



# **SWEDEN: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS**

**August 2014**

This report, submitted by Sweden, provides information on the progress made by Sweden in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 8 August 2014.

The Phase 3 report evaluated Sweden's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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## **SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY**

### **a) Summary of Findings**

1. Since Sweden's Phase 3 review in June 2012, Sweden has made significant progress on enforcing its offence of bribing a foreign public official. Of five ongoing cases, a conviction was recently obtained in one case and is now under appeal by the prosecution authorities regarding the level of the sentence. In addition, two investigations, one which is a major case in a high risk sector, and two preliminary investigations, are ongoing. The Working Group on Bribery (WGB) recognises the efforts being made by Sweden to enforce its foreign bribery offence. However, Sweden must still make substantial progress on its framework for the liability of corporations and other entities for foreign bribery.

2. The WGB is particularly encouraged that Sweden has been diligently investigating potential territorial links between the activities of Swedish parent companies and allegations of bribery involving their subsidiaries and intermediaries abroad. Sweden has also taken important institutional measures to ensure active enforcement. For instance, guidelines have been issued to prosecutors clarifying that prosecuting foreign bribery cases is generally in the public interest, and decisions about prosecuting such cases must not be influenced by political factors. There shall also be a presumption that foreign bribery cases are aggravated, ensuring a longer period for investigating and prosecuting them. The National Anti-Corruption Police Unit (NACPU), which had been recently established at the time of the Phase 3 review, is receiving specialised training and providing substantial support to the National Anti-Corruption Unit's (NACU) foreign bribery investigations.

3. On corporate liability, the maximum available fine remains EUR 1.1 million, which the WGB considers inadequate given the size of the Swedish economy, sectors of business activity, and trade and investment partners. In addition, Sweden has not yet amended its Penal Code provision on "corporate fines" to bring it into compliance with guidance in the OECD 2009 Recommendation on Further Combating the Bribery of Foreign Public Officials. Sweden is hopeful that it will be able to rectify these weaknesses, as it intends to appoint a committee of inquiry in the fall of 2014 to review the framework for corporate fines. The committee's main task will be to ensure an effective and modern legal framework for corporate fines, including for the specific purpose of implementing the Anti-Bribery Convention. The committee will also revisit the level of corporate fines with a view to raising them substantially.

4. Steps have been taken to improve the detection of foreign bribery, with the deployment of money laundering investigators to assist NACU. Due to measures taken by the Swedish International Development Agency (SIDA), Swedfund, the Swedish Export Credit Corporation (SEK), and the Exports Credit Guarantee Board (EKN), these government agencies are now better equipped to prevent and detect the bribery of foreign public officials in relation to contracting opportunities provided by them. Further steps are needed to improve the level of awareness of Swedish society-at-large about the risks of foreign bribery by Swedish companies; although recent media attention to allegations has helped significantly in this regard. Steps have not yet been taken to address the requirement that to be able to apply jurisdiction to foreign bribery cases that take place wholly abroad, the period for investigating and prosecuting bribery must not have expired under the law of the foreign country (even if it is shorter than the period in Sweden). However, in the foreseeable future, Sweden will likely review this requirement in the context of a general review on jurisdiction for crimes committed abroad.

### **b) Conclusions**

5. The WGB concludes that Sweden has fully implemented recommendations 3a), 3c), 4a), 4b), 4c), 4d), 4e), 4f), 5a), 5c), 7a), 7b), 7c), 8a), 8b), and 8c), partially implemented recommendations 5b) and 6,

and not implemented recommendations 1, 2, 3b) and 3d. Sweden is invited to report back in writing in June 2015 on progress on non-implemented and partially implemented recommendations.

6. At the time of Sweden's Phase 3 review, the WGB recommended a Phase *3bis* evaluation. The time and scope of this review were to be decided by the WGB first at Sweden's one-year review, and then at this two-year review. Due to Sweden's significant progress on enforcement and full implementation of the majority of recommendations, the WGB decided that a Phase *3bis* evaluation is no longer necessary.

## PHASE 3 EVALUATION OF SWEDEN: WRITTEN FOLLOW-UP REPORT

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|---|--------------|
| <b>Name of country:</b>                               | Sweden       |
| <b>Date of approval of Phase 3 evaluation report:</b> | 15 June 2012 |
| <b>Date of information:</b>                           | 9 May 2014   |

### PART I: RECOMMENDATIONS FOR ACTION

#### *Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery*

##### **Text of recommendation 1:**

1. The Working Group recommends that Sweden amend its framework on “corporate fines” for foreign bribery offences to ensure that, in accordance with the Good Practice Guidance in Annex I to the 2009 Recommendation, legal persons are held liable for foreign bribery committed through lower-level employees, intermediaries, subsidiaries, or third-party agents in the circumstances outlined therein, and that legal persons may in practice be held liable for foreign bribery even when individual perpetrators are not prosecuted or convicted. (Convention, Article 2, 2009 Recommendation, para. IV, and Annex I, para. B)

##### **Action taken as of the date of the follow-up report to implement this recommendation:**

The Swedish legal framework on bribery was amended on 1 July 2012, when a new provision on negligent financing of bribery entered into force. According to this provision, a commercial organisation that provides financial or other assets to anyone representing it in a given matter and that thereby, through gross negligence, furthers the offences of giving of a bribe, gross giving of a bribe or trading in influence in that matter shall be sentenced for negligent financing of bribery. This provision creates further possibilities to hold both natural and – through corporate fines – legal persons liable for foreign bribery committed through such persons as mentioned in recommendation 1.

However, the new legislation has been in effect for a relatively short time and therefore no cases have yet been raised. Our aim is that this will accomplish the recommendation above, but it is too early to comment on its effectiveness in terms of legal proceedings. Nonetheless, it has already been shown that it works preventively.

##### **Text of recommendation 2:**

2. The Working Group recommends that Sweden increase the maximum level of fines for legal persons for the foreign bribery offence, in light of the size and importance of many Swedish companies active in international business, the location of their foreign operations, and the business sectors in which they are involved. (Convention, Articles 3.1 and 3.2)

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

The Swedish legal framework on liability for legal persons, i.e. the Swedish corporate fines system, is from time to time subject to international scrutiny, not least by the European Commission. The system has so far been deemed to be in compliance with Sweden's international commitments as regards criminal liability of legal persons.

