



SWEDEN: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 9 October 2007.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of Findings

1. Sweden has taken additional steps to implement the OECD Convention since its Phase 2 examination in June 2005. The Working Group notes favourably that Sweden has put into effect a number of recommendations in the Phase 2 report.

2. Sweden has taken several measures to promote awareness of the Convention and foreign bribery. The Ministry of Foreign Affairs held several seminars on corruption. Each seminar included a demonstration of the Business Anti-Corruption Portal developed by Danida, the Danish Aid Authority. 35 Swedish-based companies participated in the seminar in Stockholm, while seminars outside Sweden were attended by local companies and foreign subsidiaries based in the host country. SEK and EKN, Sweden's export credit agencies, describe their anti-corruption policies and measures on their Web sites. EKN prepared a staff manual on foreign bribery and has raised awareness of the subject among its staff through training seminars. Additional activities reported by Sweden pertained to preventing corruption in general, such as the recent establishment of an anti-corruption network of public authorities. Other activities related to domestic corruption, such as the Systembolaget and Skandia prosecutions, and the development of the Guidelines on Bribery and Conflict of Interest for Public Sector Employees. The National Board for Public Procurement disseminated the Guidelines but did not engage in activities to specifically raise awareness of foreign bribery. Considering the totality of Sweden's efforts, Recommendations 1(a) and 1(b) have been fully implemented.

3. Concerning arms exports, Sweden participated in a project to develop integrity pacts and held seminars on corruption and integrity measures for the defence industry. In deciding whether to issue a licence to export military or dual-use goods, the Inspectorate of Strategic Products (ISP) takes into account the level of corruption in the recipient country. This practice conforms to the European Code of Conduct on Arms Exports. The ISP also considers whether an applicant has been involved in bribery. Information in this regard is gathered through regular meetings between the ISP and Swedish arms manufacturers. In light of these efforts, Recommendation 2 has been fully implemented.

4. Sweden has also taken steps involving its foreign diplomatic representations. In 2005, the Ministry of Foreign Affairs adopted a Plan of Action against Corruption and distributed the Plan to all departments and foreign missions. The Plan was revised and disseminated again in 2007. The Plan encourages (but does not oblige) Swedish officials to report suspicions of foreign bribery to the Ministry or law enforcement. In addition, corruption is a component of courses for new recruits, staff to be posted abroad, and personnel involved in migration issues or export promotion. Recent seminars for Heads of Mission also covered corruption and reporting. Accordingly, Sweden has fully implemented Recommendation 3.

5. In the area of official development assistance (ODA), Sweden confirmed to the Working Group that the Swedish International Development Agency (Sida) has adopted a new definition of "corruption" in its Anticorruption Regulation. The new definition explicitly covers the offering of improper gains by institutions, organisations, companies and individuals. A reference to "identification of loss or damage" has been eliminated. These aspects of the new definition implement Recommendation 4(a) satisfactorily.

6. As for reporting by ODA agencies, Sweden confirmed that Sida has implemented a procedure for reporting cases in which a development partner or consultant is suspected of foreign bribery. An employee is presently required to report such cases to his/her manager who will in turn forward the matter to Sida's Anti-corruption Adviser. After reviewing the suspicions, the Adviser submits the case to Sida's senior management to decide whether to report the matter to law enforcement. Sida is also expected to review this reporting mechanism shortly. Swedfund, Sweden's other ODA agency, has maintained the same reporting procedure since the Phase 2 review. Employees report cases to the Chief Legal Adviser who in turn may submit the matter to the police or prosecutor's office. On the whole, the Working Group is satisfied that Sweden has implemented Recommendation 4(b).

7. The Working Group had also recommended that Sweden ensure that standard contracts used in ODA specifically prohibit foreign bribery. In fall 2007, Sida initiated a review of its anti-corruption policies that will include an assessment of its standard contracts. Swedfund has not amended its standard contracts in this respect since Phase 2. Sweden maintained that Swedfund's contracts continue to explicitly prohibit and sanction corruption. However, the Working Group concluded that Sida and Swedfund have not implemented Recommendation 12(c).

8. As for money laundering, the Working Group noted in Phase 2 that few investigations result from the relatively large number of suspicious transaction reports filed in Sweden. After analysing the issue, Sweden concluded that this discrepancy was caused by a requirement that reports must be filed for all transactions over a certain amount. Consequently, many reports do not stem of transactions that relate to criminal offences. To remedy the problem, Sweden has instructed reporting entities (such as banks and exchange offices) to file reports only when there is suspicion. Efforts have been made to improve intelligence-sharing among investigative agencies. Sweden also plans to study information-flow among bodies involved in fighting economic crime. In light of these efforts, Sweden has fully implemented Recommendation 6.

