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Theme I

Third Evaluation Round

Evaluation Report on Sweden on Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 41st Plenary Meeting
(Strasbourg, 16-19 February 2009)

I. INTRODUCTION

1. Sweden joined GRECO in 1999. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2001) 3E) in respect of Sweden at its 5th Plenary Meeting (11-15 June 2001) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 9E) at its 22nd Plenary Meeting (14-18 March 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of Party Funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Sweden on 25 and 26 August 2008, was composed of Mr Petr HABARTA, Legal expert, Ministry of the Interior (Czech Republic) and Mr Henry MATTHEWS, Senior prosecutor at the Office of the Director of Public Prosecutions (Ireland). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2008) 2E, Theme I), as well as copies of relevant legislation.
4. The GET met with representatives of the following public institutions: the Ministry of Justice, the Prosecution authority (the National Anti-Corruption Unit), the National Economic Crimes Bureau, the Supreme Court, the Svea Court of Appeal, the National Council for Crime Prevention and the University of Uppsala. Moreover, the GET met with representatives of civil society, i.e. the Anti-Corruption Institute and Transparency International, Sweden.
5. The present report on Theme I of GRECO's 3rd Evaluation Round – "Incriminations" – was prepared on the basis of the replies to the questionnaire and information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Swedish authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include three recommendations adopted by GRECO and addressed to Sweden in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II – "Transparency of party funding", is set out in Greco Eval III Rep (2008) 4E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Sweden ratified the Criminal Law Convention on Corruption (ETS 173) on 25 June 2004 and the Convention entered into force in respect of Sweden on 1 October 2004. Sweden has made reservations in respect of Article 12 (trading in influence) and Article 17 (jurisdiction). Sweden ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) on 25 June 2004. The Protocol entered into force on 1 February 2005 in respect of Sweden.
8. Active bribery (“bestickning”) and passive bribery (“mutbrott”) in the public sector as well as in the private sector are criminalised by virtue of two global provisions: Active bribery appears in Chapter 17, section 7 and passive bribery in Chapter 20, section 2 of the Penal Code (PC). These two provisions, which were amended in 2004 as a result of the ratification process of the Criminal Law Convention on Corruption, are applicable in respect of all types of bribery offences.

Penal Code
Chapter 17 – On Crimes against Public Activity
Section 7
Active bribery (“Bestickning”)

A person who gives, promises or offers a bribe or other improper reward to an employee or other person defined in Chapter 20, section 2, for that person or for anyone else, for the exercise of duties, shall be sentenced for bribery to a fine or imprisonment for at most two years.
If the crime is aggravated, imprisonment for at least six months and at most six years shall be imposed.

Penal Code
Chapter 20 – On Misuse of Office
Section 2
Passive bribery (“Mutbrott”)

An employee who, for himself or herself or for anyone else, receives, accepts a promise of or demands a bribe or other improper reward for the performance of his duties, shall be sentenced for taking a bribe to a fine or imprisonment for at most two years. The same shall apply if the employee committed the act before obtaining the post or after leaving it. If the crime is aggravated, imprisonment for at least six months and at most six years shall be imposed.

The provisions of the first paragraph in respect of an employee shall also apply to:

- 1. a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council or association of local authorities,*
- 2. a person who exercises an assignment regulated by statute,*
- 3. a member of the armed forces under the Act on Disciplinary Offences by Members of the Armed Forces, etc. (1986:644), or other person performing an official duty prescribed by Law,*
- 4. a person who, without holding an appointment or assignment as aforesaid, exercises public authority,*
- 5. a person who, in case other than stated in 1-4, by reason of a position of trust has been given the task of*
 - a) managing another’s legal or financial affairs,*
 - b) conduct a scientific investigation,*
 - c) independently handling an assignment requiring qualified technical knowledge or*
 - d) exercising supervision over the management of such affairs or assignment referred to in a, b or c,*
- 6. a minister of a foreign state, member of the legislative assembly of a foreign state or a member of a body of a foreign state which corresponds to those referred to in 1.*
- 7. a person who, without holding an employment or assignment as aforesaid, exercises public authority in a foreign state or a foreign assignment as arbitrator,*

8. a member of a supervisory body, governing body or parliamentary assembly of a public international or supranational organisation of which Sweden is a member, and
9. a judge or official of an international court whose jurisdiction is accepted by Sweden.

Bribery of domestic public officials (Articles 1-3 and 19.1 of ETS 173)

Elements/concepts of the offence

“Domestic public official”

9. Domestic public officials or “public officers”, including judges and prosecutors, are covered by the notion of “employee” (*arbetstagare*) in the bribery provisions. Other public officials mentioned in Article 1 of the Criminal Law Convention on Corruption who cannot be conceived of as “employees” under Swedish legislation are instead covered by the list of persons or categories contained in Chapter 20, section 2 PC. The list is not only applicable in respect of passive bribery, but is also referred to in Chapter 17, section 7 PC (active bribery). The term “mayor” would, in Sweden, be equivalent to the term “borgmästare”, a title which no longer relates to a public function in the administrative system (formerly this was the title of the chief judge in the city courts). It was explained to the GET that the title most equivalent to “mayor” in Sweden, would be “municipal commissioner” - “kommunalråd” or “borgarråd” (Stockholm) - these are local politicians employed to represent the municipality and the board of a municipality. These categories of officials, as well as ministers and other elected representatives, are covered by the notion “a person who exercises an assignment regulated by statute” (Chapter 20, section 2, subsection 2 PC).