The provisions on liability for legal persons in the Swedish Penal Code are horizontal and apply to all crimes. Creating a separate framework for corporate fines in relation to foreign bribery would not be a desirable option.

However, in recent years the use in Swedish law of non-criminal administrative fees or fines has increased considerably, especially in areas covered by EU legislation. The range of these administrative fines is often such that higher fines can be imposed under these systems than would be possible under the corporate fine system. One example is Chapter 15, Section 8 of the Banking and Financing Business Act (2004:297), under which the highest amount that can be imposed is SEK 50 million.

Although administrative fines and corporate fines do not necessarily apply to the same type of acts, the purpose of both systems is the same, namely to deter illegal activities. This development in the area of administrative fines indicates that there could be reason to review the relationship between the systems of administrative sanctions and corporate fines, and to analyse whether there is a need to make adjustments with regard to the levels of fines that can be imposed.

In this respect, Sweden would also like to reiterate that it is indeed possible to impose corporate fines on a legal person even if no individual perpetrator is prosecuted or convicted, as long as it can be established that a crime has been committed within the business activities of the legal person.

Furthermore, Sweden intends to appoint a Committee of Inquiry with the task of reviewing the legal framework on corporate fines. The aim is to ensure that Sweden has an effective and modern framework on liability for legal persons in compliance with Sweden's international and EU commitments.

The Inquiry will inter alia be tasked to increase the maximum level of fines for legal persons. The Inquiry will also be tasked to analyse the need for and make proposals for legislative amendments required to ascertain that corporate fines are an effective sanction to combat offences committed in connection with the activities of a legal person (compare recommendation 1).

According to plan, the Inquiry will be appointed in the fall of 2014.

**Text of recommendation 3(a):**

3. Regarding cases of the bribery of foreign public officials involving Swedish nationals or legal persons that take place outside Sweden, the Working Group recommends that Sweden as a matter of priority:

- a) Take steps to diligently investigate potential territorial links between Swedish legal persons and allegations of the bribery of foreign public officials perpetrated abroad on behalf of foreign subsidiaries, including by non-Swedish nationals;

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

Further progress in investigating foreign bribery in the respects indicated in the recommendation requires training measures and monitoring of individual cases to enable the practice to be followed up. Setting the right priorities overall also requires a knowledge of the approach taken by the Office of the Prosecutor-General to the direction of activities.

Special training measures have been carried out in consultation with the National Anti-Corruption Police Unit (NACPU). These are supplemented by constant follow-up of training needs: special routines have been established at the National Anti-Corruption Unit for continuous follow-up and evaluation of investigations.

During the period 2012–2014, Sweden has carried out a number of activities of relevance to the point referred to in the recommendation, including the following:

The National Anti-Corruption Police Unit, an investigations unit set up within the National Bureau of Investigation, was established on 1 January 2012. The NACPU is a dedicated unit completely at the disposal of the prosecutors at the National Anti-Corruption Unit. The investigations unit consists of police officers, civilian investigators and financial specialists. The investigators have been recruited because of their skill in investigating fraud and economic crimes and they have received two weeks of basic training in corruption investigation: one week in the spring of 2012 and one week in the autumn of 2012.

A special training module was developed with the aim of increasing skills and expertise in the area of foreign bribery, and was implemented in November 2012 over a period of three consecutive days. The target group included all investigators and prosecutors. This module, which included both theoretical and practical elements, focused entirely on issues related to foreign bribery. Colleagues from the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ÖKOKRIM) participated to further broaden the knowledge and experience base in the module.

The National Anti-Corruption Unit's prosecutor is a specialist prosecutor and, alongside special training in corruption crimes, can therefore also take part in the recurrent further education and training on international issues and other matters offered to all specialist prosecutors in the Swedish Prosecution Authority.

As part of professional development within the National Anti-Corruption Unit and the NACPU, two representatives of both took part in a three-day training programme in Washington organised by SEC and the US Department of Justice in 2013, which included investigation and legal proceedings in cases of foreign bribery

Members of the NACPU have also undertaken study visits to OLAF and Europol, and taken part in the Nordic Conference on Tax and Corruption (at which representatives of the National Anti-Corruption Unit spoke) and in courses organised by CEPOL on the subject of investigating corruption and working in JTTs.

Special routines have been developed at the National Anti-Corruption Unit for further monitoring of activities (see attachment 1), with a view to continued improvement of investigative methods and creating conditions for consistency in assessments and application of the law.

In addition to mandatory registration in the CÅBRA case management system, each individual case of foreign bribery is to be continuously followed up with respect to procedures aimed at determining jurisdiction, dual criminality and other issues of particular significance in the investigation of foreign bribery. The outcome of measures taken will subsequently be evaluated so that experience gained in the course of investigations into foreign bribery can be drawn on in each individual case and in continued investigations. Data from completed and ongoing investigations is now gathered for continuous and easy access. This in turn has created positive conditions for continuous development of the units' skills. Together with the knowledge and experience gained through the international exchanges outlined above, this data has also been used in skills development at the National Anti-Corruption Unit and the NACPU in the form of special further training in 2014 on foreign bribery, for example.

The following cases concerning suspicions of foreign bribery are being investigated. The following circumstances may be of significance in assessing Sweden's compliance with the recommendation. Since the one-year report, two additional cases (5 and 6) have been reported.



**Case #1: Allegation of bribery of official of SOE in Country “B”**

Status: **Part of investigation continues and part has been terminated** after having been reopened since Phase 3 report.

Swedish enforcement steps so far: Searches of company in Sweden and elsewhere, company representatives and others interviewed in Sweden, interviews conducted in other countries. Information has not been obtained from foreign public official’s country due to difficult circumstances in country.

**Case #2: Allegation of bribery related to development assistance contract**

Status: **Conviction under appeal** by prosecution

Swedish enforcement steps so far: Coercive investigative measures taken against company in Sweden. Judicial assistance requested from third country and foreign public official’s country. Corporate fine proceedings were rejected by Court. Individuals were convicted and sentenced. Prosecution is appealing sentence.

**Case #3: Allegation of bribery of officials of SOE in Country “C”**

Status: **Preliminary investigation closed** due to insufficient evidence.

Swedish enforcement steps: Foreign confiscation order issued and enforced in Sweden. Preliminary investigation conducted in close cooperation with investigation in foreign public officials’ country.