9. Regarding international co-operation, Sweden spontaneously shares information on foreign bribery cases with authorities in other countries. Swedish police shares intelligence with their foreign counterparts, while prosecutors forward relevant information to other countries. Recommendation 7 has accordingly been fully implemented.

10. Two recommendations in Sweden's Phase 2 Report concerned the prosecution of foreign bribery cases. First, the Group noted that Sweden requires government (Cabinet) authorisation to prosecute foreign bribery that is committed outside its territory. Sweden has since considered the appropriateness of this arrangement. It concluded that changes were not necessary because the Prosecutor-General and Cabinet have a duty under international law to observe Article 5 of the OECD Convention. Factors such as the potential effect upon relations with another state will therefore be disregarded. Sweden also clarified that the Prosecutor-General may seek authorisation from Cabinet but is not obliged to do so (contrary to what was stated in the Phase 2 Report). Recommendation 11 has therefore been satisfactorily implemented.

11. The Phase 2 report also noted that Sweden's rule of mandatory prosecution may be overridden when, among other things, the "public interest" so requires. The Working Group recommended that Sweden issue guidelines to prosecutors clarifying that prosecution of foreign bribery is always in the public interest, subject to certain specific exceptions. Sweden has not issued any guidelines to this effect, though the Development Centre of the Swedish Prosecution Authority will be asked to examine this matter. In the meantime, Recommendation 10 has not been implemented.

12. There were also developments concerning the liability of legal persons. Sweden amended the Penal Code provisions on corporate fines on 1 July 2006. The amendment abolished the requirement that the predicate crime involve a gross disregard of the obligations associated with the company's business

activity or otherwise be of a serious nature. A simplified procedure was introduced for imposing fines not exceeding SEK 500 000 (EUR 55 000). Sweden also increased the maximum corporate fine to SEK 10 million (EUR 1.1 million). The Working Group finds that the sufficiency of the new maximum fine should be assessed in conjunction with the use of confiscation against legal persons. In this respect, Sweden reported that the use of confiscation against legal persons will be facilitated by assigning all corruption prosecutions to the National Anti-corruption Unit. The reason for this approach is to ensure consistency among all prosecutions, including in the use of confiscation. Nevertheless, the Working Group notes that corporate fines and confiscation have yet to be imposed against a legal person in Sweden for bribery. Sweden has not taken measures that specifically address the application of confiscation against legal persons in foreign bribery cases. Nor has it specifically drawn the attention of investigators, prosecutors and judges to the mandatory nature of corporate fines or to the application of corporate fines to intentional crimes. Accordingly, more could be done to ensure that confiscation and corporate fines are applied in practice against legal persons. For instance, Sweden could consider issuing manuals or internal directives to the relevant investigators, prosecutors and judges. For these reasons, Sweden has implemented Recommendation 9(a) but has only partially implemented Recommendations 9(b) and 9(c).

13. As for sanctions for foreign bribery generally, Sweden has broadened the basis for confiscating criminal proceeds by extending the measure to indirect proceeds (i.e. proceeds of proceeds). There is also a proposal for “extended forfeiture”, i.e. upon a conviction of certain serious crimes, a court may forfeit the convicted person’s property that probably derived from other criminal activity. To highlight the importance of confiscation, the subject is discussed in several forums attended by investigators, prosecutors and judges. These included different initiatives by the Swedish Prosecution Authority’s Development Centres in Stockholm and Malmö. Sweden has also established a working group to develop methodology in confiscation and to work with training and attitudes. Nonetheless, the Working Group finds that Sweden could further engage in activities that focus more specifically on confiscation and which target investigators, prosecutors, and judges. Recommendation 12(a) therefore remains partially implemented.

14. Concerning debarment from public procurement as a sanction for foreign bribery, a new law implementing two new European Union directives will come into force on 1 January 2008. Sweden confirmed that the new law allows debarment if a legal person has received a corporate fine under the Penal Code, and if the fine relates to an act committed in the conduct of the legal person’s business. The new law will thus allow debarment of legal persons that have received a corporate fine for foreign bribery. To verify whether a participant in public procurement has been convicted of foreign bribery, the new law allows a procuring authority to request a copy of the participant’s criminal record. The participant may also provide a sworn statement that he/she does not have a prior conviction. With these developments, Sweden has fully implemented Recommendation 12(b).

