



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 October 2010

14984/10

**Interinstitutional File:
2010/0817 (COD)**

LIMITE

**COPEN 218
EJN 48
EUROJUST 108
CODEC 1050**

NOTE

from: The Swedish Delegation
to: Working Party on Cooperation in Criminal Matters
Subject: Swedish constitutional rules on Freedom of the Press and Freedom of Expression

Sweden belongs to the group of Member States that have specific rules on freedom of the press and freedom of expression in the media. The Swedish constitutional rules have some distinctive features of historical origin, springing from the fundamental principle that freedom of expression is a guarantee for the free influence of public opinion. Article 1.3 is intended to safeguard certain specific constitutional rules in the sphere of freedom of the press and freedom of expression in the media and is crucial to Sweden.

The Swedish constitutional rules

Freedom of expression is a fundamental right contained in Article 10 of the European Convention and in Article 11 of the Charter of Fundamental Rights of the European Union. The freedom of expression is also protected by the Swedish Constitution which contains detailed rules in this field. The Constitution applies to various means of expression such as through newspapers and magazines, television and other media including, to some limited extent, the Internet. Criminalized abuse of freedom of expression is regulated both in our Constitution and by ordinary statute law.

The Swedish constitutional rules have some distinctive features of historical origin. The purpose of our constitutional rules is to secure the free exchange of opinion but is also a way for the public to exercise control over the public administration. These characteristics have evolved over the centuries and provide particularly strong protection for freedom of expression in the media.

The provisions in the Constitution is based on some fundamental principles such as the right of free establishment of, for example, printing presses and newspaper and magazine undertakings and an absolute ban on censorship. The Constitution is furthermore based on the following principles.

The principle of **sole responsibility** means that only *one* person and only that person can be held responsible for the content in, for example, a newspaper. The usual penal rules on liability for complicity do not apply. The principle of sole responsibility guarantees that there is always a designated person who is responsible for the publication. This person cannot evade responsibility by alleging that he or she did not know about the content or did not consent to the publication. It is therefore not necessary to undertake any investigative measures to the question of establishing responsibility of that person.

The principle of **freedom to communicate with the media** entails a right, without penal consequences, to provide information, including confidential information, to newspapers and magazines, the radio and TV *for publication*. The provider of the information has the right to anonymity, and journalists, inter alia, may not disclose the source of their information. Authorities and other public bodies may not investigate who has provided information, if this person has chosen to be anonymous, and may not undertake any negative measures, for example, investigative measures against this person.

However, the freedom of expression and freedom to communicate with the media is not absolute. Responsibility for the content of a published statement may come into question for certain crimes listed in the Swedish Constitution. These include certain serious crimes against the safety of the realm, agitation against ethnic groups, unlawful threat and defamation. This list is exhaustive. If a crime is not included in the list, publication of a statement can consequently not lead to penal liability, and thus not either be subject to any investigative measures.

The constitutional provisions also provide procedural guarantees in the case of actions against abuse of the freedom of the press and the freedom of expression in the media. These rules differ to some extent from ordinary penal procedural rules. The Chancellor of Justice is the only public prosecutor in those cases.

Relationship to the Directive

Enforcement of a European Investigation Order in Sweden can in exceptional cases impinge upon our constitutional rules on freedom of the press and freedom of expression as presented above. This could be the case when a European Investigation Order concerns a measure directed against newspapers and magazines, which are protected by the Swedish constitutional rules, and the provisions of the Constitution are otherwise applicable, inter alia, when the measure is directed against statements protected by the Constitution. However, not all statements published in the media are covered by our special constitutional rules on freedom of the press and freedom of expression. Child pornography, for example, does not have this protection.

A situation where a problem could arise is if the European Investigation Order concerns a measure, for example, questioning intended to investigate a suspicion of a crime directed against a person, for example, a journalist, who, according to our Constitution, has no criminal liability for publication. According to our Constitution, only the responsible publisher bears responsibility for a public statement in newspapers or magazines. Enforcement of a European Investigation Order in these cases would conflict with the principles of sole responsibility and freedom to communicate with the media.

It should be pointed out that it is only within a limited area that Sweden considers that a conflict could arise with our constitutional rules in connection with enforcement of a European Investigation Order. According to Sweden, the provision in Article 1.3 should not create a general exemption for, in this case, freedom of the press and freedom of expression. The Member States have in other legal acts agreed upon that these constitutional principles must be complied with in, for example, the Council Framework Decision 2008/919/RIF of 28 November 2008 amending Framework Decision 2002/475/RIF on Combating Terrorism (Article 2).

Article 1.3 is intended to safeguard certain specific constitutional rules in the sphere of freedom of the press and freedom of expression in the media and is crucial to Sweden.