European transparency of assets
Swedish National Report
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1. The address of the debtor
2. The determination of the debtor’s assets in the forefront of a judicial decision
3. The determination of the debtor’s assets on the basis of an enforcement title
4. Information in law and in fact
5. The cross-border context

Questionnaire

1. The address of the debtor
1.1. Natural persons
1.1.1. Definitions: Domicile, residence and address for service
Domicile and residence
1.1.2. Available public registers to determine residence:
1.1.2.1. Which registers are available: registration index (Melderegister), foreigners’ register (Fremdenregister), tax or social assistance registers, electoral rolls?
        A national register on all persons domiciled or resident in Sweden.
1.1.2.2. Are these registers accessible to creditors, the courts, the enforcement organs?
        Yes. In addition the enforcement authority also has access to information on the debtor’s address in social insurance registers and some other registers when needed for enforcement purposes.
1.1.2.3. Conditions of access and procedures?
        Telephone, in writing or by computer access.
1.1.3. Other means of determining the location of natural persons (example: assistance of police offices)?
        No.
1.2. Legal persons
1.2.1. Definitions: Statutory seat, registered place of business and location of a branch office

   Statutory seat or registered branch office.

1.2.2. Is this information documented in the following public registers:

1.2.2.1. In the companies’ register¹?

   Yes, see under 2.3.1.2.

1.2.2.2. In finance, tax or other registers?

   See under 1.2.2.1.

1.2.2.3. Are these registers accessible to creditors, the courts, the enforcement organs?

   Yes.

1.2.2.4. Conditions of access and procedures?

   Telephone, in writing or by computer access.

1.2.3. Other means of determining the registered office of legal persons and their branch offices?

2. Transparency of assets before obtaining a judgement

   Answers already available in other parts of the study (2.1.- 2.2.1.)

2.1. Who has a right to obtain the information²:

2.1.1. the creditor and his legal representative?

2.1.2. the court?

2.1.3. the (future) enforcement organ?

2.1.4. other organs (e.g. the public prosecutor)?

2.2. Can the court (or another person or institution mentioned in 2.1.) require information from the debtor about his financial situation?

2.2.1. If so, on what conditions?

2.2.2. Extent of the disclosure obligation³?

When the debtor’s situation is investigated one of the first steps is to ask him about his assets. Information from the debtor is a substantial part of the investigation. According to Chapter 4, § 14 of the Enforcement Code the debtor must give information about his assets. He must also confirm the truth of the information he has provided listed in a document or at an interrogation (complex matters).

¹ Please deal with the differences between central and local keeping of the registers as well.
² In answering this question (2.1.), the reporters should feel free to depart from the predetermined structure if this is necessary to draw a complete picture of the situation in the respective member state.
³ Please attach a usual form to the report.
In ordinary enforcement matters private and public creditors seldom supply any information about the assets or the circumstances of the debtor. It is especially in cases such as sequestration or other comprehensive matters where the private creditors use the possibility to assign assets to secure. The applicant private creditor is, if required, summoned to be present at an interrogation with the debtor. This possibility can be used (it happens however very seldom) when the applicant has knowledge of the assets of the debtor. Regarding public creditors it is common that the Tax Authority inform the Enforcement Authority about what they have observed in connection with tax audit related to the debtor.

One of the first steps in an investigation related to a debtor is to ask him about both his debts and assets. Information from the debtor is always a substantial part of the investigation.

Information regarding the debtor’s debts is available to the following extent at the Enforcement Authorities for enforcement purposes through research in public registers, to which the Enforcement Authorities have direct access by computer.

*The Accounting system for the Enforcement Authorities (REX)*

The Accounting System for the Enforcement Authorities (REX) contains all registered debtors and is a central computer base used by all units of the Swedish Enforcement Authorities. This register contains all public claims and the claims are registered centrally by the National Tax Board. The register also contains all the private matters, which are registered by the local authorities. All payments and actions taken in relation to the debtors are recorded in the register. With the help of the personal code number or the organization number of a company you can find out if the individual or the company is subject to enforcement, what kind of debt the individual or the company has and what action the Enforcement Authority has taken.

*Register for the Injunction to pay and for the Enforcement Assistance*

The register for the Injunction to pay and for the enforcement assistance is a computer based register kept and administered by the Enforcement Authorities containing certain information related to the applications.

*Tax register*

The tax register includes of course also information on tax debts.

*Register of mortgage on a company´s assets*

The register of mortgage on a company’s assets is a national computer based register kept and administered by the local District Court of Malmö. The register contains information concerning businesses (individuals and legal entities), whose business activity is encumbered by chattel mortgage as security for due payment. In addition to information about every mortgage on every business in the whole of Sweden you can get knowledge of who the mortgager is.

2.2.3. What sanctions are available in the case of failure / default?
According to Chapter 2, § 15 of the Enforcement Code there is a possibility to prescribe fines to get a debtor to document his assets in writing. In order to get a debtor to comply with his liability to provide the required information in the matter the Enforcement Authority can submit an application to the District Court on the detention of the debtor, provided there are special reasons (Chapter 2, § 16 of the Enforcement Code). This provision is very seldom used.

2.3. Information from public registers:

2.3.1. From which public registers can information be obtained:

2.3.1.1. land register?

The real estate register is a computer based register kept and administered by the Land-Surveying Office. The register contains information regarding all real estates and site-leasehold rights in the country. Facts to be found in this base are owner-ship status, the taxation value and mortgages of the real estate.

