National report from Sweden

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Introduction

This national report addresses practical and theoretical aspects regarding the structure, contents and effects of enforcement titles in Sweden. The structure of the report follows the structure of the questionnaire, to enable and ease comparisons between Sweden and other jurisdictions. The full questions of the questionnaire are not repeated in the report.

The most prominent domestic legislation on the issues covered in the report are the Code of Judicial Procedure (*rättegångsbalken, 1942:740*, henceforth: *RB*) and the Enforcement Code (*utsökningsbalken, 1981:774,* henceforth: *UB*). The Swedish Ministry of Justice (*Justitie-departementet*) has published official English translations of RB and UB.[1] The translations in this report are not always the same, since the official translations are sometimes inaccurate and have not been updated for a long time.

Enforcement titles in general

1.1 Brief definition of an enforcement title

According to Chapter 1 Section 1 first paragraph of the Enforcement Code (*UB)*, an enforcement title (*en exekutionstitel*) is forming the basis for enforcement of an obligation to pay or other obligation comprised therein.

The Swedish enforcement titles are listed in Chapter 3 Section 1 of the Enforcement Code (*UB*). It reads:

> Enforcement may, subject to the preconditions stated in this Chapter, take place on the basis of the following enforcement titles:
>
> 1. a court judgment, order or decision, a settlement that is confirmed by a court, and a mediation agreement declared enforceable by a court,
> 2. an approved criminal penalty order, an approved order to pay a breach-of-regulations fine, or an approved order of charge,
> 3. an arbitration award, or a decision on cancellation of arbitration,

[1] RB: 'The Swedish Code of Judicial Procedure', Ds 1998:000, and UB: 'The Enforcement Code (1981:774)', Ds 2002:45, available online via <www.government.se>.

4. undertakings concerning maintenance allowance,
5. a decision by an administrative authority that in accordance with a special regulation may be enforced,
6. a document that in accordance with a special regulation may form a basis for enforcement, and
7. an order or decision in cases concerning payment orders or judicial assistance made by the Enforcement Authority, and a European enforcement order declared enforceable by the Enforcement Authority.

What is stated in the Code concerning judgments also applies, unless otherwise prescribed, in applicable parts to orders or decisions of courts, to orders or decision of the Enforcement Authority in cases concerning payment orders, judicial assistance, and European enforcement orders declared enforceable by the Enforcement Authority. What is stated in the Code on arbitral awards also applies to decisions on cancellation of arbitration.

1.2 Definitions of "civil and commercial"

The concept civil and commercial matters (civil law, *civilrätt, ius civile*) covers an extensive part of Swedish law concerning relationships between physical or legal persons in areas such as contract law, labour law, corporate law, family law, insurance law, property law, tort law and competition law. Hence, it includes various kinds of civil proceedings, including *i.a.* commercial proceedings. The concept is primarily intended to exclude public law and criminal law matters, *i.e.* relationships between physical or legal persons and the State. Nevertheless, State authorities can for example conclude contracts of a civil and commercial nature as any physical or legal person. There is a fine line between private and public law in Swedish law; some rules are in a grey area between private and public law.

Moreover, the Swedish court system is divided into general courts (district courts, Courts of Appeal and the Supreme Court, mainly handling civil and criminal matters) and administrative courts (administrative courts, administrative Courts of Appeal and the Supreme Administrative Court), which further highlights the division between civil and commercial matters and public law in Sweden.

In Swedish civil procedure an important distinction is made between civil cases amenable to out-of-court settlement and those not, for example a contractual dispute and certain kinds of family cases respectively.

1.3 Bodies conforming to the definition of "Courts and Tribunals" as provided for by the B IA

General courts (district courts, Courts of Appeal and the Supreme Court, mainly handling civil and criminal matters) and administrative courts (administrative courts, administrative Courts of Appeal and the Supreme Administrative Court) are regarded as courts.

There have been some discussions in Sweden concerning certain bodies, and whether they are courts or tribunals or not. Two uncertain examples are the Rent and Tenancy Boards, and the Swedish Foreign Intelligence Court.

Bodies that do conform to the definition of courts are the Labour Court, the Migration Courts and the Migration Court of Appeal, the Land and Environment Courts, the Land and Environment Court of Appeal, the Patent and Market Court, and the Patent and Market Court of Appeal, and the Maritime Court.

1.4 Types of domestic decisions which may be rendered/issued under Sweden's civil procedure

There are different kinds of decisions under Swedish law, issued under different circumstances, on different matters and in different phases of the proceedings.

Judgment (*dom*). A court's decision on 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*). Certain decisions by a court or a public authority.

In this context, claims for damages in criminal cases should be mentioned (*enskilt anspråk*). Even though part of criminal proceedings, the damage claim falls mainly under the rules of civil procedure, and have a civil law character. If, for example, the injured party is domiciled abroad, the application of choice of law rules in Swedish court may occur in order to determine claims for damages. This Private International Law issue is however, rarely observed by prosecutors or the counsels of the injured party.

The Swedish enforcement titles are listed in Chapter 3 Section 1 of the Enforcement Code (*UB*), see 1.1 supra.

1.5 Decisions and instruments conforming to the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA

Art. 2 a) of the Brussel I Regulation has a very wide definition of a judgment, provided that the defendant has had the opportunity to answer and state his or her case. However, the definition of a judgment in art. 2 a) of the Brussels I Regulation is not very precise. In comparison to the

Swedish concept of judgment, the concept of judgment used in the Brussels I Regulation is far more inclusive. Perhaps it would have been better to use the concept decision in the Brussels I Regulation, being a more neutral and generic term.

We have not found any Swedish decisions or instruments being problematic in the light of the euro-autonomous definitions. It appears that as long as a decision falls within the scope of civil and commercial matters, all of the decisions mentioned under 1.4 supra seems to fall within the scope of art. 2 a) of the Brussels I Regulation.

1.6 Questions for preliminary ruling to the CJEU regarding the notion of "Judgment"

To our knowledge the national courts of Sweden have not addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment".

1.7 Level of judicial control exerted by the courts when rendering default judgments

There is some judicial control before a Swedish court can issue a default judgment. The power of assessment is regulated in Chapter 44 Section 8 of the Code of Judicial Procedure (*RB*), which reads:

> When a judgment by default is entered against the claimant his claim shall be dismissed on the merits unless the claim has been consented to by the defendant or it is otherwise evident that the claim is well founded.
>
> A judgment by default against the defendant shall be based upon the claimant's statement of the circumstances in the case to the extent that the defendant has received notice of the statement and the statement is not contrary to matters of common knowledge. To the extent that the statement does not comprise legal reasons for the claimant's case or it is otherwise clearly without foundation, the claim shall be dismissed on the merits.
>
> A judgment by default shall be marked as such.

In principle, a default judgment for payment can be enforced immediately under certain circumstances (*cf.* Chapter 3 Section 5 and Chapter 8 Section 4 of the Enforcement Code, *UB*).

2 General aspects regarding the structure of Judgments

2.1 Elements comprised in the structure of a domestic (civil) judgment

Chapter 17 Section 7 of the Code of Judicial Procedure (*RB*) reads:

> A judgment shall be in writing and specify in separate sections:
>
> 1. the court, time, and place of pronouncement of the judgment;
>
> 2. the parties and their attorneys or counsel;
>
> 3. the operative part [*domslutet*];

4. the parties' claims and defences, and the circumstances on which they are founded; and

5. the reasoning in support of the judgment [*domskälen*], including a statement of what has been proved in the case.

A judgment rendered by a superior court shall, to the extent necessary, describe the judgment of the lower court.

If a party is entitled to appeal from a judgment or apply for the reopening of a default judgment, the judgment shall state the steps he must take to do so.

According to Chapter 17 Section 10 of the Code of Judicial Procedure (*RB*) every judgment shall be separately drawn up and signed by each of the legally qualified judges participating in the adjudication.

2.2 The structure of a judgment is prescribed by law

The structure of Swedish (civil) judgments is prescribed by law, i.e. Chapter 17 Section 7 of the Code of Judicial Procedure (*RB*); see 2.1 supra.

2.3 How standardised (regarding form and structure) are judgments from Sweden?

With only few exceptions the judgments from Swedish courts are standardised according to the structure prescribed by law (see 2.1–2.2 supra). Deviating from the order of the sections in (civil) judgments from other courts, the operative part (*domslutet*) in judgments from the Labour Court (*Arbetsdomstolen*) is found last, in line with old court practice outdated in other courts.[2]

2.4 How the different elements of the judgment are separated from one another

The different elements of the judgment are separated from one another with headlines. After the conclusion there is often a horizontal line.

2.5 Structure of judgments from courts, other than courts of first instance

Courts other than courts of first instance may also issue enforceable judgments. The overall structure is the same, since Chapter 17 Section 7 of the Code of Judicial Procedure (*RB*, see 2.1 supra) is applicable also in superior courts. As stated in the second paragraph, a judgment rendered by a superior court shall, to the extent necessary, describe the judgment of the lower court. The judgment issued by the first instance is usually annexed to the judgment of the appellate court.

