



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Third Evaluation Round

Compliance Report on Sweden

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 50th Plenary Meeting
(Strasbourg, 28 March – 1 April 2011)

I. INTRODUCTION

1. The present Compliance Report assesses the measures taken by the authorities of Sweden to implement the 10 recommendations issued in the Third Round Evaluation Report on Sweden (see paragraph 2), covering two distinct themes, namely:
 - **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).
2. The Third Round Evaluation Report was adopted at GRECO's 41st Plenary Meeting (19 February 2009) and made public on 31 March 2009, following authorisation by Sweden (Greco Eval III Rep (2008) 4E [Theme I](#) / [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Swedish authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 28 April 2010 and additional information from the authorities were received on 28 February 2011. This information served as the basis for the Compliance Report.
4. GRECO selected Finland and Poland to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Kaarle J. LEHMUS, Inspector General of the Police, National Police Board/Ministry of the Interior (Finland) and Ms Katarzyna NASZCZYŃSKA, judge, Ministry of Justice (Poland). They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will, within a given deadline, be assessed on the basis of a further situation report to be submitted by the authorities after the adoption of the present compliance report (cf. paragraph 22).

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed 3 recommendations to Sweden in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i: *GRECO recommended 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.*

Recommendation ii: *GRECO recommended 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.*

Recommendation iii: GRECO recommended 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).

7. GRECO recalls that it was concluded in the Evaluation report (paragraph 85) that the Swedish criminal legislation in respect of bribery complied in a strict legal sense with the relevant provisions of the Criminal Law Convention on Corruption and its Additional Protocol; however, it appeared difficult to foresee all consequences of the legislation from its wording. A possible revision of the existing bribery legislation, which had been on the Government's agenda for some time, was therefore strongly supported by GRECO as that would be an opportunity to make the legislation more comprehensible and in that context also reconsider the necessity of maintaining Sweden's 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" in order to prosecute, in Sweden, corruption offences which have been committed abroad.
8. The authorities of Sweden indicate that, in March 2009, the Government decided to establish a commission of inquiry with the task of reviewing the penal law regulation of active and passive bribery. The Commission ("*Utredningen om mutor*") submitted its final report to the Minister of Justice in June 2010. The report contains several proposals for changes in the Penal Code in respect of the offences of bribery, aiming at achieving modern, efficient and easily accessible legislation in respect of bribery offences based on precise definitions. New sections of the penal Code regarding active bribery, passive bribery, gross active and passive bribery and negligent financing of a bribe were proposed by the Commission as well as the criminalisation of trading in influence. The Commission was furthermore instructed to consider abolishing the requirement of "dual criminality" in respect of bribery offences committed abroad, but reached the conclusion not to make such a proposal. The report has been submitted by the Government to a number of stakeholders for their comments. All this information forms the basis for the on-going discussions within the Ministry of Justice. Draft legislation is currently being prepared within the Ministry of Justice; a bill is intended to be submitted to Parliament during the first half of 2011 and new legislation is expected to come into force early 2012.
9. GRECO notes that the Commission ("*Utredningen om mutor*") has carried out thorough work concerning a number of aspects relating to corruption and the fight against this phenomenon. The Commission report (343 pages, available to GRECO) describes anti-corruption legal instruments at the international level, *inter alia*, the United Nations Convention against Corruption (UNCAC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Criminal Law Convention on Corruption (ETS 173) and other anti-corruption instruments of the Council of Europe. The report also includes extensive information on the work and findings of GRECO, in particular, in respect of its first, second and third evaluation rounds concerning Sweden. The main focus of this report, however, is about the establishment of various corruption offences, including trading in influence, and the establishment of a model code of conduct for business and industry. The Government has requested comments on the findings of the Commission from other stakeholders to serve as additional basis for its ongoing consideration and elaboration of draft legislation. GRECO commends the Swedish authorities for having pursued this revision process, in accordance with *recommendation i*.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

11. As stated above, the Commission ("*Utredningen om mutor*") has, in a detailed manner, analysed the possibilities of criminalising trading in influence in Sweden in the light of the Criminal Law Convention on Corruption and including comparative studies of pertinent legislation in various states. The conclusion of the Commission is that trading in influence may well be introduced under Swedish criminal law. GRECO is pleased that this matter is now under consideration within the Ministry of Justice and hopes that the offence of trading in influence, if criminalised under Swedish law, will be as wide as foreseen in the Criminal Law Convention on Corruption, in order to make it possible for Sweden to withdraw the current reservation in respect of Article 12 of the Convention, as requested in *recommendation ii*.
12. GRECO concludes that recommendation ii has been implemented satisfactorily.
13. Concerning the issue of "dual criminality", the Commission ("*Utredningen om mutor*") has considered the issue to some extent and has come to the conclusion that such a requirement, which is not specific to corruption offences, should be addressed in a wider context, including also other types of offences. For that reason, the Commission did not include any proposal to amend the legislation to the Government in this respect. GRECO takes note of this information and trusts that more substantial progress might be achieved by the authorities in due course; however, this matter has been subject to consideration as requested in *recommendation iii*.
14. GRECO concludes that recommendation iii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