2.3.1.2. companies’ register?

Register of limited liabilities corporation

The register of limited liabilities corporations is a computer based register kept and administered by the Patent and Registration Office, which contains all limited liabilities companies, both public and private, the size of the share-capital of the company, the members of the Board of directors and information about who is legally authorized to sign on behalf of the company. You can also get copies from the company’s annual accounts. It is also possible to get information about all the limited companies in which a certain person is involved as a member of the Board of directors or as a deputy. You can receive an excerpt of all the companies with help of the personal identity number.

Trade- and association registers

The register is kept and administered by the Patent and Registration office and contains information about partnership companies, limited partnership companies, private firms, economic associations, certain foundations and non-profit associations. From the register you can among other things obtain the names, addresses, etc of who are the partners of the companies and which companies a certain person is involved in. You can also get copies from the annual accounts.

2.3.1.3. any available list of assets and liabilities (Schuldnerverzeichnis)?

No.

2.3.1.4. insolvency or bankruptcy registers?

2.3.1.5. motor vehicle register (ship register, airplane register)?

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4 For Germany see § 807 ZPO, if the debtor has already been obliged to deliver the affidavit about his assets in earlier execution proceedings.
Traffic register

The Traffic register is a computer based register kept and administered by the National Road Administration. The register contains information regarding all registered vehicles and their registered owners. You can find out who the registered owner to a certain vehicle is, which vehicles a certain person is registered for as owner and the last three previous owners to a certain vehicle.

The Shipping register

The Swedish Shipping register is kept and administered by the local District Court of Stockholm and contains all ships with an overall length of at least twelve meters and an overall width of at least four meters. Inquiries about the ships (owners and mortgages) can be made by telephone as well as in writing.

Aircraft register

The Swedish aircraft register is kept and administered by the Swedish Civil Aviation Administration. The register contains information regarding all registered aircrafts and their registered owners. The register, which also contains information about outstanding mortgages, is kept and administered by the local District Court of Stockholm.

2.3.1.6. any other registers and lists?

The matrimonial register

The matrimonial register is a register covering the whole country. It is kept and administered by the National Statistics Office in Örebro and contains information about premarital settlements, documents of division of joint property and gifts between husband and wife.

The Securities register

The Securities register is kept by a company, värdepapperscentralen (VPC). This company has information about all shares listed on the Stockholm stock exchange and also other financial instruments like bonds, convertible debentures, convertible profit share certificates, subscription certificates and premium bonds. The company can give information about which shares or other securities a debtor is in the possession of.

Trotting- and gallophorse registers

The registers are kept and administered by the Swedish Trotting Central Association and the Swedish Horseracing Central Association and contain information about the
owner to a certain trotting- or gallophorse and which horses a certain individual is in possession of. The information if a debtor is an owner of a certain horse can be obtained by inquiring by telephone. Further information is provided on written inquiry.

Weapon register

There is no central weapon register for the whole country. Every police district has however, a weapon register for individuals resident in the district, from where you can get information about possessions of weapons.

2.3.2. What conditions apply to information requests at the register (including procedural aspects)?

2.4. Obtaining information from third parties

2.4.1. Who is obliged to provide information:

According to Chapter 4, § 15 of the Enforcement Code a third party has an obligation to provide information in an enforcement case. A third party is obliged to state whether the debtor has a claim on him or other financial dealings with him, which can be of importance for the assessment to what extent the debtor possesses distrainable property. An obligation to provide information incur also for a person who is in the possession of property belonging to the debtor as a pledge or in deposition or has hired the property.

2.4.1.1. the employer of the debtor?

The employer is obliged to provide information on the debtors incomes to the enforcement authority.

2.4.1.2. banks where the debtor’s accounts are kept (Please specify if there are central institutions which can provide information, e.g. the central cheque register (Zentrales Scheckregister))?5

In addition to bank accounts a bank is obliged to provide information also about safe custody or safe-deposit box belonging to the debtor. Also closely - related persons are obliged to provide information.

2.4.1.3. revenue offices (tax office)?

Tax register

The tax register is kept and administered by the tax authorities for taxation purposes. All taxpayers both individuals and legal entities are recorded in the base. Most of the information in this base is classified secret. The local Enforcement Authority has only access to debtors in their own region. Facts which could be found in this register are

5 Please refer to question 6.1. of the questionnaire about the garnishment of bank accounts.
e.g. the debtor’s sources of income, name of employer, bank accounts and real estate holdings.

2.4.1.4. pension and social insurance agencies?

_The regional social insurance office_

In order to get the prerequisites of a proper order of attachment of earnings you must have information about where the debtor is employed and the existence and size of accommodation allowance. The regional social insurance office provides the Enforcement Authority with such information.

_The social welfare office_

The social welfare office can provide information to the Enforcement Authority whether the debtor receives social allowance permanently or temporarily during a certain period.

_Private insurance companies_

Private insurance companies are obliged to provide information on the debtors assets in terms of capital or pension insurances.

2.4.1.5. other persons (for example lawyers, chartered accountants, tax consultants)?

Answer already available in other parts of the study.

2.4.2. Is this information request subject to certain conditions:

2.4.2.1. the refusal of the debtor to provide information voluntarily (see above 2.2.3.)?

Answer already available in other parts of the study.