[2] Cf. Official Reports of the Swedish Government (*Statens offentliga utredningar*), SOU 2008:106 pp. 167–168.

2.6 How does the assertion of a counterclaim affect the structure of the judgment?

The structure of the judgment is not affected by the assertion of a counterclaim. If the counterclaim is invoked only as a defence on the merits up to the *summa concurrens* (i.e. only as a set-off against the amount being claimed), the claim and the counterclaim will be entertained in the same proceedings and decided in a single judgment. A judgment has legal force to the extent that it adjudicates a debt claimed as a set-off, according to the Code of Judicial Procedure (*RB*) Chapter 17 Section 11 second paragraph.

Chapter 14 Section 3 of the Code of Judicial Procedure (*RB*) reads:

> If the defendant requests joint adjudication with the claimant's action of an action instituted by the defendant against the claimant concerning the same or a related matter at issue, or concerning a debt that may be set-off against the claimant's claim, the cases shall be joined in one proceeding. A claim thus joined with the principal claim [*huvudkäromålet*] is a counterclaim [*genkäromål*].

A separate counterclaim according to this section is not invoked only as a defence on the merits up to the *summa concurrens*. When brought, the claim and the counterclaim will be entertained in the same proceedings but decided in separate judgments.

2.7 No specifications of time-periods regarding fulfilment or enforcement in the judgment

The judgment does not include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant. Nor does it contain a specification of the time-period within which the judgment is not to be enforced, or a specification of the time-period after which the judgment is no longer enforceable.

The judgment creditor applies to the Enforcement Authority (*Kronofogdemyndigheten*) for enforcement. Chapter 4 Section 11 first paragraph of the Enforcement Code (*UB*) reads:

> Before attachment takes place, notification of the case shall be sent to the debtor by post or given in an appropriate manner. The notification shall take place within such time as the debtor can be expected to have sufficient time to protect his rights.

Accordingly, the Enforcement Authority notifies the judgment debtor, usually by mail, that enforcement measures will take place if the judgment debtor does not pay the debt voluntarily within a certain time. In the average case, the debtor has a fortnight to abide by the instructions in the notification. During this time period it is very common that the judgment debtor invokes the national grounds in Chapter 3 Section 21 of the Enforcement Code (*UB*), trying to stop enforcement, in particular that the claim underlying the judgment is time-barred. Statute of limitation is regulated in the Swedish Act of Statute of Limitation (1981:130, *preskriptionslagen*), and the time starts to run from the time when a claim is created. Time limits are 3 or 10 years.

2.8 Personal information specified in the judgment

There are no provisions on what personal information to be specified in the judgment for the purposes of identifying the parties to the dispute, cf. Chapter 17 Section 7 first paragraph Point 2 of the Code of Judicial Procedure (*RB*, see 2.1 supra). When there is no confidentiality regarding any personal data, it is a question of suitability which data should be stated in the judgment. In court practice the names, personal identity numbers/company registration numbers, and addresses are usually included.[3] When published by the courts or the by the Swedish National Courts Administration (*Domstolsverket*) the names in the judgments are anonymised by replacing the names by their initials. However, the judgments with the names are accessible according to the strong Swedish principle of public access to official documents.

2.9 Indication of the amount in dispute

The parties' claims and defences, and the circumstances on which they are founded shall be specified in a separate section of the judgment according to Chapter 17 Section 7 first paragraph 4 of the Code of Judicial Procedure (*RB*, see 2.1 supra). This includes the amount in dispute and the specific tranches, etc. In cases where amendments to claims have occurred during proceedings the final claim is stated, sometimes with an indication like 'as finally determined'.

2.10 Indication of the underlying legal relationship

The reasoning in support of the judgment, including a statement of what has been proved in the case shall be specified in a separate section of the judgment according to Chapter 17 Section 7 first paragraph Point 5 of the Code of Judicial Procedure (*RB*, see 2.1 supra). If relevant, this might include indications of the underlying legal relationship (legal assessment of the dispute).

2.11 Further on the underlying legal relationship

Questions of the kind of which *§ 850f of the German ZPO* is an example, are handled as grounds of refusal of enforcement, when the judgment is enforced by the Enforcement Authority. It is not as such considered by the court, even if the legal relationship etc. might be indicated in the judgment, see 2.10 supra. The decision by the Enforcement Authority may be appealed against to a district court.

2.12 What kinds of decisions can a court issue in regular litigation proceedings?

Chapter 17 Section 1 of the Code of Judicial Procedure (*RB*) reads:

> A court's determination on the merits of the matter at issue is made in a judgment [*dom*]. The determination of other matters is made by a decision [*beslut*]. A decision, other than a judgment, that dis-

[3] See the Swedish Parliamentary Ombudsmen Report, JO 2004/2005 p. 29.

associates a court from a matter at issue is a final decision [*slutligt beslut*] as is a superior court's decision on such matter if it has been appealed against separately.

Provisional and protective measures of different kinds may be tied to the proceedings.

2.13 How judgments are drafted when they contain a "decision" on issues other than the merits of the case

Cf. 2.12 supra. If a decision, which is not final, is pronounced together with a judgment or a final decision, it shall be included in the judgment or the final decision, according to Chapter 17 Section 13 third paragraph of the Code of Judicial Procedure (*RB*). If a decision, which is not final, is pronounced separately from a judgment or a final decision, it shall be drawn up separately, included in a record, or otherwise be documented in the case file or the case register.[4]

2.13.1 How does this effect the operative part and/or the reasoning?

If a decision, which is not final, is pronounced together with a judgment or a final decision, it shall be included in the judgment or the final decision. Cf. 2.13 supra. The decision and the reasoning will be in separate paragraphs of the operative part and the reasoning of the judgment.

2.13.2 Which decisions can be incorporated into the judgment?

Cf. 2.12 supra. Any decision on issues other than the merits of the case, which is not final and which is pronounced together with a judgment can be incorporated into the judgment, see 2.13 supra.

2.13.3 Can provisional and protective measures form part of a judgment or can they only be issued separately?

Provisional and protective measures can form part of a judgment under the conditions mentioned in 2.13.2 supra.

3 Special aspects regarding the operative part

3.1 What the operative part communicates

The operative part [*domslutet*] shall communicate the explicit position of the court on every claim of the parties. There are no regulations on the specific formulations to be used.

[4] See the Code of Judicial Procedure (*RB*) Chapter 6 and the regulation (1996:271) on cases and court matters in the general courts (*Förordning, 1996:271, om mål och ärenden i allmän domstol*).

The formulation of the operative part of a favourable judgment depends on the formulation used by the claimant. The court is supposed to consider the suitability of that formulation already before issuing a writ of summons.

If the claim is for a specific performance, that performance shall be clearly stated in the operative part, in order to make performance or enforcement possible "N N [the defendant] shall [or: is obliged to etc.] pay the sum of SEK 50,000 to N N [the claimant]" etc. If there are any reciprocal obligations they shall also be clearly stated.

If the claim is for a declaratory judgment, this nature of the judgment shall be evident through the wording of the operative part ("the court declares that…" etc.).

Usually, no legal provisions are mentioned in the operative part, with one common exception, "interest under [a certain section of] the Interest Act (1975:635)", cf. 3.6 infra.

3.1.1 Must the operative part contain a threat of enforcement?

The operative part usually does not contain a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment. A common exception is the threat of eviction from the property at the expense of the defendant, if the defendant does not leave the property according to the judgment.

3.1.2 Must the operative part include declaratory relief if the Claimant sought payment?

The operative part does not have to include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance).

3.1.3 The specification of the debtor's obligation is usually finalized by the court

In most cases the specification of the debtor's obligation is finalized by the court and not left to later procedures/authorities, cf. 3.1.4 infra.

3.1.4 How the operative part is drafted in a case of a prohibitory injunction

The formulation of the operative part of a judgment in a case of a prohibitory injunction (Swedish: *förbudstalan*; German: *Unterlassungsklage*) depends mainly on the formulation used by the claimant, cf. 3.1 supra. The prohibition may be under penalty of a fine according to the claim or, exceptionally, of the Court's own motion, but it does not have to be under any penalty.

If the prohibition has to be enforced, the Enforcement Authority may order a default fine in the amount considered necessary to make the defendant to observe the prohibition, Chapter 2 Section 15 and Chapter 16 Section 12 of the Enforcement Code (*UB*).