15. As for the remaining recommendations, Sweden has established an inquiry to consider the reporting of foreign bribery by auditors (Recommendations 5(a) and 5(b)). The inquiry is expected to report to the government by September 2008. Sweden is also considering the terms of reference for an inquiry that will, *inter alia*, examine the definition of foreign public officials *viz.* officials of a public international organisation of which Sweden is not a member (Recommendation 8). In the meantime, these recommendations have not been implemented.

16. Finally, the Phase 2 Report identified several additional issues for follow-up. The Working Group will continue to monitor these issues since there have not been legislative developments or sufficient practice on these matters since the Phase 2 examination. Regarding Follow-up Issue 13(a)(ii), Sweden’s Supreme Court has agreed to hear a case involving the interpretation of “impropriety”. The Court’s eventual decision may elucidate the issue.

b) Conclusions

17. Based on these findings, the Working Group concludes that Sweden has not implemented Recommendations 5(a), 5(b), 8, 10, and 12(c), and has partially implemented Recommendations 9(b), 9(c), and 12(a). The Working Group considers the key outstanding Recommendations are 5(a), 5(b) and 8. The remaining Recommendations have been implemented or dealt with in a satisfactory manner.

WRITTEN FOLLOW-UP TO PHASE 2 REPORTS

Name of country: Sweden

Date of approval of Phase 2 Report: 21 September 2005

Date of information: 13 September 2007

Part I. Recommendations for Action

Text of recommendation:

1. With respect to general measures to raise awareness of, to prevent and to detect bribery of foreign public officials, the Working Group recommends that Sweden:
 - a) continue efforts to make Swedish companies more aware of their exposure to solicitations of bribery by foreign public officials (Revised Recommendation I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry for Foreign Affairs has continued to raise awareness, inter alia, by arranging more seminars. During the past year, when Sweden held the Presidency of the Council of the Baltic Sea States, a series of seminars were arranged in various Member States, including one in Stockholm. Each seminar has included a demonstration on how to use the Business Anti-Corruption Portal, developed for the Danish Aid Authority, Danida. Sweden and a number of other countries have recently become partners to the portal. Links to relevant Swedish organisations, including Swedish missions abroad, are in the process of being incorporated. Among these organisations are the Swedish Export Credits Guarantee Board, the Swedish Export Credit Corporation and Sida. These organisations have likewise included references to the portal on their respective websites.

At the beginning of 2006, the Swedish Export Credits Guarantee Board (EKN) started to monitor its 22 largest corporate clients with a view to raising their awareness.

The Swedish Export Credit Corporation (SEK) provides information on the offence of bribery of foreign public officials on its website as well as on its lending application forms. An anti-corruption policy is also available on SEK's website within the framework of its overall corporate social responsibility commitments.

The establishment of the National Anti-Corruption Unit within the Swedish Prosecution Authority in

2003, has played a very important role in raising awareness about corruption in general. The Unit has received a lot of publicity mainly in connection with the detection and prosecution of a large number of employees of the alcoholic beverage monopolist, the publicly owned Systembolaget and employees of the insurance company Skandia. The Unit has been very active in supporting the development of integrity measures in other public authorities, mainly such exposed to risks for corruption. The Unit also took the initiative to set up a network with such agencies. Later Verva, the Swedish Administrative Development Agency, has taken the responsibility for administering the network. On 30 August participants in a seminar from a broad range of public authorities decided to establish a national anti-corruption network with the view to fostering the exchange of information on best practice. So far, more 80 public authorities participate.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

1. With respect to general measures to raise awareness of, to prevent and to detect bribery of foreign public officials, the Working Group recommends that Sweden:
 - b) raise the awareness of the offence of bribery of a foreign public official among public officials, particularly those of the Swedish Export Credit Guarantees Board, the Swedish Export **Credit Corporation and the National Board for Public Procurement (Revised Recommendations I and Ia).**

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry of Finance, in cooperation with the Swedish Association of Local Authorities and Regions, has published Guidelines regarding bribery and conflict of interest. These Guidelines are addressed to all public employees, including employees of the EKN and the National Board for Public Procurement. The National Board for Public Procurement has published information about the Guidelines in its newsletter, which is available to all contracting authorities. Further information will be published in connection with the new legislation on public procurement and on procurement within special sectors (please see 12 (b)).

EKN has completed a manual for its staff on how to apply the OECD Recommendation on Bribery and Officially Supported Export Credits. EKN has also enlisted the assistance of the Prosecutor-General of the National Anti-Corruption Unit to raise awareness among its staff.