2.4.2.2. a certain type of claim which is to be enforced (example: Alimony or child maintenance claims)?

Answer already available in other parts of the study.

2.4.2.3. If so, please indicate the extent of the respective obligation to give information (please structure the answer according to the questions following question 2.4.1.)

Answer already available in other parts of the study.

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6 As is the case in Germany under §§ 645 ff. ZPO.
2.4.3. Is the information given on the basis of a simple request of the creditor?
Answer already available in other parts of the study.

2.4.4. Is an order or other approval of the responsible court required?
Answer already available in other parts of the study.

2.4.5. Extent of the information (Please structure the answer according to the questions following question 2.4.1.)?
Answer already available in other parts of the study.

2.4.6. What sanctions are available in the case of failure / default?
The enforcement Authority can demand to get the information from a third party verbally or in writing and if necessary summon to an interrogation with prescribed fines (Chapter 2, § 11 of the Enforcement Code). The Enforcement Authority could prescribe fines in the event of the third party’s refusal to provide information in the matter (Chapter 2, § 15 of the Enforcement Code).

Provided there are special reasons the Enforcement Authority can submit an application to the District Court on the detention of the third party (Chapter 2, § 16 of the Enforcement Code). This provision is very seldom used.

2.5. In what form is the information given:
The enforcement authority has direct access to the following sources of information by computer; the accounting system for the enforcement authorities, the register for the injunction to pay and for the enforcement assistance, the tax register, the trade- and association register, the traffic register, the real estate register and the register of mortgage on a company’s assets.

The enforcement authority does not have direct access to the following sources of information by computer, but can forward requests for information in writing to the following sources of information; the regional social insurance office, the social welfare office, the matrimonial register, the securities register, the shipping register, the trotting- and gallop horse register and the weapon register.

2.5.1. on the basis of a standardized form?
Answer already available in other parts of the study.

2.5.2. by electronic exchange?
Answer already available in other parts of the study.

2.5.3. in a general, undefined form?
Answer already available in other parts of the study.

2.6. Limits to information demands in general:
The Swedish Judicial system and Swedish authorities work are strongly influenced by an open decision model. This is realised in the individual’s freedom of speech and the public’s right to attend court cases or meetings of the State, County or City authorities. The public also has a right to read documents drafted and kept by the different authorities.

However, the Swedish open decision model is not exclusive. Court procedures and official meetings may be proclaimed to be held “behind closed doors” and certain documents at the different authorities can be stated as “secret” or classified. Private entities can have specific rules stated in other laws or codes than The Law of Confidentiality.

The Law of Confidentiality is constructed in view of three different requisites. These are requisites concerning the interest that shall be protected, how much is covered by secrecy and how strong the secrecy shall be. There are three different degrees of protection. The regulations either contain a “straight damage requisite”, a “reversed damage requisite” or a “strict damage requisite”. The construction with a damage requisite means that he who is requiring the information is relevant in discerning whether secrecy shall prevail or not.

The straight damages requisite entails that the practitioner can make his decision within a relatively wide margin. The intention is that the damage assessment in this case can be done at the starting point. This means that the question whether secrecy applies or not, does not need to be tied to any damage assessment in the individual case. Instead what is decisive is, not who the person is, but what the information is about. If the information is such that, on average, it is seen as harmless then as a norm this would fall outside the rules of secrecy.

The reversed damages requisite proceeds that secrecy is the principle rule. Secrecy applies if it is not absolutely sure that it may be given out without causing harm. This means that the practitioner has a relatively narrow margin for his decision. In practice this means that in many cases the practitioner cannot give out information under such a rule of secrecy without knowing the identity or the purposes of the receiver.

The strict damage requisite is not very common and means “per se” that there is no requisite to be tried.

2.6.1. protection of the debtor’s privacy?
When one refers to protection for the “individuals affairs” in most cases the terms “harm” or “disadvantage” are used to describe the various inconveniences that the giving out of information can cause an individual.

In principle just about anything that can cause an inconvenience to an individual can be referred to as “harm” or “disadvantage”. The expressions have particular meanings. “Harm” refers to more economic damage while “disadvantage” refers to the individual’s privacy interference – in the first hand violation of integrity. However “disadvantage” in certain circumstances can also comprise economic circumstances for an individual.

The starting point for an evaluation whether “disadvantage” is present depends upon the experiences of the affected individual. The evaluation can be adjusted on the basis of the prevalent values in the community. Merely an occasion that a person experiences a certain discomfort or inconvenience or even feels that it is uncomfortable that the general public know something about him does not constitute “disadvantage” in the meaning of the Law of Confidentiality.

The interests of the individual, which are protected, are his personal and economic state of affairs. Economic affairs in this case are quite obvious. Personal affairs however are slightly vague. In the preparation of the Law of Confidentiality it has not been deemed especially important to closely analyse or interpret the expression. What is meant by “personal affairs” shall be decided by the ordinary usage of the language. The expression shall therefore be considered to comprise widely differing proportions such as a persons address or that a person suffers from a specific psychological condition. The expressions “personal and economical affairs” are kept separated for several reasons. One is that the secrecy regulations apply even to deceased persons and in appropriate parts also judicial persons. The latter reservation concerns the fact that they can hardly be said to have any “personal affairs”. Another reason is that sometimes it can be necessary to classify information, which is of a more personal nature as secret without a hindrance that the information regarding purely economic affairs is released.