3.1.5 How the operative part is drafted in an interlocutory or intermediate judgement

On the basis of the comment in the questionnaire, we would prefer to call this an interlocutory or intermediate judgment (*mellandom*) rather than an interim judgment, cf. 3.1.6 infra. The formulation of the operative part of a favourable judgment of this kind depends on the formulation of the issue of this separate judgment, which is decided by the court after consulting with the parties, according to Chapter 17 Section 5 second and third paragraphs of the Code of Judicial Procedure (*RB*), which reads:

> If it is appropriate having regard to the investigation, the court may give a separate judgment on one of several circumstances that are each individually of immediate importance to the outcome of the case or on how a certain issue raised in the case and primarily relating to the application of law is to be judged when determining the matter at issue.
>
> When rendering a separate judgment pursuant to this section, the court may order a stay of proceedings on the remaining issues in the case until the separate judgment enters into final force.

If the interim judgment is dismissing on the merits, the issue of this separate judgment is, according to court practice, usually specified in the operative part of the judgment, cf. 3.1 supra.

3.1.6 How the operative part is drafted in an interim decision

On the basis of the comment in the questionnaire, we would prefer to call a temporary decision of this kind an interim decision (*interimistiskt beslut*) rather than an interlocutory judgment, cf. 3.1.5 supra.

When a petition for an interim decision is dismissed on the merits the petition is, according to court practice, not specified in detail in the operative part of the judgment. Often, that part only states "The petition for an interim decision [of a certain type] is dismissed" or a similar wording.

The formulation of the operative part of a favourable decision depends on the formulation used by the party in the petition for an interim decision.

3.1.7 How the operative part is drafted in the case of alternative obligations

In the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim, the formulation of the operative part the formulation of a favourable judgment depends on the formulation used by the claimant. The court is supposed to consider the suitability of that formulation already before issuing a writ of summons. If there are any conditions for an alternative to apply, this will be specified in the operative part (e.g. "or, if the property does not remain with the defendant…"). In case of dismissal "The action is dismissed [*Talan ogillas*]" or a similar wording will be used like in other cases.

3.1.8 How the operative part is drafted when a claim is wholly or partially dismissed (on substantive grounds)

When an action [*käromål*] is dismissed on the merits the claim is, according to court practice, not specified in the operative part of the judgment, but that part only states "The action is dismissed [*Talan ogillas*]" or a similar wording.

It is not always clear from the operative part that a claim is only partially sustained (or that an alternative claim is dismissed). In order to know, the recital of the judgment – which includes the parties' claims and defences, and the circumstances on which they are founded – has to be considered. The same goes for deciding the extension of *res judicata*.

3.1.9 How the operative part is drafted when a claim is wholly or partially rejected (on formal/procedural grounds)

In a situation where the court finds it cannot entertain a claim due to formal/procedural reasons, the operative part will usually only state that the claim is rejected wholly (*käromålet avvisas*) or partially (e.g. a specific claim: *yrkandet avvisas*). The reason for the rejection is usually not found in the operative part. In order to know, the recital of the judgment – which includes the parties' claims and defences, and the circumstances on which they are founded – has to be considered.

3.1.10 How the operative part is drafted if the debtor invokes set-off

If the debtor invokes set-off, the operative part might be drafted in different ways. There is no legal requirement that the operative part has to specify how the claim and counter-claim are extinguished and to what extent. In order to know, the recital of the judgment – which includes the parties' claims and defences, and the circumstances on which they are founded – might have to be considered.

At least in a case where there are several different claims and counter-claims and not all counter-claims are sustained a specification might found in the operative part. An example (based on a judgment from the District Court of Gothenburg (Göteborg) 7 May, 2013 in case no. T 18130-11, where the operative part in principle stated:

1. [The claimant] shall [*ska*] pay [an amount] to [the defendant] and interest from different times under the Interest Act (1975:635), Section 6, running from different dates regarding different tranches of the full amount until the date of payment.
2. [The defendant] has the right to deduct [an amount] from the claim according to 1.
3. The counterclaims of [one amount] and [another amount] are dismissed.

3.2 Specifications pertaining to the structure and substance of the operative part of the judgment

The specifications pertaining to the structure and substance of the operative part of the judgment [*domslutet*] are not set out by law or court rules but are developed in court practice. However, it follows more indirectly from Chapter 59 Section 1 Point 3 of the Code of Judicial Procedure (*RB*), that the judgment (as a whole) has to be is so precise and complete that the court's adjudication on the merits can be ascertained therefrom, see 3.9 infra.

3.3 Does the operative part contain elements from or references to the reasoning of the judgment?

The operative part usually does not contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment), but it may, for the sake of clarity.

3.4 Wording used, mandating the debtor to perform.

Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

Different formulations are used, e.g. that the debtor shall pay a certain amount to the claimant. The debtor is not always specifically "ordered" to perform by the wording of the operative part, when the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Hence, a wording like the Slovenian example would not be problematic in a Swedish legal context.

3.5 How the operative part is drafted in cases of reciprocal relationships

If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-)performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

The operative part states that the Claimant against e.g. payment of a certain, specified amount (etc.) shall obtain e.g. a certain, specified object. Cf. 3.1.10 supra.

3.6 How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part.*

According to Chapter 18 Section 8 second paragraph of the Code of Judicial Procedure (*RB*), compensation for litigation costs shall include interest under the Interest Act (1975:635), Section 6, running from the date of the court's determination until the date of payment. No pleadings are needed to this end. According to Section Chapter 18 Section 14 of the Code of Judicial Procedure (*RB*), the winning party is entitled to that interest, despite the absence of a demand.

Despite the fact that this provision on interest has been placed in the Code of Judicial Procedure (*RB*), it is qualified as a substantive matter under Swedish law. If a foreign law is applicable to the disputed relationship, the interest must be determined in accordance with the applicable foreign law, and not by Swedish law. Nevertheless, Swedish courts, by oversight, sometimes determine the interest by Swedish law.

3.7 How the operative part differs when claims to impose different obligations on the debtor are joined or when the action is of a different relief sought

Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

The operative part will include separate numbered sections, each concerning a separate claim. A more elaborate answer, including typical (abstracted) examples of operative parts will be provided in a forthcoming version of the report.

3.8 The operative part may refer to an attachment/index

May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

The operative part may refer to an attachment/index, which has to be attached as an integral part of the judgment. The judgment (as a whole, including the attachment/index) has to be is so precise and complete that the court's adjudication on the merits can be ascertained therefrom, see 3.9 infra.

3.9 What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

According to Chapter 59 Section 1 Point 3 of the Code of Judicial Procedure (*RB*), a judgment that has entered into final force shall be set aside for grave procedural errors, on extraordinary appeal of a person whose legal rights the judgment concerns, if the judgment (as a whole) is so vague or incomplete that the court's adjudication on the merits cannot be ascertained therefrom. This also presents a ground for appeal of a judgment that has not yet entered into final force, Chapter 49 Section 14 Point 4 and Chapter 50 Section 26 of the Code of Judicial Procedure (*RB*). According to Chapter 5 Section 2 § first paragraph of the regulation on enforcement [*utsökningsförordningen*, 1981:981], the Enforcement Authority shall refer the applicant to make an extraordinary appeal as mentioned supra.

3.10 May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

In principle no and certainly not without consultations with the parties. A more elaborate answer might be provided in a forthcoming version of the report.

4 Special aspects regarding the reasoning

4.1 If applicable, how does the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

Chapter 17 Section 7 clause 5 of the Code of Judicial Procedure (*RB*) reads:

> A judgment shall be in writing and specify [– – –] the reasoning in support of the judgment [*Domskäl*], including a statement of what has been proved in the case.

This is a bare minimum. According to other sources of law and court custom more is usually expected. A more elaborate answer will be provided in a forthcoming version of the report.

4.1.1 Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

The order of these aspects follows from court custom, which may vary between different courts and also between different judges within the same court. They may intertwine.

4.1.2 How lengthy/detailed is the reasoning?

The length and level of detail of the reasoning differs a lot, depending on the matter at hand. A more elaborate answer will be provided in a forthcoming version of the report.

4.1.3 Do you find the reasoning to be too detailed?

This is seldom the case. Rather the opposite. A more elaborate answer will be provided in a forthcoming version of the report.

4.1.4 Are the parties' statements (adequately) summarised in the grounds for decision?

Yes, usually this is the case.

4.1.5 Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

Yes, the distinction is almost always clear.

4.2 In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

Sometimes the courts address procedural prerequisites and applications made after the filing of the claim. The final stage is in focus and if it's not directly affected by the procedural prerequisites and applications made after the filing of the claim, the court usually don't address them in the reasoning.

4.3 Are independent procedural rulings properly re-addressed in the judgment?

The final stage is in focus and if it's not directly affected by independent procedural rulings they are seldom re-addressed in the judgment.

4.4 What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the judgment?

In principle, no legal effects are attributable to the reasoning as such. Sometimes the reasoning has to be consulted to understand the scope of res judicata and other effects of the finality of the judgment.

5 Effects of judgments – the objective dimension of res judicata

5.1 A final judgment will, in most Member States, obtain res judicata effect.[5] With regard to this point, please answer the following questions:

5.1.1 What are the effects associated with res judicata in your national legal order?

Res judicata has the effect that a prior judgment can be used as the basis for a subsequent action, thus having a substantive (positive) effect. Further, res judicata has the (negative) effect that a prior judgment constitutes a procedural hindrance. When already resolved, a second action shall be dismissed. See 9.1.5 infra.