“Promising, offering or giving” (active bribery)

10. The elements of “promising”, “offering” and “giving” are expressly contained in the penal provisions concerning active bribery (Chapter 17, section 7 PC).

“Request or receipt, acceptance of an offer or promise” (passive bribery)

11. Passive bribery is covered in three distinct situations, i.e. when a public official “receives”, “accepts a promise” of, or “demands”, a bribe or other improper reward (Chapter 20, section 2 PC).

“Undue advantage”

12. “Undue advantage” corresponds to “bribe or other improper reward” (*muta eller annan otillbörlig belöning*) used in both provisions. The concept of bribe or other improper/undue reward is, according to the Swedish authorities, to be interpreted in the widest sense to cover material as well as immaterial advantages, the only limitation being the prerequisite of impropriety. The GET was informed that this interpretation derives from the preparatory works to the bribery legislation (SOU 1974:37 p. 143-145) as well as from recent case law, see below (paragraph 16).
13. The authorities referred to guidelines for public sector employees “*On bribes and conflict of interest*”, drawn up by the Department for Public Administration of the Ministry of Finance and the Swedish Association of Local Authorities and Regions, and *Ethical Guidelines for Service Abroad* drawn up by the Foreign Office and SIDA(2004). These guidelines deal with the practical aspects of proper/improper benefits.

14. In the Supreme Court case NJA 1981 s. 477, the court found that small Christmas gifts from an entrepreneur to county officials of about 100 SEK (EUR 9) annually were not improper. In the case NJA 1981 s. 1174 the Court found that invitations from a building company to county officials (from the south of Sweden) to go to Stockholm for an information visit that included staying the night, lunch and dinner was not improper. In the case NJA 1985 s. 477 a head of a service facility for elderly people helped one of her clients to make a will with her as a beneficiary. This was considered as bribe-taking. In the case NJA 1987 s. 604 an elderly man left his house to a nurse who had helped him at home. This was not considered an improper reward, due to special circumstances in the case. In the case NJA 1993 s. 539 a company that sold office supplies offered employees in the public and private sector a portable stereo "Walkman" if they ordered products from the company exceeding a certain amount. This was considered an undue advantage even though the offer was made openly and was not unusual at the time.
15. In a Supreme Court judgment of 11 June 2008 (case B 1866-07) the Court held that the participation of a County Governor (*landshövding*) in a free moose hunting trip offered to her by a major forest company did not constitute passive bribery. Moose hunting is of considerable importance for the area of Sweden that the County Governor represented (*Jämtland*). Her participation was considered as a natural part of her work. The reward was therefore not considered improper.
16. In a Supreme Court judgment of 10 July 2008 (case B 5248-06) the Court found a vehicle inspector of the State Motor Vehicle Inspection guilty of passive bribery. The inspector had accepted gifts in the form of alcoholic beverages or had been offered the chance to buy such beverages at heavily discounted prices. Those providing the benefits were representatives of local car dealers, who regularly came to the station to have vehicles inspected. The representatives of the dealerships were sentenced for active bribery. In this case the Supreme Court interprets the notion of "undue advantage" in the following way: *"a reward given with the specific intent that the recipient is to grant the briber a privilege, is always to be considered improper. In other cases the question of impropriety is dependent on custom and public opinion at a given time and is to be assessed taking all relevant circumstances into consideration. According to the preparatory works any transaction that on objective grounds is likely to influence the recipient's professional behaviour on a professional basis is to be considered improper. This assessment is in turn dependent on the nature and the value of the reward in relation to the position of the bribe taker. The concept of impropriety has a wider meaning if the bribe taker is exercising public authority compared to when this is not the case. The strong demand for protection of integrity of persons that exercise public authority can in certain cases lead to the assessment that a reward is considered improper even if it is not likely – on objective grounds – to influence the recipient."*

"Directly or indirectly"

17. The element *"directly or indirectly"* is not explicitly mentioned in the provisions. However, the GET was informed that this would not be an obstacle for the prosecution of active or passive bribery through, for example, an intermediary as this would be covered by the general rules on complicity, provided for in the Penal Code. According to Chapter 23, Section 4 PC, criminal liability is to be imposed not only on the person who committed the act but also on anyone who furthered it by advice or deed and such a person may also be considered the perpetrator of the offence. Moreover, a person who is not regarded as the perpetrator may, if s/he induced another to commit the act, be sentenced for instigation of the crime and otherwise for aiding the crime.