In Chapter 7 – 9 of The Law of Confidentiality it is stated which conditions apply for when secrecy protection is regarded necessary in relation to an individuals personal and economical affairs. It is regulated in detail for different official agencies/organisations and private organisations in situations when the individuals need for secrecy outweighs the publics right to insight.

2.6.2. particular secrecy protec tions (Geheimhaltungsbedürfnisse):

The Law of Confidentiality contains a wide range of rules that in time delimit the secrecy for information in public actions. Because of the very nature of this topic the calculation of the length of time for secrecy can only be used in the question of public actions. This is due to the fact that there can be information which has not been documented thereby having no natural finishing point within which the time for secrecy is calculated.

The rules on time limiting of secrecy actions have also significance for secrecy in other respects i.e. how the rules apply on the obligation to silence. The time span for
the secrecy action therefore becomes rarely decisive in the question of how long the obligation to silence prevails.

The duty to observe secrecy has a time limit mainly for practical purposes. For the regulating of secrecy to be manageable it must contain certain elements of modelling. Because of this the Law of Confidentiality once and for all should decide with which point in time the harm-risk at latest should cease to exist. Even from pure points of principle it is of great importance that legislation states a definite time limit after which an action can never be held secret.

For the regulation to stand in agreement with the right of access principle, it is required that the given times actually function as maximum and not as standard times. The question of whether an action is given out or not shall always, within the given time for secrecy, be done with a finishing point in a real test of damage risk. The time limits of secrecy vary depending on which type of protection the secrecy has called for.

2.6.2.1. tax secrets?
According to chapter 9, 1 § The Law of Confidentiality secrecy applies in the actions of an authority concerning the determination of tax or taxation or in other authorisations for a basis for a determination of tax and for information on an individual’s personal or economic situation. Corresponding secrecy applies in the authority’s actions concerning the processing of or extraction of the Tax Data Base according to the law (2001:181) on the use of information in the Tax Administrations taxing operations for data that has been put into the database.

As can be seen in the formulating of the stipulation the secrecy is absolute i.e. there is no damage requisite. Secrecy however does not apply for judgment/decision, where in tax or pension-qualifying income determines or a basis of determination of tax is established provided that the judgment has not been announced in errands on:

- advanced notice in taxation or tax enquiry
- allowance that liability to taxations incomes, according to the rules on state income tax, shall not be regarded as upcoming from the disposal of shares in private companies
- the taxation of foreign experts, scientists or other key people when The Research Taxation Committee has made the judgment.

2.6.2.2. social secrets?
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2.6.2.3. bank secrets?
The protection of an individual against a bank not giving out information concerning the individuals economical situation to another is not covered by The Law of Confidentiality but by chapter 1, 10 § The Law of Banking. This is due to that the individuals standing and relationship to his bank is not regarded as the public’s
responsibility or that the regulating of the relationship between the bank and the customer is to be seen as a public judicial regulation. According to the Law of Confidentiality however secrecy applies for information that a state authority includes in an action with supervision over bank and credit companies, insurance companies, Institute of documents of value, Unit Trust companies etc. see Chapter 8, 5 § the Law of Confidentiality.

2.6.2.4. other secrecy protections?

The area for a rule of secrecy’s application, which follows that the secrecy becomes limited to a certain errand, a particular action or authority, has, in the preparation of the law, been called The Primary Area of Secrecy. Within this area thereby applies so-called “primary secrecy”. The law however includes rules that signify that the secrecy can spread outside of the primary area of secrecy. In the preparatory work this was called “secondary secrecy”. A condition for the secrecy to continue to apply for information leaving the primary area of secrecy is that a specific rule on this can be cited.

A stipulation on transferring of secrecy to the Swedish Government and Parliament, Justice Ombudsman and Chancellor of Justice also the courts and their legal executive and administrative actions can be found in Chapter 11 and 12 in the Law of Confidentiality. Moreover there is, besides Chapter 11-13, also directions on secondary secrecy in certain specific secrecy stipulations. The signification with these is that the secrecy in question follows the information leaving the stipulations primary area of application for use in other common actions.

2.6.3. To what extent do data protection regulations limit the availability of the information relevant to the transparency of assets?

It is evident from the preparatory work carried out for the Law on Personal Data and those laws that regulate the use of personal data within the National Tax Authority’s area of jurisdiction that these types of regulating are not aimed at being secrecy breaching or have the intention to decide whether data should be given out or not.

In the above given statutory instruments, only the forms for an eventual surrender of information are regulated, e.g. in which ways data can be given to another. With this it is meant to bring about a regulation for direct acquisition or other issuing mediums for computer processing of information.

A surrender of information (outgoing) supported by the Law on Personal Data or those laws regulating the use of confidential information within the jurisdiction of the National Tax Authority, normally assumes that the Law of Confidentiality approves
the surrender of information. Of importance is also who it is that requires certain information and in which way or by what media the information shall be given out.

The Law of Confidentiality further contains a stipulation in Chapter 7, 16 § that states that secrecy applies for personal information if it can be determined that an outlay would convey that the information would be handled in compliance with the Law on Personal Data.

2.6.4. Is the disclosure obligation (of the debtor, of public registers, of third parties) limited by the principle of proportionality?

An examination of the extent of damages is made when accessing whether or not an item of information should be classified as secret, in accordance with the secrecy stipulations being applied for that situation. The stipulations damage requisite (see section 2.6 above) gives the level for which the decision shall be based. Further examinations after a proportionality principle or such like are not carried out.