**Case #4: Allegation of bribery in high risk sector**

Status: **Investigation ongoing.**

Swedish enforcement steps so far: Searches and interviews in Sweden, responses to MLA requests related to money flow, and further steps to ensure asset recovery.

**Case #5: Allegation of bribery of officials of SOE in Country “D”**

Status: **Preliminary investigation**

Swedish enforcement steps so far: MLA request sent to country in which officials were allegedly bribed.

**Case #6: Allegation of bribery in relation to public procurement contract**

Status: **Preliminary investigation**

Swedish enforcement steps so far: Preliminary investigation opened due to MLA request from country in which bribery allegedly occurred.

**Text of recommendation 3(b):**

3. Regarding cases of the bribery of foreign public officials involving Swedish nationals or legal persons that take place outside Sweden, the Working Group recommends that Sweden as a matter of priority:

- b) Take urgent measures to be able to sanction Swedish legal persons for foreign bribery offences committed by them abroad, including when the foreign bribery offence is perpetrated abroad through an intermediary who is not a Swedish national;

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

The sanctions available when foreign bribery has been committed in the activities of legal persons are corporate fines and confiscation. A requirement for both sanctions is that Sweden has jurisdiction. The situation is similar if the offence has been perpetrated abroad by an intermediary who is not a Swedish national, i.e. Swedish jurisdiction must be investigated and proved. In both these respects, it is important to further develop expertise in how jurisdiction is established, investigated and proved.

In this context, reference is made to what has been stated above under point 3 (a) concerning training and continuous monitoring of investigations into foreign bribery, as the issue indicated by the recommendation is covered by these measures.

Point 3 (a) above provides an account of the circumstances concerning certain ongoing cases, which may be of significance in assessing this recommendation as well.

**Text of recommendation 3(c):**

3. Regarding cases of the bribery of foreign public officials involving Swedish nationals or legal persons that take place outside Sweden, the Working Group recommends that Sweden as a matter of priority:

- c) Issue guidance to the prosecution authorities on the legal and evidentiary requirements for dual criminality in order to establish nationality jurisdiction over cases of foreign bribery that take place abroad, and clarify in the guidance that dual criminality should be deemed to be met if the act is unlawful where it occurred, even if under a different criminal statute; and

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

As guidance for prosecutors, the Office of the Prosecutor-General published a handbook in December 2008 entitled 'Chapter 2 of the Swedish Penal Code – Swedish jurisdiction and authorisation to prosecute'. The section dealing with Swedish jurisdiction also deals with the requirements for dual criminality. Based on this handbook and other literature on these matters, special training for the prosecutors at the National Anti-Corruption Unit concerning the necessary conditions for dual criminality is planned in cooperation with the Office of the Prosecutor-General.

The views expressed in the recommendation will be worked into the handbook when it is revised. Such a revision is planned, and special training on the legal and evidentiary requirements for dual criminality in order to establish nationality jurisdiction in cases of foreign bribery that takes place abroad will therefore wait until the revision has been carried out.

There is no case-law that deals with evidentiary issues concerning dual criminality. 'Free examination of evidence' applies in Sweden. In the absence of guiding judgments, the training will therefore focus on showing various ways of obtaining necessary information, and what information about

the legislation of another country is likely to be needed.

The definition of a crime under Chapter 1, Section 1 of the Swedish Penal Code is as follows: “A crime is an act defined in this Code or in another law or statutory instrument for which a punishment as stated below is provided”. This is a legal definition that applies across the board in Swedish legislation.

When the term is used in Chapter 2, Section 2 of the Swedish Penal Code in the context “crimes committed outside the Realm” it is in the same sense, i.e. “an act defined in this Code”. This means that an act committed abroad constitutes a crime under Swedish law if it falls under a description in the Swedish Penal Code or another Swedish criminal law, even if the crime would have a different designation under the foreign legislation as compared to the Swedish legislation. This is a principle that applies to the administration of all Swedish criminal law and there was no reason to draw special attention to this in the handbook produced by the Office of the Prosecutor-General.

Nonetheless, based on the recommendation the training will particularly stress the fact that this fundamental principle is also applicable when examining the question of dual criminality.

The special routines on foreign bribery at the National Anti-Corruption Unit described in point 3 (a) above also cover the issues raised by this recommendation, and so they will be subject to continuous monitoring and evaluation.

**Text of recommendation 3(d):**

3. Regarding cases of the bribery of foreign public officials involving Swedish nationals or legal persons that take place outside Sweden, the Working Group recommends that Sweden as a matter of priority:

- d) Take appropriate measures to ensure that dual criminality for the purpose of applying nationality jurisdiction can be established regardless if the statute of limitations in the foreign jurisdiction has expired, or the level of sanctions for bribery is lower in the foreign jurisdiction. (Convention, Articles 4.1, 4.2 and 4.4)

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

It is correct that, as mentioned in recommendation 3 (d), the expiry of the statute of limitations in the foreign jurisdiction prevents further prosecution in Sweden. Sweden has been recommended to take urgent measures to ensure that dual criminality for the purpose of applying nationality jurisdiction in relation to foreign bribery can be established even if the statute of limitation in the foreign jurisdiction has expired, or the level of sanctions for bribery is lower in the foreign jurisdiction. The provisions on dual criminality in the Swedish Penal Code are, in principle, horizontal and apply generally to all crimes. The recommendation would therefore, in practice, require a general review of the concept of dual criminality under Swedish law. In the foreseeable future, Sweden will in all likelihood review the existing provisions on jurisdiction for crimes committed abroad in general, including the provisions on dual criminality. In this process, the recommendations made by the OECD will be kept in mind.

**Text of recommendation 4(a):**

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Sweden:

- a) As recommended already in Phase 2, issue guidelines to prosecutors clarifying that it is always in the “public interest” to prosecute cases of foreign bribery, subject to the normal

exceptions under the Code of Judicial Procedure, and that investigations and prosecutions of foreign bribery shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved;

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

The training programmes carried out with the NACPU described above under point 3 (a) also dealt with the question of when prosecution can be called for from a general point of view and the importance of upholding Article 5 of the OECD Convention. These questions will be the subject of more specific training measures in the special further professional development for prosecutors that is planned to be held in cooperation with the Office of the Prosecutor-General. Moreover, as one of the basic premises of the remit issued to the National Anti-Corruption Unit on 19 November 2012, the Office of the Prosecutor-General stressed prosecutors' role, anchored in the Constitution, to "independently lead criminal investigations, decide whether to bring charges and present cases in court". The account of the circumstances in Case #4 (close relationship between Swedish company and Swedish government) under point 3 (a) above is a clear example of the independence and autonomy of both Swedish prosecutors and the Swedish courts.

