

Surrender under a European arrest warrant

What are the rules for issuing a European arrest warrant? What happens once it has been issued? Some basic facts are presented below.

Background

A European arrest warrant can be issued when a prosecutor wants a person who is in another EU country to be surrendered to Sweden. An arrest warrant can be used when the person in question is to undergo legal proceedings (be prosecuted and sentenced) as well as when they are to serve a previously passed sentence here. When cooperating with the Nordic countries, a *Nordic arrest warrant* is used in essentially the same way.

The regulation on European arrest warrants was originally included in an EU framework decision. It was then implemented in Swedish law.

Swedish prosecutors may issue European arrest warrants for offences that have sentences of imprisonment for a year or more in the range of punishment. If an arrest warrant is issued for an offence with a sentence of imprisonment for a year or more, other offences with lighter sentences than imprisonment for a year can also be included in the arrest warrant. The wanted person does not, in that case, need to be remanded in custody for the less serious offences.

A prosecutor may only issue an arrest warrant if it appears justified in consideration of the nature and seriousness of the offence, as well as of other circumstances (this is known as the principle of proportionality). In making this assessment, the prosecutor must consider the potential punishment, crime victims' interests, etc.

A remand order is required

The issuing of an arrest warrant requires a prior remand order by a court. The prosecutor must therefore begin by requesting that the person be detained in absentia by applying to a District Court for a remand order. The District Court will then hold a detention hearing to determine whether the person is to be remanded in custody. The wanted person must be suspected of the offence on probable grounds, which is the higher degree of suspicion.

When the person has been remanded in custody

Once the District Court has issued a remand order, the prosecutor issues an arrest warrant. If the wanted person's whereabouts are unknown, the prosecutor requests that the police publish an international wanted persons notice (also known as a Red Notice).

If the wanted person's whereabouts are known, the arrest warrant can be sent directly to the country in question. It is often appropriate to issue a Red Notice anyway, so that the person is not able to leave the country in question before they can be apprehended.

When the person is apprehended

The procedures that follow the apprehension of a person wanted under a European Arrest Warrant vary between EU member states. The details of the framework decision regarding when a country is entitled to refuse to surrender a person have to some extent been interpreted differently in different countries' national legislation – but the basic assumption is that member states will respect each other's sentences and decisions, and that wanted persons will be surrendered.

When a wanted person is apprehended, they have to be informed about the arrest warrant and its contents. The person must also be informed of their option of consenting to being surrendered to the country that issued the arrest warrant. If the person does not consent, they are entitled to be heard by the executing judicial authority of the country where they were apprehended. It is then for that judicial authority to decide whether to surrender the person or not. Which judicial authority this involves varies between different countries.

The matter must be processed with urgency and within a specified time frame.

Enforcement of surrender

Once the decision to surrender a person has been made, enforcement must follow as soon as possible. The general rule is that it be carried out within 10 days after the final decision to surrender the person. The prosecutor is responsible for ensuring that the wanted person is taken to Sweden following the decision to surrender them, while actual enforcement is handled by the Swedish Prison and Probation Service or the Police Authority.

The premise is that a person surrendered to Sweden may not be detained for offences that were not included on the arrest warrant that was the basis of the surrender. This means that the person may not be detained for any additional suspected offence or sentence (from the time before the surrender), unless the person or the state that surrendered them consents to this. By the same token, Sweden may not without such consent extradite or surrender the person to any other state. Any conditions set by the surrendering state for the enforcement of the arrest warrant must also be respected, e.g. that a person sentenced in Sweden must have the right to return to their home country and serve their sentence there.

When the person arrives in Sweden

Once the person has been surrendered to Sweden, the prosecutor must immediately report this to the court that issued the remand order. The court must then, within four days, hold a new remand hearing with the suspected person present. During the time between their arrival in Sweden and the hearing, the person will be held in custody in Sweden.

As soon as the remand hearing is over the court must immediately – just like in other criminal case proceedings – issue a decision on the matter of remand. Remand is either revoked or reaffirmed by the court; in the latter case a date is set by which an action must be brought. A remand decision can always be appealed.