5.1.2 What decisions in your Member State have the capacity to become res judicata?

Judgments (*domar*), according to Chapter 17 Section 11 of the Code of Judicial Procedure (*RB*; see 5.1.3 infra) have the capacity to become res judicata. According to Section 64 of the law on payment injunctions or enforcement assistance (*lagen, 1990:746, om betalningsföreläggande och handräckning*) verdicts (*utslag*) in cases concerning payment injunctions or enforcement assistance made by the Enforcement Service, have the capacity to become res judicata like judgments.

5.1.3 At what moment does a judgment become res judicata?

A judgment meets the criteria for becoming res judicata upon the expiration of the time for appeal. See Chapter 17 Section 11 of the Code of Judicial Procedure (*RB*), which reads:

> Upon the expiration of the time for appeal, a judgment acquires legal force to the extent that it determines the matter at issue in respect of which the action was instituted.
>
> A judgment also has legal force to the extent that it adjudicates a debt claimed as a set-off.
>
> A question thus determined may not be adjudicated again.
>
> There are specific provisions applicable to extraordinary remedies.

[5] If your national legal order does not operate with the principle of res judicata, then please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.

5.1.3.1 How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

It defines the moment, see 5.1.3 supra.

5.1.3.2 How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

The classification of remedies into one of these two categories is dependent on these effects. Extraordinary remedies can only to be used when ordinary remedies (like appeal, *överklagande*) cannot be used at all or any longer. According to Chapter 58 Section 1 of the Code of Judicial Procedure (*RB*), a relief for a substantive defect (*resning*) may only be granted "[a]fter a judgment in a civil case has entered into final force". The same goes for a separate application for setting aside for grave procedural errors (*klagan över domvilla*), according to Chapter 58 Section 1 of the Code of Judicial Procedure (*RB*).

5.1.4 Is res judicata restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

Res judicata is defined by the operative part together with the parties' claims and defences [or motions and positions, *Yrkanden* and *Inställning*]. See Chapter 17 Section 11 first paragraph of the Code of Judicial Procedure (RB) in 5.1.3 supra ("to the extent that it [the judgment] determines the matter at issue in respect of which the action was instituted"; "såvitt därigenom avgjorts den sak, varom talan väckts").

5.1.4.1 Are courts bound by prior rulings on preliminary questions of law?

Comment: *A court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, does a court in Member State B have to dismiss that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will? Will this be the case in your Member State? In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part or reasoning? How are they elaborated in the Judgment?*

The courts are in principle not bound by prior rulings on preliminary questions, as the reasoning (where the preliminary issue can be mentioned) in a Swedish judgment does not attain legal

force under Swedish law. The effects of a judgment on preliminary issues is usually limited to the specific case, and accordingly, a consequence of the fact that the reasoning of a judgment does not attain legal force.

5.1.4.2 Does your legal order operate with the concept of "claim preclusion"?

Comment: *Claim preclusion bars a claim from being brought again on an event, which was the subject of a previous legal cause of action that has already been finally decided between the parties. Consider the following examples.*

First example: A claimant files suit for damages he incurred in a traffic accident, alleging that the defendant acted negligently. The court dismisses the claim. The claimant then files a second action for damages arising from the same traffic accident; however, this time he alleges battery (intentional tort) on defendant's side. Is the second action admissible?

Second example: A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages from the same traffic accident. Is the second action admissible or should the claimant have requested all damages in the first action?

Yes, "claim preclusion" is an important res judicata effect. A more elaborate answer will be provided in a forthcoming version of the report.

5.1.4.3 Are courts bound by the determination of facts in earlier judgements?

Comment: *Consider the following example. A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court finds that the claimant correctly observed traffic rules and drove through a green light. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages. In these proceedings, however, the court finds that the claimant drove through a red light. Is this a permissible finding or should the court give effect to the findings of the first judgement?*

The courts are not formally bound by the determination of facts in earlier judgements. However, res judicata has the effect that a prior judgment can be used as the basis for a subsequent action, thus having a substantive (positive) effect, see 5.1.1 supra. Since the subject-matter (*saken*) is not the same, the example includes a permissible finding. However, the first judgment is likely to have strong evidentiary effect.[6]

[6] See B. Lindell, Civil Procedure in Sweden (Iustus 2004) p. 128 § 431 where he discusses a similar case.

5.2 If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account res judicata effects?

This depends on how the subject-matter (*saken*) is defined. A more elaborate answer, including typical examples, will be provided in a forthcoming version of the report.

5.3 In the case of a negative declaratory action, what is the effect of a finding that the matter is res judicata?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

The judgment is not enforceable, but B has to initiate an action against A. A more elaborate answer will be provided in a forthcoming version of the report.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: an interim judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement (the same as under question 3.1.5).*

An answer will be provided in a forthcoming version of the report.

5.5 Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to lis pendens rules under B IA.

5.5.1 Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with res judicata effect? What is the position regarding this question in Sweden?

An answer will be provided in a forthcoming version of the report.

5.5.2 If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y?

First, some initial remarks. In *Gothaer Allgemeine Versicherung*[7] an action for compensation had been brought before a German court by certain insurers against the defendant concerning damages caused to an installation during a transport. Belgian courts had dismissed similar actions brought before them as inadmissible on the ground that a bill of lading, drawn up on 13 August 2006, the date on which the defendant took delivery of the installation in Belgium, contained a jurisdictional clause stating that any dispute arising thereunder was to be decided by Icelandic courts according to Icelandic law.

One question addressed to the CJEU was whether the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdictional clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.

In p. 41 of the decision, the CJEU explained that "a judgment by which a court of a Member State has declined jurisdiction on the basis of a jurisdiction clause, on the ground that the clause is valid, binds the courts of the other Member States both as regards that court's decision to decline jurisdiction, contained in the operative part of the judgment, and as regards the finding on the validity of that clause, contained in the *ratio decidendi* which provides the necessary underpinning for that operative part".

The solution in *Gothaer Allgemeine Versicherung* seems to imply that the 2nd court must dismiss a claim by reference to the reasoning of the 1st judgment, and not only to the operative part of that judgment. Another consequence of this decision may be that the court designated in a jurisdictional clause must accept that it has jurisdiction in a case dismissed by a court in another Member State, regardless of the designated court's point of view on the matter. It could be that the CJEU has introduced a European standard concerning legal force when it comes to civil proceedings involving jurisdictional clauses.

What is the position on the question above in Sweden's legal order:

5.5.2.1 If in domestic cases you do not extend res judicata effect to the elements of a court's reasoning (Question 5.1.4)?

According to Swedish law only the operative parts of a judgment obtain *res judicata*, not the reasoning of the judgment. A judgment cannot be appealed just because a judgment debtor finds that the reasoning "is wrong". A court is therefore not formally bound by the reasoning in a previous judgment delivered by another Swedish court.

[7] ECJ 15 November 2012, Case C-456/11, Gothaer Allgemeine Versicherung AG and Others v Samskip GmbH, ECLI:EU:C:2012:719

5.5.2.2 If res judicata effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

See 5.5.2.1 supra. However, in this situation, Swedish courts are bound by the case law of the CJEU, see for example *Hoffmann* and *Gothaer Allgemeine Versicherung*.[8]

5.5.2.3 If res judicata effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

See 5.5.2.1 and 5.5.2.1 supra.

5.5.3 How to handle the limitation period problem in the scenario described above

The lis pendens case law of the CJEU prevents the filing of a warranty liability claim in Sweden as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in Sweden without making the warranty case pending?

The statute of limitation (10 years in general and 3 years for consumer claims) counts from the making of a claim. According to § 5 of the Act (1981:130) of Statute of Limitations, the limitation period can be prevented from running in different ways:

1. The debtor confirms the debt by paying a part of the claim or the interest. The limitation period is also prevented from running if the debtor acknowledges the debt in another way, for example by promising to pay the debt.
2. The debtor receives a written demand or a written notice concerning the claim from the creditor. Hence, the claim must be presented in writing by the creditor. It is the creditor that stands the risk that the letter does not reach the debtor, and the creditor has to prove that the letter reached the debtor, for example by presenting a copy of the letter.[9]
3. The creditor institutes proceedings against the debtor or pleads the claim in another way with the Enforcement Authority, in insolvency proceedings or in arbitration.

If the limitation period is barred under p. 1 or p. 2, a new limitation period of 10 or 3 years starts running. If the limitation period is barred under p. 3, for example if the creditor has applied for enforcement with the Enforcement Authority, the question of limitation depends on what happens with the Enforcement Authority.

The limitation period is qualified as a substantive matter under Swedish law governed by the applicable law, not, like in some other states, as a procedural question governed by *lex fori*.