SEK has included anti-bribery information on its internal website, see the response to 1 (a).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

2. With respect to the prevention and detection of bribery of foreign public officials in the arms export sector, the Working Group recommends that Sweden encourage the Swedish defence industry to develop strong anti-corruption measures, and ensure that the decision-making bodies for providing licenses for exporting military equipment and dual-use goods consider whether applicants have been involved in bribery as well as the level of risk of corruption in relation to arms procurement in the destination country (Revised Recommendations I and II.v).

Actions taken as of the date of the follow-up report to implement this recommendation:

Sweden has had long-standing cooperation with Transparency International (UK) with a view to fighting corruption in arms deals. The Swedish and UK governments have financed a project aimed at developing integrity pacts for arms deals. The Ministry arranged a seminar for the Swedish defence industry in 2006 to discuss integrity measures and to encourage defence companies to develop integrity measures. This year TI (Sweden) arranged a seminar on corruption in the defence industry.

The government agency that issues licences for exporting military equipment and dual-use goods, the Swedish Inspectorate of Strategic Products (ISP), conducts awareness-raising training with its staff. The ISP has adopted an internal policy paper on bribes and on conflict of interest.

When a company applies for a manufacturing or brokering permit, it will be investigated by the police.

The ISP complies with the European Code of Conduct on Arms Exports which, in its User's Guide, mentions corruption in the recipient country as a factor to be considered before making decisions on licences. The Government is active in the EU with the view to improving the application of the Code in this respect.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

3. With respect to the role of Swedish foreign representations, including embassy personnel, in preventing and detecting bribery of foreign public officials, the Working Group recommends that Sweden take further measures to increase the awareness of foreign representations of corruption issues and of the steps that should be taken where credible allegations arise that a Swedish company or individual has bribed, or taken steps to bribe, a foreign public official, including encouraging the reporting of such allegations to the competent authorities in Sweden (Revised Recommendation I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry for Foreign Affairs adopted a Plan of Action against Corruption in June 2005. The Plan was disseminated to all the departments at the Ministry in Stockholm and to all missions abroad, with clear instructions from the State Secretary for Foreign Affairs to put it into practice. The Plan has been revised this year. The revised version was disseminated in June with similar instructions from the State Secretary to apply the plan. Important objectives of the plan are to increase awareness, ensure that there is no corruption in any of the activities of the Ministry and its missions and ensure that there is no corruption in export promotion activities.

Many efforts have been made to raise awareness about the adverse effects of corruption. Corruption has been included as an integral part of all courses given to newly recruited personnel, personnel to be posted abroad, and personnel working with migration issues and with export promotion. Recently, corruption was an item on the agenda of seminars for Heads of Mission on their role as employers. The issue of reporting is always given particular attention.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With respect to the prevention and detection of bribery of foreign public officials in official development assistance (ODA), the Working Group recommends that:
 - a) the Anticorruption Regulation of May, 2001 of the Swedish International Development Agency should be amended to clarify that “corruption” includes the bribery of foreign public officials and that the identification of loss or damage is not necessary to report suspicions of bribery of foreign public officials (Revised Recommendation I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Government has recently instructed the Swedish Agency for Development Evaluation (Sadev) to evaluate anti-corruption measures in Swedish development cooperation. Sadev is to evaluate the work of the Ministry for Foreign Affairs and the Swedish International Development Cooperation Agency (Sida) to prevent corruption and minimise the risk of corruption for Swedish support in development cooperation, the existing follow-up and control mechanisms, and how cases of corruption are followed up. On the basis of the evaluation Sadev is to submit proposals concerning necessary measures to further improve the work of combating corruption in Swedish development cooperation. The report will be published no later than 15 May 2008.

Fighting corruption was one of Sida's strategic priorities for budget years 2005–2006. A draft follow up report of the Strategic Priority based on a questionnaire to all Embassies with Sida staff and all Departments within Sida Headquarters (HQ) was presented to Sidas Director General on August 30th 2007. A condensed version will be available later. It is clear that both awareness and knowledge regarding corruption issues and the Sida Rule and Guidelines on anti-corruption have increased in the organization. The number of Embassies with their own anti-corruption strategies related to handling of ODA have doubled since 2004. Corruption risk assessment is improving at country level in Development Cooperation Strategy Processes. HQ Departments have developed sector specific guidance in the areas of infrastructure, environment and water. Check-lists for Managers action regarding suspicion of corruption as well as a check-list on risk analysis at contribution level have been produced. However the area of risk analysis is deemed by Embassies and HQ as in need for further improvement.