“For himself or herself or for anyone else”

18. “For himself or herself or for anyone else” is reflected in the wording “*for that person or for anyone else*” in respect of active bribery (Chapter 17, section 7 PC). Concerning passive bribery, the wording “*for himself or herself or for anyone else*” (Chapter 20, section 2 PC) match exactly the wording of the Criminal Law Convention.

“To act or refrain from acting in the exercise of his or her functions”

19. “*To act or refrain from acting in the exercise of his or her functions*” is covered by the term “*for the performance of duties*” (*för tjänsteutövningen*) used in respect of both active and passive bribery, which is equivalent to exercising his/her duties/functions. The authorities have added that “performance of duties” would cover action as well as omission, that the performance does not have to be affected by the advantage, the mere risk of influence is the basis for the provision and that criminal responsibility can follow even if the bribe taker does nothing more than what corresponds to his/her duty towards the briber, i.e. it does not matter whether the performance goes beyond the specific duties.

“Committed intentionally”

20. Active and passive bribery in all its forms are intentional crimes according to the law. The general provision in Chapter 1, section 2 PC provides that an act is to be regarded as a crime only if it is committed intentionally, unless otherwise stated in a particular provision of an offence. The perpetrator’s intent in respect of all pertinent elements of the offence is necessary to obtain criminal liability and the issue of whether an improper gift has had a real impact or not is irrelevant.

Sanctions

21. There are two levels of active and passive bribery offences and the sanctions range from a fine to two years’ imprisonment or, in case the offence is considered aggravated, from six months’ to six years’ imprisonment¹. Alternatives to imprisonment, such as conditional sentences and probation, are also applicable to bribery and bribe taking and could be combined with a fine.
22. The provisions do not give examples on circumstances that make an offence aggravated. The GET was informed that this is a common legislative technique in Swedish law that gives a great deal of leeway to the courts; i.e. that all relevant circumstances must be taken into account when assessing bribery cases. According to the preparatory work to the bribery legislation, an aggravated offence may be at hand for example if the bribe taker holds a post that calls for special protection of its integrity or if s/he has carried out or intended to carry out an act that is contrary to his/her duties or if s/he has caused considerable damage (SOU 1974:37 p.145). Two published Court of Appeal judgments deal with the question of the border between “normal” and “aggravated” offences. In RH 1996:30, the court held that a person who negotiated rental agreements on behalf of an authority had committed an aggravated offence when he received 195 000 SEK (EUR 17 600) from a real estate owner. In RH 1997:43 a reward (construction services) amounting to SEK 187 000 to a technical manager in a municipality did, however, not constitute an aggravated offence. The court came to this conclusion after having established that the technical manager had very little influence over the decision making of interest to the briber.

¹ The aggravated form of bribery was introduced in connection with the ratification process of the Criminal Law Convention on Corruption.

23. If a crime, such as active bribery, has been committed in the course of someone's business activities, the physical person being a perpetrator may be prohibited from running the business or from acting in a managerial position in a legal person (business prohibition) for a certain period of time (from 3 to 10 years). Rules governing this sanction, which can only be imposed by a court, are provided for in the Trading Prohibition Act (1986:436).
24. Moreover, passive bribery committed by a domestic public official may, in addition, lead to sanctions of a non-criminal nature, for example, a public employee who neglects his/her duty may be subject to dismissal from his/her position. For less serious offences disciplinary sanctions may be imposed according to Sections 14 and 15 of the Public Employment Act (1994:260). The disciplinary sanctions available are warning and docking of pay. Pay may be reduced for a period of no more than thirty days. The pay deducted per day may amount to no more than 25 per cent of daily pay.
25. Although Swedish legislation does not acknowledge corporate criminal liability as such, legal persons may be criminally sanctioned – in addition to a physical person – according to the rules on corporate fines (företagsbot) provided for in Chapter 36, Sections 7–10 a of the Penal Code. This is possible in certain cases where the legal person has not done what could reasonably be required to prevent the crime, or the crime has been committed by a person who has a leading position within the legal person or an authority to take decisions on behalf of it or otherwise has a special responsibility of supervision or control of the business. A corporate fine may range between 5 000 SEK (EUR 450) and 10 000 000 SEK (EUR 901 000).
26. Bribery offences may also lead to disbarment from public procurement according to Chapter 10 of the Public Procurement Act (2007:1091).

Statistics / case law

27. The Swedish authorities have referred to a study carried out by the National Council for Crime Prevention indicating that the number of suspected offences during the period 2003-2005 was 248 (excluding an unknown number of offences still under investigation). The number of those specific suspected offences that led to prosecution was 31. Moreover, the National Anti-Corruption Unit informed the GET that between 15th July 2003 and 15th January 2009 there had been about 280 pre-investigations leading to 82 prosecutions (involving more than 270 persons). At the time of adoption of the current report, this had resulted in approximately 90 convictions.
28. The GET was also informed that in a large majority of the cases convicted persons had been sentenced to day fines or a suspended sentence combined with a day fine. No bribery offence, referred to above, led to imprisonment.
29. Moreover, the authorities have referred to the fact that the National Anti-Corruption Unit, since its establishment in 2003², has dealt with an increasing number of cases. As a result, court practice in the area of bribery is expanding and cases were pending in the various courts, including the Supreme Court.