**Text of recommendation 4(b):**

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Sweden:

- b) Take appropriate steps to ensure that all prosecutors are aware of the requirement to record their reasons for terminating investigations of the bribery of foreign public officials in the computer system (CABRA);

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

All cases concerning suspected offences handled by Swedish prosecutors are registered in the computerised case management system CÅBRA. The prosecutor is always the head of the preliminary investigation in cases concerning suspected giving or receiving of bribes and other corruption offences. Where there is a suspicion of foreign bribery, cases must always be handled by the National Anti-Corruption Unit. A case cannot, in either technical or formal terms, be terminated without a reason being given.

However, under the special routines on foreign bribery at the National Anti-Corruption Unit described above in point 3 (a), with respect to foreign bribery "when taking a decision not to open a preliminary investigation or when terminating a preliminary investigation, alongside the grounds for the decision required in CÅBRA" prosecutors must "formulate more extensive grounds for the decision so that it is clear how both the objective and subjective conditions for criminality in the specific case have been assessed".

**Text of recommendation 4(c):**

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Sweden:

- c) Ensure as a matter of priority that adequate resources are available for prosecuting cases of the bribery of foreign public officials;

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

The Prosecutor-General has tasked the National Anti-Corruption Unit with a review of operational priorities, in cooperation with the NACPU. A report will then be submitted by the National Anti-Corruption Unit on how priorities are managed. The Prosecutor-General, acting through the chief prosecutor for the area, will then determine the contents of the follow-up report and when this report should be delivered. According to a decision subsequently issued by the Director of the Public Prosecution Authority responsible for the National Anti-Corruption Unit, the unit will specifically follow up how it prioritises cases concerning foreign bribery annually.

In addition, the Prosecutor-General will consult with the National Police Board concerning annual reports from the NACPU to the National Police Board on the management of prioritisation.

We believe that the level of resources is adequate, especially considering the establishment on 1 January 2012 of the new police unit, whose task it is to assist the National Anti-Corruption Unit in investigations of suspected cases of bribery. As stated by the Office of the Prosecutor-General at the on-site visit, additional resources could be reallocated to the National Anti-Corruption Unit, should the need arise.

Concerning cooperation with the NACPU on operational priorities with regard to breaches of the Convention, the head of the National Anti-Corruption Unit has held continuous consultations with the responsible managers at the NACPU. Case #4 (above) is a very extensive case, and has tested the units' ability to set operational priorities. It was possible to implement investigative and coercive measures just a day or two after this case became known.

Another case of suspected foreign bribery was reported from a source outside Sweden (Case #2 above) and, in that case too, the ability of the National Anti-Corruption Unit and the NACPU to reprioritise made it possible to initiate the investigation immediately. The preliminary investigation was completed within 5 months; a prosecution was subsequently initiated a few weeks later, and a judgment was issued in the district court on 17 July 2013.

Case #6 above arose as an MLA request. , A preliminary investigation was subsequently opened within 2 months, and the investigation and a decision on whether to prosecute are due in spring 2014.

The processing of the cases mentioned above shows that the resources available to the National Anti-Corruption Unit and the NACPU are, at least at present, sufficient. The units are well able to shift priorities where necessary for the processing of cases concerning foreign bribery.

**Text of recommendation 4(d):**

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Sweden:

- d) Ensure as a matter of priority that the investigators at NACPU receive adequate specialized training on investigating cases of foreign bribery; and

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

For an account of the training measures already undertaken with regard to the NACPU, see section 3 (a) above. Training programmes has been developed in consultation between the National Anti-Corruption Unit and the NACPU to take care of future professional development in the area of foreign bribery and other types of corruption investigations.

The special routines on foreign bribery at the National Anti-Corruption Unit described in point 3 (a) above continuously pick up on experiences from the investigations and the need for information, and thereby form part of the basis for continuing professional development.

**Text of recommendation 4(e):**

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Sweden:

- e) Ensure that the statute of limitations applied to foreign bribery cases, including at the investigative stage, is as a rule the ten-year period for aggravated foreign bribery; and

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

The conditions for determining whether a case of foreign bribery is a gross offence have been dealt with in the training measures carried out together with the NACPU, described above under point 3 (a). This will be the subject of more specific training measures in the special further professional development for prosecutors to be held in cooperation with the Office of the Prosecutor-General, described above under point 3 (c).

**Text of recommendation 4(f):**

4. Regarding the investigation and prosecution of foreign bribery cases, the Working Group recommends that Sweden:

- f) Proactively detect and investigate potential accounting violations related to foreign bribery. (Convention, Articles 5 and 6, and Commentary 27)

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

Particular attention has been devoted to the importance of detecting and investigating bookkeeping offences in the training measures carried out together with the NACPU, described above under point 3 (a). One training programme was focused on the crime itself. There is considerable expertise and

adequate resources to both detect and investigate bookkeeping offences, as several of the investigators have worked at the Swedish Economic Crime Authority or the Tax Authority, and the National Anti-Corruption Unit employs three auditors. The prosecutors, almost all of whom have a background as specialists on economic crime, regularly ensure that the occurrence of bookkeeping offences is investigated, particularly as this kind of offence often occurs in connection with all kinds of bribery.

In June and September 2013, representatives from the National Anti-Corruption Unit arranged training for Swedish Tax Agency staff. The target group was tax auditors, tax offence investigators and those responsible for coordinating the reporting of offences. A total of around 300 officials have received training. Further training courses will be held in spring 2014.

**Text of recommendation 5(a):**

5. The Working Group recommends that Sweden take the following urgent measures to improve the detection of foreign bribery through its anti-money laundering system as follows:

- a) Increase awareness in the FIU concerning the kinds of transactions that could potentially involve the laundering of the proceeds of the bribery of foreign public officials;

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

The Swedish FIU, which also incorporates the law enforcement section of the assets recovery office, has deployed two investigators to assist the National Anti-Corruption Unit at both intelligence and investigation level. The strengthened capacity for asset recovery issues will hopefully facilitate and increase awareness of the laundering of the proceeds of the bribery of foreign public officials.