[8] ECJ 15 November 2012, Case C-456/11, Gothaer Allgemeine Versicherung AG and Others v Samskip GmbH, ECLI:EU:C:2012:719 and ECJ 4 February 1988, Case C-145/86, Horst Ludwig Martin Hoffmann v Adelheid Krieg, ECLI:EU:C:1988:61

[9] See i.a. the Swedish Supreme Court cases NJA 1996 s. 809, NJA 2007 s. 157, NJA 2012 s. 172 and NJA 2016 s. 332.

6 Effects of judgements – res judicata and enforceability

6.1 The relation of res judicata to enforceability, i.e. can a judgment be enforced before it is res judicata?

According to Chapter 17 Section 14 of the Code of Judicial Procedure (*RB*), if there is reason for so doing, the court may in its judgment order that the judgment may be enforced though it has not entered into final force. In such instances, the court may, if there is reason, require that security be furnished to cover the damages for which a party may be liable if the judgment is changed.

Decisions made during the proceedings that cannot be appealed against separately shall be immediately enforceable [according to Chapter 17 Section 14]. The same applies to decisions by which the court has:

1. dismissed an attorney or counsel;

2. denied a third party's application to participate as an intervenor in an action;

3. ruled on the compensation or advance payment to a counsellor, witness, expert or any other person who is neither a party nor an intervenor;

4. ordered that a person be held in detention, ordered provisional attachment or any other measure pursuant to Chapter 15, or cancelled such a measure;

5. appointed as counsel a person other than the one proposed by the party; or

6. ruled, in situations other than those referred to in items 3 or 5, on a matter relating to legal aid, except a decision concerning liability for compensation pursuant to the Legal Aid Act (1996:1619), Section 30.

The provisions of the first paragraph shall apply to a decision ordering a party or third person to produce evidence in writing or make an object accessible for view or inspection. Any special provision that a judgment or decision which has not entered into final force may be enforced shall apply.

In addition, several provisions in the Enforcement Code (*UB*) are relevant.

Under Chapter 3 Sections 3 of the Enforcement Code (*UB*), a judgment may be enforced without special conditions when it has entered into final legal force. If an action has only been completed for a particular part of a judgment, the judgment may otherwise, when this can be done, be enforced as a judgment that has entered into final legal force, unless otherwise provided by reason of the completed action.

Chapter 3 Section 4 of the Enforcement Code (*UB*) provides that a judgment that has not entered into final legal force may be enforced in the cases and subject to the conditions stated in Sections 5–9. Provisions concerning impediments to paying out from the sale of attached property or funds received are contained in Chapter 8, Section 4 together with Chapter 13, Sections 1 and 14.

Chapter 3 Sections 5–9 of the Enforcement Code (*UB*) reads:

Section 5

Enforcement may take place immediately of a

1. judgment in bills of exchange cases or cheque cases,

2. default judgment whereby an obligation to pay has been imposed on the party that failed to attend or who did not satisfy that stated in Chapter 44, Section 7a or 7b of the Code of Judicial Procedure [*RB*], unless otherwise provided as a result of an application for re-opening.

Section 6

Another judgment whereby an obligation to pay has been imposed otherwise than as referred to in Section 5 may be enforced immediately, provided the debtor has not deposited money with the Enforcement Authority in an amount that corresponds with the obligation to pay on the date that the deposit takes place together with administration costs or as a pledge provides corresponding credit balances at a bank together with the interest that runs on the credit balance for the period thereafter or, when the judgment has been issued by a lower court, provides other security for the obligation to pay together with administration costs.

If the debtor satisfies that stated above first after a measure has been implemented for enforcement of the judgment, the measure shall lapse, if this is possible.

Section 7

If a superior court has declared that an action against a judgment whereby an obligation to pay has been imposed has lapsed, the judgment may be enforced immediately, unless otherwise provided as a result of the application for the reinstatement of the case.

If a Court of Appeal has refused leave to appeal for a party in an action against a judgment of a District Court, whereby an obligation to pay has been imposed on the party, the judgment may be enforced immediately, unless otherwise provided as a result of an action against the decision of the Court of Appeal.

Section 8

Judgment whereby someone has been ordered to release moveable property may be enforced immediately, provided security is provided for recovery of the property together with yield. However, this does not apply if the obligation has been imposed as a special legal effect of crime.

Section 9

A judgment, that in accordance with an Act or according to an order by the Court may be enforced before it has entered into final legal force, is enforced as a judgment that has entered into final legal force, unless otherwise provided by the Act or the order.

6.1.1 Is provisional enforceability suspended if an appeal is lodged?

According to Chapter 2 Section 19 second paragraph of the Enforcement Code (*UB*), the enforcement continues even if the decision of the Enforcement Authority is appealed against, unless otherwise prescribed by this Code or ordered by a court.

If a defendant wishes to suspend enforceability, before a judgment has obtained legal force, Swedish law mainly provides two options. The debtor can apply for inhibition, *i.e.* that an

execution title should not be enforced, in connection to an appeal, or deposit money alternatively provide security.

In certain cases, a Swedish court can decide on inhibition. Inhibition can be admitted after appeal of execution titles rendered without a trial of the merits. A court can also decide on inhibition after appeal of the Enforcement Authority's decision on enforcement measures.

Other provisions apply when the court assesses judgments for payment in substance. When such a decision by a District court or a Court of Appeal is appealed the higher court cannot prevent enforcement by inhibition. The judgment creditor can secure his or her claim by attachment, see Chapter 3 Section 6 of the Enforcement Code (*UB*).

The relevant provisions according to which a court can decide on inhibition when an enforcement measure has been appealed are found in Chapter 18 Section 12 and 19 of the Enforcement Code (*UB*). The prohibition to enforce in this case only covers the measure appealed against, not the execution title *per se*.

6.1.2 Who bears the risk if the provisionally enforceable judgement is reversed or modified?

A creditor is strictly liable for the damage occurred to the debtor in an enforcement matter in cases where an execution title is overruled, see Chapter 3 Section 22 third paragraph of the Enforcement Code (*UB*).

To the applicant there is a difference if the Enforcement Authority rescinds enforcement/ attachment, or if the question on whether enforcement should be rescinded is tried by a District court. If the Enforcement Authority rescinds enforcement the applicant does not need to pay the appellant's costs. If, on the other hand, a court rescinds enforcement the applicant may have to pay the appellant's costs, which can be very high in certain cases.

6.1.2.1 Must the judgment creditor provide security before the judgment can be enforced?

According to Chapter 17 Section 14 of the Code of Judicial Procedure (*RB*), if there is reason for so doing, the court may in its judgment order that the judgment may be enforced though it has not entered into final force. In such instances, the court may if there is reason require that security be furnished to cover the damages for which a party may be liable if the judgment is changed.

A debtor who wants to avoid enforcement of a regular judgment for payment that is not final can, with the Enforcement Authority 1. deposit money, 2. provide a bank balance as pledge, or 3. in situations where a judgment has been rendered by a lower court, provide other security. A deposit or security may not take place in case of default judgments or in cases of judgments in bills of exchange cases or cheque cases.

Chapter 3 Section 6 of the Enforcement Code (*UB*) reads:

Another judgment whereby an obligation to pay has been imposed otherwise than as referred to in Section 5 may be enforced immediately, provided the debtor has not

1. deposited money with the Enforcement Authority in an amount that corresponds with the obligation to pay on the date that the deposit takes place together with administration costs or

2. as a pledge provides corresponding credit balances at a bank or financial institute together with the interest that runs on the credit balance for the period thereafter or,

3. when the judgment has been issued by a lower court, provides other security for the obligation to pay together with administration costs.

If the debtor satisfies that stated above first after a measure has been implemented for enforcement of the judgment, the measure shall lapse, if this is possible.

A deposit or deposit of a security can be made before or after an application for enforcement at the Enforcement Authority.

According to Chapter 2 Section 25 of the Enforcement Code (*UB*), a security that shall be provided in accordance with this Code shall comprise a pledge, guarantee or floating charge. The guarantee shall be presented as a principal debtor and, if it is entered into by two or more persons together, be joint and several. If the security is not approved by the person for whose benefit the security shall apply, it shall be considered by the Enforcement Authority.

If a bank or other comparable financial institution shall provide security, an undertaking may be accepted by the financial institution to satisfy the obligation to which the security shall relate.

The security shall be taken into care by the Enforcement Service.

Certain situations require the creditor to provide security in order for the Enforcement Authority to disburse money. According to Chapter 13 Section 14 of the Enforcement Code (*UB*) funds may not be paid out before collateral has been provided, if

1. attachment has taken place pursuant to Chapter 3, Section 5, (1) or (6), and the enforcement title has not entered into final legal force or attachment has taken place as a result of a verdict or decision in a case concerning a payment order or enforcement assistance and the debtor has applied for reopening or appeal,

2. attachment has taken place with the estate of a deceased person for a claim that is not linked to a special priority right in the property and the period stated in Chapter 8, Section 6, first paragraph, has not expired,

3. the right to funds is dependent upon an appeal of the attachment or the sale of the attached property or an action referred to in Chapter 4, Sections 20 – 22 or 26,

4. distribution that has taken place at a distribution meeting has not entered into final legal force,

5. a dispute prevails in other cases concerning who is entitled to payment.