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

² Following a recommendation by GRECO in its First Evaluation Round Report in respect of Sweden [doc. Greco Eval I Rep (2001) 3E].

30. Active and passive bribery of members of domestic public assemblies are criminal offences under Chapter 17, section 7 and Chapter 20, section 2 PC, as such officials are covered by subsections 1 and 2 of the latter provision (list of categories): “1. *a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council or association of local authorities*” and “2. *a person who exercises an assignment regulated by statute*”. A member of Parliament or of a local council would be covered by the latter provision.
31. All other elements/concepts, including the penal sanctions, described under bribery of domestic officials (above) are equally applicable in respect of this offence.
32. Regarding case law, the authorities informed the GET of one case in which the responsibility for bribery was the issue in respect of a person campaigning to become a member of Parliament. The Court of Appeal held that this person was not guilty of passive bribery based on the facts of the case (RH 1995:99).

Bribery of foreign public officials (Article 5 of ETS 173)

33. Active and passive bribery of foreign public officials are criminal offences under Chapter 17, section 7 and Chapter 20, section 2 of the PC, as such officials are covered by the notion of “employee” in the above provisions or covered by subsections 6 and/or 7 of the latter provision (list of categories) which read: “6. *a minister of a foreign state, member of the legislative assembly of a foreign state or a member of a body of a foreign state which corresponds to those referred to in 1*” [*a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council or association of local authorities*] and “7. *a person who, without holding an employment or assignment as aforesaid, exercises public authority in a foreign state...*”. The GET was informed that the term “employee” in Chapter 17 section 7 PC is not limited to Swedish employees but also covers foreign employees, according to Government Bill 1998/99:32 p. 38 (concerning the ratification of, *inter alia*, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).
34. All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of foreign public officials. In addition, it was made clear to the GET that regarding the interpretation of what would constitute an undue advantage the customs in Sweden, and not those of the foreign state, have to be taken into account, cf. paragraph 16 (reasoning of the Supreme Court).
35. The authorities informed the GET that there were no statistics or specific case law available in respect of these offences.

Bribery of members of foreign public assemblies (Article 6 of ETS 173)

36. Active and passive bribery of members of foreign public assemblies are criminal offences under Chapter 17, section 7 and Chapter 20, section 2 PC, the persons concerned are either covered by the notion of “employee” in the above provisions or by subsections 6 and/or 7 of the latter provision (list of categories) which read in relevant parts: “6. ... *member of the legislative assembly of a foreign state or a member of a body of a foreign state which corresponds to those referred to in 1*” [*a member of a directorate, administration, board, committee or other such agency belonging to the State, a municipality, county council or association of local authorities*]

and “7. a person who, without holding an employment or assignment as aforesaid, exercises public authority in a foreign state...”.

37. All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of members of foreign public assemblies. In addition, it was explained to the GET that regarding the interpretation of what would constitute an undue advantage the customs in Sweden, and not those of the foreign state, have to be taken into account, cf. paragraph 16 (reasoning of the Supreme Court).
38. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery in the private sector (Articles 7 and 8 of ETS 173)

Elements/concepts of the offence

“Persons who direct or work for, in any capacity, private sector entities”

39. Active and passive bribery in the private sector are criminal offences under Chapter 17, section 7 and Chapter 20, section 2 PC, as the notion “*persons who direct or work for, in any capacity, private sector entities*” of the Criminal Law Convention is captured by the term “employee” in the above provisions of the Penal Code or by subsection 5 of the latter provision (list of categories) which reads:
a person who, in a case other than that stated in 1-4, by reason of a position of trust has been given the task of
 - a) managing another's legal or financial affairs,*
 - b) conducting a scientific investigation,*
 - c) independently handling an assignment requiring qualified technical knowledge or*
 - d) exercising supervision over the management of such affairs or assignment referred to in a, b or c”.*
40. It was explained to the GET that subsection 5 above, is based on the categories of persons that are covered by the provision on “breach of faith committed by an agent” in Chapter 10, section 5 PC and that subsection 5 d) above, covers technical engineers in managerial positions, running scientific projects, for example, as well as independent consultants. These categories are not covered by a)-c) as they are not themselves carrying out the tasks described there.

“In the course of business activity”; “...in breach of [their³] duties”

41. The authorities submit that criminal liability for active and passive bribery presupposes a professional connection between the briber and the bribe-taker. The bribe-taker must in some way be able to favour the briber. This follows, *inter alia*, from the wording “for the exercise of duties”. But the liability is not restricted as such to bribery situations “in the course of business activity”. For example, a bribe given afterwards or even when the bribe-taker has left his/her position may also lead to criminal responsibility and, moreover, an actual breach of duty is not required in respect of this offence.