**Text of recommendation 5(b):**

5. The Working Group recommends that Sweden take the following urgent measures to improve the detection of foreign bribery through its anti-money laundering system as follows:

- b) Encourage financial institutions to develop money laundering typologies and provide training on the laundering of the proceeds of foreign bribery; and

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

Within the Swedish AML/CFT framework there is a cooperative body consisting of the designated supervisory authorities and, on a voluntary basis, the Swedish Bar Association, the Swedish FIU and the Swedish Companies Registration Office. The FIU participates in this formalised cooperation, which aims to improve the supervisory measures as well as to encourage and facilitate the development of awareness among the financial and non-financial institutions. Prior experiences and developed knowledge of typologies are shared. There is potential to use this cooperative body to further encourage financial institutions to develop typologies and provide information on the laundering of the proceeds of foreign bribery.

In addition to this formalised organ there is a continuously ongoing dialogue, for instance on the use of business intelligence, between the FIU and the entities. Any experiences of cash handling or other forms of payment revealed from investigations will be communicated to the entities of the financial sector. Of interest in this context is the possession of monetary assets abroad by domestically involved

people, however not linked to the category of this questionnaire (assessment). In part, this type of dialogue enabled the detection of the abovementioned suspected bribery transactions.

The two national risk assessment reports on money laundering and terrorist financing risks mentioned in the one-year report have been presented to the Government. The Government is currently working on a national strategy on AML/CFT, which is due to be presented to the parliament in June. The national strategy builds on the conclusions drawn in the two national risk assessment reports and aims to communicate the Government's goals, priorities and planned measures. It aims to promote the effectiveness of the AML/CFT system.

**Text of recommendation 5(c):**

5. The Working Group recommends that Sweden take the following urgent measures to improve the detection of foreign bribery through its anti-money laundering system as follows:

- c) Ensure that NACU and where relevant the Economic Crimes Authority (ECA) provide feedback to the FIU when reports from the FIU have led to foreign bribery investigations. (Convention, Article 7)

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

The arrangement with the officers from the FIU/ARO that are deployed at the National Anti-Corruption Unit constitutes a good feedback channel of transaction patterns in bribery cases to the FIU investigations. This information is brought back to the unit and certain indicators are set in the handling of incoming STRs in order to detect suspected bribery.

In addition, the Swedish Economic Crime Authority has a liaison officer deployed at the FIU office. A direct channel for the exchange of information (newly obtained experience, typologies, trends and patterns) is created, offering representatives a possibility to dedicate special attention to new *modi operandi* and suspicious business transactions that could indicate bribery/corruption-related money laundering. Experiences so far indicate that suspected bribery proceeds are forwarded abroad, which requires the FIUs in both jurisdictions (sending/receiving) to detect the same transaction. This calls for a closer cooperation between the different national FIUs.

***Recommendations for ensuring effective prevention and detection of foreign bribery***

**Text of recommendation 6:**

6. The lead examiners recommend that Sweden take concrete and meaningful steps to examine how it could increase the awareness of Swedish society-at-large of the importance of combating the bribery of foreign public officials by Swedish businesses.

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

To raise awareness of issues concerning corruption, on 8 November 2013 the Swedish Government arranged a CSR Day with the purpose of highlighting current problems in the corporate world. Particular focus was given to human rights, sustainability and corruption. The number of participants at the conference was close to 300, including representatives from the private sector and NGOs, government officials and academics.



In March this year, the Government's development assistance platform was outlined in a written communication to the Riksdag (Govt Communication 2013/14:131) that includes the importance of Swedish development assistance strengthening the fight against corruption. Corruption is a serious social problem in the countries that receive Swedish development assistance, and Sweden must therefore place requirements on partner countries and support their efforts to combat corruption. The major resource flows associated with development assistance can in themselves risk corruption, for example in cases of public procurement.

The Ministry of Health and Social Affairs is responsible for public procurement legislation and policy. Procurement policy is largely enforced by the responsible administrative authority for public procurement, i.e. the Swedish Competition Authority. Due to a reorganisation, from 1 March 2014 the Competition Authority is responsible for public procurement support to contracting authorities and entities. According to its appropriation directions, the support function at the Competition Authority must strive to prevent corruption and conflicts of interest in public procurement.

Kammarkollegiet – the authority previously responsible for public procurement support – produced a guide to contracting authorities and entities about how corruption and conflicts of interest can be prevented in their purchasing activities (2011:11.2, revised 14 January 2014). The guide introduces the reader to basic facts about corruption and conflicts of interest in connection with public procurement and it includes concrete proposals for organisational measures to prevent corruption. There is advice on how officials should think and act to prevent and detect corruption and conflicts of interest.

The Swedish Government is presently considering how to further strengthen public procurement support, including support to preventing corruption and conflict of interest, provided by the Competition Authority.

#### **Text of recommendation 7(a):**

7. Regarding efforts by Sweden to encourage companies to adopt adequate internal controls, ethics and compliance programmes or measures, the Working Group recommends that Sweden take appropriate steps to:

- a) Continue encouraging the private sector, including SMEs, to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery, taking into account the OECD Good Practice Guidance; and

#### **Action taken as of the date of the follow-up report to implement this recommendation:**

On several occasions in 2013, the company management group at the Ministry of Finance invited all board members and managing directors to a dialogue on the State's expectations concerning sustainable business, and a number of attendees themselves presented their work and thoughts on the subject. This included defining and deciding on a number of sustainability goals and working strategically with sustainable business on the board. The dialogues also aimed to provide information about the State's ownership policy concerning sustainable business and the main characteristics of the international guidelines and frameworks, which all include anti-corruption. The State guidelines include a disclosure requirement for sustainability data and high levels of ambition with respect to external reporting. The sustainability reporting requirement is a tool for progressing work on sustainable enterprise by working systematically with clear reporting and follow-up. In its guidelines for external reporting, the Government adopted expanded information requirements in sustainability reports, including a requirement for state-owned companies to publish sustainability reports in line with the Global Reporting Initiative (GRI) international sustainability reporting guidelines. On 6 February 2013 there was a meeting about the new

framework for sustainability reporting. The new policies on anti-corruption were highlighted.