Sida has revised its definition of corruption. A new version coherent with the OECD recommendations was presented by the Legal and Policy departments to the Director General for decision on September 10th, 2007.

Sida has created a new post in its legal services division for procedures, coordination and advice on how to deal with suspicions of corruption in the activities of the organisation.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

4. With respect to the prevention and detection of bribery of foreign public officials in official development assistance (ODA), the Working Group recommends that:
 - b) the competent authorities in ODA take steps to ensure an effective system for reporting suspicions of bribery of foreign public officials to law enforcement authorities in Sweden and/or abroad (Revised Recommendation I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The main message of Sida's existing anti-corruption regulation is "Never accept. Always Act. Always inform". A central task for the new post as full-time Anti-corruption Adviser is to propose an effective system for the handling of cases of suspicion of corruption within Sida. This was done on September 4th, 2007. The proposal is to centralize the entry of cases to one single function. The handling of a case should follow the functions of financial responsibility. When reasonable suspicion of a corruption related crime involving Swedish Civil Servants arises, Sida as all other agencies of the Public Administration, is obliged to report this to the National Anti-Corruption Unit of the Swedish Prosecution Authority.

The proposal for an improved system was well received by Sida Management who decided that its final design and implementation will be carried out within the framework of a general revision of Sidas Anti-Corruption Rule and Guidelines, to be initiated during the fall of 2007.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. With respect to the prevention and detection of bribery of foreign public officials through accounting and auditing, the Working Group recommends that Sweden should:
 - a) require an auditor to report indications of a possible illegal act of bribery to the board of directors of the audited entity regardless of who within the company structure perpetrated the offence (Revised Recommendation V.B.(iii)).

Actions taken as of the date of the follow-up report to implement this recommendation:

The reporting requirements were under consideration prior to the adoption of new reporting rules in 1999. The matter is complicated, due, among other things, to the changes in international standards that in principle apply in Sweden and that, within a few years, will apply throughout the EU. The Government has instructed an inquiry to propose ways of implementing the new EC Statutory Audit Directive. The inquiry has also been instructed to consider the OECD Recommendation. The inquiry is to present its report no later than September 2008. Following the completion of the inquiry, the Government will consider the Recommendation.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

5. With respect to the prevention and detection of bribery of foreign public officials through accounting and auditing, the Working Group recommends that Sweden should:
- b) consider requiring the auditor to report indications of a possible illegal act of bribery to the competent authorities regardless of (i) who within the company structure perpetrated the offence, (ii) whether the economic damage from the suspected crime has been compensated and other prejudicial effects of the action have been remedied, and (iii) whether the offence is considered of minor significance (Revised Recommendation V.B.(iv)).

Actions taken as of the date of the follow-up report to implement this recommendation:

Please see the response to 5 (a).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

6. With respect to the prevention and detection of bribery of foreign public officials through anti-money laundering measures, the Working Group recommends that Sweden analyse the reasons for the low number of investigations and prosecutions compared to the number of suspicious transaction reports, with a view to increasing the effectiveness of the money laundering reporting system for the purpose of detecting and preventing the offence of bribing a foreign public official (Convention, Article 7; Revised Recommendation I).

Actions taken as of the date of the follow-up report to implement this recommendation:

The great difference between the number of reported suspected transactions and the number of crime investigations/prosecutions is mainly due to the fact that many reports are made in response to a fixed monetary limit being exceeded. Consequently, many of the transactions thus reported do not constitute criminal offence.

The National Economic Crimes Bureau, the National Financial Intelligence Service, banks and currency exchange offices are collaborating with a view to improving the supporting documentation submitted to the police and prosecutors and avoiding “over-reporting”.

Guidance is given and has been improved further. A special information campaign together with the EBM and FI was directed at money exchange offices in December 2005. In these meetings it was clearly underlined that the report must entail the reasons for suspicion, that reports should only be filed

when ML/FT is suspected and not be cause exchanges over a certain amount (15.000 Euro) has been made. These meetings were considered to have been very successful and will be followed up. In addition to meetings, the campaigns will in future encompass brochures and training.