³ By the persons who direct or work for, in any capacity, private sector entities.

Other elements

42. All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of this offence.
43. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of officials of international organisations (Article 9 of ETS 173)

44. Active and passive *bribery of officials of international organisations*, are covered by the term "employee" under Chapter 17, section 7 and Chapter 20, section 2 PC. The notion of employee is not limited to Swedish employees (cf. paragraph 33).
45. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of officials of international organisations. In addition, it was made clear to the GET that regarding the interpretation of what would constitute an undue advantage the customs in Sweden, and not those of the foreign state, have to be taken into account, cf. paragraph 16 (reasoning of the Supreme Court).
46. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)

47. Active and passive bribery of members of international parliamentary assemblies are covered by Chapter 17, section 7 and Chapter 20, section 2, subsection 8 PC (list of categories), which reads: "*a member of a supervisory body, governing body or parliamentary assembly of a public international or supranational organisation of which Sweden is a member*".
48. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic officials (above) are equally applicable in respect of bribery of officials of international parliamentary assemblies. In addition, it was made clear to the GET that regarding the interpretation of what would constitute an undue advantage the customs in Sweden, and not those of the foreign state, have to be taken into account, cf. paragraph 16 (reasoning of the Supreme Court).
49. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of judges and officials of international courts (Article 11 of ETS 173)

50. Active and passive *bribery of judges and officials of international courts*, are criminal offences under Chapter 17, section 7 and Chapter 20, section 2, subsection 9 PC (list of categories), which reads: "*a judge or official of an international court whose jurisdiction is accepted by Sweden*". The authorities also point out that judges of international courts as well as other staff, registrars etc would be covered by the general notion of "employee".
51. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of judges

and officials of international courts. In addition, it was made clear to the GET that regarding the interpretation of what would constitute an undue advantage the customs in Sweden, and not those of the foreign state, have to be taken into account, cf. paragraph 16 (reasoning of the Supreme Court).

52. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Trading in influence (Article 12 of ETS 173)

53. Trading in influence is not as such included in the penal legislation and Sweden has made a reservation in this respect, see Annex B. The reservation to Article 12 was first introduced in 2004 and renewed in March 2008 for a period of three years.
54. Regarding the reasons for the reservation, the Swedish authorities have referred to the Government Bill submitted to the Swedish Parliament containing the proposal for ratification of the Criminal Law Convention on Corruption (prop. 2003/04:70 p. 32). In the Bill, the Government stated that most cases of undue influence of persons covered by Article 12 of the Convention are already criminalised under the provisions of active and passive bribery. As regards situations that might not be covered, these border on lobbying. Lobbying is not considered illegal, but provides opportunity for NGO's and interest groups to exercise political influence. A criminalisation of trading in influence might thus come into conflict with the fundamental right in a democracy to influence people in power or others through exercising the right to freedom of expression. In the view of the authorities, neither the Convention, nor the Explanatory Report define clearly "undue influence", against which background the authorities find it difficult to provide a precise definition in criminal law of the acts described in Article 12 of the Criminal Law Convention on Corruption.

Bribery of domestic arbitrators (Article 1, sections 1 and 2 and Articles 2 and 3 of ETS 191)

55. Active and passive *bribery of domestic arbitrators* are criminal offences under Chapter 17, section 7 and Chapter 20, section 2, subsection 2 PC (list of categories), which reads: "*a person who exercises an assignment regulated by statute*". The statutory regulation for domestic arbitrators is contained in the Law on Arbitration (1999:116).
56. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of domestic arbitrators.
57. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of foreign arbitrators (Article 4 of ETS 191)

58. Active and passive *bribery of foreign arbitrators* is criminalised under Chapter 17, section 7 and Chapter 20, section 2, subsection 7 PC (list of categories), which reads: "*a person who, without holding an employment or assignment as aforesaid, exercises public authority in a foreign state or a foreign assignment as arbitrator*".
59. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of foreign arbitrators. In addition, it was made clear to the GET that regarding the interpretation of what

would constitute an undue advantage the customs in Sweden, and not those of the foreign state, have to be taken into account, cf. paragraph 16 (reasoning of the Supreme Court).

60. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)

61. Active and passive *bribery of domestic jurors* are criminalised under Chapter 17, section 7 and Chapter 20, section 2, subsection 2 PC (list of categories), which reads: “*a person who exercises an assignment regulated by statute*”. Jurors and other lay judges are all regulated by statute in Sweden.
62. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic officials (above) are equally applicable in respect of bribery of domestic jurors.
63. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of foreign jurors (Article 6 of ETS 191)

64. Active and passive *bribery of foreign jurors* are criminal offences under Chapter 17, section 7 and Chapter 20, section 2, subsection 2 PC (list of categories), which, *inter alia*, reads: “*a person who, without holding an employment or assignment as aforesaid, exercises public authority in a foreign state...*”.
65. All other elements/concepts of the offence, including the penal sanctions, described under bribery of domestic officials (above) are equally applicable in respect of bribery of foreign jurors. In addition, it was made clear to the GET that in respect of the interpretation of what would constitute an undue advantage is to be interpreted in accordance with the customs of Sweden (c.f. paragraph 16).
66. The authorities informed the GET that there were no statistics or specific case law available in respect of these offences.