At the annual board seminar organised by the Ministry of Finance for board members and managing directors of state-owned companies, the theme in 2013 was sustainability. Petter Stordahlen from Nordic Choice Hotels and founders of fund manager Generation Investment Management Al Gore and David Blood described their view of sustainable business and how it forms an integral part of their business activities. Through several articles and speeches, both targeted directly at the state-owned companies and in more public forums, the Minister for Financial Markets has emphasised how important the Government considers the issue of sustainable business to be. Furthermore, on 27 September 2012 a meeting specifically concerning anti-corruption was held. The approximately 60 participants from mainly state-owned companies were informed about the new Swedish legislation and comparisons were drawn with legislation in the UK and the US. The Minister for Financial Markets has also held several meetings concerning one of the allegations listed under point 3(a)).

In a communication to the Riksdag on 16 March 2014 concerning strategic export controls, the Government strongly repudiated all forms of corruption in international business transactions. The Government urges companies to follow the principles contained in the United Nations Global Compact, which concern human rights, labour law, the environment and anti-corruption, and to apply the OECD Guidelines for Multinational Enterprises. The Government is also encouraging the initiative taken by manufacturers of military equipment, first at European level through the AeroSpace and Defence Industries Association of Europe (ASD) and later together with its US counterpart, to develop and apply an international code of conduct that includes zero tolerance of corruption (the Global Principles of Business Ethics for the Aerospace and Defence Industry). The largest Swedish sectorial organisation, the Swedish Security and Defence Industry Association, which organises more than 95 per cent of enterprises within the defence industry in Sweden, also requires that a Code of Conduct on Business Ethics be signed and complied with as a condition of membership.

The Swedish Agency for Public Management has been instructed to survey the efforts of government agencies to prevent corruption. The Swedish Agency for Public Management is to describe the efforts currently under way and the risks that have to be managed by government agencies. The Swedish Agency for Public Management is to propose how the government agencies can develop and strengthen their corruption prevention efforts: reducing the risks of corruption and increasing the opportunities to uncover such irregularities. This applies to agencies' activities both in Sweden and abroad.

Sweden is the lead nation to run the Business Anti-Corruption Portal ([www.business-anti-corruption.com](http://www.business-anti-corruption.com)) together with UK, Germany, Austria and Norway. The portal was launched in 2007 and it is financed by these countries through an annual grant. Today is featured in five different languages - English, German, Chinese, Russian and Arabic. The aim is to provide enterprises with relevant information on corruption incidents, and it has established itself as a leading due diligence tool used by companies. Every year, the portal is estimated to have more than 130 000 unique visitors and the number is increasing by 20 per cent per annum. It has also grown in terms of number of countries covered (103 in April 2014). In December 2012 an agreement was signed between Sweden and the European Commission to widen the coverage to include 33 European countries. The 33 country studies have been published in English and the national language(s). The studies were introduced on the website in November and December 2013.

The Swedish Government recently presented a publication outlining its basic position on issues relating to sustainable business. The goal is to give enterprises and other stakeholders guidance on how to act in accordance with sustainable business principles. According to the Government, sustainable business includes human rights, work requirements, the environment and anti-corruption. In the 25-page publication, Sweden emphasises the importance of combating corruption in order to create possibilities for sustainable and long-term development. The text was published in Swedish on 8 November 2013 in connection with the CSR Day and in English one month later. The French version was published in

March 2014 (see attachment 2).

In cooperation with SIDA, the Ministry for Foreign Affairs is currently developing an extensive eLearning tool. It is intended to be used in the training of all Ministry for Foreign Affairs and SIDA employees to raise awareness of corruption in both national and foreign bribery contexts.

**Text of recommendation 7(b):**

7. Regarding efforts by Sweden to encourage companies to adopt adequate internal controls, ethics and compliance programmes or measures, the Working Group recommends that Sweden take appropriate steps to:

- b) Raise awareness in the private sector of the new offence of bribery, which includes foreign bribery and negligent financing of bribery, and clarify for the private sector the legal consequences of the proposed code for self-regulation on bribery related matters in the business community, including that the amendments to the Penal Code do not provide a safe harbour for complying with the code; and

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

The National Anti-Corruption Unit is, and will continue to be, represented in a number of contexts where these issues are considered. For example, prosecutors from the National Anti-Corruption Unit speak at training programmes offered by private education providers to company executives, compliance officers, lawyers and others responsible for or exposed to this type of issue.

**Text of recommendation 7(c):**

7. Regarding efforts by Sweden to encourage companies to adopt adequate internal controls, ethics and compliance programmes or measures, the Working Group recommends that Sweden take appropriate steps to:

- c) Urgently take concrete steps to raise awareness in the accounting and auditing profession of the need to diligently report possible acts of foreign bribery according to the established legal system for reporting bookkeeping irregularities. (2009 Recommendation, para. X.C, and Annex II)

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

In the autumn of 2013, the National Anti-Corruption Unit provided special information to representatives of FAR (the professional institute for authorised and approved public accountants) concerning the legislation on corruption and the significance and importance of observing the duty to report suspicions of foreign bribery. In the autumn of 2012, representatives of the NACPU provided information concerning their activities and corruption issues in general to the Institute of Internal Auditors.

Ensuring that the business sector has access to auditors who can audit limited companies, banks, insurance companies, large economic associations, foundations and other groups operating business activities is a central government task. Such audits are carried out by approved or authorised public accountants or registered public accounting firms. The Supervisory Board of Public Accountants holds examinations of professional competence for approved public accountants and authorised public accountants twice a year. An accountant must have passed such an examination in order to be able to

apply to become an approved or authorised public accountant.

The Supervisory Board also has a supervisory role. It receives and examines reports against qualified accountants. Such reports are usually submitted by clients, receivers or authorities. The Supervisory Board also has substantial activities devoted to verifying that audits carried out maintain a high standard. It also opens audit cases based on information in the press and other media, even if no report has been received. If in any case, whether started by a report or by any other means, the Supervisory Board finds that a qualified accountant has disregarded his or her professional duties, it can take disciplinary measures against that accountant. These measures include cautions, warnings and suspension of approval, authorisation or registration. The Supervisory Board takes around 60 disciplinary measures each year. Another aspect of the supervisory activities is that the Supervisory Board can issue a preliminary ruling on certain issues.