6.1.2.2 Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

See 6.1.2.1 supra.

6.1.2.3 Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

In such a case there is a bar to enforcement under Chapter 3 Section 21 first paragraph of the Enforcement Code (*UB*), which reads:

> If the defendant shows that he has satisfied an obligation to pay or other obligation to which the application concerning enforcement relates, enforcement may not take place. This also applies if the defendant as a set-off refers to a claim, which has been confirmed by an enforcement title that may be enforced or which is based on a promissory note or other written evidence of debt, and the general preconditions for set-off exist.

6.1.2.4 Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

See 6.1.2.1 supra.

6.1.2.5 What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?

See 6.1.2 supra.

6.2 Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Comment: *The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement.*

The judgment creditor applies to the Enforcement Authority for enforcement. The Enforcement Authority notifies the judgment debtor according to Chapter 4 Section 12 of the Enforcement Code (*UB*), usually by mail, that enforcement measures will take place if the judgment debtor does not pay the debt voluntarily within a certain time. In the average case, the debtor has a fortnight to abide by the instructions in the notification. A more elaborate answer might be provided in a forthcoming version of the report.

6.3 Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?

No, it follows by law.

6.4 How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?

Within the scope of the Brussels I Regulation, this is described in Art. 54.

In Swedish national law, this is dealt with in case law of the Supreme Court, NJA 1995 s. 495 (see also NJA 1995 s. 6). An Italian decision, containing a security measure (*sequestro giudiziario*), had been declared enforceable in Sweden. The Italian decision stated that certain movable property should be handed over to the applicant for administration. According to Swedish law, and Chapter 15 of the Enforcement Code (*UB*), it is not possible for the applicant to administer property. Only the Enforcement Authority can administer property. When the Swedish decision on *exequatur* was to be enforced, the question arose if the property should be handed over to the applicant in accordance with the Italian decision, or administered by the Swedish Enforcement Authority.

The Swedish Supreme Court held that the Italian *sequestro giudiziario* is not identical to Swedish attachment. The purpose of the two institutes is, however, the same – to cut off the defendant's right of disposition of the property to secure the claimant's right in forthcoming enforcement. A foreign decision on security measures, that lacks an immediate equivalent in Swedish law, shall as far as possible be adapted to a corresponding measure in Swedish law (as an Italian decision cannot prescribe how actual enforcement should take place in Sweden). Therefore, the claimant's administration of the property as stated in the Italian decision could not take place, but the administration of the property should be governed by the Swedish rules on attachment in the Enforcement Code (*UB*). Hence, the property was to be administered by the Swedish Enforcement Authority.

7 Effects of Judgments – Personal boundaries of res judicata

7.1 How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of an ongoing litigation; indispensable parties)?

Concerning res judicata the general rule is that a third person standing outside of the litigation is not affected.[10] If a co-litigant or third persons might be affected by a judgment, intervention is one of the tools to use. Chapter 14, Section 9 of the Code of Judicial Procedure (*RB*) states:

[10] See B. Lindell, Civil Procedure in Sweden (Iustus 2004) pp. 127 § 427.

Anyone not a party to pending proceedings who states that the matter at issue bears on his legal right or obligation, and who shows probable cause for his statement, may appear as an intervenor in the litigation on the side of either the plaintiff or the defendant.

A more elaborate answer will be provided in a forthcoming version of the report.

7.2 Do certain judgments produce in rem (*erga omnes*) binding effects?

Yes, certain judgments produce erga omnes binding effects. A more elaborate answer will be provided in a forthcoming version of the report.

7.3 How are (singular and universal) successors of parties affected by the judgment?

Comment (7.3): *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*

To demonstrate a transfer of a claim under an execution title, the successor must show that he or she has acquired it.[11] In all cases where the applicant is someone else than the one stated in the execution title, the Enforcement Authority (before enforcement) will check that there is a coherent chain of transfer-agreements. A successor of claims laid down in a judgment, who wishes to apply for enforcement, needs to hand in a certified agreement that he or she has succeeded to the claim. If the applicant does not submit the documents that prove the acquisition, the application must be completed. If the applicant cannot prove his or her right to the claim in the execution title the application for enforcement will be dismissed.

Concerning transfers of bearer bonds (*innehavarskuldebrev*), only the bearer bond has to be submitted.

Below are some various other observations on the matter.

Transfers by donation are regulated specially in different laws, *i.a.* the donor must inform about the donation (denuntiation).

Prohibition of transfers are also regulated directly in various laws. For example, surplus on tax accounts cannot be transferred, but can be attached.

A party who acquires an insurance from an insured party, obtains the same rights against the insurance company as the original party had.

The parties to a deceased person's 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*).

[11] See the *travaux prépartoires*: Proposition [Prop., Government Bill] 1980/81:8 s. 206.

8 Effects of Judgments – Temporal dimensions

8.1 Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

In principle, no. A more elaborate answer will be provided in a forthcoming version of the report.

8.2 If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

A *factum superveniens*, i.e. a subsequent fact, might break through the binding force of judgment,[12] or rather, it is not affected by that force. A more elaborate answer will be provided in a forthcoming version of the report.

8.3 Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

Yes, these *facta supervenientia* (cf. 8.2 supra) can be invoked, according to Chapter 3 Section 21 second paragraph of the Enforcement Code (*UB*),[13] which reads:

> Nor may enforcement take place if the defendant claims that another circumstance involving the relationship of the parties constitutes an impediment to enforcement and if the objection cannot be ignored.

8.4 Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

This is regulated in Chapter 3 Section 21 first paragraph of the Enforcement Code (*UB*), which reads:

> If the defendant shows that he has satisfied an obligation to pay or other obligation to which the application concerning enforcement relates, enforcement may not take place. This also applies if the defendant as a set-off refers to a claim, which has been confirmed by an enforcement title that may be enforced or which is based on a promissory note or other written evidence of debt, and the general preconditions for set-off exist.

This provision covers i.a. the situation where a judgment debtor invokes a previous set-off. If, for the first time, the claim for set-off is made in the enforcement proceedings this is regarded

[12] See B. Lindell, Civil Procedure in Sweden (Iustus 2004) pp. 128–129 §§ 432–433.
[13] See the *travaux prépartoires*: Proposition [Prop., Government Bill] 1980/81:8 pp. 331.

as a direct set-off defence. If it is accepted, the Enforcement Authority will decide that enforcement cannot take place with regard to that part of the set-off that covers the main debt.[14]

9 Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1 How does Sweden's legal order determine lis pendens?

Lis pendens is regulated in Chapter 13 Section 6 of the Code of Judicial Procedure (*RB*), which reads:

> While an action is pending, a new action involving the same issue (*fråga*) between the same parties may not be entertained.

This provision rules on *lis pendens* and presuppose three prerequisites: 1) The existence of two actions, 2) involving the same issue (subject-matter), 3) between the same parties.

The meaning of the concept subject-matter is crucial when deciding whether *lis pendens* is present. For *lis pendens* to exist, it is necessary that the first action is pending when the second action is instituted. In addition, the earlier instituted and still-pending action constitutes *lis pendens* under the same conditions as a judgment rendered in this action would have led to a dismissal of the action instituted later because of *res judicata*.[15]

The provision is applied *ex officio* by the court.

9.1.2 How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

The Swedish translation of the B IA concept of "same cause of action" is "*samma sak*". This and a similar terminology are also used in the national Swedish legal order, cf. 9.1.1 supra on lis pendens as regulated in Chapter 13 Section 6 of the Code of Judicial Procedure (*RB*). In the national Swedish legal order, the criteria of lis pendens are fundamentally identical to the criteria for negative legal force. The terms "legal force" (*rättskraft*) and "res judicata" are used almost synonymously. The main rule in Swedish law is that legal force binds only the parties

[14] See the *travaux prépartoires*: Proposition [Prop., Government Bill] 1980/81:8 pp. 331–332.
[15] See B. Lindell, Civil Procedure in Sweden (Iustus 2004) p. 128 § 430.

to the case; however, there is no express rule to this effect in the Code of Judicial Procedure (*RB*).[16]

It is difficult to find a general definition of "*samma sak*". The Code of Judicial Procedure (*RB*) does not define the term. Neither is the legislative history of the Code of much help in this respect. The Swedish Supreme Court has stated that the way in which the claims in the cases to be compared are formulated is of major significance in the assessment, and that the grounds alleged must, as a rule, also be taken into consideration.