Other questions

Participatory acts

67. Chapter 23, section 4 PC contains general provisions on participation in criminal offences (aiding and abetting), which are applicable in respect of any offence, including the above-mentioned bribery offences: “*Punishment as provided for an act in this Code shall be imposed not only on the person who committed the act but also on anyone who furthered it by advice or deed. The same shall also apply to any other act punishable with imprisonment under another law or statutory instrument. A person who is not regarded as the perpetrator shall, if he induced another to commit the act, be sentenced for instigation of the crime and otherwise for aiding the crime. Each accomplice shall be judged according to the intent or the negligence attributable to him. Punishments defined in law for the act of a manager, debtor or other person in a special position shall also be imposed on anyone who was an accomplice to the act of such a person...*”.

Jurisdiction

68. The rules of Swedish criminal jurisdiction are laid down in Chapter 2 PC ("On the Applicability of Swedish Law"): Section 1 provides that crimes committed in the territory of Sweden shall be adjudicated in accordance with Swedish law and by a Swedish court. The same applies when it is uncertain where the crime was committed but grounds exist for assuming that it was committed within the Realm.
69. Chapter 2, section 2 PC provides that crimes committed abroad shall be adjudged according to Swedish law and by a Swedish court where the crime has been committed 1. by a Swedish citizen or an alien domiciled in Sweden, 2. by an alien not domiciled in Sweden who, after having committed the crime, has become a Swedish citizen or has acquired domicile there or who is a Danish, Finnish, Icelandic or Norwegian citizen and is present in the Realm, or 3. by any other alien, who is present in Sweden, and the crime under Swedish law can lead to imprisonment for more than six months.
70. Moreover, Chapter 2, section 2 PC provides that Swedish jurisdiction shall not apply if the act is not subject to criminal responsibility under the law of the place where the offence was committed ("dual criminality") or if it was committed within an area not belonging to any state and, under Swedish law, the punishment for such an act cannot be more severe than a fine. Furthermore, in respect of offences committed abroad, a sanction may not be imposed which is more severe than the severest punishment provided for in respect of the crime under the law in the place where it was committed.
71. Sweden has made two reservations in respect of Article 17 (jurisdiction) of the Criminal Law Convention on Corruption. Firstly, the authorities reserved the right not to exercise jurisdiction solely on the grounds that a crime under the Criminal Law Convention involves a Swedish citizen who is an official of an international organisation or court, a member of a parliamentary assembly of an international or supranational organisation or a judge at an international court. This reservation was upheld in March 2008. The reason for this reservation is, according to the Government Bill, that there would not be sufficient grounds for establishing further jurisdiction over persons without connection to Sweden than what already follows from Chapter 2, Section 2, subsection 3 PC. The latter provision together with subsections 1 and 2 of the same provision enables Sweden to establish jurisdiction for corruption offences when the offender is present in Sweden. Secondly, Sweden has made a reservation in order to maintain the requirement of dual criminality for acts committed abroad. It was explained to the GET that Sweden requires dual criminality as a general condition for jurisdiction if a crime committed abroad is not directly committed against Swedish interests, and that exceptions are normally made in respect of very serious crimes only, such as genocide and terrorism.
72. The GET was informed that there was no specific case law in connection with questions concerning jurisdiction of bribery offences.

Statute of limitations

73. The period of limitation is, as a main rule, determined by the length of imprisonment which can be imposed for the offence in question. As a consequence, according to Chapter 35, Section 1 PC in conjunction with the provisions on bribery, the limitation period in respect of active and passive bribery offences is five years, unless the offence is considered aggravated in which case the limitation period will be 10 years.

74. There is no specific case law of relevance in this respect.

Defences

75. There are no special defences available to corruption crimes. A list of more general defences can, however, be found in Chapter 29, Section 5 PC. As follows from that provision, special circumstances, such as when the accused has suffered bodily harm as a result of the offence or has, to the best of his/her ability, tried to prevent the offence or has given him/herself up etc. may lead to a shorter or more lenient sentence or may even result in no sentence at all. There is no specific case law of relevance in this respect.

III. ANALYSIS

76. The criminalisation of corruption in Sweden is provided for by two broadly phrased provisions in the Penal Code dealing with active and passive bribery respectively, in the public as well as in the private sector. The bribery legislation covers all offences listed in the Criminal Law Convention on Corruption and its Additional Protocol, except for “trading in influence”, in respect of which Sweden has made a reservation. It should be added that the Swedish bribery legislation, which in certain parts is rather general, is complemented by the preparatory work to the law containing further details which carry a certain weight when the law is interpreted by the courts.