In addition to this, in 2006 the Swedish National Economic Crimes Bureau and the National Financial Intelligence Service started a cooperative project which included setting up new routines for the transfer of intelligence between the authorities in this area. In the same year, a cooperative project was started between the authorities represented in the Economic Crimes Council (the Swedish Prosecution Authority, the Swedish National Economic Crimes Bureau, the National Criminal Police, the Swedish Tax Agency, the Swedish Customs Service, Finansinspektionen [the Financial Supervisory Authority] and the Swedish Companies Registration Office). In May 2006 the Economic Crimes Council decided to appoint a working group whose responsibilities included mapping the flow of information between the authorities, with a view to more effective information exchange concerning suspected money laundering. This working group has completed its assignment and has delivered a report to the Economic Crimes Council. Following this, the Economic Crimes Council in turn decided to pass on the report to the Money Laundering Inquiry for purposes of possible new legislation, and to the National Financial Intelligence Service.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

7. With respect to investigations of bribery of foreign public officials, the Working Group encourages Sweden to spontaneously share information regarding cases of bribery of foreign public officials with authorities in other countries, when such information might assist the receiving authority in initiating or carrying out an investigation, prosecution or judicial proceeding or lead to a request for mutual legal assistance (Revised Recommendations I, II.vii and VII.i).

Actions taken as of the date of the follow-up report to implement this recommendation:

In most countries, including Sweden, the issue of information gathering outside an ongoing criminal investigation is a matter of criminal intelligence and thus a police responsibility. This does not prevent information in corruption cases being shared between countries via the prosecutors.

Information about corruption cases is forwarded from Swedish prosecutors to other countries where deemed relevant.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

8. With respect to the offence of bribing a foreign public official, the Working Group recommends that Sweden ensure that the notion of a foreign public official in Chapter 20, section 2 of the Penal Code covers all officials and agents, including those elected, of a public international organisation of which Sweden is not a member (Convention, Article 1(4)).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Ministry of Justice has initiated an analysis of the possible need to appoint an inquiry to conduct a review of Swedish anti-corruption laws. The definition of public officials will be looked into within the framework of this review.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

9. With respect to the liability of and sanctions for legal persons for bribery of foreign public officials, the Working Group:
 - a) urges the Swedish government to complete as a matter of priority, its proposal for reforming the system of liability of legal persons, and recommends that this reform (i) review whether there are any legal or practical obstacles to imposing corporate fines, and (ii) increase the maximum fine for bribery of foreign public officials to an appropriate level, given the size and global importance of Swedish companies (Convention, Articles 2 and 3(2)).

Actions taken as of the date of the follow-up report to implement this recommendation:

The rules concerning corporate fines have been changed through legislative amendments that came into force on 1 July 2006. These changes are intended to make the system of corporate fines more effective and increase the practical use of the sanction. The requirement that the crime must have entailed a gross disregard of the obligations associated with the business activity or otherwise be of a serious nature has been abolished. Furthermore, the maximum fine has been raised from SEK 3 million to SEK 10 million. In addition a simplified procedure has been prescribed for fines not exceeding SEK 500 000. In such cases corporate fines may be imposed directly by a prosecutor through summary imposition of a fine, which is expected to further encourage practical use being made of the institution of corporate fines.

By introducing the new regulations, Sweden considers that measures required by the recommendation has been taken. The legislative amendments have recently come into force and it is too early to comment on their practical application.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

9. With respect to the liability of and sanctions for legal persons for bribery of foreign public officials, the Working Group:
 - b) recommends that Sweden ensure that confiscation of the bribe and the proceeds of bribery shall be applied in practice against legal persons as a sanction for bribery of a foreign public official (Convention, Articles 2 and 3(2)).

Actions taken as of the date of the follow-up report to implement this recommendation:

The issue of confiscation orders against legal persons is essential in combating bribery. Confiscation of proceeds of crime from natural persons is a remedy that is normally always applied wherever possible. Corresponding confiscation from legal persons, including in cases where there is insufficient evidence to convict a natural person, is also essential in combating this type of crime. In certain situations such confiscation from a legal person may be the only way to get at the proceeds of crime.

The fact that the officials in charge of investigations into bribery are gathered in a single unit, the National Anti-Corruption Unit, simplifies the work of the Unit in developing methods and monitoring case law. The fact that there is no compilation of case law at present showing that such confiscation is applied in cases covered by the OECD Convention, can probably be explained by the low incidence of such cases in Sweden. The question will be followed up as and when such cases arise in Sweden.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

9. With respect to the liability of and sanctions for legal persons for bribery of foreign public officials, the Working Group:
 - c) recommends that Sweden draw to the attention of investigating, prosecutorial and judicial authorities (i) the mandatory nature of corporate fines and (ii) the application of corporate fines to intentional crimes (Convention, Articles 2 and 3(2)).

Actions taken as of the date of the follow-up report to implement this recommendation:

Please see the response to 9 (b).