3. The disclosure of the debtor’s assets on the basis of an enforcement title

Since the 1st of October 2001 the Enforcement Authority has been applying a reversed requisite with its procedures in debt recovery and collection whereby presumption is now confidential. (See Chapter 9, 19 § Law of Confidentiality.) Confidentiality therefore, applies in the field of enforcement in cases or errands concerning debt recovery and collection procedures, according to the Law on Injunction against carrying out business, on an individual’s personal or economic situations if it is not clear that the individual or someone close may be damaged or harmed by the use of such information.

Exceptions from confidentiality have been made for certain information. Consequently secrecy does not apply to information on economic liability concerning the sought execution in an ongoing trial or errand and not either in the judgment of such a trial or errand. However if it is the first occasion within a two year period that the debtor has been actual at the Enforcement Authority and the debtor has paid his debt before a decision has been made by the authority on seizure or it has been established that the debtor lacks assets, which can be attached, secrecy will cover all the information on the debtor. If the debtor within a period of two years has a new application for enforcement made against him, secrecy will no longer cover any information on the debtor.

The exceptions under this area of confidentiality are therefore to a certain extent dependant upon the debtor’s own actions. The regulation entails that one and the same piece of information, within a relatively short period of time can change between being confidential and public.

7 As far as the legal position is identical in questions 2. and 3., the reporters can restrict to stating this briefly.
These regulations were introduced after weighing the differences of interest in regard to personal integrity against the interest of an effective credit information system, which has incurred the need for special trimmed directions for companies, involved in credit assessment.

3.1. Who has a right to obtain the information: 8

Who is entitled to take part of classified information has not been decided in any regulation or in the Law of Confidentiality. The basis is actually that publicity is the rule unless the individual, according to the Law of Confidentiality, has an entitlement to secrecy of certain information in a public proceeding. Who has the right to have certain parts of information depends greatly on an assessment of damages the by that specific authority.

3.1.1. the creditor and his legal representative?

A creditor has the right to view documents according to interpretation of the Law of Confidentiality although with certain limitations. Documents or other material cannot be given to a party if they contain confidential information in regard to the interest of the public or the individual. In this case it is the duty of the authority to inform the party on the content of the information in such a way that his rights be fulfilled without serious damage being inflicted on the interests, which are protected by confidentiality.

However, secrecy never restricts a party from taking part of a judgment or decision in a case or hearing. What is stated on the party also applies for the legal representative if he can prove his status. Another important restriction affecting parties is regulated in Chapter 6, 7 § Law of Confidentiality. The stipulation states that secrecy applies for information that has come or been collected by an authority or use in state or communal judicial disputes, if it can be presumed that the public or companies interests are jeopardised if the information is touched.

3.1.2. the court?

Regulations in the Law of Confidentiality are focused around the entire actions of the public and consequently for the courts. The term authority in the Law of Confidentiality points not only to the administration authorities but also toward the courts. Regulations in the Law of Confidentiality concerning courts have been

8 In answering this question (3.1.), the reporters should feel free to depart from the predetermined structure if this is necessary to draw a complete picture of the situation in the respective member state.
formulated with regard to the special circumstances that can occur there. These regulations are relatively complicated and have lead to a great number of diverse cases in the public courts.

The problem is not restricted to whether or to what extent secrecy (classified material and Code of Silence) applies in these cases or errands. The regulating must cover countless other questions, among others the question in which cases court proceedings can be held behind closed doors, so called “classified hearings”. In this case the regulating is only focused on the secrecy in the courts handling of justice and the administrating of justice. Confidentiality for information that does not relate to this follows the same rules applying for authorities in general.

In the Law on Confidentiality the rules are placed according to the interests they protect. Therefore these rules (regulations), which are directly applicable only in the courts, are placed among other regulations protecting the same interests. There is also a rule on the transfer of confidential material in the courts, see Chapter 12, 1 § Law of Confidentiality. The stipulation implies that classified material/information held by a court from an authority or from a person bound to secrecy by law, keeps its classification in the court. However, often the Law of Confidentiality includes directly applicable stipulations for a court that protect the same interests.

The regulation further implies that the Law of Confidentiality, or law to which the Law of Confidentiality refers, materially regulates all handling of confidential information in the courts. As the confidentiality according to said law in most cases requires both confidentiality in actions and a code of silence for those involved in the appropriate authority, the result is a corresponding confidentiality for the employee of the courts.

If classified material is brought into a case or a hearing in a court, it is the court’s duty to treat this material as it would be treated in similar circumstances by other authorities or departments. There are no special rules for the courts when the procedure is done in writing. However particular rules apply to information given at a hearing or which is included in a judgment or other court decision. Also certain specific classified stipulations are formulated so that the publicity becomes greater in a court of higher instance than in the first instance.

Apart from the written procedures in the courts it is quite common for oral deliberations. From a judicial view, it has been considered that great weight should be given to public awareness in the proceedings and judgments of courts. Publicity is considered to strengthen the public’s faith in the course of justice. In RF 2:11, it is stated that deliberations in courts, in principle, shall be made public with regard to common interest or those of the individual however it is unavoidable to limit the public awareness concerning certain information being brought to court proceedings.

There is also a difference in the regulation of confidentiality between the public Courts and the administrative Courts. Within proceedings in the public courts confidentiality applies only if there is a particularly strong reason, i.e. the information in question is of such importance that it be held confidential, which out weighs the public interest.