77. Concerning the undue advantage requirement, the Swedish legislation uses the wording “bribe or improper reward”. Leaving aside the word “bribe” (“muta”) which is not defined as such, the GET notes the explanation given by the authorities, that the implied impropriety requisite is to be interpreted in a wide sense; i.e. that material as well as immaterial advantages are covered, that all circumstances of a given case have to be taken into account and that any transaction which on objective grounds is likely to influence the bribee’s professional behaviour is to be considered improper. This follows from recent case law by the Supreme Court (B 5248-06), which largely confirms the legislator’s intention behind the law as expressed in the preparatory works to the law.

78. An issue of note for the GET is the range of persons to whom the passive bribery provision contained in Chapter 20, section 2.5 PC is applicable. While Article 8 of the Criminal Law Convention on Corruption covers all “...persons who direct or work for, in any capacity, private sector entities...”, the relevant provision of the Swedish Penal Code provides for an exhaustive list of categories of persons concerned. The GET could not point out a particular category of private sector representatives who would not be included, however, given the diversity of business and commercial life, it cannot be excluded that some particular private sector positions would fall outside this list, now or in the future. While it was understood that the current wording is a result of successive adjustments in order to comply with international instruments and legislation in other areas, the complexity of this provision makes it difficult to understand, if not for the practitioners so at least for the wider public.

79. The relevant provisions contained in the Penal Code do not expressly provide for indirect commission of bribery offences, i.e. bribery committed through intermediaries. Instead, practitioners referred - convincingly - to the general rules of the Penal Code on complicity (Chapter 23, section 4 PC). In the absence of any indications to the contrary, the GET accepts that the general rules referred to would cover situations of indirect bribery.

80. The sanctions for active and passive bribery in the public as well as in the private sector are the same and reach up to six years' imprisonment in case the offence is considered aggravated. The legislation itself does not provide guidance on the circumstances which would qualify bribery as aggravated. However, it was explained to the GET that the preparatory work to the law indicates that all circumstances of a case are to be taken into account when assessing what constitutes an aggravated offence and the limited case-law available confirms this approach. The GET was satisfied that not only economic implications, such as the value of the bribe or the benefit but that also the wider societal concern about the dangers of certain forms of corruption are relevant in the global assessment of the offence. The sanctions, as provided by Swedish legislation, appear to be adequate and in conformity with the requirements of the Criminal Law Convention.
81. Overall, leaving aside the parts of the Convention where Sweden has made reservations, the GET is of the opinion that current legislation complies with the provisions of the Criminal Law Convention on Corruption and its Additional Protocol under consideration. Having said that, the GET notes that the legislation as a result of its general character, leaves a wide margin of appreciation to the courts for developing case law but that the existing case law is rather limited due to the relatively low number of known cases. The GET learned during the visit that the views about the efficiency of the current legislation are contradictory. On the one hand, the GET met with crime investigation practitioners who clearly stated that they had no major difficulties in applying the current law. On the other hand, the GET heard critical opinions by civil society representatives, including the business sector and academia, indicating that the current law does not provide much guidance. More particularly, the GET learned about the criticism put forward by the Anti-Corruption Institute⁴ concerning a number of perceived weaknesses in the wording of current legislation (see paragraph 8), such as the definition of what constitutes a bribe, the interpretation of the "employee requirement" as well as an alleged lack of precision of the list of persons covered by the offences, the very general wording of the impropriety requirement, the uncertainty of what constitutes an aggravated offence and a lack of distinction between bribery in the public and the private sector. The Anti-Corruption Institute has on several occasions requested a revision of the current legislation and submitted a detailed justification for its position to the Ministry of Justice in December 2006.
82. The GET was informed that the Government currently is considering whether to establish terms of reference for a Government inquiry which might lead to a complete revision of the existing legislation. Despite the fact that the GET is of the opinion that the Swedish bribery legislation is in line with the requirements of the provisions of the Criminal Law Convention on Corruption and its Additional Protocol under consideration, it shares the view of the Anti-Corruption Institute that a full revision of the legislation aiming at making it clearer, more easy to understand and thus its consequences more foreseeable, also for the wider public, would no doubt be beneficial. The GET therefore recommends **that the Government pursue the revision process of the existing penal legislation in the field of corruption with a view to enhancing its consistency and clarity.**
83. Sweden has made a reservation in respect of trading in influence, which is not an offence as such under Swedish law, the reason being that current provisions on bribery are thought to cover most situations of undue influence over persons anyway; it is also believed that the offence of trading in influence could affect lobbying which in itself is not illegal. The GET recalls that it is

⁴ The Anti-Corruption Institute (Institutet Mot Mutor) is a non-profit organisation, established in 1923 by the Stockholm Chamber of Commerce, the Federation of Swedish Industries and the Swedish Retail Federation. The aim of the Institute is, *inter alia*, to spread knowledge about the legal provisions against bribery and corruption; to make public legal cases in this field; to provide the public with advice on interpretation and usage of relevant legislation and to combat the system of illicit payments.