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

10. With respect to the reversal of the rule of mandatory prosecution for the prosecution of bribery of a foreign public official, the Working Group recommends that Sweden issue guidelines to prosecutors clarifying that prosecution of bribery of foreign public officials is always required in the public interest subject only to the normal exceptions under Chapter 20, section 7 of the Code of Judicial Procedure, and take effective measures to bring these guidelines to the attention of all prosecutors (Convention, Article 5).

Actions taken as of the date of the follow-up report to implement this recommendation:

The National Anti-Corruption Unit has so far interpreted “what may be required in the public interest” very broadly. Only cases where the benefit was of very limited value or where it is apparent that no damage of confidence has occurred, have been considered not to require further action. However, the Development Centre of the Swedish Prosecution Authority will be asked to look further into this matter as this specific aspect was not dealt with in the review the Swedish Prosecution Authority recently completed of its regulations.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

11. With respect to a decision of whether to prosecute a case of bribery of a foreign public official committed outside of Sweden, the Working Group recommends that Sweden consider the appropriateness of the requirement of government authorisations to prosecute such cases. Sweden is invited to compile relevant information to assist the Working Group in monitoring this issue (Convention, Article 5).

Actions taken as of the date of the follow-up report to implement this recommendation:

Sweden has a duty under international law to fulfil the obligations that follow from Article 5 of the Convention. The point of departure must therefore be that the Prosecutor-General and the Government will conform with the Convention when examining authorisation to prosecute. The Prosecutor-General is not required to obtain authorisation from the Government to prosecute crimes committed outside Sweden but has the option of doing so. So far, no cases have been submitted to the Government. Sweden has carefully considered this Recommendation but has concluded that the system should not be changed.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. With respect to sanctions for bribery of foreign public officials, the Working Group:
- a) encourages the Swedish authorities to pursue their work in order to broaden the grounds for the confiscation of criminal proceeds, and recommends that Sweden draw the attention of the investigating, prosecutorial and judicial authorities to the importance of imposing confiscation on the bribers (Convention, Article 3(3)).

Actions taken as of the date of the follow-up report to implement this recommendation:

The rules on confiscation were amended on 1 July 2005. The changes made concerned the possibility of confiscating property that has taken the place of proceeds, returns on proceeds and returns on property that has taken the place of proceeds.

Extended forfeiture was *not* addressed in the above-mentioned legislation. This question is dealt with in a memorandum (Ds 2006:17). The memorandum proposes the introduction of a possibility of extended forfeiture in cases where someone has committed certain serious crimes, mainly crimes with a range of penalties that include six years imprisonment. This includes gross bribery. For extended forfeiture it shall not be required that property or money found can be traced to a certain concrete crime. Instead, it shall be sufficient that the property with great probability derives from criminal activity. A proposal based on the memorandum will shortly be presented to Parliament. The new rules are proposed to enter into force in 2008. Through the changes already made and the new proposal on extended forfeiture, Sweden has continued its work to broaden the grounds for confiscation in line with the Recommendation.

The questions concerning the tracing of proceeds of crime and forfeiture are being given high priority by both the Swedish Prosecution Authority and the Economic Crimes Bureau. A working group has been established to develop methodology in the field, and to work with training and attitudes.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. With respect to sanctions for bribery of foreign public officials, the Working Group:

- b) recommends that Sweden devise procedures to verify whether a participant in public procurement has been convicted of bribery of foreign public officials, and consider debaring legal persons subject to corporate fines for bribery of foreign public officials from participating in public procurement (Convention, Article 3(4); Revised Recommendations II.v and VI.ii).

Actions taken as of the date of the follow-up report to implement this recommendation:

Sweden is in the process of transposing two new EC directives on public procurement and procurement within special sectors respectively into national law. According to the directives, a supplier *may* be excluded from participation in a contract when that supplier has been convicted of an offence concerning his professional conduct. The directives also contain mandatory exclusion provisions. A supplier who has been the subject of a conviction by final judgement for certain offences, which the contracting authority is aware of, *shall* be excluded from participation in a contract. It is proposed that the new provisions enter into force on 1 January 2008.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation:

12. With respect to sanctions for bribery of foreign public officials, the Working Group:

- c) recommends that the Swedish International Development Cooperation Agency (Sida) and Swedfund review the standard contracts that they use with their clients in order to ensure that they contain provisions that specifically prohibit the bribery of foreign public officials related to the contracts (Convention, Article 3(4); Revised Recommendation II.v and VI.iii).

Actions taken as of the date of the follow-up report to implement this recommendation:

Swedfund has already included rules on anti-corruption and money laundering in its standard contracts for lending and equity. Guidance for implementation is in the process of being developed.