There are, primarily, two views in the Swedish legal literature regarding how to determine what is meant by "*samma sak*". According to one view, the decisive criterion is whether the two actions concern the "same course of events" or the "same set of facts". According to the other view, the decisive question is whether the two actions concern the same "remedy". The Swedish Supreme Court has, with certain modifications, embraced the latter view.

It is not possible for a claimant to bring a second litigation by decreasing or increasing the amount sought. In the case NJA 1999 s. 520 the Swedish Supreme Court held that alternative remedies which are financially equivalent are precluded by virtue of the first judgment even if they were not claimed in the first litigation. Legal force thus includes the same remedy and remedies which are alternative and financially equivalent to the first remedy. The meaning of the term "financially equivalent" is not quite clear and the introduction of this criterion has been criticised.

There is no generally applicable criterion in respect of what constitutes one as opposed to several concrete remedies. In order to resolve this question, one must look at both the actual claim in the case and the facts alleged in support of the claim. If the same abstract remedies lie "at the root", one must ask whether, as a result of the alleged facts, the defendant can be ordered to make only one performance or two performances. If only one performance is possible, it is matter of the same (concrete) remedy. This applies even if different facts are alleged as a basis for the two different actions. As a result, the second action must be dismissed since it addresses the same matter at issue pursuant to the res judicata provision, Chapter 17 Section 11 of the Code of Judicial Procedure (*RB*).

9.1.3 How a negative declaratory action is treated in relation to contradictory actions

The Swedish legal order does allow a negative declaratory action, according to Chapter 13 Section 2 of the Code of Judicial Procedure (*RB*), which reads:

> An action for a declaration of whether or not a certain legal relationship exists may entertained on the merits if an uncertainty exists as to the legal relationship, and the uncertainty exposes the claimant to a detriment.

[16] This part of the report is based on p. 17–21 (without most of the references to literature and other sources in Swedish and without the more detailed examples) in the very accurate national report from Sweden by Lars Heuman, Jonas Olsson & Mikael Pauli in the project *The Effect in the European Community of Judgments in Civil and Commercial Matters: Recognition, Res Judicata and Abuse of Process*, British Institute of International and Comparative Law (JLS/2006/FPC/21- 30-CE-00914760055), available online: <www.biicl.org/files/3486_sweden_final_c.pdf>.

> If determination of the matter at issue depends upon the existence or non-existence of a certain disputed legal relationship, a request for a declaration thereon my be entertained.
>
> Actions for declaratory judgments may be entertained in other cases where legislation so prescribes.

Institution of contradictory actions are barred by the negative legal force being part of the res judicata (or lis pendens) effect of a negative declaratory action.

9.1.4 How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

This question is regulated in Chapter 13 Section 6 of the Code of Judicial Procedure (*RB*), and is concerned with the procedural hinderance *lis pendens*. This provision is applied ex officio by the court. As is the case with the Brussels I Regulation, Swedish law requires that the case concern the same cause of action (objective identity) between the same parties (subjective identity). The subjective identity is at hand as long as the parties are the same, irrespective of the roles as claimant and respondent.

A complication in *Tatry* (C-406/92) was that several parties on one side only partly were identical in the second case. An application of Art. 29 of the Brussels I Regulation does not prevent that case 2 continues with regard to the "new" parties. In *Drouot* (C-351/96) the parties were not the same in case 1 and case 2. However, the CJEU did not exclude that an insurer and a policyholder may have identical an inseparable interests, and subjective identity could be fulfilled.

This is a more far-stretched solution than according to Swedish law and Chapter 13 Section 6 of the Code of Judicial Procedure (*RB*).

9.1.5 The requirement "the same end in view" as expressed by the CJEU

The case *Drouot*[17], determined by the CJEU, concerned the issue of subjective identity. The claimant in case 1 was the owner of a cargo on a sunken vessel (that was later salvaged) and an insurer that had insured the cargo. The defendant in case 1 was the ship owner and its charterer. In case 2 the claimant was an insurer that had issued an insurance on hulls concerning the sunken and salvaged vessel. The claim was brought against the claimants in case 1. Henceforth, the parties were not the same in case 1 and case 2: the owner of the vessel and its charterer were not parties to case 2, and the insurer on hulls was not a party to case 1. However, it was claimed that identity between the parties were at hand, apparently because they had the same interests.

The CJEU did not exclude that an insurer and a policy holder could be regarded as one and the same party in certain cases, when it comes to the provisions on *lis pendens* in the Brussels instruments. However, in this case the CJEU held that it does not seem that the interest of the insurer of the hull of the vessel can be considered to be identical to and indissociable from those of its insured, the owner and the charterer of the vessel. However, it was for the national court to ascertain.

[17] Case C-351/96.

When discussing subjective identity and the same end in view, it is necessary to bear in mind the "connection" between *lis pendens* and *res judicata*, see 9.1.1 supra. Therefore, a "cautious" understanding of the same end in view could be advocated. The importance of individual access to court has to be observed.

9.2 The notion of "related actions"

Closely related actions shall be joined in one proceeding. According to Chapter 14 Section 1 of the Code of Judicial Procedure (*RB*) actions instituted at the same time by a claimant against the same defendant shall be joined in one proceeding if they *are based essentially on the same ground [stödja sig på väsentligen samma grund]*. When cases have been instituted at the same time by a claimant against more than one defendant, or by more than one claimant against one or more defendants, the claims shall, according to Chapter 14 Section 2 of the Code of Judicial Procedure (*RB*), be joined in one proceeding if they *are based essentially on the same ground [stödja sig på väsentligen samma grund]*. Counterclaims are also considered as a kind of "related actions", to be joined in the same proceeding as the main claim, see Chapter 14 Section 3 of the Code of Judicial Procedure (*RB*), quoted in 2.6 supra.

If a person not party to the proceedings requests joint adjudication upon instituting an action, which concerns *the same matter at issue* [*det, som tvisten gäller*], against one or both parties, the cases shall be joined in one proceeding, according to Chapter 14 Section 4 of the Code of Judicial Procedure (*RB*); according to Section 5 the same is stipulated for a party or a third party who, in the event that a judgment is entered against him, wishes to present a claim for rescission or for damages.

Related but not as closely related actions between the same or different parties may, according to Chapter 14 Section 6 of the Code of Judicial Procedure (*RB*), be joined in one proceeding in situations other than those described above if joinder *will aid the inquiry* [*är till gagn för utredningen*]; if there is reason, the claims may be separated again later. According to Chapter 14 Section 7 of the Code of Judicial Procedure (*RB*), the provisions of Sections 1 to 6 authorizing joinder of cases in one proceeding apply only when i.a. the claims have been instituted in the same court, the court is competent, and the same rules of procedure apply to each case.

However, according to Chapter 14 Section 7 a of the Code of Judicial Procedure (*RB*), an action may be transferred from one court to another pursuant to Supreme Court order, if the action is *related* [*råder sådant samband*] to an action in another court, as stated in Sections 1 through 6, upon application by a party or upon notice from a district court or a court of appeal. Such a transfer and shall only take place if a joinder of the cases would have *substantial advantages for the handling of the cases and not significantly inconvenience any party* [*väsentliga fördelar för handläggningen av målen och det inte innebär betydande olägenhet för någon part*]. If it becomes appropriate, the court which shall deal with the cases may separate them (cf. Chapter 14 Section 6 of the Code of Judicial Procedure, *RB*).

Most of the relevant court cases on "related actions" concern Chapter 14 Section 7 a of the Code of Judicial Procedure (*RB*). For example, in the Supreme court case NJA 2001 s. 308 the

court has, in the application of that Section, considered actions between the same parties relating to prior claims to property under separate courts to constitute a single dispute and found that the cases should be joined in the court under which the main part of the immovable property lies (cf. *forum rei sitae*, according to Chapter 10 Section 10 of the Code of Judicial Procedure, *RB*).

9.3 Cross-border cases involving related actions within the meaning of the B IA

There are some cases from Swedish courts concerning related actions which are referred to in abstract below.

9.3.1 On irreconcilability for the purpose of related actions

In the Supreme Court case NJA 2001 s. 386 the court held that within the scope of the Brussels instruments it is for the national court in each individual case to determine the suitability to join cases. In the circumstances in the cases – a connection between the claims, similar agreements negotiated separately, and the same underlying legal relationships – did not constitute a connection between the claims.

In the Supreme Court case NJA 2005 s. 652 the claims M had against T and F were substantially founded on the same factual circumstances, and therefore there was a close connection between the legal causes of actions.

According to the Supreme Court case NJA 2007 s. 1000 the two claims were founded on the same commitment to pay. For reasons of appropriateness and procedural economy, the court should not make substantive assessments in order to determine if it had jurisdiction. Therefore, the claimant had shown that there was a sufficiently close connection between the claims that calls for a joint dealing and to avoid irreconcilable judgments.

In the reported Court of Appeal-case RH 2001:81, the court held that the proper administration of justice requires that related actions is given a wide interpretation, covering all situations where there is a risk of conflicting decisions, even if both judgments could be enforced separately and their legal consequences did not exclude each other. The cases were joined.