stressed in the Explanatory report to the Convention (paragraph 65) that “*the acknowledged forms of lobbying do not fall under the notion of “improper” influence which must contain a corrupt intent by the influence peddler*”. The GET also recalls that the establishment of trading in influence as a criminal offence permits the authorities to reach the close circle of officials and to tackle so-called “background corruption”, which undermines the trust of citizens in the fairness of public administration (paragraph 64 of the Explanatory Report). For these reasons, and in view of the above recommendation (paragraph 82), the GET recommends **to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention.**

84. In respect of jurisdiction, the GET was concerned that Sweden applies the jurisdictional principle of dual criminality for bribery offences (see reservation in Appendix A). This means that Swedish residents could only be prosecuted for bribery offences committed abroad if the offence is punishable in the foreign State and, if so, Swedish courts may not apply sanctions which are more severe than those applicable under the law of the foreign state. The GET believes that this legal obstacle in respect of bribery offences committed abroad significantly weakens Sweden's possibilities to fight corruption committed in certain foreign states and, thus, provides the wrong message regarding its commitment to fight corruption in a determined manner. Consequently, the GET recommends **to consider abolishing the requirement of dual criminality in respect of bribery offences when committed abroad and thus withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).**

IV. CONCLUSIONS

85. Swedish criminal legislation in respect of bribery complies in a strict legal sense with the relevant provisions of the Criminal Law Convention on Corruption and its Additional Protocol. That being said, the legislation is very general in its wording, although some further guidance regarding the application of the law can be found in the preparatory works, and the existing case law is rather limited. As a result, it is difficult to foresee all consequences of the law. It appears that the current legislation, which has been subject to a number of successive amendments in order to comply with developing international standards and which is subject to domestic criticism, would benefit from a revision in order to become more comprehensive and clear in respect of public and private sector corruption and, above all, *vis-à-vis* the wider public. The revision of existing bribery legislation, which has been on the Government's agenda for some time, is therefore strongly supported. Such a revision would not only be an opportunity to make the legal framework more comprehensible but it could also assist Sweden to reconsider the necessity of maintaining its reservations in respect of the Criminal Law Convention on Corruption (ETS 173), regarding the criminalisation of trading in influence and the requirement of dual criminality for prosecuting corruption offences committed abroad.

86. In view of the above, GRECO addresses the following recommendations to Sweden:
- i. **that the Government pursue the revision process of the existing penal legislation in the field of corruption with a view to enhancing its consistency and clarity (paragraph 82);**
 - ii. **to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention (paragraph 83);**

iii. to consider abolishing the requirement of dual criminality in respect of bribery offences when committed abroad and thus withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 84).

87. In conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Swedish authorities to present a report on the implementation of the above-mentioned recommendations by 31 August 2010.

88. Finally, GRECO invites the authorities of Sweden to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.

APPENDIX A

Declarations made with respect to treaty No. 173

Declaration contained in the instrument of ratification deposited on 25 June 2004 - Or. Engl.

Sweden makes the explanatory statement that, in Sweden's view, a ratification of the Convention does not mean that its membership of the Group of States against Corruption (GRECO) cannot be reviewed if reasons to do so arise in the future.

Period covered: 1/10/2004 -

The preceding statement concerns Article(s) : -

Reservation contained in the instrument of ratification deposited on 25 June 2004 - Or. Engl.

Sweden makes a reservation against the undertaking to introduce criminal provisions for trading in influence (Article 12 of the Convention).

[Note by the Secretariat: By a letter from the Minister for International Development Cooperation, Ministry for Foreign Affairs of Sweden, dated 19 March 2008, registered at the Secretariat General on 27 March 2008 - Or. Engl. - the Government of Sweden has informed the Secretary General of its intention to uphold this reservation, wholly, for a period of three years (Article 38 of the Convention).]

Period covered: 1/10/2004 -

The preceding statement concerns Article(s) : 12, 37

Reservation contained in the instrument of ratification deposited on 25 June 2004 - Or. Engl.

Sweden reserves the right not to exercise jurisdiction solely on the grounds that a crime under the Convention involves a Swedish citizen who is an official of an international organisation or court, a member of a parliamentary assembly of an international or supranational organisation or a judge at an international court (Article 17.1 c of the Convention).

Sweden also reserves the right to maintain a requirement of dual criminality for Swedish jurisdiction for acts committed abroad.

[Note by the Secretariat: By a letter from the Minister for International Development Cooperation, Ministry for Foreign Affairs of Sweden, dated 19 March 2008, registered at the Secretariat General on 27 March 2008 - Or. Engl. - the Government of Sweden has informed the Secretary General of its intention to uphold this reservation, wholly, for a period of three years (Article 38 of the Convention).]

Period covered: 1/10/2004 -

The preceding statement concerns Article(s) : 17, 37

Declaration contained in the instrument of ratification deposited on 25 June 2004 - Or. Engl.

As central authority Sweden designates the Government Offices of Sweden (the Swedish Ministry of Justice).

Period covered: 1/10/2004 -

The preceding statement concerns Article(s) : 29