction of illicit profits etc. are in place. In accordance with the convention, rules on precursors control are put into domestic law.

Through the membership in the EU, Sweden is obliged to follow the Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. As a specific part of that decision the manufacturing, transporting or distribution of precursors is said to be criminalized in each member country.

The 1968 Narcotic Drugs Penal Law is the major national law on drugs and narcotics. In paragraph 1 almost any contact with narcotics is criminalized, including use of narcotics. In paragraph 4 almost any handling of precursors is criminalized.

2. Does your country have specific legislation on precursors control?

Yes, in the 1992 act on Control of Narcotics (“Lag (1992:860) om kontroll av narkotika”) the Swedish Medical Product Agency is pointed out as in charge of supervising the observance of Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors and Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors. The law was, in the case of drug precursors, lastly amended in 2011.

The law basically states that any handling (manufacturing, transportation and distribution) of either drugs or precursors can be done only after a formal permit from the Swedish Medical Product Agency.

3. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors? Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

Please explain:

No, there is no need for an approval by a judge or a court order in these situations. It is all initiated and handled by the public prosecutor and the police in due cooperation. Controlled or monitored deliveries must, according to law, be approved or decided upon by a public prosecutor. This is in accordance with how criminal procedural generally works in Sweden, regardless of the offence/crime at hand.

4. When a drug/precursor-related crime is being investigated in your country, does the judiciary have any role (a) in the request for information from a foreign state and/or b) in the provision of information to a foreign state?

No, it is all handled by the police and/or the public prosecutor.

5. Does your country have legislation or court rules that relate to monitoring manufacture and distribution of precursors which are applicable over the entire national territory?

Please explain:

All legislation and court rules are applicable over the entire national territory.

6. Does your country have legislation or judicial rules that establish as a crime the manufacture, transportation and distribution of essential equipment intended for the illicit manufacture of drugs?

Please explain:

No. However such equipment may be subject to forfeiture of property if the suspected crime will be brought to trial. For example, such actions with essential equipment may be prosecuted as preparation to commit drug offence.

7. In respect of non-scheduled chemicals/equipment, is the fact that they have been mis-declared before the Customs, sufficient to impute 'knowledge' on the part of the supplier of their being used for illicit drug manufacture?

Please explain:

No. In each case illicit intent regarding the chemicals/equipments intended use has to be demonstrated in court and eventually becomes a question of evidence.

8. In your country, does domestic legislation include measures and/or civil, criminal and/or administrative sanctions to address non-scheduled chemicals and emerging precursors, namely those that are used as starting materials and/or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention? If yes, what type of sanctions?

Please explain:

No.

9. Please elaborate on specific pieces of information and level of details that would allow you as a judge to act on information/intelligence/evidence received from counterparts in

investigations related to new emerging drug precursor chemicals not under control in your country.

Please explain:

According to Swedish procedural law a judge have no obligation or responsibility to act in such a situation.

10. Are there any specific provisions that allow you as judge to act on non-scheduled chemicals with no known legitimate uses? Would information from an international body, or a collection of information from other countries, that a chemical has no known legitimate use facilitate your work in any way?

Please explain:

No. As a judge I am bound to the official list or record, laid down in law, on what chemicals or substances that are illegal and therefore can constitute a crime. Other official organs, namely those who update that legislation, probably use such information already.

11. As a judge, if you receive a request for assistance in a drug/precursor-related crime from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), how is it relevant to your determination to ensure that basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected?

Please explain:

I actually haven't been in that situation, but any such request would require me to get a clear picture of the content of the matter and through my decision allow such a request only if it is compatible with my own country's legal undertakings according to conventions or other international documents, and the applicable Swedish law. One possible problem for me would be if a substance isn't defined as a drug or precursor according to my national law but according to the requesting foreign country's law.

12. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.

a) The most common difficulty is handling evolving designed drugs, such drugs that not yet are defined as drugs or precursors in the legislation, and in the first period after the official definition, to assess the severity of the crime due to lack of knowledge of the impact of the drug.

b) In the EU there are established common procedural rules on assisting other country's requests on hearing a witness from my country. According to those rules I will allow the

hearing but have an obligation to attend the hearing in order to ensure that national procedural rules applicable on hearing a witness and testimonies are not violated.

c) One example of complications was the hacking of Encrochat (encrypted cellphones) that was made by the French police who then delivered the material to Swedish police and prosecutors. In that case it was claimed by several defenders that the evidence originating from such an operation in a foreign country could not be used in a Swedish trial. But the matter was brought to the Supreme Court who deemed the evidence to be allowed.