In comparison, in the Administrative Courts, the demand for confidentiality applies for the information to be brought into the hearing (RB 5:1 and 16 § of the Code of
Administrative Judicial Proceedings. It is likely that proceedings behind closed doors are to a wider extent held in the Administrative Courts than in cases in the Public Courts. This is partly due to the character of the cases and that the Administrative Courts have the facility to proceed behind closed doors in cases where the information is likely to be brought to the hearing and also due to the fact that the majority of cases in the Administrative Courts are in writing.

If information is brought into a public hearing confidentiality ceases to apply in the case. The court can decide to proceed behind closed doors and thereby keeping confidentiality for the information. If the court has held a public hearing or if an order of secrecy has not been conveyed in the case or judgment, the confidentiality ceases to apply for the information in the case or the action. Confidentiality also ceases to apply to information, which is included in the courts judgment or other judicial decision in the action. When confidentiality for information ceases to apply in a case or action it will no longer be confidential if the case or action follows to a higher court.

The court does however beforehand, have the possibility to ordain that secrecy for certain information applies, even if information appears in the judgment or decision where the strength of the public interest is weighed against the judicial security. Only in extremely special exceptions can parts be deemed secret. The Law of Confidentiality in these cases states that in matters of National Security and matters of equal importance then the courts will order a continuance of confidentiality. Certain sections in the European Convention for Human Rights and fundamental liberties also make it possible for the courts to order confidentiality on a judgment.

3.1.3. the (future) enforcement organ?

The Enforcement Authority deals with widely differing areas of practice, such as orders of payment and assistance (settlement of indisputable claims), execution according to selected codes (UB) along with debt collection, clearing debts and supervision in bankruptcy. For these different branches there are orders of confidentiality, which can be viewed, in their respective operational particulars.

Settlement of indisputable claims.
In this action, on the whole, there are no regulations of confidentiality; therefore information being handled by the Enforcement Authority is unclassified or public knowledge.

Execution according to selected codes along with debt collecting.
Regulations governing confidentiality (re. Chapter 9, 19 § Law of Confidentiality) contain a clause giving a presumption for secrecy.

Clearing of Debts.
Regulations can be found in Chapter 7, 35 § Law of Confidentiality. According to the paragraph confidentiality applies for information regarding an individuals personal circumstances only if he, or a close relation, can be harmed or disadvantaged by the use of such. Confidentiality is demarcated by a direct harm-requisite. Through this all sensitive information on the individual is protected.

Supervision of bankruptcy.
In accordance with Chapter 9, 1§ Law of Confidentiality, secrecy will be enforced, by the department supervising in bankruptcy, if information concerning private affairs or operations can be detrimental to the individual if disclosed. Without impediment of confidentiality, information can be submitted to an individual according to what is written in The Bankruptcy Act (1987:672). A straight damages requisition gives a precedent for confidentiality. This stands against a presumption to publicity. This provision is not applicable other than in the Enforcement Authority's role as the “department supervising bankruptcy”. Regulating confidentiality in an executive action has been covered in 9:19.

3.1.4. other organs (e.g. the public prosecutor)?

In Chapter 9, 17-18 §§ Law of Confidentiality, are regulations for secrecy concerning investigating e.g. in the interest of the individual. In Chapter 5, 1 § of the same law corresponding confidentiality regulations protect the public’s crime prevention and activities/actions by public Prosecutors. According to 9:17 confidentiality applies to information concerning an individual’s private and economic situation unless the following from 18 §:

1. in investigation for purposes in formulating a criminal prosecution.
2. in an urgency concerning forced coercion or action to prevent crime.
3. in an urgency concerning control registers and certain personal investigation according to Security Cover Law (1996:627).
4. in the Prosecutors, Police Departments, Inland Revenue (Tax offices), National Criminal Technical Lab/Forensic, Customs or Coast Guards activities in general to prevent, detect, investigate or prosecute crime.
5. if it is not clear that if the information can be “touched” without the individual or someone close being damaged or disadvantaged.

However 9:18 also states that confidentiality according to 17 § does not cover:

1. decisions whether prosecution shall be done or decisions whether an investigation shall be dropped.
2. information in errands on fines or methods of paying them.
3. information to do with custody according to 13 § p2 of the Police Code.

3.2. Can the court (or another person or institution mentioned in 3.1.) require information from the debtor about his financial situation?

The first condition for an authority to request information, on an individual’s personal or economic affairs, is that the authority needs the information for a hearing of a trial or a legal matter. If the collection of information has the support of a particular registry for such or is supported by law, the general collection of personal information may only be undertaken for special, particular, given or specific purposes. Information of course cannot either further be used for any purpose which is not associated to what the information was originally collected.
3.2.1. If so, on what conditions?
Information – which is usually classified as secret – can under certain circumstances be passed to another with reservations that limit the individuals right to pass the information further or to use the information a particular way. Reservations can only occur however when the information is passed to an “individual” (Private person). A reservation can consequently not apply towards anyone who may use the information in any public engagement. Note that a secrecy classification can only be disclosed to an employee of the department where the information is held.