As indicated in the response to Rec. 4 (b), a major overview of the Sida Rule on Anti-Corruption rule and connecting rules will be initiated in the fall of 2007, including adjustment of standard agreements and contracts. Already today, standard agreements and contracts contain provision of anti-corruption measures.

If no action has been taken to implement this recommendation, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II. Issues for Follow-up by the Working Group

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- a) The operation of the offence of bribery of foreign public officials, including (i) the criteria for determining when bribery is aggravated or simple, (ii) the operation of certain elements of the offence of bribery of foreign public officials, including the notion of “impropriety” (Convention, Article 1).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

At the time of the Phase II examination of Sweden one case of international bribery, the World Bank case, was discussed. The proceedings of the District Court were completed but the outcome had been appealed to higher instance. The Court of Appeal passed its judgement on 1 December 2005. In addition to confirming the judgement of the District Court, the persons involved were sentenced for two additional cases of bribery. The Court considered that the bribery offences committed were very serious. The sentences were confirmed to 1,5 and 1 year of imprisonment respectively. The judgement of the Court of Appeal was appealed to the Supreme Court that denied leave to appeal.

The process in Sweden was made possible by the fact that the recipients of the bribes had made an agreement with relevant US Authorities to truthfully provide all available information about their own activities and all what they knew about others had done in the case, inter alia through giving evidence in Swedish Courts.

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- b) Whether in practice legal or procedural obstacles are encountered in proceeding against the legal person where the natural person who bribes a foreign public official has not been proceeded against, or has not been convicted and/or sanctioned (Convention, Article 2).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the World Bank case, the legal persons involved were not subject to legal proceedings. That was probably due to the fact that such processes were not deemed to provide any value added.

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- c) The level of sanctions and application of confiscation measures to offence of bribery of foreign public officials (Convention, Article 3).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Not enough experience yet.

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- d) The application of nationality jurisdiction to the offence of bribing a foreign public official, in particular:
 - i) the requirement of dual criminality and the obtaining of information through mutual legal assistance and other channels to establish dual criminality (Convention, Article 4(2)).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Please see answer to 13 (a).

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- d) The application of nationality jurisdiction to the offence of bribing a foreign public official, in particular:
 - ii) the application of sanctions to Swedish legal persons for the offence of bribery of foreign public officials where the offence takes place abroad and is perpetrated by a non-Swedish natural person¹ (Convention, Article 2).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the World Bank case, the legal persons involved were not subject to legal proceedings. That was probably due to the fact that such processes were not deemed to provide any value added.

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- e) The system for assigning cases and allocating resources in prosecutions and investigations of bribery of foreign public officials (Convention, Article 5).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Not enough experience yet.

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:
- f) Whether and when the offences that cover the concept of money laundering apply where the predicate offence occurs abroad (Convention, Article 7).

¹ The Working Group notes that the latter issue should also be monitored on a horizontal basis.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

Not enough experience as yet.

Text of issue for follow-up:

13. The Working Group shall follow-up the following issues once there has been sufficient practice:

- g) The effectiveness in practice of mutual legal assistance for non-criminal proceedings against legal persons brought by other parties to the Convention (Convention, Article 9; Revised Recommendation II.vii).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The International Legal Assistance in Criminal Matters Act (2000:562) contains rules about international legal assistance in criminal cases. The law has a general application and there is no need for an international agreement for legal assistance to take place. The Central Authority has had very few cases concerning bribery of foreign public officials, inter alia on assistance with securing evidence. As far as the Central Authority is informed, no particular difficulties have arisen which are related to this type of crime.

It is worth noting that the possibility to investigate and prosecute crimes committed by foreign public official in practice is dependent on the other state's willingness to take part and to assist inter alia in resolving matters pertaining to secrecy laws. In practice, formal legal assistance is not always a possible way forward. According to Swedish prosecutors it is often more efficient if those states coordinate their efforts and concurrently investigate and prosecute the perpetrators involved. By doing so, they don't have to deal with foreign public officials. That is instead one by the authorities in the home country of the official. Such working methods result in efficiencies and sometimes help avoid jurisdictional problems. Within the EU, such coordination and cooperation functions well with the help of effective tools for cooperation such as the European Arrest Warrant, and cooperation within Eurojust. Cooperation of this kind with countries outside the EU is more difficult to establish, even if Eurojust's contacts with third countries provide valuable assistance. Bilateral contacts are necessary in practice. The Working Group on Bribery could maybe contribute to improvements by developing a coherent model for such cooperation and for exchange of information between states.