The Supervisory Board is responsible for ensuring that the standards used by qualified accountants in their audits, i.e. generally accepted auditing standards and professional ethics for accountants, are suitably developed. To this end, the Supervisory Board can issue formal regulations and special statements.

The Government governs the Supervisory Board through the annual appropriation directions and through special assignments given to it. According to its appropriation directions for 2014, as part of its activities the Supervisory Board is to work to raise awareness among accountants of the need to draw attention to and report suspected corruption offences in the course of their work. This is to be achieved through awareness-raising activities and an ambition to take account of corruption issues in ongoing supervisory activities both during inspections and in other supervisory matters. These issues have been raised at consultation meetings with FAR, which is considering how they can be highlighted in the organisation's training activities.

**Text of recommendation 8(a):**

8. Regarding the role of official development assistance funded procurement and officially supported export credits in preventing and detecting foreign bribery, the Working Group recommends that Sweden:

- a) Implement as soon as possible the outstanding Phase 2 recommendation to review the standard contracts that SIDA and Swedfund use with their clients in order to ensure that they specifically prohibit the bribery of foreign public officials related to the contracts;

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

In autumn 2012, Sida's Department for Legal Services and Procurement revised Sida's general conditions for official duties in consultant contracts. As part of the revision, the clause concerning bribes and corruption has been adjusted and now specifically prohibits bribery of foreign public officials. During 2013 the Legal Department of Sida has reviewed Sida's standard conditions for consultancy contracts as set out in the response to the previous recommendations. During a follow-up revision, which will take place during 2014, the Legal Department will consider whether it is necessary to further strengthen the clauses on anti-corruption in accordance with Sweden's commitments under the Convention.

In this context we would like to point out that when Sida's internal anti-corruption rules, which apply to all managers and staff, were revised in 2013 it was made clear that Sida's definition of corruption includes bribery of foreign public officials (paragraph 4 of Sida's anti-corruption rules, see attachment 3).

Furthermore, as part of our cooperation with the business sector Sida has produced a tool for sustainability screening of partners, in which anti-corruption is an important element. The aim is to

identify risks or weaknesses in the partner's management system, which are then the subject of dialogue and improvement measures. The tool will also be used to identify opportunities for various forms of cooperation with the business sector on these issues.

The due diligence tool is used to screen cooperation with the business sector, and is based on self-assessment carried out by the partners. It covers 10 areas of CSR: 1. Human rights, 2. Labour practices, 3. Anti-corruption, 4. Environment, climate and ecosystems, 5. Community involvement and development, 6. Fair competition, 7. Customer and consumer interests, 8. Property rights, 9. Gender equality, 10. Disclosure and transparency. Each question is divided into six different levels: (1) Commitment, (2) Assessment, (3) Definition, (4) Implementation, (5) Measuring & Monitoring, (6) Communication & Engagement. Each question and level is to be assessed using a scale from 1 to 5: initiated, basic, established, advanced, leading.

In 2014, Sida also began a cooperation programme with around twenty Swedish companies through the Swedish Leadership for Sustainable Development network, in which anti-corruption is a priority area and the companies have committed to contributing to fighting corruption and to using ethical business models in the countries in which they operate. (see attachment 4)

Swedfund's standard investment documents contain provisions prohibiting all forms of corruption, including the bribery of public officials (see enclosed summary of such contractual provisions, attachment 5).

Each Swedfund counterparty has an obligation to inform Swedfund of any act that could constitute corrupt practices and is furthermore obliged to take appropriate action. A breach of such provisions constitutes a default under the respective agreements.

Swedfund's Board adopted an anti-corruption policy in December 2012 (see attachment 6). Swedfund's anti-corruption policy describes Swedfund's work to counter all forms of bribery and corruption. Countering corruption is crucial to Swedfund's overarching mission, which is to contribute to poverty reduction through sustainable business.

The policy describes the conduct expected of Swedfund's employees, stakeholders, partners and portfolio companies. Swedfund defines corruption as "the abuse of trust, power or position for improper gain. Corruption includes bribery – including bribery of a foreign official –, extortion, conflict of interest and nepotism". The policy not only covers bribery of public officials but also bribery between private sector entities.

Portfolio companies must contractually commit to comply with an anti-corruption policy that is satisfactory to Swedfund. Swedfund provides an anti-corruption policy model that can serve as guidance to portfolio companies in their efforts to combat corruption.

All Swedfund employees have a responsibility to report suspected corruption. All suspicions concerning corruption will be acted upon immediately by Swedfund in good faith, with its partners, to determine whether a violation has occurred and/or what action should be taken. Failures to satisfactorily rectify such situations will cause Swedfund to terminate the investment. Training sessions on the anti-corruption policy and its practical implementation within Swedfund and its portfolio companies will be held on a regular basis. A first such session was held for Swedfund employees and board members in 2013 by the Global Advice Network APS (GAN), Copenhagen. Further training sessions will be held in the future.

**Text of recommendation 8(b):**

8. Regarding the role of official development assistance funded procurement and officially supported export credits in preventing and detecting foreign bribery, the Working Group recommends that Sweden:

- b) Establish a channel that enables the Swedish Export Credit Corporation (SEK) and the Exports Credits Guarantee Board (EKN) to obtain prompt information about convictions of individuals and the imposition of “corporate fines” for foreign bribery in Swedish courts; and

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

The OECD review was undertaken before the entry into force in Sweden of the new legislation on bribery. If a new review had been done in 2013 the result would have been different. The special routines on foreign bribery at the National Anti-Corruption Unit described in point 3 (a) above include a routine whereby when convictions are issued in foreign bribery cases, copies of the judgments are sent to SEK and EKN.

**Text of recommendation 8(c):**

8. Regarding the role of official development assistance funded procurement and officially supported export credits in preventing and detecting foreign bribery, the Working Group recommends that Sweden:

- c) Establish effective channels of communication between SEK/EKN and NACU, to ensure that SEK and EKN report suspicions of foreign bribery without delay to NACU, and to ensure that NACU routinely consult SEK and EKN when investigating allegations of foreign bribery in which official export credit guarantees are involved, as appropriate. (Convention, Article 3.4, 2009 Recommendation, paras. III. vii), XI and XII)

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

SEK and EKN, in consultation with the National Anti-Corruption Unit, have introduced a new routine into their manuals concerning corruption. If, in the course of their activities, there is suspicion of bribery or other improper rewards in connection with export transactions, the lawyer responsible for corruption issues will immediately inform prosecutors at the National Anti-Corruption Unit. The National Anti-Corruption Unit has also provided special training measures for managers and other staff at SEK and EKN.