3.2.2. Extent of the disclosure obligation?
An example with reservations could be shown in the following way:
This action is submitted to N.N. with the following reservations:
1. Certain information in the action, which encroaches an individual’s personal affair, may not be passed further, unless the information cannot be related to the individual.
2. N.N. shall store the information in such a way that no others can gain access to it.
3. The document and copies of it shall be destroyed by 31 march 2003.
Stockholm 2003-03-11
By a departments means

3.2.3. What sanctions are available in the case of failure / default?
The individual can – if the information has been used incorrectly – demand the authority to correct them. In principle all treatments of personal particulars opposing the legislation, regulating the procedure, shall be corrected. If personal particulars have been used contrary to the purpose for which they where obtained the individual can demand compensation according to the statute or law governing the registry.

Damages incurred to legal entities or to relatives to deceased people are not covered by this stipulation. Instead they can apply for compensation within the parameters of the law governing compensation. A clerk who requests information without due reason or uses information contrary to the purpose for which it was obtained could be liable to prosecution.

3.3. Information from public registers:
3.3.1. From which public registers can information be obtained:
3.3.1.1. land register?
Answer already available in other parts of the study.

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9 Please attach a usual form to the report.
3.3.1.2. companies’ register?
Answer already available in other parts of the study.

3.3.1.3. any available list of assets and liabilities (Schuldnerverzeichnis)\textsuperscript{10}?
Answer already available in other parts of the study.

3.3.1.4. insolvency or bankruptcy registers?

Bankruptcy
Only insolvent individuals or legal entities can be declared bankrupt.

1. The Patent and Registration Office (PRV) keeps a register of all bankruptcies that have been declared by all the Courts in Sweden. The register is governed by law. The Patent and Registration Office has the authority to verify in a written document if an individual or a legal entity has been declared bankrupt.

2. The ten Enforcement Authorities (KFM) also have information of all bankruptcies that have been declared by all the Courts in Sweden. The information can be obtained from The National Tax Board, which is the supervising Authority of the Enforcement Authorities. The information is stored in a computer-based register called REX.

3. There are also ten Supervising Authorities in bankruptcy, which have information of all bankruptcies that have been declared by all the Courts in Sweden. The information can be obtained from The National Tax Board, which also is the supervising Authority over them. The information is stored in a computer-based system called OPTIMA. OPTIMA is mainly used as a support for employees of the Supervising Authorities in Bankruptcy and is not regulated by law.

Reorganisation of Business

A petition for reorganisation of a business may be made either by the debtor or by a creditor and is filed at a district court. These are registered in REX.

Debt Relief

Under the Debt Relief Act it is possible in certain circumstances for private individuals who do not run a business to obtain debt relief. These applications are handled by the ten Enforcement Authorities where registers over all people who have received debt relief are stored in a computer-based system called SKUSAN. The information can be obtained from the National Tax Board, which is the supervising Authority.

3.3.1.5. motor vehicle register (ship register, airplane register)?)
Answer already available in other parts of the study.

\textsuperscript{10} For Germany see § 807 ZPO, if the debtor has already been obliged to deliver the affidavit about his assets in earlier execution proceedings.
3.3.1.6. any other registers and lists?
Answer already available in other parts of the study.

3.3.2. What conditions apply to information requests at the register (including procedural aspects)?
Answer already available in other parts of the study.

3.4. Obtaining information from third parties
3.4.1. Who is obliged to provide information:
3.4.1.1. the employer of the debtor?
Answer already available in other parts of the study.

3.4.1.2. banks where the debtor’s accounts are kept (Please specify if there are central institutions which can provide information, e.g. the central cheque register (Zentrales Scheckregister))\(^{11}\)?
Answer already available in other parts of the study.

3.4.1.3. revenue offices (tax office)?
Answer already available in other parts of the study.

3.4.1.4. pension and social insurance agencies?
Answer already available in other parts of the study.

3.4.1.5. other persons (for example lawyers, chartered accountants, tax consultants)?
A lawyer has an obligation of secrecy (professional confidentiality) according to the Swedish Bar Associations Code (§ 34) and also due to chapter 8 § 4 of the Swedish Code of Judicial Procedure where it is stated that a lawyer has a duty not to divulge information he gains from his clients in his profession. There are also certain limitations in the duty to give witness in chapter 36 § 5 of the Swedish Code of Judicial Procedure.

There are also certain rules concerning trustees in bankruptcies, who nearly mainly are lawyers. Their duties to give information to the creditors etc is stated in chapter 7 § 9 in the Bankruptcy Act.

\(^{11}\) Please refer to question 6.1. of the questionnaire about the garnishment of bank accounts.
Accountants have an obligation of secrecy stated in chapter 10 § 38 in The Companies Act. Accountants are however, according to the 42 §, obliged to give information to the trustees in bankruptcies if the audited company has been declared bankrupt. Accountants are also obliged to give information to the prosecutor if a preliminary inquiry for a criminal case has started. Accountants are now also obliged to notify the prosecutor if he suspects criminal acts as stated in 38-40 §§ in The Companies Act.

Tax consultants are, as lawyers and accountants, not an “Authority” and therefore the Swedish Secrecy Act or other rules of disclosure are not applicable. Nor are they governed by any Supervising Authority. Tax consultants presumably have no right to give any information about their clients without their client’s permission.

3.4.2. Is this information request subject to certain conditions:
3.4.2.1. the refusal of the debtor to provide information voluntarily (see above 3.2.3.)?
Answer already available in other parts of the study.

3.4.2.2. a certain type of claim which is to be enforced (example: Alimony or child maintenance claims)?
Answer already available in other parts of the study.