15. It is recalled that GRECO in its evaluation report addressed 7 recommendations to Sweden in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i: *GRECO recommended to widen considerably the range of political parties at central, regional and local level required to keep proper books and accounts (including in connection with election campaigns); to ensure that income, expenditure, assets and debts are accounted for in a comprehensive manner following a coherent format; to seek ways to consolidate the accounts to include local branches of parties as well as other entities which are related directly or indirectly to the political party or under its control; and to make sure that the annual accounts are made public in a way that provides for easy access by the public.*

Recommendation ii: *GRECO recommended to consider introducing reporting on income and expenditure relating to election campaigns at appropriate intervals and to make sure that relevant information is disclosed in a way that provides for easy access by the public.*

Recommendation iii: *GRECO recommended to introduce a general ban on donations from donors whose identity is not known to the party/candidate and to introduce a general requirement for parties/election candidates to report individual donations above a certain value together with the identity of the donor*

Recommendation iv: *GRECO recommended to consider elaborating a co-ordinated approach for the publication of political financing reports (including party and election campaign financing) in order to facilitate the public's access to such documents.*

Recommendation v: *GRECO recommended to ensure independent auditing in respect of political parties, as appropriate, obliged (or yet-to-be obliged) to keep books and accounts.*

Recommendation vi: GRECO recommended to ensure independent monitoring of political party funding and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.

Recommendation vii: GRECO recommended that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate (flexible) sanctions, which are effective, proportionate and dissuasive.

16. The authorities of Sweden report that all the recommendations have been carefully considered, but that they did not have any reason to believe that the longstanding self regulation that prevails in Sweden would not suffice to counter corruption in this area, taking into account the low level of perceived corruption in the country¹. Consequently, it has not been deemed necessary to establish detailed rules regarding the funding of political parties and electoral campaigns. The authorities furthermore state that the “*Joint Agreement concerning openness about the parties’ income*”, dated April 2000 (appended to the Evaluation report), remains unchanged, i.e. the signatories to this agreement are the seven political parties that were represented in Parliament at the time of the adoption of the Evaluation Report. Following the parliamentary elections in September 2010, one additional party gained representation in Parliament; however, this party has not signed the agreement and has not declared whether it intends to become a signatory to it. While the authorities maintain that there are no current plans to change or amend the prevailing system, they also mention that there is an on-going discussion concerning the transparency of party funding among political parties in Sweden.
17. GRECO recalls its conclusions in the Evaluation report (paragraph 78) that the system of political financing in Sweden falls short of the standards provided for in the *Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on common rules against corruption in the funding of political parties and electoral campaigns* in respect of the particular areas covered by the Third Evaluation Round. GRECO takes note of the new information provided, which does not contain any detailed considerations in respect of any of the distinct recommendations and there are no immediate plans to remedy the weaknesses identified in the Evaluation report as regards in particular the transparency of political financing and its supervision. The only change noted as compared with the situation at the time of the adoption of the Evaluation report, is that, currently, the “*Joint Agreement*” does not cover all political parties represented in Parliament, following the recent elections. Consequently, it may even be argued that the present state of affairs provides for less transparency of the political financing system than at the time of adoption of the Evaluation report.
18. GRECO concludes that recommendations i - vii have not been implemented.

III. CONCLUSIONS

19. **In view of the above, GRECO concludes that Sweden has implemented satisfactorily or dealt with in a satisfactory manner three of the ten recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii and iii have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, none of the recommendations (i– vii) has been implemented.

¹ The authorities refer in this respect to the “corruption perception index” (CPI) of Transparency International (2008), according to which Sweden was ranked as one of the least corrupt countries in the World.

20. GRECO welcomes that the recommendations under Theme I have been implemented satisfactorily, although the requirements of these recommendations are not particularly demanding, given that concrete results in terms of new legislation were not expected. However, the complete lack of any concrete move under Theme II is striking; nothing substantial at all has been achieved in respect of the seven recommendations concerned. GRECO notes the strong determination on the part of the Swedish authorities to maintain the current model of self regulation as opposed to establishing statutory rules, a position that GRECO was already well aware of at the time of adoption of the Evaluation report. In this context, GRECO wishes to stress that each country is assessed on its own merits in the GRECO process and that the pertinent recommendations addressed to Sweden do not necessarily require legislative measures.
21. In view of the above and despite the progress noted in respect of Theme I GRECO concludes that the blatant non compliance with the recommendations under Theme II makes the overall response to the recommendations “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Swedish delegation to provide a report on the progress in implementing the pending recommendations – at the latest – by 31 October 2011, pursuant to paragraph 2(i) of that Rule.
22. GRECO invites the authorities 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.