Ahead of the entry into force of the new legislation on 1 July 2012, EKN took various measures to strengthen the internal regulatory framework concerning bribery. EKN has subsequently decided on new revised forms, general conditions and a processing anti-corruption manual, including new working methods. In 2012 SEK decided to implement an extensive anti-bribery programme and since 2013 SEK has been a member of the Transparency Business Group.

Below are some examples of measures taken by the Swedish system (EKN and SEK) since 2012:

1. EKN and SEK meet regularly with the Chief District Prosecutor at the National Anti-Corruption Unit to discuss ways of cooperating. These forms of cooperation have been established in the manual with the help of prosecutors, and prosecutors have also offered their views on some aspects of the manual.
2. Anti-corruption declarations for exporters have been revised to encompass all forms of

bribery.

3. A greater number of transactions are scrutinised for corruption risks.
4. A greater number of in-depth controls. Apart from transactions involving agents' fees or where the guarantee recipient has stated that the company is blacklisted, suspected of bribery-related offences or other improper rewards, EKN has also identified other transactions with a major intrinsic risk of corruption where more in-depth controls should be carried out.
5. The EKN general conditions state that a guarantee can be declared non-binding on EKN if bribery-related offences are discovered, and that EKN cannot be held liable for any costs or expenses. Furthermore, the guarantee recipient is obliged to repay sums received, including interest, to EKN. The amendment to the clause now includes all forms of bribery.
6. SEK has revised its anti-corruption clauses in loan agreements with foreign buyers of Swedish goods to encompass all forms of bribery, and has included a possibility for actors in the transaction to report through a whistleblower system in case of suspicions of any criminal activity.

## **PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP**

### **Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- a) Application of the new foreign bribery offence and the offence of negligent financing of bribery once they come into force, to assess whether they effectively apply to situations including the following: the foreign public official has not requested or received the bribe or an offer or promise of a bribe; instances where a third party acts outside the scope of engagement but for the benefit of the company; complicated case scenarios involving intermediaries and/or foreign subsidiaries; and regarding the distinction between simple and aggravated foreign bribery;

### **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:**

Concerning the boundaries between a gross offence and a regular offence, in a judgment from 2012 concerning bribery in Sweden of a driving examiner, the Supreme Court stated that a sum of approximately SEK 168 000 (around EUR 19 000) is to be deemed a considerable amount. This judgment is of interest because since the legislation was amended on 1 July 2012, one of the factors that must be taken into particular account when assessing whether an offence is to be deemed gross is whether it "involved a considerable sum".

In Case #2 under point 3 (a), one of the appeal issues to be examined in the Court of Appeal is the conditions for an offence to be deemed gross.

**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- b) Application of the new offence of negligent financing of bribery to legal persons;

**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 new piece of legislation has been in effect for a relatively short time and therefore no cases have yet been raised. However, it is worth noting that the most important purpose of the paragraph is that it works proactively, in other words, it encourages management of an organisation to develop Codes of Conduct etc. to avoid being exposed to criminal liability.

**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- c) Application of sanctions for foreign bribery to natural persons;

**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:**

See Case #2 under 3 (a).

**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- d) Application of confiscation, including “extended confiscation”;

**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:**

See Case #4 above.



**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- e) Whether the automatic reporting to the Tax Administration by Swedish courts of foreign bribery convictions will also apply where “corporate fines” are imposed on legal persons;

**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- f) Whether in practice the six-year period within which tax deductions for payments constituting bribes to foreign public officials may be retroactively denied is effective, particularly in view of the ten-year statute of limitations for aggravated foreign bribery; and

**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- g) Whether in practice the application of the ground for denying mutual legal assistance (MLA) when “circumstances are such that the request should not be granted” is an impediment to the provision of prompt and effective MLA to other Parties to the Anti-Bribery Convention for proceedings within the scope of the Convention;

**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:**

One ambition when drafting the Act on International Legal Assistance in Criminal Matters was not to burden the legislation with unnecessary regulation and to delete, where possible, regulation that might cause a delay when Swedish prosecutors and courts are executing foreign requests for legal assistance. In this spirit, the fact that a crime might be statute-barred according to Swedish legislation was deleted as a ground for refusal. The dual criminality requirement was also removed for non-coercive measures. Furthermore, a judgement in a third state is, according to the Act, not a ground for refusal.

With this in mind, it was considered necessary to insert a ground for refusal that can be applied when none of the existing grounds for refusal are applicable, but when, taking all circumstances into consideration, the request for mutual legal assistance should not be granted for some reason.

The legislative history of the Act underlines that this ground for refusal is to be used in a restrictive manner.

This ground for refusal has only been used in one case. This case concerned a request from another state for a person to be interviewed. This person was suspected of a crime in the requesting state. However, the person had already been convicted of that crime in a third state. The person had also served the sentence following from that judgment. The request for mutual legal assistance was therefore refused.

The application of this ground for denying mutual legal assistance does not constitute an impediment

to the provision of prompt and effective MLA to other Parties to the Anti-Bribery Convention for proceedings within the scope of the Convention. The ground for refusal has, as previously indicated, been used only once since the legislation came into force in 2000.

**Text of issue for follow-up:**

9. The Working Group will follow-up the issues below as jurisprudence and practice develop on the implementation of the foreign bribery offence in Sweden:

- h) Whether employees of Swedish companies report suspected cases of foreign bribery through whistleblower channels, and whether these reports lead to investigations and prosecutions.

**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:**

As regards employees involved in whistleblowing, protection mainly consists of the requirement that, under Section 7 of the Employment Protection Act (1982:80), notice of termination must be based on objective grounds. In addition, the general legal principle of good labour market practice also applies, which means that the right to direct work may not be exercised in an inappropriate manner or in breach of good practice. An employee also has the right to have particularly far-reaching reassignments examined by a court.

Two inquiries of interest in this regard are currently in progress. One of these inquiries aims at enhancing protection of sources in the private sector. The remit of the other is to propose measures in the area of labour law aimed at enhancing protection of employees who blow the whistle on misconduct, irregularities or offences. As far as possible, the proposals are to be general in nature and applicable in both the public and private sectors.