3.4.2.3. If so, please indicate the extent of the respective obligation to give information (please structure the answer according to the questions following question 3.4.1.)
Answer already available in other parts of the study.

3.4.3. Is the information given on the basis of a simple request of the creditor?
Answer already available in other parts of the study.

3.4.4. Is an order or other approval of the responsible court required?
Answer already available in other parts of the study.

3.4.5. Extent of the information (Please structure the answer according to the questions following question 3.4.1.)?

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12 As is the case in Germany under §§ 645 ff. ZPO.
3.4.6. What sanctions are available in the case of failure / default?
Answer already available in other parts of the study.

3.5. In what form is the information given:
3.5.1. on the basis of a standardized form?
Answer already available in other parts of the study.

3.5.2. by electronic exchange?
Answer already available in other parts of the study.

3.5.3. in a general, undefined form?
Answer already available in other parts of the study.

3.6. Limits to information demands in general:
3.6.1. protection of the debtor's privacy?
Answer already available in other parts of the study.

3.6.2. particular secrecy protections (Geheimhaltungsbedürfnisse):
3.6.2.1. tax secrets?
Answer already available in other parts of the study.

3.6.2.2. social secrets?
Answer already available in other parts of the study.

3.6.2.3. bank secrets?
Answer already available in other parts of the study.

3.6.2.4. other secrecy protections?
Answer already available in other parts of the study.

3.6.3. To what extent do data protection regulations limit the availability of the information relevant to the transparency of assets?
Answer already available in other parts of the study.

3.6.4. Is the disclosure obligation (of the debtor, of public registers, of third parties) limited by the principle of proportionality? Answer already available in other parts of the study.

4. Factual background information

4.1. To what extent do actual execution problems exist in your country?

No substantial problems.

4.2. Are there legal-political proposals to reform the existing procedures?

No.

4.3. Are there non-public data sources which are open to the creditors (examples: Schufa, Kreditreform)?

Yes, there are “credit information” companies, which sell information gathered on debtors and non-debtors in the private market place, e.g. Intrum-Justitia and Upplysningscentralen (UC).

5. The cross-border context

5.1. Is access to information about the debtor’s assets also open foreign creditors / foreign enforcement organs:

Yes, in principle and on the corresponding conditions as for a domestic private judgment creditor, e.g. there has to exist a (foreign) enforceable judgement at the Swedish enforcement authority in order to, at the enforcement of the claim, benefit from the information available for enforcement purposes at the authority. This means that a foreign private judgment creditor in such situations, or in case he is represented by a foreign enforcement organ, could benefit from and obtain most of the information re. the debtor’s assets and debts through the investigations of the enforcement authority as evident from the previously mentioned sources of information in this report. Otherwise, the openness of access to information is limited at the same level of access as to the general public.
Such information is, however, yet seldom possible to reach through databases on Internet. See in this context in addition comments in, enclosed annex; Access to information for enforcement and recovery purposes and international co-operation.

5.1.1. with regard to any disclosure made by the debtor?
   See under 5.1.

5.1.2. with regard to public registers?
   See under 5.1.

5.1.3. with regard to information provided by third parties?
   See under 5.1.

5.2. What are the conditions for access by the foreign creditor / enforcement organ?
   See under 5.1.

5.2.1. Are there special, additional conditions?
   See under 5.1.

5.2.2. For example the recognition of the foreign enforcement title\textsuperscript{13}?
   See under 5.1.

5.2.3. Example: letter of request (Rechtshilfeersuchen) of a foreign enforcement organ?
   See under 5.1.

5.3. Is the debtor required to disclose assets which are located abroad:
   No, he is not obligated by law to make such a disclosure (such an obligation exist on the other hand in bankruptcy).

5.3.1. in an affidavit?
   See 5.3

5.3.2. with regard to registers?
   See 5.3

5.3.3. with regard to disclosure obligations of third parties (tax offices / garnishees (employer, bank))? 
   See 5.3

5.4. Has your country ratified international conventions that (also) address questions of transparency of assets (in civil and commercial matters) ?
   No.

\textsuperscript{13} Could you please also describe the meaning of Art. 47 I VO 44/01/EG in this context.
5.4.1. Multilateral conventions (e.g. in relation to family maintenance)\textsuperscript{27} 
No.

5.4.2. Bilateral treaties\textsuperscript{28} 
No.

5.5. In your opinion, which model of a cross-border cooperation would be preferable to improve the transparency of assets at the European level?

5.5.1. Introduction of a European legislation to require the debtor to deliver an affidavit about his assets regarding the European judicial area ("European Assets Declaration")? 
No, for the reasons developed on p. 5 in the enclosed annex: Access to information for enforcement and recovery purposes and international co-operation, to this report.

5.5.2. The setting-up of a common system for an exchange of information between enforcement authorities / agents or official register keepers? 
Yes, for the reasons developed in the enclosed annex: Access to information for enforcement and recovery purposes and international co-operation, with enclosures, to this report.

5.5.3. Additional proposals?
See recommendations on the harmonization of national legislations in enclosed annex; Access to information for enforcement and recovery purposes and international co-operation, to this report.

\textsuperscript{27} Please name the convention and provide an international reference (e.g. United Nations Treaty Series)
\textsuperscript{28} Please name the treaty and provide an international reference (e.g. United Nations Treaty Series)