9.3.2 On the discretion to stay proceedings

No Swedish case law on the discretion to stay proceedings is known to us.

10 Court settlements

10.1 The prerequisites for the conclusion of a court settlement

Provisions for settlements are found in Chapter 42 Section 6 first and second Paragraph of the Code of Judicial Procedure (*RB*), which reads:

> If a summons is issued, preparation of the case shall take place.
>
> The object of the preparation is to elucidate:
>
> 1. the parties' claims and objections and also the circumstances which the parties invoke as the basis for their actions, the claimant for the claim and the defendant for the answer,
>
> 2. to what extent the parties differ about the facts alleged by them,
>
> 3. which means of evidence shall be brought forward and what will be proved by each means,
>
> 4. whether further inquiry or other measures are necessary prior to the adjudication of the case, and
>
> 5. *whether there are possibilities for an out of court settlement.* [emphasis added]

The prerequisites for court settlements are regulated in Chapter 42 Section 17 of the Code of Judicial Procedure (*RB*):

> If the matter at issue is amenable to out of court settlement, the court shall, to the extent appropriate considering the nature of the case and other circumstances, work for the parties to reach a settlement.
>
> If, considering the nature of the case, it is more appropriate that special mediation occur, the court can direct the parties to appear at a mediation session before a mediator appointed by the court.

This mandatory provision is generally formulated, and guidance is provided in the *travaux prépartoires*.[18] The court thus has an obligation to raise the issue concerning settlement in all cases amenable to settlement. However, the court should be more cautious in cases were the outcome is more or less certain, or where the parties are represented by lawyers.

The question concerning a settlement should be addressed at the end of the oral session for preparation, *i.e.* preparation before the court hearings. In cases amenable to settlement the court shall investigate if it is possible to settle the dispute, and also in certain cases actively try to reach a settlement. The extent of the court's activity in this case is somewhat controversial.

Some claim that the court's primary task is administration of justice, and the court should therefore only participate in the conclusions of settlements that are in accordance with law (close to a judgment rendered in the dispute). Only if there are particular reasons should the court suggest a settlement contrary to civil law. This implies that the court's efforts in settling the case should be started late in the session for preparation, when the judge can overview the disputed issues and the legal standing of the case.

Others, on the other hand, assert that it could be beneficial that courts participate in settlements, even if the settlement results in a somewhat different result than the court's judgment of the case. As we are concerned with issues amenable to settlement, the parties are free to decide on their own irrespective of the contents in dispositive civil law legislation. The court is in principle obliged to confirm the parties' settlement even if it is contrary to substantive laws.

This controversy is not solved. Different judges approach the issue differently.

The court should not actively work for a settlement if one of the parties clearly has expressed that he or she does not want a settlement.

[18] Proposition [Prop., Government Bill] 1986/8:89 p. 111–114.

In summary, the court should consider factors as the case's legal and substantive complications, the interests of the parties to maintain good relations, their will to settle the dispute and the participation of lawyers should be balanced before the court decides whether to raise the settlement issue or not. Finally, the case has to be apt for settlement.

10.1.1 Elements a court settlement must contain

The forms or elements for the court's settlement activities are pretty much left to the judge while still keeping his or her impartiality, when it has been determined that it is appropriate to raise the settlement issue. Also see 10.1 supra.

10.1.2 Formal requirements

The court shall assist the parties in drawing a written agreement, if need be. Usually it is sufficient that the parties orally tell the content of the agreement to the court, and that the agreement is noted in the record. The agreement is then read aloud to the parties. The court cannot change the agreement when the record is printed, even if the agreement is unclear and could gain from rephrasing. The record does not state anything on the merits. Instead it is noted: "After reviewing the case the parties agree to the following settlement." ("*Efter genomgång av målet träffar parterna följande förlikning.*")

The contents of a settlement agreement should as a principle be short. In the average case it is sufficient to state the amount and the day of payment, and that the parties agreement regulates the parties' dealings fully or in partially. If there are ambiguities or incompleteness in a settlement which might lead to problems in enforcement problems, the court should try to remedy this through questions and comments.[19]

After the settlement, the case is closed either by dismissal or by confirmation in a judgment.[20] Chapter 17 Section 10 of the Code of Judicial Procedure (*RB*) reads:

> If the parties agree on a settlement of the dispute, the court, upon request of both parties, shall enter a judgment confirming the settlement.

10.1.3 How the parties are identified

If the settlement is confirmed by the court, the parties are named and identified in the confirming judgment. See 2.1 supra.

10.1.4 Substantive legal relationships that can be settled in a court settlement

The provisions for settlements in *RB*, see 10.1 supra, are applicable to cases amenable to out-of-court settlement.

[19] Supreme Court case NJA 2017 s. 94
[20] In the Supreme Court case NJA 1957 s. 470 it was held that a settlement regulating relations somewhat outside the actual dispute could be confirmed as well.

10.2 When a court settlement becomes enforceable

A settlement confirmed by the court is enforceable under the same circumstances as a regular judgment, see 6.1 supra.

10.3 How successors of parties are affected by the judgment

See 7.3 supra.

10.4 Amendment of a confirmed settlement settled

A settlement confirmed by court is not a separate kind of judgment, but follows the rules of ordinary judgments, and the remedies available to such judgments. See 5 supra in relevant parts.

10.5 For how long is a court settlement enforceable?

See 10.4 supra.

10.6 How errors in a court settlement can be remedied

Court settlements follow the rules for ordinary judgments, and the remedies available in such cases.

Chapter 17 Section 15 of the Code of Judicial Procedure (*RB*) lays down that:

> If the court considers that a judgment or decision that contains a manifest error attributable to a clerical mistake, a miscalculation, or similar oversight by the court or somebody else it may decide on rectification.
>
> If the court has neglected to issue a decision that should have been rendered together with a judgment or final decision, the court may supplement its determination within six months from the determination becoming legally binding. A supplementation later than two weeks after the pronouncement of the determination may only take place if a party so demands and the other party does not oppose the supplementation.
>
> Before making a decision concerning rectification or supplementation, the court shall afford the parties an opportunity to be heard unless it is manifestly unnecessary. The decision shall, if possible, be endorsed on all copies of the determination that has been rectified.

There are no notarial acts or other authentic instruments under the Swedish legal order, which are considered enforcement titles, see 11 infra (cf. the latter part of 10.6 in the questionnaire, which concerns such instruments).

11 Enforceable notarial acts

11.1 The competence of the notary in civil and commercial matters in Sweden

There is no full equivalent to the civil law notary in Swedish legal terminology; a *notarius* publicus is not such a notary.[21]

According to the act on notarius publicus (*lagen [1981:1363] om notarius publicus*) a Swedish notary public (*notarius publicus*) assists members of the public mainly by

1. attesting signatures, transcripts, translations and other details about the content of documents.
2. attending as a witness, e.g. when a seal is broken.
3. supervising lottery draws, etc.
4. providing an account of her/his observations, after checks or investigations,
5. confirming that someone is authorised to do certain things or that someone is competent or in a position to represent someone,
6. issuing 'apostilles', etc.

11.2 No authentic instruments considered enforcement titles

There are no notarial acts or other authentic instruments under the Swedish legal order, which are considered enforcement titles, cf. 1.1 supra. In a comparative study covering Sweden it has rightly been stated that 'it does not seem justified to state that the Swedish legal systems builds [*sic!*] upon a concept that is at least comparable to that of the authentic instrument under civil law.'[22]

In the same study it was, also rightly, stated: 'In fact, for Sweden, the study found that there does not even exist a legal term that would serve to adequately translate the notion of the authentic instrument into the Swedish language without running the risk of provoking far-reaching incoherence within the Swedish legal system.'[23]

Against this background, most of the questions in part 11 of the questionnaire are left aside, since they are of no relevance for the Swedish legal system.

11.3 Enforcement of foreign notarial acts

A foreign notarial act which is enforceable in its originating Member State, would be enforced in Sweden if it fulfils the requirements of the Brussels Ia Regulation or if it has been certified as a European Enforcement Order (cf. 11.16 in the questionnaire). If not, there is no ground for enforcing foreign notarial acts in Sweden. Hence, disregarding EU legislation, there are no

[21] Comparative Study on Authentic Instruments, National Provisions of Private Law, Circulation, Mutual Recognition and Enforcement, Possible Legislative Initiative by the European Union: United Kingdom, France, Germany, Poland, Romania, Sweden (European Parliament 2008, IP/C/JURI/IC/2008-019) available online via <www.europarl.europa.eu/studies>, p. 175–176.
[22] Comparative Study (2008), supra n. 21, p. 19.
[23] Comparative Study (2008), supra n. 21, p. 117.

special restrictions regarding recognition and enforcement under the private international law of Sweden, pertaining specifically to foreign notarial acts (cf. 11.14 in the questionnaire).